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REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

OCTOBER 10, 2012 TO OCTOBER 23, 2012

SUPREME COURT
MANILA
2015

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 6733. October 10, 2012]

HERMINIA P. VOLUNTAD-RAMIREZ, *complainant, vs.* **ATTY. ROSARIO B. BAUTISTA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; BREACH OF DUTY TO SERVE CLIENTS WITH COMPETENCE AND DILIGENCE.— We agree with the finding of the Investigating Commissioner that respondent breached his duty to serve his client with competence and diligence. Respondent is also guilty of violating Rule 18.03 of the Code of Professional Responsibility, which states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." x x x Once a lawyer receives the acceptance fee for his legal services, he is expected to serve his client with competence, and to attend to his client's cause with diligence, care and devotion. x x x In this case, respondent attributes his delay in filing the appropriate criminal case to the absence of conciliation proceedings between complainant and her siblings before the *barangay* as required under Article 222 of the Civil Code and the Local Government Code. However, this excuse is belied by the Certification to File Action by the Office of the *Lupong Tagapamayapa*, Office of the *Barangay* Council, *Barangay* Daanghari, Navotas. The Certification to File Action was issued on 1 July 2002, which was more than four months before complainant engaged respondent's legal services on 25

November 2002. Respondent's allegation that complainant failed to inform him about the existence of the Certification to File Action is hard to believe considering complainant's determination to file the case against her siblings. Clearly, respondent has been negligent in handling complainant's case.

2. ID.; ID.; ATTORNEY'S FEE; WHERE REFUND OF THE ACCEPTANCE FEE IS IN ORDER.— In this case, complainant is asking for the refund of ₱14,000 out of the ₱15,000 acceptance fee considering that, apart from sending a letter to the City Engineer of Navotas City, respondent did nothing more to advance his client's cause during the six months that complainant engaged his legal services. We agree with the recommendation of the Investigating Commissioner and the IBP Board of Governors that a refund is in order.

APPEARANCES OF COUNSEL

Romeo N. Bartolome for complainant.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This administrative case arose from a complaint filed by Herminia P. Voluntad-Ramirez (complainant) against Atty. Rosario B. Bautista (respondent) for violation of Canon 18,[1] Rule 18.02,[2] and Rule 22.02[3] of the Code of Professional Responsibility, violation of the lawyer's oath, grave misconduct, and conduct prejudicial to the best interest of the public.

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[1] CANON 18 – A lawyer shall serve his client with competence and diligence.

[2] RULE 18.02. A lawyer shall not handle any legal matter without adequate preparation.

[3] RULE 22.02. A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter.

The Facts

In her Affidavit-Complaint[4] dated 29 March 2005, complainant alleged that on 25 November 2002, she engaged the legal services of respondent to file a complaint against complainant's siblings for encroachment of her right of way. For his legal services, respondent demanded ₱15,000 as acceptance fee, plus ₱1,000 per court appearance. Complainant then paid respondent the ₱15,000 acceptance fee. On 29 May 2003, or six months after she hired respondent, complainant severed the legal services of respondent because respondent failed to file a complaint within a reasonable period of time as requested by complainant. Complainant then retrieved from respondent the folder containing the documents and letters pertaining to her case which complainant had entrusted to respondent. Complainant claimed that she was dissatisfied with the way respondent handled her complaint considering that during the six months that elapsed, respondent only sent a letter to the City Engineer's Office in Navotas City concerning her complaint. On 8 March 2004, complainant sent a letter to respondent, reiterating that she was terminating the services of respondent and that she was asking for the refund of ₱14,000 out of the ₱15,000 acceptance fee. Complainant stated in her letter that due to respondent's "failure to institute the desired complaint on time" against complainant's brothers and sisters, complainant was compelled to hire the services of another counsel to file the complaint. Respondent failed to refund the ₱14,000, prompting complainant to file on 10 May 2005 her complaint dated 29 March 2005 with the Office of the Bar Confidant of the Supreme Court. Complainant charged respondent with violation of Canon 18, Rule 18.02, and Rule 22.02 of the Code of Professional Responsibility, violation of the lawyer's oath, grave misconduct, and conduct prejudicial to the best interest of the public.

In his defense, respondent alleges that complainant initially wanted him to file an injunction case against her siblings but later changed her mind when she was apprised of the expenses involved. Respondent then advised complainant that since her

[4] *Rollo,* pp. 2-4.

case involves family members, earnest efforts toward a compromise should be made in accordance with Article 222 of the Civil Code[5] and that since the parties reside in the same *barangay*, the case must be referred to the *barangay* in accordance with the Local Government Code. Respondent also suggested filing a criminal action instead of an injunction case. The day after he was hired by complainant, respondent wrote a letter to the City Engineer of Navotas City pertaining to complainant's case. Respondent made several follow ups with the City Engineer's Office and even filed a case[6] against the City Engineer for nonfeasance under Republic Act No. 6713.[7] When complainant voluntarily withdrew her case from respondent on 29 May 2003, complainant also retrieved the folder containing the documents relevant to her case. It was only after almost ten months from severing respondent's legal services that complainant sent a letter dated 8 March 2004 demanding the refund of ₱14,000 out of the ₱15,000 acceptance fee. Respondent explains that the acceptance fee is non-refundable because it covers the time and cost of research made immediately before and after acceptance of the case. The acceptance fee also pays for the office supplies used for the case. Nevertheless, respondent alleges that he did not ignore complainant's request for a refund. Respondent claims that he sent a letter dated 17 March 2004, which stated that although it is their law firm's policy not to entertain requests for refund of acceptance fee, they were willing to grant her a fifty percent (50%) discount and for complainant to contact them for her refund.[8] In fact,

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[5] Article 222 of the Civil Code states that: "[n]o suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035."

[6] Respondent did not submit any evidence to prove that he indeed filed a case for nonfeasance against the City Engineer.

[7] Otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

[8] *Rollo*, p. 15. Although it was stated in the Comment that respondent attached the letter dated 17 March 2004 as Annex 3, no such letter was attached as annex in the records. Nevertheless, in her Position Paper dated

respondent stated that he sent text messages to complainant's lawyer, Atty. Bartolome, signifying respondent's willingness to refund the amount of ₱9,000.[9]

In her Reply-Affidavit, complainant stated that even before she engaged respondent's legal services, her case was already referred to the *barangay* for conciliation proceedings. However, complainant's siblings failed to appear which resulted in the issuance on 1 July 2002 of a Certification to File Action by the Office of the *Lupong Tagapamayapa*, Office of the *Barangay* Council, *Barangay* Daanghari, Navotas.[10] Respondent countered in his Position Paper that complainant did not inform him of the existence of the alleged Certification to File Action and that the said certification was not part of the case folder which respondent turned over to complainant when his services was severed.

The case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation or decision.

Report and Recommendation of the Commission on Bar Discipline

The Investigating Commissioner found respondent "guilty of violation of the lawyer's oath, Canon 18, Rule[s] 18.03 and 22.02 of the Code of Professional Responsibility, grave misconduct and thereby recommend that he be suspended for a period of one (1) year with a stern warning that similar acts in the future will be severely dealt with."[11] Respondent was also ordered to refund to complainant the sum of ₱14,000.

The Investigating Commissioner held that respondent has the moral duty to restitute ₱14,000 out of the ₱15,000 acceptance fee considering that, apart from sending a letter to the City Engineer of Navotas City, respondent did nothing more to

22 April 2006, complainant stated that respondent's offer to restitute 50% of the acceptance fee is not equitable.

[9] *Id.* at 16.

[10] *Id.* at 24.

[11] IBP Records, Volume IV, p. 6.

advance his client's cause during the six months that complainant engaged his legal services.

Decision of the Board of Governors of the Integrated Bar of the Philippines

On 31 May 2007, the IBP Board of Governors passed Resolution No. XVII-2007-230, adopting and approving the Investigating Commissioner's Report and Recommendation, with modification, thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's dishonesty, negligence in [his] mandated duty to file a case to protect [his] clients cause, Atty. Rosario Bautista is hereby **SUSPENDED** from the practice of law for six (6) months, and **Restitution** of the amount of ₱14,000 to complainant is likewise ordered.[12]

In his Motion for Reconsideration, respondent alleged that even before complainant officially engaged his legal services on 25 November 2002, complainant already consulted him for several days regarding her case for which no consultation fee was charged. A day after receiving the ₱15,000 acceptance fee, respondent sent a letter-complaint to the City Engineer of Navotas City for a possible case of violation of the National Building Code. Respondent reiterated that complainant failed to disclose to him that a Certification to File Action was already issued by the Office of the *Lupong Tagapamayapa*.

In its 28 October 2011 Resolution No. XX-2011-143, the Board of Governors of the IBP partially granted respondent's Motion for Reconsideration:

> RESOLVED to unanimously GRANT partially, the Respondent's Motion for Reconsideration. Thus, Resolution No. XVIII-2007-230 dated 31 May 2007 is hereby Amended, by lowering the recommended

[12] *Id.* at 1.

penalty of Suspension against respondent Atty. Rosario Bautista from six (6) months to **ADMONITION**.

The Issue

The issue in this case is whether respondent is guilty of negligence in handling the case of complainant.

The Ruling of the Court

The Court affirms the 28 October 2011 Resolution No. XX-2011-143 of the Board of Governors of the IBP, reducing the recommended penalty from six months to admonition.

We agree with the finding of the Investigating Commissioner that respondent breached his duty to serve his client with competence and diligence. Respondent is also guilty of violating Rule 18.03 of the Code of Professional Responsibility, which states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." However, we do not find respondent guilty of violating Rule 22.02 of the Code of Professional Responsibility[13] since respondent immediately turned over to complainant the folder containing the documents and letters pertaining to her case upon the severance of respondent's legal services.

Once a lawyer receives the acceptance fee for his legal services, he is expected to serve his client with competence, and to attend to his client's cause with diligence, care and devotion.[14] As held in *Santiago v. Fojas*:[15]

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He

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[13] RULE 22.02. A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter.

[14] *Hernandez v. Padilla*, A.C. No. 9387, 20 June 2012; *Del Mundo v. Capistrano*, A.C. No. 6903, 16 April 2012; *Reyes v. Atty. Vitan*, 496 Phil. 1 (2005).

[15] Adm. Case No. 4103, 7 September 1995, 248 SCRA 68.

has the right to decline employment, subject, however, to Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of [his] client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care and devotion. Elsewise stated, he owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of the law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[16]

In this case, respondent attributes his delay in filing the appropriate criminal case to the absence of conciliation proceedings between complainant and her siblings before the *barangay* as required under Article 222 of the Civil Code and the Local Government Code. However, this excuse is belied by the Certification to File Action by the Office of the *Lupong Tagapamayapa*, Office of the *Barangay* Council, *Barangay* Daanghari, Navotas. The Certification to File Action was issued on 1 July 2002, which was more than four months before complainant engaged respondent's legal services on 25 November 2002. Respondent's allegation that complainant failed to inform him about the existence of the Certification to File Action is hard to believe considering complainant's determination to file the case against her siblings. Clearly, respondent has been negligent in handling complainant's case.

In *Cariño v. Atty. De Los Reyes*,[17] the respondent lawyer who failed to file a complaint-affidavit before the prosecutor's

[16] *Id.* at 73-74.

[17] 414 Phil. 667 (2001)

office, restituted the ₱10,000 acceptance fee paid to him. The respondent lawyer in *Cariño* was reprimanded by the Court with a warning that he should be more careful in the performance of his duty to his clients.

In this case, complainant is asking for the refund of ₱14,000 out of the ₱15,000 acceptance fee considering that, apart from sending a letter to the City Engineer of Navotas City, respondent did nothing more to advance his client's cause during the six months that complainant engaged his legal services. We agree with the recommendation of the Investigating Commissioner and the IBP Board of Governors that a refund is in order.

WHEREFORE, the Court **AFFIRMS** the 28 October 2011 Resolution No. XX-2011-143 of the Board of Governors of the Integrated Bar of the Philippines, reducing the recommended penalty from six months to admonition. The Court finds Atty. Rosario B. Bautista **GUILTY** of violating Canon 18 and Rule 18.03 of the Code of Professional Responsibility and he is **ADMONISHED** to exercise greater care and diligence in the performance of his duty to his clients. Atty. Bautista is ordered to **RESTITUTE** to complainant ₱14,000 out of the ₱15,000 acceptance fee.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

FIRST DIVISION

[G.R. No. 153478. October 10, 2012]

MR HOLDINGS, LTD., *petitioner, vs.* **SHERIFF CARLOS P. BAJAR, Sheriff IV, RTC of Manila, Branch 26, CITADEL HOLDINGS, INC., VERCINGETORIX CORPORATION, MANILA GOLF & COUNTRY CLUB, INC. and MARCOPPER MINING CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; 1997 RULES OF CIVIL PROCEDURE; *LIS PENDENS*; CONCEPT.— *Lis pendens,* which literally means pending suit, refers to the jurisdiction, power or control which a court acquires over property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, *lis pendens* is intended (1) to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation; and (2) to announce to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property.

2. ID.; ID.; ID.; NOTICE OF *LIS PENDENS* MAY NOT BE AVAILED OF IN ACTIONS INVOLVING TITLE TO OR ANY RIGHT OR INTEREST IN PERSONAL PROPERTY.— It is evident that a notice of *lis pendens* is availed of mainly in real actions. As a general rule, these actions are: (a) an action to recover possession of real estate; (b) an action for partition; and (c) any other court proceedings that directly affect the title to the land or the building thereon or the use or the occupation thereof. Additionally, this Court has held that the annotation of *lis pendens* also applies to suits seeking to establish a right to, or an equitable estate or interest in, a specific real property, or to enforce a lien, a charge or an encumbrance against it. Clearly, in this jurisdiction, a notice of *lis pendens* does not apply to actions involving title to or any right or interest in, *personal property*,

such as the subject membership shares in a private non-stock corporation.

3. ID.; ID.; ID.; ID.; DENIAL BY THE RTC AND THE CA OF THE MOTION TO ANNOTATE *LIS PENDENS* ON THE SUBJECT CLUB MEMBERSHIP CERTIFICATES DOES NOT AMOUNT TO GRAVE ABUSE OF DISCRETION.— The denial by the RTC and CA of petitioner's motion to annotate *lis pendens* on the subject club membership certificates was rather based on the absence of law and rules to govern the application of the remedy over personal properties. No grave abuse of discretion can therefore arise from such adverse ruling predicated on the lack of statutory basis for grant of relief to a party.

4. ID.; ID.; ID.; KNOWLEDGE OF THE CORPORATION OF A PERSON'S LIEN/TITLE OVER THE SUBJECT MEMBERSHIP SHARES IS DEEMED EQUIVALENT TO REGISTRATION OF AN ENCUMBRANCE IN ITS CORPORATE BOOKS.— Manila Golf Club had actual notice of petitioner's lien/title as assignee of the recorded chattel mortgage and as purchaser in the foreclosure sale, as well as the pendency of Civil Case No. 96-80083 before the Manila RTC which ordered the sale on execution pending appeal. Such actual knowledge, on the part of Manila Golf Club, of petitioner's interest and Civil Case No. 96-80083 involving the subject membership shares is deemed equivalent to registration of an encumbrance or assignment in its corporate books. By virtue of such registration of petitioner's lien/title and the pending litigation, third parties, or potential transferees *pendente lite*, may therefore be charged with constructive notice of petitioner's lien/title over the subject shares and the pending litigation involving the same, as of the time Manila Golf Club was formally notified by petitioner even prior to Manila Golf Club's receipt of the January 26, 1999 Order of the Manila RTC in Civil Case No. 96-80083.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.

Benedicto E. Marigundon for Vercingetorix Corp.

Quasha Ancheta Peña Nolasco Law Office for Marcopper Mining Corp.

Angara Abello Concepcion Regala & Cruz for Manila Golf & Country Club, Inc.

Henry D. Castro for Citadel.

D E C I S I O N

VILLARAMA, JR., *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the Decision[1] dated May 8, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 59476.

Petitioner MR Holdings, Ltd. is a non-resident foreign corporation, organized and existing under the laws of Cayman Island with business address c/o Codan Trust Company (Cayman), Ltd., Zephyr House, Mary Street, George Town, Grand Cayman, British West Indies. It is a subsidiary corporation of Placer Dome, Inc. (Placer Dome), a foreign corporation which owns 40% of respondent Marcopper Mining Corporation (Marcopper). This Court has adjudged petitioner to be a foreign corporation engaged only in isolated transactions and not "doing business" in the Philippines.[2]

On November 4, 1992, Marcopper and Asian Development Bank (ADB) executed a "Principal Loan Agreement" and a "Complementary Loan Agreement" whereby ADB agreed to extend a loan in the aggregate amount of US$40,000,000.00 to finance Marcopper's open-pit copper ore mining project (San Antonio Mine) at Sta. Cruz, Marinduque.[3] On even date, ADB and Placer Dome executed a "Support and Standby Credit Agreement" whereby Placer Dome agreed to provide Marcopper with cash flow support for the payment of its obligations to ADB.

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[1] *Rollo*, pp. 8-18. Penned by Associate Justice Bienvenido L. Reyes (now a Member of this Court) with Associate Justices Roberto A. Barrios and Edgardo F. Sundiam concurring.

[2] *MR Holdings, Ltd. v. Sheriff Bajar*, 430 Phil. 443 (2002).

[3] CA *rollo*, pp. 75-143.

As security for the loan, Marcopper executed in favor of ADB a "Deed of Real Estate and Chattel Mortgage" dated November 11, 1992 covering substantially all of its real and personal properties including Manila Golf & Country Club (Manila Golf Club) Membership Certificate Nos. 1412 and 1444, and "Addendum to Mortgage" dated May 10, 1996.[4] The Deed of Real Estate and Chattel Mortgage and Addendum to Mortgage were registered with the Register of Deeds on November 12, 1992 and May 15, 1996, respectively.

Sometime in March, 1996, Marcopper had to stop mining operations when tons of mine waste or tailings leaked from the drainage tunnel of its Mt. Tapian pit and spilled into the waters of the Boac and Makalupnit rivers. Due to massive damage to the environment and threat of serious health problems to local residents resulting from the incident, the Department of Environment and Natural Resources immediately issued a Closure Order, which was followed by a cease and desist order from the Pollution Adjudication Board.

Marcopper defaulted on its loan obligations to ADB. Pursuant to Placer Dome's undertaking under the "Support and Standby Credit Agreement," petitioner assumed Marcopper's obligation to ADB in the amount of US$18,453,450.02. Consequently, under an "Assignment Agreement"[5] dated March 20, 1997, ADB assigned to petitioner all its rights, interests and obligations under the principal and complementary loan agreements, Deed of Real Estate and Chattel Mortgage, and Support and Standby Credit Agreement. Marcopper subsequently executed a "Deed of Assignment" (December 8, 1997) whereby Marcopper assigns, cedes and conveys to petitioner, its assigns and/or successors-in-interest all of its properties, mining equipment and facilities.[6]

On account of its inability to meet production targets after the mine tailings disaster in its Marinduque project, Marcopper was sued by one of its creditors, Solidbank Corporation

[4] *Id.* at 144-180.

[5] *Id.* at 184-199.

[6] *MR Holdings, Ltd. v. Sheriff Bajar, supra* note 2 at 452.

(Solidbank) on the foreign currency loans granted by the latter. Solidbank filed a civil complaint before the Regional Trial Court (RTC) of Manila, Branch 26, docketed as **Civil Case No. 96-80083**, entitled "*Solidbank Corporation v. Marcopper Mining Corporation, John E. Loney, Jose E. Reyes and Teodulo C. Gabor, Jr.*" Solidbank sought to collect a total amount of ₱52,970,756.89 plus interest, charges and litigation expenses. A writ of preliminary attachment was issued by said court on September 20, 1996, pursuant to which respondent Sheriff Carlos P. Bajar levied upon the properties of Marcopper such as personal properties consisting of club membership shares, including the subject Manila Golf Club shares.

On May 7, 1997, the Manila RTC issued in Civil Case No. 96-80083 a Partial Judgment,[7] as follows:

> WHEREFORE, PREMISES CONSIDERED, partial judgment is hereby rendered ordering defendant Marcopper Mining Corporation as follows:
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> 1. To pay plaintiff Solidbank the sum of Fifty Two Million Nine Hundred Seventy Thousand Seven Hundred Fifty Six Pesos and 89/100 only (₱52,970,756,89), plus interest and charges until fully paid;
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> 2. To pay an amount equivalent to Ten Percent (10%) of abovestated amount as attorney's fees; and
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> 3. To pay the costs of suit.
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> SO ORDERED.[8]

On June 25, 1997, the RTC also granted Solidbank's motion for execution pending appeal, conditioned on its posting of a bond in the amount of ₱30 million in addition to the ₱58.2 million attachment surety bond filed with the court. The writ of execution pending appeal issued on July 7, 1997 directed Sheriff Bajar to require Marcopper "to pay the sums of money to satisfy the partial judgment." On July 11, 1997, Sheriff Bajar issued a

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[7] CA *rollo*, pp. 203-208. Penned by Judge Guillermo L. Loja, Sr.

[8] *Id.* at 207-208.

notice of sale on execution pending appeal covering several club membership shares, and setting the public auction sale thereof on July 21, 1997.[9]

On July 2, 1997, Marcopper filed a Petition for *Certiorari* and Prohibition in the CA, docketed as **CA-G.R. SP No. 44570**, praying for the issuance of a writ of preliminary injunction and the nullification of the June 25, 1997 Order of execution pending appeal. The CA, in its Resolution dated July 15, 1997, granted a temporary restraining order (TRO) enjoining the implementation of the writ of execution issued by the Manila RTC, Branch 26 in Civil Case No. 96-80083.[10]

In the meantime, petitioner pursued other remedies to protect its rights over the levied properties in Civil Case No. 96-80083. In a letter dated July 21, 1997, it formally notified the Corporate Secretary of Manila Golf Club of the assignment of mortgage under instruments duly registered, and requested the Corporate Secretary "to record and reflect the said mortgage and encumbrance upon the described shares so as to put third parties and the public in general on notice of the fact [and] existence of said mortgage."[11]

On August 4, 1997, petitioner filed in Civil Case No. 96-80083 a "Manifestation And Notice of Prior Lien" asserting in particular, its rights as assignee of the club shares of Marcopper which had been mortgaged and conveyed to ADB, including the subject Manila Golf membership shares. Petitioner requested that the "Deed of Assignment," "Deed of Real Estate and Chattel Mortgage," and "Addendum to Mortgage" be entered and made part of the records of the case "in order to warn future bidders or buyers of said mortgaged properties presently subject to execution proceedings, of the existence of [petitioner's] prior lien or encumbrance."[12]

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[9] *Id.* at 209-215.

[10] *Id.* at 216-220.

[11] *Id.* at 221.

[12] *Id.* at 222-224.

On September 4, 1997, petitioner as assignee filed an application for extrajudicial foreclosure of the Chattel Mortgage executed on November 11, 1992. In the auction sale held on September 15, 1997, the subject club shares consisting of Marcopper's Manila Golf Club Membership Certificate Nos. 1412 and 1444, were sold to petitioner as the highest bidder, and accordingly a Certificate of Sale was issued to it by the Office of the Clerk of Court and *Ex-Officio* Sheriff of Makati City. On the same date, petitioner furnished the Corporate Secretary of Manila Golf Club a copy of the certificate of sale and warning the said officer "not to honor or effect any transfers or transactions involving the said shares other than the transfer of the said shares to [petitioner]."[13]

Meanwhile, on December 8, 1997, in payment of its obligations amounting to US$19,550,747.00 as of December 31, 1997, Marcopper executed a Deed of Assignment whereby Marcopper assigned, ceded and conveyed to petitioner, its assigns and/or successors-in-interest all of its properties, mining equipment and facilities.

On December 12, 1997, the CA rendered judgment dismissing the petition in CA-G.R. SP No. 44570. The CA likewise denied the motion for reconsideration filed by Marcopper. On July 15, 1998, Marcopper filed before this Court a petition for review on *certiorari* under Rule 45, docketed as **G.R. No. 134049** entitled "*Marcopper Mining Corporation v. Solidbank Corporation, the Sheriff of Manila and Deputy Sheriff Carlos Bajar.*"[14]

On January 13, 1999, Sheriff Bajar issued in Civil Case No. 96-80083 a notice of sale on execution pending appeal which set the auction of the levied membership shares of Marcopper in various clubs on January 19, 1999. On that scheduled date, petitioner filed a "Manifestation and Warning" specifically addressed to Sheriff Bajar, all bidders and the general public, informing that the subject club shares which Sheriff Bajar

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[13] *Id.* at 226-240.

[14] 476 Phil. 415 (2004).

intended to sell have already been acquired by petitioner at the foreclosure proceedings conducted by the Sheriff of Makati City on September 15, 1997. Petitioner likewise served an "Affidavit of Third-Party Claim" asserting such legal and beneficial ownership it acquired over the subject club membership shares by virtue of the foreclosure sale.[15]

The Manila RTC, Branch 26 denied the third-party claim, prompting the petitioner to file an independent reivindicatory action in the RTC of Boac, Marinduque against Solidbank, Marcopper and Sheriffs Bajar and Jandusay, pursuant to Rule 39, Section 16 of the 1997 Rules of Civil Procedure, as amended. The case was docketed as **Civil Case No. 98-13**. On October 6, 1998, the court in said case denied petitioner's application for a writ of preliminary injunction.

Herein respondents Citadel Holdings, Inc. (Citadel) and Vercingetorix Corporation (Vercingetorix) were the highest bidders for Manila Golf Club Membership Certificate Nos. 1412 and 1444, respectively, during the public auction conducted by Sheriff Bajar on January 19, 1999 pursuant to the writ of execution pending appeal issued in Civil Case No. 96-80083. After the Certificates of Sale have been issued to them by Sheriff Bajar, the following Order[16] dated January 26, 1999 was issued by the Manila RTC, Branch 26:

Acting on the two identical *ex-parte* motions filed by movants CITADEL HOLDINGS, INC. and VERCINGETORIX CORPORATION, which were declared awardees of MANILA GOLF AND COUNTRY CLUB CERTIFICATE NOS. 1412 and 1444, respectively, for having posted the highest bids during the Sheriff's Auction Sale on January 19, 1999, and finding both motions to be impressed with merit, the Court orders the corporate secretary and/or authorized officer of MANILA GOLF AND COUNTRY CLUB, INC. to register and transfer MANILA GOLF MEMBERSHIP CERTIFICATE NO. 1412 to CITADEL HOLDINGS, INC. and MANILA GOLF MEMBERSHIP CERTIFICATE NO. 1444 to VERCINGETORIX CORPORATION which were levied by virtue of the Writ of Attachment issued in the above-captioned

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[15] *Id.* at 241-247.

[16] *Id.* at 250.

case as early as September 20, 1996, to the movants and highest bidders CITADEL HOLDINGS, INC. and VERCINGETORIX CORPORATION, in place and in lieu of the old membership certificates registered in the name of the judgment-debtor, defendant MARCOPPER MINING CORPORATION, which said old membership certificates are hereby declared void and cancelled.

SO ORDERED.

Manila Golf Club's Corporate Secretary, Atty. Avelino V. Cruz, wrote petitioner's counsel informing the latter that they could not comply with petitioner's earlier request not to register any transfer of Membership Certificate Nos. 1412 and 1444 in view of the above court order "absent any further revision or amendment of that Order by the said court or by higher courts."[17]

On March 15, 1999, petitioner filed in the RTC of Makati City a complaint for "Reivindication of Possession/Right with Damages and Prayer for Preliminary Injunction and Temporary Restraining Order" against herein respondents, docketed as **Civil Case No. 99-605** (Branch 62). Petitioner argued that as assignee of the creditor-mortgagee, it had the right to foreclose the chattel mortgage on the subject certificates upon default of the debtor-mortgagor (Marcopper) according to the terms of the loan agreements. Having foreclosed a preferred/superior mortgage lien, all subordinate liens, such as the levy on attachment/ execution for Solidbank as judgment obligee, has also been foreclosed. Petitioner thus asserted that as purchaser in the extrajudicial foreclosure sale, it became the absolute owner of the subject certificates sold by respondent sheriff at the execution sale pending appeal, including the Manila Golf Club certificates which the Manila RTC, Branch 26 directed to be transferred to respondents Citadel and Vercingetorix.

In its complaint, petitioner prayed for the following reliefs:

1. Upon the posting of a bond in such sum as may be directed by the Honorable Court, to issue a writ of preliminary injunction or temporary restraining order enjoining, pending final adjudication of

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[17] *Id.* at 251.

the instant complaint, the defendant Manila Golf from transferring to defendants Citadel and Vercingetorix Certificate Nos. 1412 and 1444, respectively, and issuing new certificates in lieu thereof.

2. And, making said writ of preliminary injunction final upon favorable consideration of the complaint.

3. To render judgment:

a.) Declaring the plaintiff as the true absolute owner of Manila Golf Certificate Nos. 1412 and 1414.

b.) Restoring possession/right of the subject club shares to plaintiff;

c.) Ordering the defendant sheriff to pay damages to the plaintiff in such sums as may be proved in court but not less than the market value of the subject club shares in the sum of a total of Sixty Five Million Pesos (₱65,000,000.00); exemplary damages of One Million Pesos (₱1,000,000.00); litigation expenses in the sum of One Hundred Thousand Pesos (₱100,000.00); attorney's fees in the sum of Five Hundred Thousand Pesos (₱500,000.00); and cost of suit.

Or, in the alternative:

4. Should judgment be to deny plaintiff's reivindication of possession/right over the subject club shares, render judgment ordering defendant Marcopper to restitute plaintiff all such sums paid by it in consideration of the foreclosure sale, or so much thereof as will cover the consideration paid for the foreclosed Manila Golf Club shares or the total sum of Sixty Five Million Pesos (₱65,000,000.00), plus legal interest thereon from date of filing of complaint until fully paid.

Other just and equitable reliefs are, likewise, prayed for.[18]

In their separate answers, respondents Citadel, Vercingetorix and Sheriff Bajar moved for the dismissal of the complaint on grounds of forum shopping, *litis pendentia*, lack of legal capacity to sue and lack of cause of action. By way of cross-claim, Vercingetorix prayed that in the event of adverse judgment against it, its co-defendant Sheriff Bajar be ordered to indemnify it for all

[18] *Id.* at 71-73.

damages it sustained in the amount of not less than ₱15,300,000.00. On its part, Manila Golf Club filed a manifestation and motion praying that it be dropped as party defendant for the reason that it is not a real party in interest. On the other hand, Marcopper filed a motion to dismiss on the ground that the complaint states no cause of action against it.[19]

In his Order dated April 5, 1999, Presiding Judge Roberto C. Diokno denied petitioner's application for TRO and Preliminary Injunction, and set the case for pre-trial after the expiration of the periods for the filing of defendants' answers.[20]

In a Manifestation dated September 16, 1999, Manila Golf Club stated that it is constrained to comply with the January 26, 1999 Order of the Manila RTC, Branch 26 in Civil Case No. 96-80083 by registering and transferring the subject membership certificates in the names of Citadel and Vercingetorix. It nevertheless reiterated its undertaking to abide in whatever Judgment/Decision will be rendered by the Makati City RTC in the case (Civil Case No. 99-605).[21] This prompted petitioner to file a motion for the court "to order defendant Manila Golf & Country Club to annotate the pendency of the instant case on Manila Golf Membership Certificate Nos. 1412 and 1444 and to keep the annotation until final judgment has been rendered in the instant case."[22] Petitioner stated that such annotation is necessary to protect its interest pending the final judgment or decision to be rendered in Civil Case No. 99-605. In the Order dated March 20, 2000, Judge Diokno denied petitioner's motion for lack of basis in law. Petitioner's motion for reconsideration was likewise denied under the Order dated May 10, 2000 stating that the notice of *lis pendens* provided in Section 76 of Presidential Decree (P.D.) No. 1529 pertains to real properties and not shares of stock which are considered chattels, and that granting the motion would constitute an undue

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[19] *Id.* at 254-291.

[20] *Id.* at 252-253.

[21] *Id.* at 292-294.

[22] *Id.* at 295-296.

restraint on the ownership of Citadel and Vercingetorix of the Manila Golf membership certificates.[23]

On July 3, 2000, petitioner filed a petition for *certiorari* in the CA (**CA-G.R. SP No. 59476**) assailing the aforesaid orders of the Makati City RTC, Branch 62 denying its motion to annotate a notice of *lis pendens* on Manila Golf Membership Certificate Nos. 1412 and 1444.

Meanwhile, this Court promulgated the Decision dated April 11, 2002 granting the petition in G.R. No. 138104 on the denial of petitioner's application for preliminary injunction in Civil Case No. 98-13. The dispositive portion of said Decision reads:

> WHEREFORE, the petition is GRANTED. The assailed Decision dated January 8, 1999 and the Resolution dated March 29, 1999 of the Court of Appeals in CA G.R. No. 49226 are set aside. Upon filing of a bond of ₱1,000,000.00, respondent sheriffs are restrained from further implementing the writ of execution issued in Civil Case No. 96-80083 by the RTC, Branch 26, Manila, until further orders from this Court. The RTC, Branch 94, Boac, Marinduque, is directed to dispose of Civil Case No. 98-13 with dispatch.
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> SO ORDERED.[24]

On May 8, 2002, the CA rendered its Decision in CA-G.R. SP No. 59476 dismissing the petition for *certiorari* filed by petitioner. The CA found no grave abuse of discretion in the denial by the Makati City RTC, Branch 62 of petitioner's motion to annotate *lis pendens* on the subject certificates considering that Section 14, Rule 13 of the Rules of Court and Section 76 of P.D. No. 1529 both refer to actions affecting title or right of possession to real properties, and that even assuming that the public respondent erroneously opined on the matter, the same constitutes a mere error in judgment which cannot be corrected by the extraordinary remedy of *certiorari* but by ordinary appeal at the proper time.

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[23] *Id.* at 295-297, 305-313.

[24] *MR Holdings, Ltd. v. Sheriff Bajar, supra* note 2 at 474.

Petitioner filed the present petition on May 28, 2002.

During the pendency of this case, on June 17, 2004, a decision was rendered in G.R. No. 134049 which nullified the order of RTC Manila, Branch 26 in Civil Case No. 96-80083 granting the respondents' motion for execution pending appeal. The dispositive portion of said decision reads:

> IN LIGHT OF ALL THE FOREGOING, the petition in this case is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 44570 and the assailed Order of the RTC in Civil Case No. 96-80083 dated May 7, 1997 and the Writ of Execution issued by the RTC on the basis of the said Order, are REVERSED AND SET ASIDE.
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> SO ORDERED.[25]

In this petition, the following issues are presented for resolution:

I. WHETHER THE *LIS PENDENS* RULE CAN APPLY IN ACTIONS AFFECTING TITLE OR POSSESSION OF PERSONAL PROPERTIES.

II. WHETHER THE PETITION AT BAR PRESENTS CIRCUMSTANCES SUFFICIENT FOR THE HONORABLE COURT AS A COURT OF LAW, JUSTICE AND EQUITY TO GRANT THE MOTION TO ANNOTATE.[26]

Lis pendens, which literally means pending suit, refers to the jurisdiction, power or control which a court acquires over property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, *lis pendens* is intended (1) to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation; and (2) to announce to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk,

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[25] *Marcopper Mining Corporation v. Solidbank Corporation, supra* note 14 at 454.

[26] *Rollo,* p. 384.

or that he gambles on the result of the litigation over said property.[27]

A notice of *lis pendens* is governed by Rule 13, Section 14 of the 1997 Rules of Civil Procedure, as amended, which states:

> SEC. 14. *Notice of lis pendens*. - In an action affecting the title or the right of possession of **real property,** the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names. (Emphasis supplied)

It is evident that a notice of *lis pendens* is availed of mainly in real actions. As a general rule, these actions are: (a) an action to recover possession of real estate; (b) an action for partition; and (c) any other court proceedings that directly affect the title to the land or the building thereon or the use or the occupation thereof. Additionally, this Court has held that the annotation of *lis pendens* also applies to suits seeking to establish a right to, or an equitable estate or interest in, a specific real property, or to enforce a lien, a charge or an encumbrance against it.[28] Clearly, in this jurisdiction, a notice of *lis pendens* does not apply to actions involving title to or any right or interest in, *personal property*, such as the subject membership shares in a private non-stock corporation.

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[27] *St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City*, G.R. Nos. 174290 & 176116, January 20, 2009, 576 SCRA 713, 730, citing *Romero v. Court of Appeals*, G.R. No. 142406, May 16, 2005, 458 SCRA 483, 492.

[28] *Lu v. Lu Ym, Sr.*, G.R. Nos. 153690, 157381 & 170889, August 4, 2009, 595 SCRA 79, 92, citing *Atlantic Erectors, Inc. v. Herbal Cove Realty Corporation*, G.R. No. 148568, March 20, 2003, 399 SCRA 409, 416.

Petitioner, citing the 1958 case of *Diaz v. Hon. Perez, et al.*[29] argues that *lis pendens* may also be allowed in "other circumstances wherein equity and general convenience would make [it] appropriate." In the said case, this Court declared that Section 79 of the Land Registration Act (Act No. 496) and Section 24, Rule 7 of the old Rules of Court are not exclusive enumeration of cases where *lis pendens* may be made.

We do not agree that the afore-cited case serves as authority for allowing the annotation of *lis pendens* in an action involving only personal property. The issue of the propriety of the annotation of a *lis pendens* in *Diaz v. Hon. Perez, et al.* arose from a guardianship proceedings instituted by petitioner Diaz's children who petitioned the Court of First Instance to declare her incompetent to take care of herself and manage her properties and to appoint a guardian of her person and her properties. While the special proceedings was pending hearing, petitioner received from the Register of Deeds of Rizal a letter advising her that by reason of said proceedings, a notice of *lis pendens* had been annotated on her Transfer Certificate of Title No. 32872 covering a real property situated in that province. Whereupon, petitioner sought to cancel the annotation but her motion was denied by respondent Judge Perez. In a petition for *mandamus* and *certiorari* filed in this Court, petitioner sought to annul the order refusing cancellation of the notice of *lis pendens*.

On the issue of whether respondent Judge Perez committed grave abuse of discretion, this Court first explained the purpose of the annotation and then ruled that the notice of *lis pendens* may not be considered as improper in a guardianship proceeding. On petitioner Diaz's contention that guardianship proceedings is not included in the enumeration of the cases indicated in Section 79 of Act No. 496 and Section 24 of Rule 7 where *lis pendens* may be annotated, this Court expressed the view that it is to be doubted whether said enumeration were intended to be exclusive. However, the ruling was clearly confined to the issue of whether the annotation of *lis pendens* was proper in

[29] 103 Phil. 1023 (1958).

a guardianship proceeding which involves a specific real property. Our conclusion therein did not contemplate a reading of the subject provisions that would justify the application of the doctrine of *lis pendens* to personal property. Thus:

> In the light of the object and salutory effects of the notation, **we see no reason to declare it improper in this case**, specially because the allegations of the guardianship petition specified instances wherein the incompetent disposed of her properties in favor of persons allegedly taking undue advantage of her advanced age and weak mental and physical condition.
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> The argument is presented that Sec. 79 of Act No. 496 and Sec. 24 of Rule 7 indicate the cases wherein *lis pendens* may be annotated, and that guardianship proceedings is not included therein. In the first place Sec. 79 is not an exclusive enumeration. In the second place, **these proceedings affect "the use" or possession of the real estate within the meaning of above sections, even "the title," in the sense that the proceedings will curtail or take away the right of the owner to dispose of the same.**
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> Anyway, it is to be doubted whether the above sections were intended to be exclusive of other circumstances wherein equity and general convenience would make *lis pendens appropriate*. Indeed, cases have held it to be proper in receivership proceedings involving realty, and in lunacy proceedings situations closely akin to the instant litigation.
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> In this connection, it is insisted that both sections only apply to "actions" which are different from "special proceedings," like guardianship. It is enough to point out that the Rules provided for civil actions are generally applicable to special proceedings. (Rule 73, Section 2.)
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> Lastly, we are advised that after hearing the petition the lower court found in April 1957 that by reason of her advanced age and weak mind, Roberta Diaz could not manage her properties - she does not even remember them - and needed a guardian to help administer her interests. This, in a way, vindicates the annotation and the court's refusal to cancel it.
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> Clearly then no abuse was made of the court's discretion. Petition denied, with costs.[30] (Emphasis supplied)

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[30] *Id.* at 1026-1027.

The foregoing shows that the issue presented in *Diaz v. Hon. Perez* pertains to the nature of the action where the motion for annotation of notice of *lis pendens* is filed, and not to the kind of property which may be the subject of the annotation because, obviously, the cited provisions (Section 79 of Act No. 496 and Section 24 of Rule 7, Rules of Court) make express reference to real estate/property. The denial by the RTC and CA of petitioner's motion to annotate *lis pendens* on the subject club membership certificates was rather based on the absence of law and rules to govern the application of the remedy over personal properties. No grave abuse of discretion can therefore arise from such adverse ruling predicated on the lack of statutory basis for grant of relief to a party.

It has been declared in a case decided by the US Supreme Court that the doctrine of *lis pendens* has no application to commercial securities.[31] In some other cases the doctrine has been applied to personal properties such as corporate stock, non-negotiable bond, and non-negotiable notes.[32] Statutes may also expressly provide for the filing of a formal notice of *lis pendens* even in actions involving only personal property.[33] However, there seems to be no uniformity of rulings with respect to the application of the doctrine of *lis pendens* to corporate stock.[34] In this case, the notice of *lis pendens* was sought to be annotated on membership certificates representing a proprietary interest in the assets of a private non-stock corporation.

Petitioner invokes equity and justice in seeking the annotation of *lis pendens* on the subject club membership shares, which may be justified by the attendant circumstances whereby its superior lien as assignee of a prior recorded chattel mortgage and purchaser at the foreclosure sale of the club membership shares subject of said mortgage, still runs the risk of being

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[31] *Orleans v. Platt,* 99 U.S. 676, 99 U.S. 682, cited in *Presidio County v. Noel-Young Co.,* 212 U.S. 58 (1909).

[32] 51 Am Jur 2d § 18, pp. 964-965.

[33] *Id.* at 965.

[34] *See* 38 Corpus Juris § 16, pp. 16-17.

defeated by a subsequent alienation of such shares by either Citadel or Vercingetorix to a transferee for value and good faith. Should that eventuality take place, petitioner submits it would be the height of injustice, harassment and oppression if, to maintain its title and possession, petitioner were to be made again subject to another costly litigation against the would-be *bona fide* purchasers.

On the other hand, respondent Vercingetorix points out that the petition is now moot and academic because the trial court (Civil Case No. 99-605) had already issued a Writ of Preliminary Injunction dated July 1, 2003 against herein respondents, among others "from committing acts, allowing, or causing to allow the transfer and registration of Manila Golf [Club] Certificates Nos. 1412 and 1444 to third parties and from issuing new certificates in lieu of those already issued to CITADEL and VERCINGETORIX pending final adjudication of the instant complaint."[35]

On its part, respondent Citadel asserts that in case of conflict, our statutory provisions must prevail over the cited American jurisprudence especially since the subject matter is expressly covered by the Civil Code of the Philippines. Thus, the application of the American jurisprudence cited by petitioner will cause undue restraint on respondent's right of ownership recognized under Article 428[36] of the Civil Code.[37]

Reviewing the records, we find that, contrary to petitioner's submission, its rights and interest over the subject club membership shares are amply protected by the following: (1) Preliminary Injunction granted by virtue of this Court's Decision dated April 11, 2002 in G.R. No. 138104 restraining the further implementation of the writ of execution issued in Civil Case No. 96-80083 by the Manila RTC, Branch 26 "until further orders from this Court"; (2) Setting aside of the Writ of Execution issued by said court under

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[35] *Rollo,* p. 273.

[36] ART. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

[37] *Rollo,* p. 425.

the Decision dated June 17, 2004 in G.R. No. 134049 which effectively nullified the execution sale of the Manila Golf Club shares in favor of respondents Citadel and Vercingetorix; (3) Certificates of Sale dated September 15, 1997 issued to petitioner as the highest bidder in the extrajudicial foreclosure of the chattel mortgage conducted by the Office of the Clerk of Court and *Ex-Officio* Sheriff of Makati City RTC, covering Manila Golf Club Membership Certificate Nos. 1412 and 1444 for the sum of ₱32,500,000.00; (4) Writ of Preliminary Injunction issued on July 1, 2003 by the court *a quo* (Makati City RTC, Branch 62) in Civil Case No. 99-605 restraining the respondents from committing any act or allowing the transfer and/or registration of the aforesaid club shares to *third parties* until the final adjudication of the said case; and (5) Decision dated December 28, 2009 of the court *a quo* declaring petitioner as the true and absolute owner of the subject club shares and ordering defendant Manila Golf Club to cancel the Membership Certificate Nos. 2386 and 2387 it issued to Citadel and Vercingetorix, respectively, and to issue new membership certificates in petitioner's name. It does not appear in the records whether respondents have appealed the adverse judgment of the trial court in Civil Case No. 99-605.

The failure to file a notice of the pendency of the action, where a statute provides therefor as a condition precedent to the action being *lis pendens*, ordinarily precludes the right to claim that the person acquiring interests *pendente lite* takes the property subject to the judgment. But this rule has no application where the purchaser has actual notice of the pendency of the suit, or where regardless of the *lis pendens* notice, other facts exist establishing constructive notice, or where the purchaser is chargeable with notice by reason of the filing of a lien or payment of the amount of the lien into court, or where the property is seized by court proceedings.[38] Notwithstanding the absence of statutory basis in this jurisdiction for availing of *lis pendens* in suits involving only personal property, the foregoing rule may be considered when actual or constructive notice are discernible from the records.

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[38] 38 Corpus Juris § 44, pp. 30-31.

In this case, petitioner, as early as July 21, 1997 had formally notified Manila Golf Club's Corporate Secretary of the assignment of chattel mortgage duly registered covering the subject shares of Marcopper, and further requested that the same be recorded to put third parties on notice of petitioner's lien. After the chattel mortgage was extrajudicially foreclosed on September 15, 1997, petitioner promptly notified the said officer and furnished him with a copy of the Certificates of Sale issued by Sheriff Bajar in favor of petitioner as the highest bidder during the public auction sale of the subject club shares.

Subsequently, however, Manila Golf Club informed petitioner of its inability to comply with its request in view of the January 26, 1999 Order of the Manila RTC in Civil Case No. 96-80083 ordering Manila Golf Club to transfer Membership Certificate Nos. 1412 and 1444 in the name of respondents Citadel and Vercingetorix who purchased the same in the execution pending sale authorized by said court. Manila Golf Club thus declared that it has to comply with the said directive until the same is revised by the trial court or higher courts.

Clearly, Manila Golf Club had actual notice of petitioner's lien/title as assignee of the recorded chattel mortgage and as purchaser in the foreclosure sale, as well as the pendency of Civil Case No. 96-80083 before the Manila RTC which ordered the sale on execution pending appeal. Such actual knowledge, on the part of Manila Golf Club, of petitioner's interest and Civil Case No. 96-80083 involving the subject membership shares is deemed equivalent to registration of an encumbrance or assignment in its corporate books. By virtue of such registration of petitioner's lien/title and the pending litigation, third parties, or potential transferees *pendente lite*, may therefore be charged with constructive notice of petitioner's lien/title over the subject shares and the pending litigation involving the same, as of the time Manila Golf Club was formally notified by petitioner even prior to Manila Golf Club's receipt of the January 26, 1999 Order of the Manila RTC in Civil Case No. 96-80083.

It may be that Manila Golf Club could have been directly informed only of the pendency of Civil Case No. 96-80083 and

not Civil Case No. 99-605 between petitioner and respondents. But while Civil Case No. 96-80083 was not the very proceeding wherein petitioner sought the *lis pendens* and not the case filed by petitioner against herein respondents Citadel and Vercingetorix (Civil Case No. 99-605), petitioner had filed therein (Civil Case No. 96-80083) his Affidavit of Third-Party Claim and Manifestation of Prior Lien, and it is the Manila RTC which ordered the sale on execution pending appeal during which *Citadel* and *Vercingetorix* purchased the subject Manila Golf Club shares. As it turned out, said writ of execution was nullified by this Court in G.R. No. 134049 and consequently no right was acquired by Citadel and Vercingetorix under the void execution sale.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** The Decision dated May 8, 2002 of the Court of Appeals in CA-G.R. SP No. 59476 is **AFFIRMED.**

No pronouncement as to costs.

SO ORDERED.

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

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[*] Designated additional member per Raffle dated September 17, 2012.

SECOND DIVISION

[G.R. No. 169391. October 10, 2012]

SPS. EUGENE C. GO and ANGELITA GO, and Minor EMERSON CHESTER KIM B. GO, *petitioners, vs.* **COLEGIO DE SAN JUAN DE LETRAN, REV. FR. EDWIN LAO, REV. FR. JOSE RHOMMEL HERNANDEZ, ALBERT ROSARDA and MA. TERESA SURATOS,** *respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DECS ORDER NO. 20, S. 1991, CONSTRUED; PROHIBITION TO JOIN FRATERNITIES AND SORORITIES APPLIES TO ALL ELEMENTARY AND HIGH SCHOOL STUDENTS OF PUBLIC AND PRIVATE SCHOOLS.— [I]n ascertaining the meaning of DECS Order No. 20, s. 1991, the entire order must be taken as a whole. It should be read, not in isolated parts, but with reference to every other part and every word and phrase in connection with its context. Even cursory perusal of the rest of DECS Order No. 20, s. 1991 reveals the education department's clear intent to apply the prohibition against fraternity membership for *all* elementary and high school students, regardless of their school of enrollment. The order's title, "Prohibition of Fraternities and Sororities in Elementary and Secondary Schools," serves to clarify whatever ambiguity may arise from its fourth paragraph. It is a straightforward title. It directs the prohibition to elementary and secondary schools *in general*, and does not distinguish between private and public schools. We also look at the order's second paragraph, whereby the department faults an earlier regulation, Department Order No. 6, series of 1954, for failing to ban fraternities and sororities in public and *private* secondary schools. With the second paragraph, it is clear that the education department sought to remedy the earlier order's failing by way of DECS Order No. 20, s. 1991. Finally, we note that the order is addressed to the heads of private schools, colleges, and universities, and not just to the public school authorities. For this Court to sustain the RTC's restrictive interpretation and accordingly limit the

prohibition in DECS Order No. 20, s. 1991 to students enrolled in public schools would be to impede the very purpose of the order. In *United Harbor Pilots' Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc.*, where the Court construed an executive order, we also stated that statutes are to be given such construction as would advance the object, suppress the mischief, and secure the benefits the statute intended. There is no reason why this principle cannot apply to construction of DECS Order No. 20, s. 1991.

2. ID.; ID.; ID.; ID.; PENALTY FOR NON-COMPLIANCE WITH DECS ORDER NO. 20.— [T]he penalty for non-compliance with DECS Order No. 20, s. 1991, is *expulsion*, a severe form of disciplinary penalty consisting of excluding a student from admission to *any* public or private school in the country. It requires the approval of the education secretary before it can be imposed.

3. ID.; ID.; ID.; ID.; PRIVATE SCHOOLS STILL HAVE AUTHORITY TO ESTABLISH DISCIPLINARY RULES AND REGULATIONS EVEN WITHOUT SUCH PROHIBITION IN DECS ORDER NO. 20.— [P]rivate schools still have the authority to promulgate and enforce a similar prohibition pursuant to their right to establish disciplinary rules and regulations. This right has been recognized in the Manual of Regulations for Private Schools, which has the character of the law. x x x The right to establish disciplinary rules is consistent with the mandate in the Constitution for schools to teach discipline; in fact, schools have the *duty* to develop discipline in students. Corollarily, the Court has always recognized the right of schools to *impose disciplinary sanctions* on students who violate disciplinary rules. The penalty for violations includes dismissal or exclusion from re-enrollment.

4. ID.; ID.; ID.; ID.; LETRAN'S RULE PROHIBITING STUDENTS FROM JOINING FRATERNITIES CONSIDERED AS REASONABLE REGULATION; VIOLATING STUDENTS MAY BE LAWFULLY DISMISSED.— We find Letran's rule prohibiting its high school students from joining fraternities to be a reasonable regulation, not only because of the reasons stated in DECS Order No. 20, s. 1991, but also because of the adult-oriented activities often associated with fraternities. Expectedly, most, if not all, of its high school students are

minors. Besides, Letran's penalty for violation of the rule is clearly stated in the enrollment contracts and in the Students Handbooks it distributes at the start of every school year. In this case, the petitioners were notified of both rule and penalty through Kim's enrollment contract for school year 2001 to 2002. Notably, the penalty provided for fraternity membership is "summary dismissal." We also note that Mrs. Go signified her conforme to these terms with her signature in the contract. No reason, therefore, exist to justify the trial court's position that respondent Letran cannot lawfully dismiss violating students, such as Kim.

5. ID.; CONSTITUTIONAL LAW; DUE PROCESS; WHERE THE PARTIES WERE GIVEN AMPLE OPPPORTUNITY TO ASSIST THEIR SON IN DISCIPLINARY PROCEEDINGS, THEY CANNOT CLAIM DENIAL OF DUE PROCESS.— Since disciplinary proceedings may be summary, the insistence that a "formal inquiry" on the accusation against Kim should have been conducted lacks legal basis. It has no factual basis as well. While the petitioners state that Mr. and Mrs. Go were "never given an opportunity to assist Kim," the records show that the respondents gave them two (2) notices, dated December 19, 2001 and January 8, 2002. The notices clearly, state: "Dear Mr./Mrs. Go, We would like to seek your help in correcting Kim's problem on: Discipline & Conduct Offense: Membership in Fraternity." Thus, the respondents had given them ample opportunity to assist their son in his disciplinary case. The records also show that, without any explanation, *both* parents failed to attend the January 8, 2002 conference while Mr. Go did not bother to go to the January 15, 2002 conference. "Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot [thereafter] complain of deprivation of due process."

6. ID.; ID.; ID.; ID.; WRITTEN NOTICE RULE, SUFFICIENTLY COMPLIED WITH IN CASE AT BAR.— The *raison d'etre* of the written notice rule is to inform the student of the disciplinary charge against him and enable him to suitably prepare a defense. The records show that as early as November 23, 2001, it was already made plain to the petitioners that the subject matter of the case against Kim was his alleged fraternity membership. Thus, by the time Mr. Rosarda spoke to Kim and asked for his written explanation in December 2001, Kim has had enough time

to prepare his response to this plain charge. We also note that the information in the notice the respondents subsequently sent is no different from the information that they had earlier conveyed, albeit orally, to the petitioners: the simple unadorned statement that Kim stood accused of fraternity membership. Given these circumstances, we are not convinced that Kim's right to explain his side as exercised in his written denial had been violated or diminished. The essence of due process, it bears repeating, is simply the opportunity to be heard. And Kim had been heard. His written explanation was received, indeed even solicited, by the respondents. Thus, he cannot claim that he was denied the right to adduce evidence in his behalf. In fact, the petitioners were given further opportunity to produce additional evidence with the January 8, 2002 conference which they did not attend. We are also satisfied that the respondents had considered all the pieces of evidence and found these to be substantial. We note especially that the petitioners never imputed any motive on Kim's co-students that would justify the claim that they uttered falsehood against him.

APPEARANCES OF COUNSEL

Ricardo C. Valmonte for petitioners.
Julieto R. Marco for respondents.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the decision[2] dated May 27, 2005 and the resolution[3] dated August 18, 2005 of the Court of Appeals (*CA*) in CA-G.R. CV No. 80349. The CA decision reversed and set aside the decision[4]

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 3-37.

[2] Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Remedios A. Salazar-Fernando and Monina Arevalo-Zenarosa; *id.* at 40-51.

[3] *Id.* at 53-55.

[4] In Civil Case No. C-19938, dated August 18, 2003; *id.* at 81-93.

of the Regional Trial Court (*RTC*) of Caloocan City, Branch 131, awarding civil damages to the petitioners. The CA resolution denied the petitioners' subsequent motion for reconsideration.

The petitioners claim that respondents Colegio de San Juan de Letran (*Letran*), Rev. Fr. Edwin Lao, Rev. Fr. Jose Rhommel Hernandez, Mr. Albert Rosarda and Ma. Teresa Suratos should be held liable for moral, exemplary, and actual damages for unlawfully dismissing petitioner Emerson Chester Kim B. Go (*Kim*) from the rolls of the high school department of Letran. The respondents claim that they lawfully suspended Kim for violating the school's rule against fraternity membership.

Factual Background

In October 2001, Mr. George Isleta, the Head of Letran's Auxiliary Services Department, received information that certain fraternities were recruiting new members among Letran's high school students. He also received a list of the students allegedly involved. School authorities started an investigation, including the conduct of medical examinations on the students whose names were on the list. On November 20, 2002, Dr. Emmanuel Asuncion, the school physician, reported that six (6) students bore injuries, probable signs of blunt trauma of more than two weeks, on the posterior portions of their thighs.[5] Mr. Rosarda, the Assistant Prefect for Discipline, conferred with the students and asked for their explanations in writing.

Four (4) students, namely: Raphael Jay Fulgencio, Nicolai Lacson, Carlos Parilla, and Isaac Gumba, admitted that they were neophytes of the Tau Gamma Fraternity and were present in a hazing rite held on October 3, 2001 in the house of one Dulce in Tondo, Manila. They also identified the senior members of the fraternity present at their hazing. These included Kim, then a fourth year high school student.

In the meantime, Gerardo Manipon, Letran's security officer, prepared an incident report[6] that the Tau Gamma Fraternity

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[5] RTC Records, p. 540.

[6] *Id.* at 545.

had violated its covenant with Letran by recruiting members from its high school department. Manipol had spoken to one of the fraternity neophytes and obtained a list of eighteen (18) members of the fraternity currently enrolled at the high school department. Kim's name was also in the list.

At the Parents-Teachers Conference held on November 23, 2001, Mr. Rosarda informed Kim's mother, petitioner Mrs. Angelita Go (*Mrs. Go*), that students had positively identified Kim as a fraternity member. Mrs. Go expressed disbelief as her son was supposedly under his parents' constant supervision.

Mr. Rosarda thereafter spoke to Kim and asked him to explain his side. Kim responded through a written statement dated December 19, 2001; he denied that he was a fraternity member. He stated that at that time, he was at Dulce's house to pick up a gift, and did not attend the hazing of Rafael, Nicolai, Carlos, and Isaac.

On the same day, Mr. Rosarda requested Kim's parents (by notice) to attend a conference on January 8, 2002 to address the issue of Kim's fraternity membership.[7] Both Mrs. Go and petitioner Mr. Eugene Go (*Mr. Go*) did not attend the conference.

In time, the respondents found that twenty-nine (29) of their students, including Kim, were fraternity members. The respondents found substantial basis in the neophytes' statements that Kim was a senior fraternity member. Based on their disciplinary rules, the Father Prefect for Discipline (respondent Rev. Fr. Jose Rhommel Hernandez) recommended the fraternity members' dismissal from the high school department rolls; incidentally, this sanction was stated in a January 10, 2002 letter to Mr. and Mrs. Go.[8] After a meeting with the Rector's Council,[9] however, respondent Fr. Edwin Lao, Father Rector and President of Letran, rejected the recommendation to allow the fourth year students to graduate from Letran. Students who were not in their fourth

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[7] *Id.* at 548.

[8] *Id.* at 502.

[9] TSN dated June 30, 2003, p. 657.

year were allowed to finish the current school year but were barred from subsequent enrollment in Letran.

Mr. Rosarda conveyed to Mrs. Go and Kim, in their conference on January 15, 2002, the decision to suspend Kim from January 16, 2002 to February 18, 2002.[10] Incidentally, Mr. Go did not attend this conference.[11]

On even date, Mrs. Go submitted a request for the deferment of Kim's suspension to January 21, 2002[12] so that he could take a previously scheduled examination.[13] The request was granted.[14]

On January 22, 2002, the respondents conferred with the parents of the sanctioned fourth year students to discuss the extension classes the students would take (as arranged by the respondents) as make-up for classes missed during their suspension. These extension classes would enable the students to meet all academic requirements for graduation from high school by the summer of 2002. The respondents also proposed that the students and their parents sign a *pro-forma* agreement to signify their conformity with their suspension. Mr. and Mrs. Go refused to sign.[15] They also refused to accept the respondents' finding that Kim was a fraternity member. They likewise insisted that due process had not been observed.

On January 28, 2002, the petitioners filed a complaint[16] for damages before the RTC of Caloocan City claiming that the respondents[17] had unlawfully dismissed Kim.[18] Mr. and Mrs. Go also sought

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[10] *Id.* at 658.

[11] TSN dated May 19, 2003, p. 399.

[12] TSN dated June 17, 2003, p. 542.

[13] RTC Records, p. 503.

[14] TSN dated June 17, 2003, p. 507; and TSN dated June 30, 2003, p. 663.

[15] RTC Records, p. 552.

[16] RTC Records, p. 7.

[17] Including Letran High School Principal Ma. Teresa Suratos.

[18] RTC Records, p. 15.

compensation for the "business opportunity losses" they suffered while personally attending to Kim's disciplinary case.

The Ruling of the RTC

Mrs. Go[19] and Mr. Go[20] testified for the petitioners at the trial. Mr. Rosarda,[21] Fr. Hernandez,[22] and Fr. Lao[23] testified for the respondents.

The RTC[24] held that the respondents had failed to observe "the basic requirement of due process" and that their evidence was "utterly insufficient" to prove that Kim was a fraternity member.[25] It also declared that Letran had no authority to dismiss students for their fraternity membership. Accordingly, it awarded the petitioners moral and exemplary damages. The trial court also held that Mr. Go was entitled to actual damages after finding that he had neglected his manufacturing business when he personally attended to his son's disciplinary case. The dispositive portion of the decision reads:

> WHEREFORE, in view of all the foregoing, the Court renders judgment in favor of plaintiffs-spouses Eugene C. Go and Angelita B. Go, together with their minor son Emerson Chester Kim B. Go, as against defendants Colegio De San Juan De Letran, Fr. Edwin Lao, Fr. Jose Rhommel Hernandez, Albert Rosarda and Ma. Teresa Suratos, and they are hereby ordered the following:
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> 1. To pay plaintiff Eugene C. Go the amount of ₱2,854,000.00 as actual damages;
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> 2. To pay each plaintiff, Eugene C. Go and Angelita B. Go, the amount of ₱2,000,000.00 for each defendant, or a total amount of ₱20,000,000.00 as moral damages; and ₱1,000,000.00 for

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[19] TSN dated January 31, 2003.

[20] TSN dated February 5, 2003 and March 31, 2003.

[21] TSN dated May 19, 2003.

[22] TSN dated June 17, 2003.

[23] TSN dated June 30, 2003.

[24] Judge Antonio J. Fineza, presiding.

[25] *Rollo,* pp. 90-91.

each defendant, or a total amount of ₱10,000,000.00 as exemplary damages, or a grand total of ₱30,000,000.00, to be paid solidarily by all liable defendants, plus prevailing legal interest thereon from the date of filing until the same is fully paid;

3. To pay plaintiffs 20% of the total amount awarded, as attorney's fees, to be paid solidarily by all liable defendants; and

4. The cost of suit.[26]

The Ruling of the CA

On appeal, the CA reversed and set aside the RTC decision. It held, among others, that the petitioners were not denied due process as the petitioners had been given ample opportunity to be heard in Kim's disciplinary case. The CA also found that there was no bad faith, malice, fraud, nor any improper and willful motive or conduct on the part of the respondents to justify the award of damages. Accordingly, it dismissed the petitioners' complaint in Civil Case No. C-19938 for lack of merit.

The petitioners moved for the reconsideration of the decision, but the CA denied the motion for lack of merit;[27] hence, the present petition for review on *certiorari.*

The Issue

Based on the petition's assigned errors,[28] the issue for our resolution is whether the CA had erred in setting aside the decision of the RTC in Civil Case No. C-19938.

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[26] *Id.* at 93.

[27] *Id.* at 55.

[28] *Rollo*, p. 19. The present petition assigned the following errors:

ASSIGNMENT OF ERRORS

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND COMMITTED SERIOUS ERROR OF LAW WHEN IT HELD THAT-

I DUE PROCESS ATTENDED THE SANCTION IMPOSED BY RESPONDENTS ON PETITIONER KIM JUST BECAUSE THEY

The Court's Ruling

We deny the petition and affirm the CA decision.

Preliminarily, we note that the disciplinary sanction the respondents imposed on Kim was actually a suspension and not a "dismissal" as the petitioners insist in their complaint. We agree with the CA that the petitioners were well aware of this fact, as Mrs. Go's letter specifically requested that Kim's *suspension* be deferred. That this request was granted and that Kim was allowed to take the examination further support the conclusion that Kim had not been dismissed.

Further, the RTC's statement that Letran, a private school, possesses no authority to impose a dismissal, or any disciplinary action for that matter, on students who violate its policy against fraternity membership must be corrected. The RTC reasoned out that Order No. 20, series of 1991, of the then Department of Education, Culture, and Sports (*DECS Order No. 20, s. 1991*),[29] which the respondents cite as legal basis for Letran's

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REQUIRED HIM TO EXPLAIN IN WRITING (WITHOUT ANY WRITTEN CHARGE INFORMING HIM OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM) HIS MEMBERSIP [*sic*] IN FRATERNITY, WHICH HE DID BY DENYING IT, ALTHOUGH THE SANCTION IS BASED MERELY ON CONFIDENTIAL, UNDISCLOSED, UNVERIFIED OR UNSWORN STATEMENTS OF HIS CO-STUDENTS AND, WORSE, ON CONFIDENTIAL, UNDISCLOSED, UNVERIFIED AND DOUBLE HERESAY [*sic*] REPORT OF RESPONDENT SCHOOL'S DETACHMENT COMMANDER.

II WHEN IT CLEARED RESPONDENTS OF ANY LIABILITY FOR DAMAGES.

[29] DECS Order No. 20, s. 1991 reads:

PROHIBITION OF FRATERNITIES AND SORORITIES IN ELEMENTARY AND SECONDARY SCHOOLS

To: Bureau Directors
Regional Directors
School Superintendents
Presidents, State Colleges and Universities
Heads of Private Schools, Colleges and Universities
Vocational School Superintendents/Administrators

policy, only covered public high schools and not private high schools such as Letran.

We disagree with the RTC's reasoning because it is a restrictive interpretation of DECS Order No. 20, s. 1991. True, the fourth paragraph of the order states:

4. EFFECTIVE UPON RECEIPT OF THIS ORDER, FRATERNITIES AND SORORITIES ARE PROHIBITED IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS. PENALTY FOR NON-COMPLIANCE IS EXPULSION OF PUPILS/STUDENTS.

This paragraph seems to limit the scope of the order's prohibition to public elementary and secondary schools. However, in ascertaining the meaning of DECS Order No. 20, s. 1991, the entire order must be taken as a whole.[30] It should be read,

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1. Recent events call attention to unfortunate incidents resulting from initiation rites (hazing) conducted in fraternities and sororities. In some cases, problems like drug addiction, vandalism, absenteeism, rumble and other behavior problems in elementary and secondary schools were found to be linked to the presence of and/or the active membership of some pupils/students in such organizations.

2. Although Department Order No. 6, s. 1954 prohibits hazing in schools and imposes sanctions for violations, it does not ban fraternities/sororities in public and **private secondary schools**.

3. Considering that enrolments in elementary and secondary schools are relatively small and students come from the immediate communities served, the presence of fraternities/sororities which serve as socializing agents among pupil/student-peers is not deemed necessary. On the other hand, interest clubs and co-curricular organizations like the Drama Club, Math Club, Junior Police organization and others perform that same function and in addition develop pupil/student potentials.

4. Effective upon receipt of this order, fraternities and sororities are prohibited in public elementary and secondary schools. Penalty for non-compliance is expulsion of pupils/students.

5. Wide dissemination of and strict compliance with this Order is enjoined.

(Sgd.) ISIDRO D. CARIÑO
[emphasis ours]

[30] See *Judge Leynes v. Commission on Audit*, 463 Phil. 557, 573 (2003).

not in isolated parts, but with reference to every other part and every word and phrase in connection with its context.[31]

Even a cursory perusal of the rest of DECS Order No. 20, s. 1991 reveals the education department's clear intent to apply the prohibition against fraternity membership for *all* elementary and high school students, regardless of their school of enrollment.

The order's title, "Prohibition of Fraternities and Sororities in Elementary and Secondary Schools," serves to clarify whatever ambiguity may arise from its fourth paragraph.[32] It is a straightforward title. It directs the prohibition to elementary and secondary schools *in general*, and does not distinguish between private and public schools. We also look at the order's second paragraph, whereby the department faults an earlier regulation, Department Order No. 6, series of 1954, for failing to ban fraternities and sororities in public and *private* secondary schools. With the second paragraph, it is clear that the education department sought to remedy the earlier order's failing by way of DECS Order No. 20, s. 1991.

Finally, we note that the order is addressed to the heads of private schools, colleges, and universities, and not just to the public school authorities.

For this Court to sustain the RTC's restrictive interpretation and accordingly limit the prohibition in DECS Order No. 20, s. 1991 to students enrolled in public schools would be to impede the very purpose of the order.[33] In *United Harbor Pilots'*

[31] See *Commissioner of Internal Revenue v. TMX Sales, Inc.,* 205 SCRA 184, 188.

[32] See *Government of the P.I. v. Municipality of Binalonan,* 32 Phil. 634, 636 (1915).

[33] Paragraphs 1 and 2, DECS Order No. 20, s. 1991. We also note that the intent of the DECS Order No. 20, s. 1991 has been further clarified by the Department of Education itself in a 2006 issuance titled "REITERATING THE PROHIBITION OF THE PRACTICE OF HAZING AND THE OPERATION OF FRATERNITIES IN SORORITIES IN ELEMENTARY AND SECONDARY SCHOOLS." Department of Education Order No. 7, s. 2006 explicitly states, and we quote: "DECS Order No. 20, s. 1991, meanwhile, prohibits the operation of fraternities in public and private elementary and secondary schools."

Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc., where the Court construed an executive order,[34] we also stated that statutes are to be given such construction as would advance the object, suppress the mischief, and secure the benefits the statute intended. There is no reason why this principle cannot apply to the construction of DECS Order No. 20, s. 1991.

Incidentally, the penalty for non-compliance with DECS Order No. 20, s. 1991, is *expulsion*, a severe form of disciplinary penalty consisting of excluding a student from admission to *any* public or private school in the country. It requires the approval of the education secretary before it can be imposed.[35] In contrast, the penalty prescribed by the rules of Letran for fraternity membership among their high school students is *dismissal*, which is limited to the exclusion of an erring student from the rolls of the school.

Even assuming *arguendo* that the education department had not issued such prohibition, private schools still have the authority to promulgate and enforce a similar prohibition pursuant to their right to establish disciplinary rules and regulations.[36] This right has been recognized in the Manual of Regulations for Private Schools, which has the character of law.[37] Section 78 of the 1992 Manual of Regulations for Private Schools, in particular and with relevance to this case, provides:

Section 78. *Authority to Promulgate Disciplinary Rules*. Every private school shall have the right to promulgate reasonable norms, rules and regulations it may deem necessary and consistent with the provisions of this Manual for the maintenance of good school discipline and class attendance. Such rules and regulations shall be

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[34] G.R. No. 133763, November 13, 2002, 391 SCRA 522, 533. See also *Association of International Shipping Lines, Inc. v. United Harbor Pilots' Association of the Philippines, Inc.*, G.R. No. 172029, August 6, 2008, 561 SCRA 284, 294.

[35] Section 77, 1992 Manual of Regulations for Private Schools.

[36] *Tan v. Court of Appeals*, 276 Phil. 227 (1991).

[37] *Espiritu Santo Parochial School v. NLRC*, 258 Phil. 600 (1989).

effective as of promulgation and notification to students in an appropriate school issuance or publication.

The right to establish disciplinary rules is consistent with the mandate in the Constitution[38] for schools to teach discipline;[39] in fact, schools have the *duty* to develop discipline in students.[40] Corollarily, the Court has always recognized the right of schools to *impose disciplinary sanctions* on students who violate disciplinary rules.[41] The penalty for violations includes dismissal or exclusion from re-enrollment.

We find Letran's rule prohibiting its high school students from joining fraternities to be a reasonable regulation, not only because of the reasons stated in DECS Order No. 20, s. 1991,[42] but also because of the adult-oriented activities often associated with fraternities. Expectedly, most, if not all, of its high school students are minors. Besides, Letran's penalty for violation of the rule is clearly stated in its enrollment contracts and in the Students Handbooks[43] it distributes at the start of every school year.[44]

In this case, the petitioners were notified of both rule and penalty through Kim's enrollment contract for school year 2001 to 2002.[45] Notably, the penalty provided for fraternity membership is "summary dismissal." We also note that Mrs. Go signified her

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[38] CONSTITUTION, Article XIV, Section 3(2).

[39] *Jenosa v. Delariarte*, G.R. No. 172138, September 8, 2010, 630 SCRA 295, 302.

[40] See *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 456 (2000).

[41] *Alcuaz v. Philippine School of Business Administration*, 244 Phil. 8, 23 (1988), citing *Ateneo de Manila University v. Court of Appeals*, No. 56180, October 16, 1986, 145 SCRA 100; and *Licup v. University of San Carlos* (*USC*), 258-A Phil. 417, 424.

[42] *Supra* note 29.

[43] RTC Records, pp. 536-537.

[44] TSN dated May 19, 2003, p. 348.

[45] RTC Records, pp. 538-539.

conformé to these terms with her signature in the contract.[46] No reason, therefore, exist to justify the trial court's position that respondent Letran cannot lawfully dismiss violating students, such as Kim.

On the issue of due process, the petitioners insist that the question be resolved under the guidelines for administrative due process in *Ang Tibay v. Court of Industrial Relations.*[47] They argue that the respondents violated due process (a) by not conducting a formal inquiry into the charge against Kim; (b) by not giving them any written notice of the charge; and (c) by not providing them with the opportunity to cross-examine the neophytes who had positively identified Kim as a senior member of their fraternity. The petitioners also fault the respondents for not showing them the neophytes' written statements, which they claim to be unverified, unsworn, and hearsay.

These arguments deserve scant attention.

In *Ateneo de Manila University v. Capulong*,[48] the Court held that ***Guzman v. National University***,[49] not *Ang Tibay*, is the authority on the procedural rights of students in disciplinary cases. In *Guzman*, we laid down the minimum standards in the imposition of disciplinary sanctions in academic institutions, as follows:

> [I]t bears stressing that due process in disciplinary cases involving students does not entail proceedings and hearings similar to those prescribed for actions and proceedings in courts of justice. The proceedings in student discipline cases may be summary; and cross-examination is not, contrary to petitioners' view, an essential part thereof. There are withal minimum standards which must be met to satisfy the demands of procedural due process; and these are, that (1) the students must be informed in writing of the nature and cause

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[46] TSN dated May 19, 2003, p. 350.

[47] 69 Phil. 635 (1940).

[48] G.R. No. 99327, May 27, 1993, 222 SCRA 644, 656.

[49] 226 Phil. 596 (1986).

of any accusation against them; (2) they shall have the right to answer the charges against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case.[50]

These standards render the petitioners' arguments totally without merit.

In *De La Salle University, Inc. v. Court of Appeals*,[51] where we affirmed the petitioning university's right to exclude students from the rolls of their respective schools[52] for their involvement in a fraternity mauling incident, we rejected the argument that there is a denial of due process when students are not allowed to cross-examine the witnesses against them in school disciplinary proceedings. We reject the same argument in this case.

We are likewise not moved by the petitioners' argument that they were not given the opportunity to examine the neophytes' written statements and the security officer's incident report.[53] These documents are admissible in school disciplinary proceedings, and may amount to substantial evidence to support a decision in these proceedings. In *Ateneo de Manila University v. Capulong*,[54] where the private respondents were students dismissed from their law school after participating in hazing activities, we held:

Respondent students may not use the argument that since they were not accorded the opportunity **to see and examine the written**

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[50] *Id.* at 603-604.

[51] G.R. No. 127980, December 19, 2007, 541 SCRA 22, 52-53.

[52] The students were enrolled at the De La Salle University and the College of Saint Benilde.

[53] These documents were later formally offered in Civil Case No. C-19938 as Exhibits "7", "8", "9", "10", and "11" RTC Records, pp. 541-546.

[54] *Supra* note 48.

statements which became the basis of petitioners' February 14, 1991 order, they were denied procedural due process. Granting that they were denied such opportunity, the same may not be said to detract from the observance of due process, for disciplinary cases involving students need not necessarily include the right to cross examination. [Emphasis ours.][55]

Since disciplinary proceedings may be summary, the insistence that a "formal inquiry" on the accusation against Kim should have been conducted lacks legal basis. It has no factual basis as well. While the petitioners state that Mr. and Mrs. Go were "never given an opportunity to assist Kim,"[56] the records show that the respondents gave them two (2) notices, dated December 19, 2001 and January 8, 2002, for conferences on January 8, 2002 and January 15, 2002.[57] The notices clearly state: "Dear Mr./Mrs. Go, We would like to seek your help in correcting Kim's problem on: Discipline & Conduct Offense: Membership in Fraternity."[58] Thus, the respondents had given them ample opportunity to assist their son in his disciplinary case.

The records also show that, without any explanation, *both* parents failed to attend the January 8, 2002 conference while Mr. Go did not bother to go to the January 15, 2002 conference. "Where a party was afforded an opportunity to participate in the proceedings but failed to do so, he cannot [thereafter] complain of deprivation of due process."[59]

Through the notices, the respondents duly informed the petitioners in writing that Kim had a disciplinary charge for fraternity membership. At the earlier November 23, 2001 Parents-Teachers Conference, Mr. Rosarda also informed Mrs. Go that the charge stemmed from the fraternity neophytes' positive

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[55] *Id.* at 657-658.

[56] RTC Records, p. 15.

[57] TSN dated January 31, 2003, *Record*, pp. 116, 118, 123.

[58] Records, pp. 548-549.

[59] *De La Salle University, Inc. v. Court of Appeals*, *supra* note 51, at 51.

identification of Kim as a member; thus the petitioners fully knew of the *nature* of the evidence that stood against Kim.

The petitioners nevertheless argue that the respondents defectively observed the written notice rule because they had requested, and received, Kim's written explanation at a time when the respondents had not yet issued the written notice of the accusation against him. The records indicate that while Kim's denial and the first notice were both dated December 19, 2001, Kim had not yet received the notice at the time he made the requested written explanation.

We see no merit in this argument as the petitioners apparently hew to an erroneous view of administrative due process. Jurisprudence has clarified that administrative due process cannot be fully equated with due process in the strict judicial sense.[60] The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.[61] Thus, we are hard pressed to believe that Kim's denial of his fraternity membership before formal notice was given worked against his interest in the disciplinary case. What matters for due process purpose is notice of what is to be explained, not the form in which the notice is given.

The *raison d'etre* of the written notice rule is to inform the student of the disciplinary charge against him and to enable him to suitably prepare a defense. The records show that as early as November 23, 2001, it was already made plain to the petitioners that the subject matter of the case against Kim was his alleged fraternity membership. Thus, by the time Mr. Rosarda spoke to Kim and asked for his written explanation in December 2001, Kim has had enough time to prepare his response to this plain charge. We also note that the information in the notice the respondents subsequently sent is no different from the information that they had earlier conveyed, albeit orally, to the

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[60] *Gatus v. Quality House, Inc.*, G.R. No. 156766, April 16, 2009, 585 SCRA 177, 190.

[61] *Perez v. Philippine Telegraph and Telephone Company*, G.R. No. 152048, April 7, 2009, 584 SCRA 110, 123.

petitioners: the simple unadorned statement that Kim stood accused of fraternity membership. Given these circumstances, we are not convinced that Kim's right to explain his side as exercised in his written denial had been violated or diminished. The essence of due process, it bears repeating, is simply the opportunity to be heard.[62]

And Kim had been heard. His written explanation was received, indeed even solicited, by the respondents. Thus, he cannot claim that he was denied the right to adduce evidence in his behalf. In fact, the petitioners were given further opportunity to produce additional evidence with the January 8, 2002 conference that they did not attend. We are also satisfied that the respondents had considered all the pieces of evidence and found these to be substantial. We note especially that the petitioners never imputed any motive on Kim's co-students that would justify the claim that they uttered falsehood against him.

In *Licup v. San Carlos University*,[63] the Court held that when a student commits a serious breach of discipline or fails to maintain the required academic standard, he forfeits his contractual right, and the court should not review the discretion of university authorities.[64] In *San Sebastian College v. Court of Appeals, et al.*,[65] we held that only when there is marked arbitrariness should the court interfere with the academic judgment of the school faculty and the proper authorities.[66] In this case, we find that the respondents observed due process in Kim's disciplinary case, consistent with our pronouncements

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[62] *Gatus v. Quality House, Inc., supra* note 59, at 190, citing *Phil. Airlines, Inc. v. National Labor Relations Commission,* G.R. No. 87353, July 3, 1991, 198 SCRA 748; see also *Audion Electric Co. v. National Labor Relations Commission*, G.R. No. 106648, June 19, 1999, 308 SCRA 341.

[63] *Supra* note 41.

[64] *Ibid.*

[65] 274 Phil. 414 (1991).

[66] *Id.* at 424, citing *Garcia v. The Faculty Admission Committee, Loyola School of Theology,* No. L-40779, November 28, 1975, 68 SCRA 277, 289.

in *Guzman*. No reason exists why the above principles in these cited cases cannot apply to this case. The respondents' decision that Kim had violated a disciplinary rule and should be sanctioned must be respected.

As a final point, the CA correctly held that there were no further bases to hold the respondents liable for moral or exemplary damages. Our study of the records confirms that the respondents did not act with bad faith, malice, fraud, or improper or willful motive or conduct in disciplining Kim. Moreover, we find no basis for the award of actual damages. The petitioners claim, and the RTC agreed,[67] that the respondents are liable for the business opportunity losses the petitioners incurred after their clients had cancelled their purchases in their plastic-manufacturing business. To prove the claim, Mr. Go testified that he neglected his business affairs because he had his attention on Kim's unlawful dismissal, and that his clients had subsequently cancelled their purchase orders when he could not confirm them.[68] His testimony on the reason for the clients' cancellation, however, is obviously hearsay and remains speculative. The respondents' liability for actual damages cannot be based on speculation.

For these reasons, we find no reversible error in the assailed CA decision, and accordingly, **DENY** the present petition.

WHEREFORE, premises considered, we hereby **AFFIRM** the decision dated May 27, 2005 of the Court of Appeals in CA-G.R. CV No. 80349.

Costs against the petitioners.

SO ORDERED.

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

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[67] *See* the RTC Decision, p. 92.

[68] TSN dated February 5, 2003, pp. 242 to 243.

SECOND DIVISION

[G.R. No. 171845. October 10, 2012]

SPOUSES GODFREY and GERARDINA SERFINO, *petitioners, vs.* **FAR EAST BANK AND TRUST COMPANY, INC., now BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. CIVIL LAW; COMPROMISE AGREEMENT; WHERE THE TERMS OF THE COMPROMISE JUDGMENT DID NOT OPERATE AS AN ASSIGNMENT OF CREDIT.— The terms of the compromise judgment, however, did not convey an intent to equate the assignment of Magdalena's retirement benefits (the credit) as the equivalent of the payment of the debt due the spouses Serfino (the obligation). There was actually no assignment of credit; if at all, **the compromise judgment merely identified the fund from which payment for the judgment debt would be sourced**[.] x x x Only when Magdalena has received and turned over to the spouses Serfino the portion of her retirement benefits corresponding to the debt due would the debt be deemed paid.

2. ID.; ID.; ID.; EFFECTS OF COMPROMISE JUDGMENT IN CASE AT BAR.— In the present case, the judgment debt was not extinguished by the **mere designation** in the compromise judgment of Magdalena's retirement benefits as the fund from which payment shall be sourced. That the compromise agreement authorizes recourse in case of default on other executable properties of the spouses Cortez, to satisfy the judgment debt, further supports our conclusion that there was no assignment of Magdalena's credit with the GSIS that would have extinguished the obligation. The compromise judgment in this case also did not give the supposed assignees, the spouses Serfino, the power to enforce Magdalena's credit against the GSIS. x x x An assignment of credit not only entitles the assignee to the credit itself, but also gives him the power to enforce it as against the debtor of the assignor. Since no valid assignment of credit took place, the spouses

Serfino cannot validly claim ownership of the retirement benefits that were deposited with FEBTC. **Without ownership rights over the amount, they suffered no pecuniary loss that has to be compensated by actual damages**. The grant of actual damages presupposes that the claimant suffered a duly proven pecuniary loss.

3. ID.; DAMAGES; CLAIM FOR DAMAGES IS NOT MERITORIOUS BECAUSE THE BANK HAS NO DUTY TO PROTECT THE INTEREST OF THE THIRD PERSON CLAIMING DEPOSIT IN THE NAME OF ANOTHER.— In the absence of a law or a rule binding on the Court, it has no option but to uphold the existing policy that recognizes the fiduciary nature of banking. It likewise rejects the adoption of a judicially-imposed rule giving third parties with unverified claims against the deposit of another a better right over the deposit. As current laws provide, the bank's contractual relations are with its depositor, not with the third party; "a bank is under obligation to treat the accounts of its depositors with meticulous care and always to have in mind the fiduciary nature of its relationship with them." In the absence of any positive duty of the bank to an adverse claimant, there could be no breach that entitles the latter to moral damages.

APPEARANCES OF COUNSEL

Jerry P. Basiao for petitioners.
Tan Lo Si Bayatan Gidor Saril & Saril for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*,[1] filed under Rule 45 of the Rules of Court, assailing the decision[2] dated February 23, 2006 of the Regional Trial Court (*RTC*) of Bacolod City, Branch 41, in Civil Case No. 95-9344.

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[1] *Rollo*, pp. 9-29.

[2] Penned by Judge Ray Alan T. Drilon; *id.* at 31-72.

FACTUAL ANTECEDENTS

The present case traces its roots to the **compromise judgment** dated October 24, 1995[3] of the RTC of Bacolod City, Branch 47, in Civil Case No. 95-9880. Civil Case No. 95-9880 was an action for collection of sum of money instituted by the petitioner spouses Godfrey and Gerardina Serfino (collectively, *spouses Serfino*) against the spouses Domingo and Magdalena Cortez (collectively, *spouses Cortez*). By way of settlement, the spouses Serfino and the spouses Cortez executed a compromise agreement on October 20, 1995, in which the spouses Cortez acknowledged their indebtedness to the spouses Serfino in the amount of ₱108,245.71. To satisfy the debt, Magdalena bound herself "**to pay in full the judgment debt out of her retirement benefits**[.]"[4] Payment of the debt shall be made one (1) week after Magdalena has received her retirement benefits from the Government Service Insurance System (*GSIS*). In case of default, the debt may be executed against any of the properties of the spouses Cortez that is subject to execution, upon motion of the spouses Serfino.[5] After finding that the compromise agreement was not contrary to law, morals, good custom, public order or public policy, the RTC approved the entirety of the parties' agreement and issued a compromise judgment based thereon.[6] The debt was later reduced to ₱155,000.00 from ₱197,000.00 (including interest), with the promise that the spouses Cortez would pay in full the judgment debt not later than April 23, 1996.[7]

No payment was made as promised. Instead, Godfrey discovered that Magdalena deposited her retirement benefits in the savings account of her daughter-in-law, Grace Cortez, with the respondent, Far East Bank and Trust Company, Inc. (*FEBTC*). As of April 23, 1996, Grace's savings account with

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[3] Penned by Judge Edgar G. Garvilles; *id*. at 148-149.

[4] *Id*. at 143.

[5] *Id*. at 144.

[6] *Id*. at 148-149.

[7] *Id*. at 12.

FEBTC amounted to ₱245,830.37, the entire deposit coming from Magdalena's retirement benefits.[8] That same day, **the spouses Serfino's counsel sent two letters to FEBTC informing the bank that the deposit in Grace's name was owned by the spouses Serfino by virtue of an assignment made in their favor by the spouses Cortez.** The letter requested FEBTC to prevent the delivery of the deposit to either Grace or the spouses Cortez until its actual ownership has been resolved in court.

On April 25, 1996, the spouses Serfino instituted Civil Case No. 95-9344 against the spouses Cortez, Grace and her husband, Dante Cortez, and FEBTC for the **recovery of money on deposit and the payment of damages**, with a prayer for preliminary attachment.

On April 26, 1996, **Grace withdrew ₱150,000.00 from her savings account with FEBTC**. On the same day, the spouses Serfino sent another letter to FEBTC informing it of the pending action; attached to the letter was a copy of the complaint filed as Civil Case No. 95-9344.

During the pendency of Civil Case No. 95-9344, the spouses Cortez manifested that they were turning over the balance of the deposit in FEBTC (amounting to ₱54,534.00) to the spouses Serfino as partial payment of their obligation under the compromise judgment. The RTC issued an order dated July 30, 1997, authorizing FEBTC to turn over the balance of the deposit to the spouses Serfino.

On February 23, 2006, the RTC issued the assailed decision (a) finding the spouses Cortez, Grace and Dante liable for fraudulently diverting the amount due the spouses Serfino, but (b) **absolving FEBTC from any liability for allowing Grace to withdraw the deposit**. The RTC declared that FEBTC was not a party to the compromise judgment; FEBTC was thus not chargeable with notice of the parties' agreement, as there

[8] Two deposits were made in Grace's savings account: a check deposit in the amount of ₱55,830.37 was made on April 12, 1996, the check was issued to Magdalena and indorsed by her in favor of Grace; and a cash deposit of ₱190,000.00 was made on April 19, 1996 (*id.* at 45).

was no valid court order or processes requiring it to withhold payment of the deposit. Given the nature of bank deposits, FEBTC was primarily bound by its contract of loan with Grace. There was, therefore, no legal justification for the bank to refuse payment of the account, notwithstanding the claim of the spouses Serfino as stated in their three letters.

THE PARTIES' ARGUMENTS

The spouses Serfino appealed the RTC's ruling absolving FEBTC from liability for allowing the withdrawal of the deposit. They allege that the RTC cited no legal basis for declaring that only a court order or process can justify the withholding of the deposit in Grace's name. Since FEBTC was informed of their adverse claim after they sent three letters, they claim that:

> [u]pon receipt of a notice of adverse claim in proper form, **it becomes the duty of the bank** to: 1. Withhold payment of the deposit until there is a reasonable opportunity to institute legal proceedings to contest ownership; and 2) give prompt notice of the adverse claim to the depositor. The bank may be held liable to the adverse claimant if it disregards the notice of adverse claim and pays the depositor.
>
> When the bank has **reasonable notice of a bona fide claim that money deposited with it is the property of another than the depositor**, it should withhold payment until there is reasonable opportunity to institute legal proceedings to contest the ownership.[9] (emphases and underscoring supplied)

Aside from the three letters, FEBTC should be deemed bound by the compromise judgment, since Article 1625 of the Civil Code states that an assignment of credit binds third persons if it appears in a public instrument.[10] They conclude that FEBTC,

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[9] *Id*. at 22, citing *Miller v. Bank of Washington*, 176 N.C. 152, 96 S.E. 977 and *Lindstrom v. Bank of Jamestown*, 154 Misc. 553, 278 N.Y.S 963, both cases cited in Antonio Viray, *Handboook on Bank Deposits* (1988 revised ed.).

[10] Article 1625. An assignment of credit, right or action shall produce no effect as against third persons, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property.

having been notified of their adverse claim, should not have allowed Grace to withdraw the deposit.

While they acknowledged that bank deposits are governed by the Civil Code provisions on loan, the spouses Serfino allege that the provisions on voluntary deposits should apply by analogy in this case, particularly Article 1988 of the Civil Code, which states:

> Article 1988. The thing deposited must be returned to the depositor upon demand, even though a specified period or time for such return may have been fixed.
>
> **This provision shall not apply** when the thing is judicially attached while in the depositary's possession, or **should he have been notified of the opposition of a third person to the return or the removal of the thing deposited**. In these cases, the depositary must immediately inform the depositor of the attachment or opposition.

Based on Article 1988 of the Civil Code, the depository is not obliged to return the thing to the depositor if notified of a third party's adverse claim.

By allowing Grace to withdraw the deposit that is due them under the compromise judgment, **the spouses Serfino claim that FEBTC committed an actionable wrong that entitles them to the payment of actual and moral damages.**

FEBTC, on the other hand, insists on the correctness of the RTC ruling. It claims that it is not bound by the compromise judgment, but only by its contract of loan with its depositor. As a loan, the bank deposit is owned by the bank; hence, the spouses Serfino's claim of ownership over it is erroneous.

Based on these arguments, the case essentially involves a determination of ***the obligation of banks to a third party who claims rights over a bank deposit standing in the name of another***.

THE COURT'S RULING

We find the petition unmeritorious and see no reason to reverse the RTC's ruling.

Claim for actual damages not meritorious because there could be no pecuniary loss that should be compensated if there was no assignment of credit

The spouses Serfino's claim for damages against FEBTC is premised on their claim of ownership of the deposit with FEBTC. The deposit consists of Magdalena's retirement benefits, which the spouses Serfino claim to have been assigned to them under the compromise judgment. That the retirement benefits were deposited in Grace's savings account with FEBTC supposedly did not divest them of ownership of the amount, as "the money already belongs to the [spouses Serfino] having been absolutely assigned to them and constructively delivered by virtue of the *x x x public instrument[.]*"[11] By virtue of the **assignment of credit**, the spouses Serfino claim ownership of the deposit, and they posit that FEBTC was duty bound to protect their right by preventing the withdrawal of the deposit since the bank had been notified of the assignment and of their claim.

We find no basis to support the spouses Serfino's claim of ownership of the deposit.

"An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, *dation* in payment, exchange or donation, and without the consent of the debtor, transfers his credit and accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could enforce it against the debtor. It may be in the form of sale, but at times it may constitute a *dation* in payment, such as **when a debtor*, in order to obtain a release from his debt,* assigns to his creditor a credit he has against a third person**."[12] As a *dation* in payment, the **assignment of credit**

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[11] *Rollo,* p. 154.

[12] *Aquintey v. Tibong*, G.R. No. 166704, December 20, 2006, 511 SCRA 414, 438 (italics and emphasis ours; citations omitted).

operates as a mode of extinguishing the obligation;[13] the delivery and transmission of ownership of a thing (in this case, the credit due from a third person) by the debtor to the creditor is accepted as the equivalent of the performance of the obligation.[14]

The terms of the compromise judgment, however, did not convey an intent to equate the assignment of Magdalena's retirement benefits (the credit) as the equivalent of the payment of the debt due the spouses Serfino (the obligation). There was actually no assignment of credit; if at all, **the compromise judgment merely identified the fund from which payment for the judgment debt would be sourced:**

(c) That before the plaintiffs file a motion for execution of the decision or order based [on this] Compromise Agreement, **the defendant, Magdalena Cortez undertake[s] and bind[s] herself to pay in full the judgment debt out of her retirement benefits** as Local [T]reasury Operation Officer in the City of Bacolod, Philippines, upon which full payment, the plaintiffs waive, abandon and relinquish absolutely any of their claims for attorney's fees stipulated in the Promissory Note (Annex "A" to the Complaint).[15] [emphasis ours]

Only when Magdalena has received and turned over to the spouses Serfino the portion of her retirement benefits corresponding to the debt due would the debt be deemed paid.

In *Aquitey v. Tibong*,[16] the issue raised was whether the obligation to pay the loan was extinguished by the execution of the deeds of assignment. The Court ruled in the affirmative, given that, in the deeds involved, the respondent (the debtor) assigned to the petitioner (the creditor) her credits "to make good" the balance of her obligation; the parties agreed to relieve the respondent of her obligation to pay the balance of her account, and for the petitioner to collect the same from the respondent's

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[13] Civil Code, Articles 1233 and 1245, in relation to Article 1231.

[14] *Aquitey v. Tibong*, *supra* note 12, at 439.

[15] *Rollo*, p. 148.

[16] *Supra* note 12.

debtors.[17] The Court concluded that the respondent's obligation to pay the balance of her accounts with the petitioner was extinguished, *pro tanto*, by the deeds of assignment of credit executed by the respondent in favor of the petitioner.[18]

In the present case, the judgment debt was not extinguished by the **mere designation** in the compromise judgment of Magdalena's retirement benefits as the fund from which payment shall be sourced. That the compromise agreement authorizes recourse in case of default on other executable properties of the spouses Cortez, to satisfy the judgment debt, further supports our conclusion that there was no assignment of Magdalena's credit with the GSIS that would have extinguished the obligation.

The compromise judgment in this case also did not give the supposed assignees, the spouses Serfino, the power to enforce Magdalena's credit against the GSIS. In fact, the spouses Serfino are prohibited from enforcing their claim until after the lapse of one (1) week from Magdalena's receipt of her retirement benefits:

> (d) That the plaintiffs shall refrain from having the judgment based upon this Compromise Agreement executed until after one (1) week from receipt by the defendant, Magdalena Cortez of her retirement benefits from the [GSIS] but fails to pay within the said period the defendants' judgment debt in this case, in which case [this] Compromise Agreement [may be] executed upon any property of the defendants that are subject to execution upon motion by the plaintiffs.[19]

An assignment of credit not only entitles the assignee to the credit itself, but also gives him the power to enforce it as against the debtor of the assignor.

Since no valid assignment of credit took place, the spouses Serfino cannot validly claim ownership of the retirement benefits that were deposited with FEBTC. **Without ownership rights over the amount, they suffered no pecuniary loss that**

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[17] *Id.* at 439.

[18] *Id.* at 437.

[19] *Rollo*, p. 149.

has to be compensated by actual damages. The grant of actual damages presupposes that the claimant suffered a duly proven pecuniary loss.[20]

Claim for moral damages not meritorious because no duty exists on the part of the bank to protect interest of third person claiming deposit in the name of another

Under Article 2219 of the Civil Code, moral damages are recoverable for acts referred to in Article 21 of the Civil Code.[21] Article 21 of the Civil Code, in conjunction with Article 19 of the Civil Code, is part of the cause of action known in this jurisdiction as "abuse of rights." The elements of abuse of rights are: (a) **there is a legal right or duty**; (b) exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.

The spouses Serfino invoke American common law that imposes a **duty upon a bank receiving a notice of adverse claim to the fund in a depositor's account to freeze the account for a reasonable length of time, sufficient to allow the adverse claimant to institute legal proceedings to enforce his right to the fund**.[22] In other words, the bank has a duty not to release the deposits unreasonably early after a third party makes known his adverse claim to the bank deposit. Acknowledging that no such duty is imposed by law in this jurisdiction, the spouses Serfino ask the Court to adopt this foreign rule.[23]

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[20] Civil Code, Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proven. Such compensation is referred to as actual or compensatory damages.

[21] Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for the damage.

[22] *See* J. Adam Sholar, *Bank Deposits: The Need for an Adverse Claim Statute in North Carolina*, 31 Campbell L. Rev. 91, 94 (Fall 2008).

[23] *Rollo*, pp. 13-14.

To adopt the foreign rule, however, goes beyond the power of this Court to promulgate rules governing pleading, practice and procedure in all courts.[24] **The rule reflects a matter of policy that is better addressed by the other branches of government**, particularly, the *Bangko Sentral ng Pilipinas*, which is the agency that supervises the operations and activities of banks, and which has the power to issue "rules of conduct or the establishment of standards of operation for uniform application to all institutions or functions covered[.]"[25] To adopt this rule will have significant implications on the banking industry and practices, as the American experience has shown. Recognizing that the rule imposing duty on banks to freeze the deposit upon notice of adverse claim adopts a policy adverse to the bank and its functions, and opens it to liability to both the depositor and the adverse claimant,[26] many American states have since adopted adverse claim statutes that shifted or, at least, equalized the burden. Essentially, these statutes do not impose a duty on banks to freeze the deposit upon a mere notice of adverse claim; they first require either a court order or an indemnity bond.[27]

In the absence of a law or a rule binding on the Court, it has no option but to uphold the existing policy that recognizes the fiduciary nature of banking. It likewise rejects the adoption of a judicially-imposed rule giving third parties with unverified claims against the deposit of another a better right over the deposit. As current laws provide, the bank's contractual relations are with its depositor, not with the third party;[28] "a bank is under obligation to treat the accounts of its depositors with meticulous care and always to have in mind the fiduciary nature of its

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[24] CONSTITUTION, Article VIII, Section 5(5).

[25] Section 4.1 of Republic Act No. 8791 or The General Banking Law of 2000.

[26] The rule was first adopted in the 1922 case of *Huff v. Oklahoma State Bank*, 207 P. 963, 964, (J. Adam Sholar, *supra* note 22, at 94).

[27] *See* J. Adam Sholar, *supra* note 22, at 98-100.

[28] See *Gendler v. Sibley State Bank*, 62 F. Supp. 805 (1945).

relationship with them."[29] In the absence of any positive duty of the bank to an adverse claimant, there could be no breach that entitles the latter to moral damages.

WHEREFORE, in view of the foregoing, the petition for review on *certiorari* is **DENIED,** and the decision dated February 23, 2006 of the Regional Trial Court of Bacolod City, Branch 41, in Civil Case No. 95-9344 is **AFFIRMED.** Costs against the petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 178909. October 10, 2012]

SUPERIOR PACKAGING CORPORATION, *petitioner, vs.* **ARNEL BALAGSAY, ZALDY ALFORGNE, JAIME ANGELES, REY APURA, GERALD CABALAN, JONALD CALENTENG, RAMIL CRODERO, JUNREY CABALGUINTO, OSCAR DAYTO, RUFO DIONOLA, DIONILO ESMERALDA, BOOTS LADRILLO, ELIEZER MAGHAMOY, LEO FLORES, RENATO PAGADORA, REYNALDO PLAZA, ROGER SIBNEAO, EDWIN TONALBA, JOHN ACHARON, RODERICK RAMAS, SALVADOR ACURATO, JULUIS BASUL, CARLOS RAYTA, LITO BELANO, ROGER CASIMIRO, RENE CURADA, NESTRO ESTE, ROMMEL IMPELIDO, ZOILO ISLA,**

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[29] *Prudential Bank v. Lim,* G.R. No. 136371, November 11, 2005, 511 SCRA 100, 112.

JHONIE OGARDO, EDWIN POSADAS, ALEXANDER REGPALA, CHRISTOPHER SAMPIANO, RITCHIE SANCHES, ROLANDO SORIANO, ROWELL ANCHETA, RICKY BORDAS, ANTONIO BEREN, RONALD DOMINGO, JERRY MORENO, ROLLY ROSALES, RENATO RESTANO and ISIDRO SARIGNE, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ISSUE ON UNDERPAYMENT OF WAGES AND REGULAR HOLIDAY PAY MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL.—** [T]he Court will not resolve or dwell on the petitioner's argument on the doubling of respondents' underpayment of wages and regular holiday pay by the DOLE for the simple reason that this is the first time that the petitioner raised such contention. From its pleadings filed in the DOLE and all the way up to the CA, the petitioner never questioned nor discussed such issue. It is only now before the Court that the petitioner belatedly presented such argument. It is well-settled that points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice and due process.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) HAS THE AUTHORITY TO DETERMINE THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP.—** The DOLE clearly acted within its authority when it determined the existence of an employer-employee relationship between the petitioner and respondents as it falls within the purview of its visitorial and enforcement power under Article 128(b) of the Labor Code[.]

3. **ID.; ID.; LABOR-ONLY CONTRACTING; EFFECT OF A FINDING THAT THE EMPLOYER IS A LABOR-ONLY CONTRACTOR; CASE AT BAR.—** It was the consistent conclusion of the DOLE and the CA that Lancer was not an independent contractor

but was engaged in "labor-only contracting"; hence, the petitioner was considered an indirect employer of respondents and liable to the latter for their unpaid money claims. x x x *Labor-only contracting* is prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. According to the CA, the totality of the facts and surrounding circumstances of this case point to such conclusion. The Court agrees. The ratio of Lancer's authorized capital stock of ₱400,000.00 as against its subscribed and paid-up capital stock of ₱25,000.00 shows the inadequacy of its capital investment necessary to maintain its day-to-day operations. And while the Court does not set an absolute figure for what it considers substantial capital for an independent job contractor, it measures the same against the type of work which the contractor is obligated to perform for the principal. Moreover, the nature of respondents' work was directly related to the petitioner's business. The marked disparity between the petitioner's actual capitalization (₱25,000.00) and the resources needed to maintain its business, *i.e.*, "to establish, operate and manage a personnel service company which will conduct and undertake services for the use of offices, stores, commercial and industrial services of all kinds," supports the finding that Lancer was, indeed, a labor-only contractor. Aside from these is the undisputed fact that the petitioner failed to produce any written service contract that might serve as proof of its alleged agreement with Lancer. Finally, a finding that a contractor is a "labor-only" contractor is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the "labor-only" contractor is considered as a mere agent of the principal, the real employer. The former becomes solidarily liable for all the rightful claims of the employees. The petitioner therefore, being the principal employer and Lancer, being the labor-only contractor, are solidarily liable for respondents' unpaid money claims.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.

R E S O L U T I O N

REYES, *J.*:

The main issue in this case is whether Superior Packaging Corporation (petitioner) may be held solidarily liable with Lancer Staffing & Services Network, Inc. (Lancer) for respondents' unpaid money claims.

The facts are undisputed.

The petitioner engaged the services of Lancer to provide reliever services to its business, which involves the manufacture and sale of commercial and industrial corrugated boxes. According to petitioner, the respondents were engaged for four (4) months – from February to June 1998 – and their tasks included loading, unloading and segregation of corrugated boxes.

Pursuant to a complaint filed by the respondents against the petitioner and its President, Cesar Luz (Luz), for underpayment of wages, non-payment of premium pay for worked rest, overtime pay and non-payment of salary, the Department of Labor and Employment (DOLE) conducted an inspection of the petitioner's premises and found several violations, to wit: (1) non-presentation of payrolls and daily time records; (2) non-submission of annual report of safety organization; (3) medical and accident/illness reports; (4) non-registration of establishment under Rule 1020 of Occupational and Health Standards; and (5) no trained first aide.[1] Due to the petitioner's failure to appear in the summary investigations conducted by the DOLE, an Order[2] was issued on June 18, 2003 finding in favor of the respondents and adopting the computation of the claims submitted. Petitioner and Luz were ordered, among others, to pay respondents their total claims in the amount of Eight Hundred Forty Thousand Four Hundred Sixty-Three Pesos and 38/100 (₱840,463.38).[3]

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[1] *Rollo*, p. 56.

[2] *Id.* at 56-59.

[3] *Id.* at 59.

They filed a motion for reconsideration on the ground that respondents are not its employees but of Lancer and that they pay Lancer in lump sum for the services rendered. The DOLE, however, denied its motion in its Resolution[4] dated February 16, 2004, ruling that the petitioner failed to support its claim that the respondents are not its employees, and even assuming that they were employed by Lancer, the petitioner still cannot escape liability as Section 13 of the Department Order No. 10, Series of 1997, makes a principal jointly and severally liable with the contractor to contractual employees to the extent of the work performed when the contractor fails to pay its employees' wages.

Their appeal to the Secretary of DOLE was dismissed per Order[5] dated July 30, 2004 and the Order dated June 18, 2003 and Resolution dated February 16, 2004 were affirmed.[6] Their motion for reconsideration likewise having been dismissed by the Secretary of DOLE in an Order dated January 21, 2005,[7] petitioner and Luz filed a petition for *certiorari* with the Court of Appeals (CA).

On November 17, 2006, the CA affirmed the Secretary of DOLE's orders, with the modification in that Luz was absolved of any personal liability under the award.[8] The petitioner filed a partial motion for reconsideration insofar as the finding of solidary liability with Lancer is concerned but it was denied by the CA in a Resolution[9] dated July 10, 2007.

The petitioner is now before the Court on petition for review under Rule 45 of the Rules of Court, alleging that:

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[4] *Id.* at 69-71.

[5] *Id.* at 87-90.

[6] *Rollo*, p. 90.

[7] *Id.* at 99-101.

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

[9] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Jose L. Sabio, Jr. and Ramon M. Bato, Jr., concurring; *id*. at 157-160.

I

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE RULING OF THE SECRETARY OF LABOR AND EMPLOYMENT THAT THE COMPANY IS SOLIDARILY LIABLE WITH THE CONTRACTOR NOTWITHSTANDING THE FACT THAT:

A. THE COMPANY CANNOT BE HELD SOLIDARILY LIABLE WITH THE CONTRACTOR FOR THE PENALTY OR SANCTION IMPOSED BY WAY OF "DOUBLE INDEMNITY" UNDER REPUBLIC ACT NO. 6727.

B. THERE IS NO EVIDENCE TO SHOW THAT PRIVATE RESPONDENTS RENDERED OVERTIME WORK AND ACTUALLY WORKED ON THEIR RESTDAYS FOR THE COMPANY FOR THE PERIOD IN QUESTION[.]

II

THE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE FINDINGS OF THE SECRETARY OF LABOR AND EMPLOYMENT THAT THE CONTRACTOR IS ENGAGED IN LABOR-ONLY CONTRACTING.[10]

On the first ground, the petitioner argues that the DOLE erred in doubling respondents' underpayment of wages and regular holiday pay under Republic Act No. 6727 (Wage Rationalization Act) inasmuch as the solidary liability of a principal does not extend to a punitive award against a contractor.[11] The petitioner also contends that there is no evidence showing that the respondents rendered overtime work and that they actually worked on their rest days for them to be entitled to such pay.[12]

On the second ground, the petitioner objects to the finding that it is engaged in labor-only contracting and is consequently an indirect employer, considering that it is beyond the visitorial and enforcement power of the DOLE to make such conclusion.

[10] *Id.* at 10.

[11] *Id.* at 11-12.

[12] *Id.* at 14-17.

According to the petitioner, such conclusion may be made only upon consideration of evidentiary matters and cannot be determined solely through a labor inspection.[13] The petitioner also refutes respondents' alleged belated argument that the latter are its employees.[14]

The petition is bereft of merit.

To begin with, the Court will not resolve or dwell on the petitioner's argument on the doubling of respondents' underpayment of wages and regular holiday pay by the DOLE for the simple reason that this is the first time that the petitioner raised such contention. From its pleadings filed in the DOLE and all the way up to the CA, the petitioner never questioned nor discussed such issue. It is only now before the Court that the petitioner belatedly presented such argument. It is well-settled that points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage.[15] To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice and due process.[16]

With regard to the contention that there is no evidence to support the finding that the respondents rendered overtime work and that they worked on their rest day, the resolution of this argument requires a review of the factual findings and the evidence presented, which this Court will not do. This Court is not a trier of facts and this applies with greater force in labor cases.[17] Hence, where the factual findings of the labor

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

[14] *Id.* at 184-186.

[15] *Besana v. Mayor*, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 214.

[16] *Madrid v. Mapoy*, G.R. No. 150887, August 14, 2009, 596 SCRA 14, 28.

[17] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 211-212 (2005), citing *Manila Water Co., Inc. v. Pena,* 478 Phil. 68, 77 (2004).

tribunals or agencies conform to, and are affirmed by, the CA, the same are accorded respect and finality, and are binding upon this Court.[18]

Petitioner also questions the authority of the DOLE to make a finding of an employer-employee relationship concomitant to its visitorial and enforcement power. The Court notes at this juncture that the petitioner, again, did not raise this question in the proceedings before the DOLE. At best, what the petitioner raised was the sufficiency of evidence proving the existence of an employer-employee relationship and it was only in its petition for *certiorari* with the CA that the petitioner sought to have this matter addressed. The CA should have refrained from resolving said matter as the petitioner was deemed to have waived such argument and was estopped from raising the same.[19]

At any rate, such argument lacks merit. The DOLE clearly acted within its authority when it determined the existence of an employer-employee relationship between the petitioner and respondents as it falls within the purview of its visitorial and enforcement power under Article 128(b) of the Labor Code, which provides:

> Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representative shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by

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[18] *C.F. Sharp Crew Management, Inc. v. Espanol, Jr.*, G.R. No. 155903, September 14, 2007, 533 SCRA 424, 440.

[19] *Catholic Vicariate, Baguio City v. Sto. Tomas*, G.R. No. 167334, March 7, 2008, 548 SCRA 31, 39.

documentary proofs which were not considered in the course of inspection.

In *People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment*,[20] the Court stated that it can be assumed that the DOLE in the exercise of its visitorial and enforcement power somehow has to make a determination of the existence of an employer-employee relationship. **Such determination, however, is merely preliminary, incidental and collateral to the DOLE's primary function of enforcing labor standards provisions**. Such power was further explained recently by the Court in its Resolution[21] dated March 6, 2012 issued in *People's Broadcasting*, *viz*:

> The determination of the existence of an employer-employee relationship by the DOLE must be respected. The expanded visitorial and enforcement power of the DOLE granted by RA 7730 would be rendered nugatory if the alleged employer could, by the simple expedient of disputing the employer-employee relationship, force the referral of the matter to the NLRC. The Court issued the declaration that at least a *prima facie* showing of the absence of an employer-employee relationship be made to oust the DOLE of jurisdiction. But it is precisely the DOLE that will be faced with that evidence, and it is the DOLE that will weigh it, to see if the same does successfully refute the existence of an employer-employee relationship.
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> x x x [T]he power of the DOLE to determine the existence of an employer-employee relationship need not necessarily result in an affirmative finding. The DOLE may well make the determination that no employer-employee relationship exists, thus divesting itself of jurisdiction over the case. It must not be precluded from being able to reach its own conclusions, not by the parties, and certainly not by this Court.

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[20] G.R. No. 179652, May 8, 2009, 587 SCRA 724.

[21] *People's Broadcasting Service (Bombo Radyo Phils., Inc.) v. The Secretary of the Department of Labor and Employment, the Regional Director, DOLE Region VII, and Jandeleon Juezan*, G.R. No. 179652, March 6, 2012.

Under Art. 128(b) of the Labor Code, as amended by RA 7730, the DOLE is fully empowered to make a determination as to the existence of an employer-employee relationship in the exercise of its visitorial and enforcement power, subject to judicial review, not review by the NLRC.[22]

Also, the existence of an employer-employee relationship is ultimately a question of fact.[23] The determination made in this case by the DOLE, albeit provisional, and as affirmed by the Secretary of DOLE and the CA is beyond the ambit of a petition for review on *certiorari*.[24]

The Court now comes to the issue regarding the nature of the relationship between the petitioner and respondents, and the consequent liability of the petitioner to the respondents under the latter's claim.

It was the consistent conclusion of the DOLE and the CA that Lancer was not an independent contractor but was engaged in "labor-only contracting"; hence, the petitioner was considered an indirect employer of respondents and liable to the latter for their unpaid money claims.

At the time of the respondents' employment in 1998, the applicable regulation was DOLE Department Order No. 10, Series of 1997.[25] Under said Department Order, *labor-only contractin*g was defined as follows:

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[22] *Id.*

[23] *Supra* note 19, at 38, citing *Manila Water Co., Inc. v. Pena*, 478 Phil. 68, 77 (2004).

[24] *Id.*

[25] DOLE Department Order No. 10 was subsequently revoked by Department Order No. 03 (Series of 2001) entitled, "Revoking Department Order No. 10, Series of 1997, and Continuing to Prohibit Labor-only Contracting." Finally, the DOLE issued Department Order No. 18-02 (Series of 2002), implementing Articles 106 to 109 of the Labor Code, as amended, which defines *labor-only contracting*, as follows:

> Section 5. *Prohibition against labor-only contracting*. x x x For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

Sec. 9. *Labor-only contracting*. – (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such persons are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

Labor-only contracting is prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.[26]

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i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.

[26] Section 9(b), DOLE Department Order No. 10 (Series of 1997) states that *labor-only contracting* is prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. Section 19, DOLE Department Order No. 18- 02, meanwhile, provides:

x x x The principal shall be deemed as the direct employer of the contractual employees and therefore, solidarily liable with the contractor or subcontractor for whatever monetary claims the contractual employees may have against the former in the case of violations as provided for in Sections 5 (Labor-Only contracting), 6 (Prohibitions), 8 (Rights of Contractual Employees) and 16 (Delisting) of these Rules. In addition, the principal shall also be solidarily liable in case the contract between the principal and contractor or subcontractor is preterminated for reasons not attributable to the fault of the contractor or subcontractor.

According to the CA, the totality of the facts and surrounding circumstances of this case point to such conclusion. The Court agrees.

The ratio of Lancer's authorized capital stock of ₱400,000.00 as against its subscribed and paid-up capital stock of ₱25,000.00 shows the inadequacy of its capital investment necessary to maintain its day-to-day operations. And while the Court does not set an absolute figure for what it considers substantial capital for an independent job contractor, it measures the same against the type of work which the contractor is obligated to perform for the principal.[27] Moreover, the nature of respondents' work was directly related to the petitioner's business. The marked disparity between the petitioner's actual capitalization (₱25,000.00) and the resources needed to maintain its business, *i.e.*, "to establish, operate and manage a personnel service company which will conduct and undertake services for the use of offices, stores, commercial and industrial services of all kinds," supports the finding that Lancer was, indeed, a labor-only contractor. Aside from these is the undisputed fact that the petitioner failed to produce any written service contract that might serve as proof of its alleged agreement with Lancer.[28]

Finally, a finding that a contractor is a "labor-only" contractor is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the "labor-only" contractor is considered as a mere agent of the principal, the real employer.[29] The former becomes solidarily liable for all the rightful claims of the employees.[30] The petitioner therefore, being the principal employer and Lancer, being the labor-only contractor, are solidarily liable for respondents' unpaid money claims.

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[27] *Coca-Cola Bottlers Phils., Inc. v. Agito*, G.R. No. 179546, February 13, 2009, 579 SCRA 445, 462.

[28] *Rollo*, pp. 138-140.

[29] *POLYFOAM-RGC International v. Concepcion*, G.R. No. 172349, June 13, 2012.

[30] *San Miguel Corporation v. Semillano*, G.R. No. 164257, July 5, 2010, 623 SCRA 114, 129.

WHEREFORE, the petition for review is **DENIED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 182018. October 10, 2012]

NORKIS TRADING CORPORATION, *petitioner, vs.* **JOAQUIN BUENAVISTA, HENRY FABROA, RICARDO CAPE, BERTULDO TULOD, WILLY DONDOYANO and GLEN VILLARIASA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; EXCEPTION TO THE GENERAL RULE THAT FACTUAL FINDINGS OF LABOR OFFICIALS ARE TO BE ACCORDED RESPECT AND FINALITY ON APPEAL, APPLIED.— This case falls within the exception to the general rule that findings of fact of labor officials are to be accorded respect and finality on appeal. As our discussions in the other grounds that are raised in this petition will demonstrate, the CA has correctly held that the NLRC has disregarded facts and evidence that are material to the outcome of the respondents' case. No error can be ascribed to the appellate court for making its own assessment of the facts that are significant to the case to determine the presence or absence of grave abuse of discretion on the part of the NLRC, even if the CA's findings turn out to be different from the factual findings of both the LA and NLRC.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR-ONLY CONTRACTING AND LEGITIMATE JOB

CONTRACTING, DISTINGUISHED.— Labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work, or service for a principal. In labor-only contracting, the following elements are present: (a) the contractor or subcontractor does not have substantial capital or investment to actually perform the job, work, or service under its own account and responsibility; and (b) the employees recruited, supplied or placed by such contractor or subcontractor perform activities which are directly related to the main business of the principal. These differentiate it from permissible or legitimate job contracting or subcontracting, which refers to an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur: (a) the contractor carries on a distinct and independent business and partakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.

3. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; CONCEPT AND TWO ASPECTS OF *RES JUDICATA*, EXPLAINED.— *Res judicata* is defined as a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Under this doctrine, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue

in the first suit. To state simply, 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. *Res judicata* has two aspects: bar by prior judgment and conclusiveness of judgment as provided under Section 47(b) and (c), Rule 39, respectively, of the Rules of Court. Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot be raised in any future case between the same parties, even if the latter suit may involve a different cause of action.

4. ID.; ID.; ID.; *RES JUDICATA* IN THE CONCEPT OF CONCLUSIVENESS OF JUDGMENT, APPLIED.— *[R]es judicata* in the concept of conclusiveness of judgment has set in. In the proceedings before the Regional Director and the LA, there were identity of parties and identity of issues, although the causes of action in the two actions were different. First, herein respondents on the one hand, and Norkis Trading on the other hand, were all parties in the two cases, being therein complainants and respondent, respectively. As to the second requisite, the issue of whether PASAKA was a labor-only contractor which would make Norkis Trading the true employer of the respondents was the main issue in the two cases, especially since Norkis Trading had been arguing in both proceedings that it could not be regarded as the herein respondents' employer, harping on the defense that PASAKA was a legitimate job contractor. x x x The rule on conclusiveness of judgment then now precludes this Court from re-opening the issues that were already settled with finality in G.R. Nos. 180078-79, which effectively affirmed the CA's findings that PASAKA was engaged in labor-only contracting, and that Norkis Trading shall be treated as the employer of the respondents.

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHERE UTTER DISREGARD BY THE NLRC OF THE FINDINGS OF THE REGIONAL DIRECTOR AND THE DOLE SECRETARY AMOUNTS TO GRAVE ABUSE OF DISCRETION.— A reading of the NLRC's Resolution dated December 18, 2003 indicates that while it was confronted with opposing findings of the Regional Director and the LA on the material issue of labor-only contracting, it failed to even attempt to review thoroughly

the matter, look into the records, reconcile the differing judgments and make its own appreciation of the evidence presented by the parties. Instead, it simply brushed aside the rulings of the Regional Director, without due consideration of the circumstance that said labor official had the jurisdiction to rule on the issue pursuant to the visitorial and enforcement powers of the DOLE Secretary and his duly authorized representatives under Article 128 of the Labor Code. The rule in appeals in labor cases provides that the CA can grant a petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically or arbitrarily disregarding evidence which is material or decisive of the controversy. Significantly, the Secretary of Labor had already affirmed Regional Director Balanag's Order when the appeal from the LA's rulings was resolved. In the NLRC Resolution dated December 18, 2003, the Commission nonetheless merely held: x x x the Order of the Honorable Secretary of the Department of Labor and Employment dated February 7, 2002 and the Order of the Regional Director of the Regional Office of the Department of Labor and Employment finding the existence of labor-only contracting between respondent NORKIS [Trading] and respondent PASAKA do not provide sufficient basis to disturb Our Decision. x x x Such utter disregard by the NLRC of the findings of the Regional Director and DOLE Secretary amounts to grave abuse of discretion amounting to lack or excess of jurisdiction.

6. LABOR AND SOCIAL LEGISLATION; LABOR CODE; REQUIREMENTS TO BE A LEGITIMATE JOB CONTRACTOR, NOT ESTABLISHED.— As this Court's review of the records would confirm, a judicious study of the evidence presented by the parties would have supported the finding that Norkis Trading should be treated as the respondents' true employer, with PASAKA being merely an agent of said employer. PASAKA failed to sufficiently show that it had substantial capital or investment in the form of tools, equipment, machineries and work premises required from legitimate job contractors. The work required from the respondents, being welders and/or operators of industrial machines, were also directly related to Norkis Trading's principal business of manufacturing.

7. ID.; ID.; ID.; EFFECTS WHERE AN ENTITY IS DECLARED TO BE A LABOR-ONLY CONTRACTOR.— Where an entity is declared to be a labor-only contractor, the employees supplied by said contractor to the principal employer become regular employees of the latter. Having gained regular status, the employees are entitled to security of tenure and can only be dismissed for just or authorized causes and after they had been afforded due process. x x x Where labor-only contracting exists, the Labor Code itself establishes an employer-employee relationship between the employer and the employees of the labor-only contractor. The statute establishes this relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer.

8. ID.; ID.; TERMINATION OF EMPLOYMENT; WHERE TRANSFER OF EMPLOYEES SUPPLIED BY LABOR-ONLY CONTRACTOR AMOUNTS TO ILLEGAL DISMISSAL.— In claiming that they were illegally dismissed from their employment, the respondents alleged having been informed by PASAKA that they would be transferred, upon the behest of Norkis Trading, as Multicab washers or utility workers to Porta Coeli, a sister company of Norkis Trading. Norkis Trading does not dispute that such job transfer was relayed by PASAKA unto the respondents, although the company contends that the transfer was merely an "offer" that did not constitute a dismissal. It bears mentioning, however, that the respondents were not given any other option by PASAKA and Norkis Trading but to accede to said transfer. In fact, there is no showing that Norkis Trading would still willingly accept the respondents to work for the company. x x x No further evidence or document should then be required from the respondents to prove such fact of dismissal, especially since Norkis Trading maintains that it has no duty to admit and treat said respondents as its employees. Considering that Porta Coeli is an entity separate and distinct from Norkis Trading, the respondents' employment with Norkis Trading was necessarily severed by the change in work assignment. It then did not even matter whether or not the transfer involved a demotion in the respondents' rank and work functions; the intention to

dismiss, and the actual dismissal of the respondents were sufficiently established. In the absence of a clear showing that the respondents' dismissal was for just or authorized causes, the termination of the respondents' employment was illegal.

APPEARANCES OF COUNSEL

Muntuerto Miel Duyongco Law Offices for petitioner.
Alvarez Cañete Lopez Law Offices for Panaghiusa sa Kauswagan Corp.
Armando Alforque for Joaquin Buenavista, *et al.*

D E C I S I O N

REYES, *J.*:

Before us is a Petition for Review on *Certiorari* filed by petitioner Norkis Trading Corporation (Norkis Trading) to assail the Decision[1] dated May 7, 2007 and Resolution[2] dated March 4, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 84041.

The Facts

The petition stems from an amended complaint for illegal suspension, illegal dismissal, unfair labor practice and other monetary claims filed with the National Labor Relations Commission (NLRC) by herein respondents Joaquin Buenavista (Buenavista), Henry Fabroa (Fabroa), Ricardo Cape (Cape), Bertuldo Tulod (Tulod), Willy Dondoyano (Dondoyano) and Glen Villariasa (Villariasa) against Norkis Trading and Panaghiusa sa Kauswagan Multi-Purpose Cooperative (PASAKA). The complaint was docketed as NLRC-RAB-VII Case No. 09-1402-99.

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Arsenio J. Magpale and Agustin S. Dizon, concurring; *rollo*, pp. 54-65.

[2] *Id.* at 67-69.

During the proceedings *a quo,* herein respondents submitted the following averments:

The respondents were hired by Norkis Trading, a domestic corporation engaged in the business of manufacturing and marketing of Yamaha motorcycles and multi-purpose vehicles, on separate dates and for various positions, particularly:

Name	*Date of Hiring*	*Position*
Joaquin Buenavista	March 14, 1994	Operator
Henry Fabroa	January 5, 1993	Welder
Ricardo Cape	January 1993	Welder/Operator
Bertuldo Tulod	November 13, 1994	Welder/Assistant Operator
Willy Dondoyano	January 1993	Welder
Glen Villariasa	February 1993	Welder[3]

Although they worked for Norkis Trading as skilled workers assigned in the operation of industrial and welding machines owned and used by Norkis Trading for its business, they were not treated as regular employees by Norkis Trading. Instead, they were regarded by Norkis Trading as members of PASAKA, a cooperative organized under the Cooperative Code of the Philippines, and which was deemed an independent contractor that merely deployed the respondents to render services for Norkis Trading.[4] The respondents nonetheless believed that they were regular employees of Norkis Trading, citing in their Position Paper[5] the following circumstances that allegedly characterized their employment with the company:

> The work of the operators involves operating industrial machines, such as, press machine, hydraulic machine, and spotweld machine. On the other hand, the welders used the welding machines. The machines used by complainants [herein respondents] in their work are all owned by respondent Norkis [Trading] [herein petitioner] and these are installed and located in the working area of the complainants inside the company's premises.

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[3] *Id.* at 71.

[4] *Id.* at 72.

[5] *Id.* at 70-79.

The complainants produced steel crates which are exported directly by respondent Norkis [Trading] to Japan. These crates are used as containers of motorcycle machines and are shipped from Japan back to respondent Norkis [Trading].

The materials and supplies used by complainants in their work are supplied by respondent Norkis [Trading] through Benjamin Gulbin, the company's Stockman, upon the request of Tirso Maslog, a Leadman also employed by respondent Norkis [Trading].

Respondent Norkis [Trading] gave instructions and supervised the work of complainants through Edwin Ponce and Kiven Alilin, who are both Leadmen, and Rico Cabanas, who is the Production Supervisor, of the former.

The salaries of complainants are paid inside the premises of respondent Norkis [Trading] by Dalia Rojo and Belen Rubio, who are also employees of the said company assigned at the accounting office.

Despite having served respondent Norkis [Trading] for many years and performing the same functions as regular employees, complainants were not accorded regular status. It was made to appear that complainants are not employees of said company but that of respondent PASAKA.[6]

Against the foregoing scenario, the respondents, together with several other complainants,[7] filed on June 9, 1999 with the Department of Labor and Employment (DOLE) a complaint against Norkis Trading and PASAKA for labor-only contracting and non-payment of minimum wage and overtime pay. The complaint was docketed as LSED Case No. RO700-9906-CI-CS-168.

The filing of the complaint for labor-only contracting allegedly led to the suspension of the respondents' membership with PASAKA. On July 22, 1999, they were served by PASAKA

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[6] *Id.* at 71-72.

[7] The other complainants in LSED Case No. RO700-9906-CI-CS-168 were Bernardo Tumulak, Jr., Efren Dadol, Melecio Bontuyan, Jose Ramil Suico, Constancio Layasan, Renato Montaner, Ronilo Bordario, Profil Suico and Florencio Capangpangan.

with memoranda charging them with a violation of the rule against commission of acts injurious or prejudicial to the interest or welfare of the cooperative. The memoranda cited that the respondents' filing of a case against Norkis Trading had greatly prejudiced the interest and welfare of the cooperative.[8] In their answer[9] to the memoranda, the respondents explained that they merely wanted to be recognized as regular employees of Norkis Trading. The case records include copies of the memoranda sent to respondents Buenavista, Fabroa and Dondoyano.[10]

On August 16, 1999, the respondents received another set of memoranda from PASAKA, now charging them with the following violations of the cooperative's rules and regulations: (1) serious misconduct or willful disobedience of superior's instructions or orders; (2) gross and habitual neglect of duties by abandoning work without permission; (3) absences without filing leave of absence; and (4) wasting time or loitering on company's time or leaving their post temporarily without permission during office hours.[11] Copies of the memoranda[12] sent to Fabroa and Cape form part of the records.

On August 26, 1999, PASAKA informed the respondents of the cooperative's decision to suspend them for fifteen (15) working days, to be effective from September 1 to 21, 1999, for violation of PASAKA rules. The records include copies of the memoranda[13] sent to Fabroa and Cape. The suspension prompted the respondents to file with the NLRC the complaint for illegal suspension against Norkis Trading and PASAKA.

The 15-day suspension of the respondents was extended for another period of 15 days, from September 22, 1999 to

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[8] *Rollo*, p. 72.

[9] *Id.* at 83.

[10] *Id.* at 80-82.

[11] *Id.* at 72.

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

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

October 12, 1999.[14] Copies of PASAKA's separate letters[15] to Buenavista, Fabroa, Cape and Dondoyano on the cooperative's decision to extend the suspension form part of the records.

On October 13, 1999, the respondents were to report back to work but during the hearing in their NLRC case, they were informed by PASAKA that they would be transferred to Norkis Tradings' sister company, Porta Coeli Industrial Corporation (Porta Coeli), as washers of Multicab vehicles. The respondents opposed the transfer as it would allegedly result in a change of employers, from Norkis Trading to Porta Coeli. The respondents also believed that the transfer would result in a demotion since from being skilled workers in Norkis Trading, they would be reduced to being utility workers. These circumstances made the respondents amend their complaint for illegal suspension, to include the charges of unfair labor practice, illegal dismissal, damages and attorney's fees.

For their part, both Norkis Trading and PASAKA claimed that the respondents were not employees of Norkis Trading. They insisted that the respondents were members of PASAKA, which served as an independent contractor that merely supplied services to Norkis International Co., Inc. (Norkis International) pursuant to a job contract[16] which PASAKA and Norkis International executed on January 14, 1999 for 121,500 pieces of F/GF-Series Reinforcement Production. After PASAKA received reports from its coordinator at Norkis International of the respondents' low efficiency and violation of the cooperative's rules, and after giving said respondents the chance to present their side, a penalty of suspension was imposed upon them by the cooperative. The illegal suspension being complained of was then not linked to the respondents' employment, but to their membership with PASAKA.

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[14] *Id.* at 73.

[15] *Id.* at 91-94.

[16] *Id.* at 106-110.

Norkis Trading stressed that the respondents were deployed by PASAKA to Norkis International, a company that is entirely separate and distinct from Norkis Trading.

The Ruling of the Labor Arbiter

On June 1, 2000, Labor Arbiter Jose G. Gutierrez (LA Gutierrez) dismissed the complaint *via* a Decision[17] with decretal portion that reads:

> WHEREFORE, the foregoing premises considered, judgment is hereby rendered DISMISSING this case for lack of merit. Complainants [herein respondents] are however directed to report back to respondent PASAKA for work assignment [within] ten (10) days from receipt of this decision. Likewise, respondent PASAKA is directed to accept the complainants back for work.
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> SO ORDERED.[18]

LA Gutierrez sustained the suspension imposed by PASAKA upon the respondents, taking into account the offenses that the said respondents were found to have committed. He likewise rejected the respondents' claim of illegal dismissal. He ruled that to begin with, the respondents had failed to prove with convincing evidence that they were dismissed from employment. The Decision reads in part:

> Before the legality or illegality of a dismissal can be put in issue, the fact of dismissal itself must, first, be clearly established. In the instant case, We find that complainant[s] [herein respondents] failed to prove with convincing evidence the fact that they were dismissed from employment. This observation is derived from their very own allegation in their position paper. The first paragraph of page 5 of the complainants' position paper clearly show[s] that they were not yet dismissed from their employment. The said paragraph states:
>
> > "Convinced that the company is bent on terminating their services, complainants amended their complaint to include the charges of unfair labor practice, illegal dismissal, damages and attorney's fees."

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[17] *Id.* at 210-220.

[18] *Id.* at 219.

The truth, as the record would show is that, complainants were only offered another post in order to save the contractual relations between their cooperative and Norkis [Trading] as the latter finds the complainants' performance not satisfactory. The [complainants] took this offer as a demotion amounting to dismissal. We do not however, agree as their transfer to another post was only the best option available in order to save the contractual relations between their cooperative (PASAKA) and Norkis [Trading].[19]

The allegation of unfair labor practice and claim for monetary awards were likewise rejected by the LA. Feeling aggrieved, the respondents appealed from the decision of the LA to the NLRC.

In the meantime, DOLE Regional Director Melencio Q. Balanag (Regional Director Balanag) issued on August 22, 2000 his Order[20] in LSED Case No. RO700-9906-CI-CS-168. Regional Director Balanag ruled that PASAKA was engaged in labor-only contracting.[21] The other findings in his Order that are significant to this case are as follows: (1) PASAKA had failed to prove that it had substantial capital;[22] (2) the machineries, equipment and supplies used by the respondents in the performance of their duties were all owned by Norkis Trading and not by PASAKA;[23] (3) the respondents' membership with PASAKA as a cooperative was inconsequential to their employment with Norkis Trading;[24] (4) Norkis Trading and PASAKA failed to prove that their sub-contracting arrangements were covered by any of the conditions set forth in Section 6 of Department Order No. 10, Series of 1997;[25] (5) Norkis Trading and PASAKA failed to dispute the respondents' claim that

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[19] *Id.* at 217-218.

[20] *Id.* at 223-239.

[21] *Id.* at 236.

[22] *Id.* at 233.

[23] *Id.* at 234.

[24] *Id.* at 235.

[25] *Id.* at 236.

their work was supervised by leadmen and production supervisors of Norkis Trading;[26] and (6) Norkis Trading and PASAKA failed to dispute the respondents' allegation that their salaries were paid by employees of Norkis Trading.[27] Norkis Trading and PASAKA were then declared solidarily liable for the monetary claims of therein complainants, as provided in the dispositive portion of Regional Director Balanag's Order, to wit:

> **WHEREFORE**, respondent **PANAGHIUSA SA KAUSWAGAN MULTIPURPOSE COOPERATIVE** and/or **NORKIS TRADING CORPORATION** are hereby **ORDERED** to pay solidarily the amount of **THREE HUNDRED THIRTEEN THOUSAND THREE HUNDRED FIFTY[-]FOUR AND 50/100 ([₱]313,354.50) PESOS**, Philippine Currency, within ten (10) calendar days from receipt hereof to herein complainants x x x:
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> x x x x x x x x x
>
> **SO ORDERED.**[28]

The respondents informed the NLRC of Regional Director Balanag's Order by filing a Manifestation[29] dated September 11, 2000, attaching thereto a copy of the Order dated August 22, 2000.

It bears mentioning that Regional Director Balanag's Order was later affirmed by then DOLE Secretary Patricia Sto. Tomas (Sec. Sto. Tomas) in her Orders dated February 7, 2002 and October 14, 2002.[30] When the rulings of the DOLE Secretary were appealed before the CA *via* the petitions for *certiorari* docketed as CA-G.R. SP No. 73880 and CA-G.R. SP No. 74619, the CA affirmed the Orders of the DOLE Secretary.[31]

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[26] *Id.* at 237.

[27] *Id.*

[28] *Id.* at 238-239.

[29] *Id.* at 221-222.

[30] *Id.* at 268.

[31] *Id.* at 267-287.

A motion for reconsideration of the CA decision was denied in a Resolution[32] dated October 9, 2007. The two petitions docketed as G.R. Nos. 180078-79, which were brought before this Court to question the CA's rulings, were later denied with finality by this Court in the Resolutions dated December 5, 2007[33] and April 14, 2008.[34]

The Ruling of the NLRC

On April 18, 2002, the NLRC rendered its Decision[35] affirming with modification the decision of LA Gutierrez. It held that the respondents were not illegally suspended from work, as it was their membership in the cooperative that was suspended after they were found to have violated the cooperative's rules and regulations. It also declared that the respondents' dismissal was not established by substantial evidence. The NLRC however declared that the LA had no jurisdiction over the dispute because the respondents were not employees, but members of PASAKA. The suspension of the respondents as members of PASAKA for alleged violation of the cooperative's rules and regulations was not a labor dispute, but an intra-corporate dispute.[36] The complaint was also declared to have been filed against the wrong party because the respondents were found by the NLRC to have been deployed by PASAKA to Norkis International pursuant to a job contract.

The dispositive portion of the NLRC's Decision reads:

> WHEREFORE, the Decision dated June 1, 2000 of the Labor Arbiter is AFFIRMED, with respect to the DISMISSAL of the complainants [herein respondents] for lack of merit [sic], but deleting the portion directing the complainants to report back to respondent PASAKA for work assignment and to accept them back to work being an internal concern of PASAKA.

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[32] *Id.* at 288-289.

[33] *Id.* at 290-291.

[34] *Id.* at 292-293.

[35] *Id.* at 240-245.

[36] *Id.* at 244.

SO ORDERED.[37]

The respondents' motion for reconsideration was denied by the NLRC in a Resolution[38] dated December 18, 2003. Undaunted, the respondents questioned the NLRC's rulings before the CA *via* a petition for *certiorari*.

The Ruling of the CA

Finding merit in the petition for *certiorari*, the CA rendered its decision reversing and setting aside the decision and resolution of the NLRC. The dispositive portion of its Decision dated May 7, 2007 reads:

WHEREFORE, the petition is ***GRANTED***. The assailed Decision and Resolution of the NLRC, are hereby ***REVERSED*** and ***SET ASIDE***, and a new judgment is hereby rendered ordering the private respondents to:

(1) Reinstate petitioners to their former positions without loss of seniority rights, and to pay full backwages inclusive of allowances and their other benefits or their monetary equivalent computed from the time of illegal dismissal to the time of actual reinstatement; and

(2) Alternatively, if reinstatement is not possible, to pay full backwages inclusive of other benefits or their monetary equivalent from the time of illegal dismissal until the same is paid in full, and pay petitioners' separation pay equivalent to one month's salary for every year of service.

SO ORDERED.[39]

The CA rejected the argument of PASAKA and Norkis Trading that by virtue of a job contract executed on January 14, 1999, the respondents were deployed to Norkis International and not to Norkis Trading. The CA held:

We are not convinced. Private respondents' [among them, herein petitioner] own evidence belie their claim.

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[37] *Id.* at 245.

[38] *Id.* at 246-247.

[39] *Id.* at 64.

In its Comment, NORKIS TRADING attached the Payroll Registers for ***PANAGHIUSA SA KAUSWAGAN (PASAKA) MULTIPURPOSE COOPERATIVE-NICI Tin Plate*** covering the payroll periods ***"12/28/98-01/07/99"*** and ***"01/08/99-01/14/99."*** Included among the payees therein were the petitioners [herein respondents]. x x x *Why were petitioners included in said payrolls for said payroll periods when the supposed Contract with NORKIS INTERNATIONAL was not yet executed?* Apparently, private respondents slipped. Thus, we hold that the much ballyhooed January 14, 1999 Contract between PASAKA and NORKIS INTERNATIONAL, is but a mere afterthought, a concoction designed by private respondents to evade their obligations to petitioners.[40] (Citations omitted and emphasis supplied)

The CA also considered Regional Director Balanag's finding in LSED Case No. RO700-9906-CI-CS-168 that PASAKA was engaged in labor-only contracting. In ruling that the respondents were illegally dismissed, the CA held that Norkis Trading's refusal to accept the respondents back to their former positions, offering them instead to accept a new assignment as washers of vehicles in its sister company, was a demotion that amounted to a constructive dismissal.

Norkis Trading's motion for reconsideration was denied by the CA in its Resolution[41] dated March 4, 2008. Hence, this petition.

The Present Petition

The petition is founded on the following grounds:

1) THE COURT OF APPEALS HAS DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT MADE ITS OWN FACTUAL FINDINGS AND DISREGARDED THE UNIFORM AND CONSISTENT FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC, WHICH MUST BE ACCORDED GREAT WEIGHT, RESPECT AND EVEN FINALITY. IN SO DOING, THE COURT OF APPEALS EXCEEDED ITS AUTHORITY ON *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT BECAUSE SUCH FACTUAL FINDINGS WERE BASED ON SPECULATIONS AND NOT ON OTHER EVIDENCES [SIC] ON RECORD.

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

[41] *Id.* at 67-69.

2) THE COURT OF APPEALS HAS DETERMINED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN RULING THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN ALLEGEDLY IGNORING THE RULING OF THE REGIONAL DIRECTOR.

3) THE COURT OF APPEALS HAS DETERMINED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN RULING THAT PETITIONER IS THE EMPLOYER OF RESPONDENTS.

4) THE COURT OF APPEALS HAS DETERMINED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN RULING THAT THE RESPONDENTS WERE CONSTRUCTIVELY DISMISSED CONTRARY TO THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC AND WITHOUT SHOWING ANY EVIDENCE TO OVERTURN SUCH FINDING OF FACT.[42]

The respondents oppose these grounds in their Comment.[43] In support of their arguments, the respondents submit with their Comment copies of the CA's Decision[44] and Resolution[45] in CA-G.R. SP No. 73880 and CA-G.R. SP No. 74619, and this Court's Resolutions[46] in G.R. Nos. 180078-79.

This Court's Ruling

The Court resolves to deny the petition.

Factual findings of labor officials may be examined by the courts when there is a showing that they were arrived at arbitrarily or in disregard of evidence on record.

As regards the first ground, the petitioner questions the CA's reversal of LA Gutierrez's and the NLRC's rulings, and argues

[42] *Id.* at 27-28.

[43] *Id.* at 250-266.

[44] *Id.* at 267-287.

[45] *Id.* at 288-289.

[46] *Id.* at 290-291 and 292-293.

that said rulings should have been accorded great weight and finality by the appellate court as these were allegedly supported by substantial evidence.

On this matter, the settled rule is that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. We emphasize, nonetheless, that these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The CA can then grant a petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence. It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.[47]

We have thus explained in *Cocomangas Hotel Beach Resort v. Visca*[48] that the CA can take cognizance of a petition for *certiorari* if it finds that the NLRC committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which are material to or decisive of the controversy. The CA cannot make this determination without looking into the evidence presented by the parties. The appellate court needs to evaluate the materiality or significance of the evidence, which are alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.

This case falls within the exception to the general rule that findings of fact of labor officials are to be accorded respect and finality on appeal. As our discussions in the other grounds

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[47] *Prince Transport, Inc. v. Garcia*, G.R. No. 167291, January 12, 2011, 639 SCRA 312, 325, citing *Emcor Incorporated v. Sienes*, G.R. No. 152101, September 8, 2009, 598 SCRA 617, 632.

[48] G.R. No. 167045, August 29, 2008, 563 SCRA 705.

that are raised in this petition will demonstrate, the CA has correctly held that the NLRC has disregarded facts and evidence that are material to the outcome of the respondents' case. No error can be ascribed to the appellate court for making its own assessment of the facts that are significant to the case to determine the presence or absence of grave abuse of discretion on the part of the NLRC, even if the CA's findings turn out to be different from the factual findings of both the LA and NLRC.

Norkis Trading is the principal employer of the respondents, considering that PASAKA is a mere labor-only contractor.

The second and third grounds, being interrelated as they both pertain to the CA's finding that an employer-employee relationship existed between the petitioner and the respondents, shall be discussed jointly. In its decision, the CA cited the findings of the Regional Director in LSED Case No. RO700-9906-CI-CS-168 and declared that the NLRC committed a grave abuse of discretion when it ignored said findings.

The issue of whether or not the respondents shall be regarded as employees of the petitioner hinges mainly on the question of whether or not PASAKA is a labor-only contractor. Labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work, or service for a principal. In labor-only contracting, the following elements are present: (a) the contractor or subcontractor does not have substantial capital or investment to actually perform the job, work, or service under its own account and responsibility; and (b) the employees recruited, supplied or placed by such contractor or subcontractor perform activities which are directly related to the main business of the principal. These differentiate it from permissible or legitimate job contracting or subcontracting, which refers to an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work, or service within a definite

or predetermined period, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur: (a) the contractor carries on a distinct and independent business and partakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.[49]

We emphasize that the petitioner's arguments against the respondents' claim that PASAKA is a labor-only contractor, which is thus to be regarded as a mere agent of Norkis Trading for which the respondents rendered service, are already mooted by the finality of this Court's Resolutions dated December 5, 2007 and April 14, 2008 in G.R. Nos. 180078-79, which stems from the CA's and the DOLE Secretary's review of the DOLE Regional Director's Order dated August 22, 2000 in LSED Case No. RO700-9906-CI-CS-168.

To recapitulate, Regional Director Balanag issued on August 22, 2000 its Order[50] in LSED Case No. RO700-9906-CI-CS-168 and declared PASAKA as a mere labor-only contractor, and Norkis Trading as the true employer of herein respondents. He explained that PASAKA failed to prove during the conduct of a summary investigation that the cooperative had substantial capital or investment sufficient to enable it to perform the functions of an independent contractor. The respondents' claim

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[49] *Babas v. Lorenzo Shipping Corporation*, G.R. No. 186091, December 15, 2010, 638 SCRA 735, 745-746, citing *Vinoya v. NLRC*, 381 Phil. 460, 472-473 (2000).

[50] *Rollo,* pp. 223-239.

that the machinery, equipment and supplies they used to perform their duties were owned by Norkis Trading, and not by PASAKA, was undisputed. While PASAKA reflected in its Statement of Financial Condition for the year 1996 property and equipment net of accumulated depreciation at ₱344,273.02, there was no showing that the properties covered thereby were actually and directly used in the conduct of PASAKA's business.[51] The DOLE Regional Director explained:

[H]erein respondents [among them, herein petitioner] failed to prove that their sub-contracting arrangements fall under any of the conditions set forth in Sec. 6 of D.O. # 10 S. 1997 to qualify as permissible contracting or subcontracting as provided for as follows:

> Sec. 6. Permissible contracting or subcontracting. Subject to conditions set forth in Sec. 4 (d) and (e) and Section 5 hereof, the principal may engage the services of a contractor or subcontractor for the performance of any of the following:
>
> a.) Works or services temporarily or occasionally needed to meet abnormal increase in the demand of products or services...
>
> b) Works or services temporarily or occasionally needed by the principal for undertakings requiring expert or highly technical personnel to improve the management or operations of an enterprise;
>
> c) Services temporarily needed for the introduction or promotion of new products...;
>
> **d)** Works or services not directly related or not integral to main business or operation of the principal **including** casual work, janitorial, security, landscaping and messengerial services and **work not related to manufacturing processes in manufacturing establishments**.
>
> **e)** Services involving the public display of manufacturers' products...;
>
> **f)** Specialized works involving the use of some particular, unusual or peculiar skills... and

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[51] *Id.* at 234.

> **g)** Unless a reliever system is in place among the regular workforce, substitute services for [absent] regular employees...

It is therefore evident that herein respondents are engaged in "labor-only" contracting as defined in Art. 106 of the Labor Code. Furthermore, such contracting/sub-contracting arrangement not only falls under labor-only contracting but also fails to qualify as legitimate subcontracting as defined under Sec. 4 par. e of D.O. #10 S. 1997[,] to wit:

> "Sec. 4. Definition of terms. …
>
> d) …
>
> Subject to the provisions of Sections 6, 7 and 8 of this Rule, contracting or subcontracting shall be legitimate if the following circumstances **concur**:
>
> i) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility, according to its own manner and method, and **free from the control and direction of the principal in all matters connected with the performance of the work except to the results thereof;**
>
> ii) The contractor or subcontractor has **substantial capital or investment**; and
>
> iii) The **agreement** between the principal and contractor or subcontractor **assures the contractual employees entitlement to all labor and occupational and safety and health standards**, free exercise of the right to self-organization, security of tenure and social and welfare benefits."[52] (Emphasis supplied)

Together with his finding that PASAKA evidently lacked substantial capital or investment required from legitimate job contractors, Regional Director Balanag ruled that the cooperative failed to dispute the respondents' allegation that officers of Norkis Trading supervised their work and paid their salaries. In conclusion, PASAKA and Norkis Trading were declared solidarily liable for the monetary awards made in favor of therein

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

claimants-employees, which included herein respondents. A motion for reconsideration of the Order was denied by the Regional Director.

Upon appeal, then DOLE Sec. Sto. Tomas affirmed the rulings of Regional Director Balanag. Both Norkis Trading and PASAKA filed their separate appeals from the orders of the DOLE Secretary to the CA *via* the petitions for *certiorari* docketed as CA-G.R. SP Nos. 73880 and 74619, but said petitions were dismissed for lack of merit by the CA in its Decision dated May 7, 2007 and Resolution dated October 9, 2007. The CA held:

> [T]his Court agrees with the finding of the DOLE Regional Director, as affirmed by the Secretary of Labor in her assailed Order, that petitioners [among them, herein petitioner] [were] engaged in labor-only contracting.
>
> *First.* PASAKA failed to prove that it has substantial capitalization or investment in the form of tools, equipment, machineries, work premises, among others, to qualify as an independent contractor. PASAKA's claim that it has machineries and equipment worth ₱344,273.02 as reflected in its Financial Statements and Supplementary Schedules is belied by private respondents' [among them, herein respondents] evidence which consisted of pictures showing machineries and [equipment] which were owned [by] and located [at] the premises of petitioner NORKIS TRADING (as earlier noted, some of the pictures showed some of the private respondents operating said machines). Indeed it makes one wonder why, if PASAKA indeed had such machineries and equipment worth ₱344,273.02, private respondents were using machineries and [equipment] owned [by] and located at the premises of NORKIS TRADING.
>
> Even granting that indeed PASAKA had machineries and equipment worth ₱344,273.02, it was not shown that said machineries and equipment were ***actually used*** in the performance or completion of the job, work, or service that it was contracted to render under its supposed job contract.
>
> x x x x x x x x x
>
> *Second*. PASAKA likewise did not carry out an independent business from NORKIS TRADING. While PASAKA was issued its Certificate of Registration on July 18[,] 1991, all it could show to

prove that it carried out an independent business as a job contractor were the Project Contract dated January 2, 1998 with NORKIS TRADING, and the Project Contract dated December 18, 1998 with NORKIS INTERNATIONAL. However, as earlier discussed, the Project Contract dated December 18, 1998 with NORKIS INTERNATIONAL is nothing more than an afterthought by the petitioners to confuse its workers and defeat their rightful claims. The same can be said of the Project Contract with WICKER and VINE, INC., considering that it was executed *only on* ***February 1, 2000.*** Verily, said contract was submitted only to strengthen PASAKA's claim that it is a legitimate job contractor.

Third. Private respondents performed activities directly related to the principal business of NORKIS TRADING. They worked as welders and machine operators engaged in the production of steel crates which were sent to Japan for use as containers of motorcycles that are then sent back to NORKIS TRADING. Private respondents[']functions therefore are directly related and vital to NORKIS TRADING's business of manufacturing of Yamaha motorcycles.

All the foregoing considerations affirm by more than substantial evidence that NORKIS TRADING and PASAKA engaged in labor-only contracting.[53] (Citations omitted and emphasis supplied)

When the case was brought before this Court *via* the petitions for review on *certiorari* docketed as G.R. Nos. 180078-79, we resolved to issue on December 5, 2007 our Resolution dismissing the appeal for, among other grounds, the failure of Norkis Trading to sufficiently show any reversible error in the the CA decision. In our Resolution dated April 14, 2008, we denied with finality Norkis Tradings' motion for reconsideration on the ground that no substantial argument and compelling reason was adduced to warrant a reconsideration of our dismissal of the petition. This Court's resolutions, affirming the findings of the CA, had then become final and executory.

Applying the doctrine of *res judicata,* all matters that have been fully resolved with finality by this Court's dismissal of the appeal that stemmed from Regional Director Balanag's Order dated August 22, 2000 in LSED Case No. RO700-9906-

[53] *Id.* at 283-285.

CI-CS-168 are already conclusive between the parties. *Res judicata* is defined as a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Under this doctrine, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. To state simply, 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.[54]

Res judicata has two aspects: bar by prior judgment and conclusiveness of judgment as provided under Section 47(b) and (c), Rule 39, respectively, of the Rules of Court.[55] Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit cannot be raised in any future case between the same parties, even if the latter suit may involve a different cause of action.[56]

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[54] *Antonio v. Sayman Vda. de Monje*, G.R. No. 149624, September 29, 2010, 631 SCRA 471, 479-480, citing *Agustin v. Delos Santos*, G.R. No. 168139, January 20, 2009, 576 SCRA 576, 585.

[55] Sec. 47. *Effects 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:

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; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

[56] *Tan v. Court of Appeals*, 415 Phil. 675, 681-682 (2001), citing *Mata v. Court of Appeals,* 376 Phil. 525, 540 (1999).

Clearly, *res judicata* in the concept of conclusiveness of judgment has set in. In the proceedings before the Regional Director and the LA, there were identity of parties and identity of issues, although the causes of action in the two actions were different. First, herein respondents on the one hand, and Norkis Trading on the other hand, were all parties in the two cases, being therein complainants and respondent, respectively. As to the second requisite, the issue of whether PASAKA was a labor-only contractor which would make Norkis Trading the true employer of the respondents was the main issue in the two cases, especially since Norkis Trading had been arguing in both proceedings that it could not be regarded as the herein respondents' employer, harping on the defense that PASAKA was a legitimate job contractor.

Similarly, in *Dole Philippines, Inc. v. Esteva,*[57] we held that the finding of the DOLE Regional Director, which had been affirmed by the Undersecretary of Labor, by authority of the Secretary of Labor, in an Order that has reached finality and which provided that the cooperative Cannery Multi-Purpose Cooperative (CAMPCO) was engaged in labor-only contracting should bind the NLRC in a case for illegal dismissal. We ruled:

> While the causes of action in the proceedings before the DOLE and the NLRC differ, they are, in fact, very closely related. The DOLE Regional Office conducted an investigation to determine whether CAMPCO was violating labor laws, particularly, those on labor-only contracting. Subsequently, it ruled that CAMPCO was indeed engaging in labor-only contracting activities, and thereafter ordered to cease and desist from doing so. x x x The matter of whether CAMPCO was a labor-only contractor was already settled and determined in the DOLE proceedings, which should be conclusive and binding upon the NLRC. What were left for the determination of the NLRC were the issues on whether there was illegal dismissal and whether respondents should be regularized.
>
> x x x For the NLRC to ignore the findings of DOLE Regional Director Parel and DOLE Undersecretary Trajano is an unmistakable and serious undermining of the DOLE officials' authority.[58]

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[57] 538 Phil. 817 (2006).

[58] *Id.* at 863-864.

The rule on conclusiveness of judgment then now precludes this Court from re-opening the issues that were already settled with finality in G.R. Nos. 180078-79, which effectively affirmed the CA's findings that PASAKA was engaged in labor-only contracting, and that Norkis Trading shall be treated as the employer of the respondents.

In the present petition, Norkis Trading still argues that the NLRC committed no grave abuse of discretion in ignoring the findings of Regional Director Balanag considering that his Order had not yet reached finality at the time the NLRC resolved the appeal from the decision of the LA. This notwithstanding, this Court holds that the CA still committed no error in finding grave abuse of discretion on the part of the NLRC by the latter's utter disregard of the findings of the Regional Director that Norkis Trading should be considered the employer of herein respondents. As correctly observed by the CA in the assailed Decision dated May 7, 2007:

> Surprisingly, the NLRC failed to consider or even make reference to the said August 22, 2000 Order of the DOLE Regional Director. **Considering the significance of the DOLE Regional Director's findings, the same cannot just be perfunctorily rejected.** For the NLRC to ignore the findings of DOLE Regional Director is to undermine or disregard of [sic] the visitorial and enforcement power of the DOLE Secretary and his authorized representatives under Article 128 of the Labor Code, as amended. **It was grave abuse of discretion then on the part of the NLRC to ignore or simply sweep under the rug the findings of the DOLE Regional Director**.[59] (Citation omitted and emphasis ours)

A reading of the NLRC's Resolution[60] dated December 18, 2003 indicates that while it was confronted with opposing findings of the Regional Director and the LA on the material issue of labor-only contracting, it failed to even attempt to review thoroughly the matter, look into the records, reconcile the differing judgments and make its own appreciation of the evidence presented by the parties. Instead, it simply brushed aside the

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[59] *Rollo*, pp. 61-62.

[60] *Id.* at 246-247.

rulings of the Regional Director, without due consideration of the circumstance that said labor official had the jurisdiction to rule on the issue pursuant to the visitorial and enforcement powers of the DOLE Secretary and his duly authorized representatives under Article 128[61] of the Labor Code.

The rule in appeals in labor cases provides that the CA can grant a petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically or arbitrarily disregarding evidence which is material or decisive of the controversy.[62] Significantly, the Secretary of Labor had already affirmed Regional Director Balanag's Order when the appeal from the LA's rulings was

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[61] Art. 128. *Visitorial and enforcement power.* – (a) The Secretary of Labor and Employment or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations pursuant thereto.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this Article may be appealed to the latter. In case said order involves 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 Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from. (As amended by R.A. No. 7730, June 2, 1994).

[62] *AMA Computer College, Inc. v. Garcia*, G.R. No. 166703, April 14, 2008, 551 SCRA 254, 270.

resolved. In the NLRC Resolution dated December 18, 2003, the Commission nonetheless merely held:

> The photocopies of the Order of the Honorable Secretary of the Department of Labor and Employment dated February 7, 2002 and the Order of the Regional Director of the Regional Office of the Department of Labor and Employment finding the existence of labor-only contracting between respondent NORKIS [Trading] and respondent PASAKA do not provide sufficient basis to disturb Our Decision. We are not convinced that the facts and evidence, which are totally distinct from this case and which were presented in a separate proceedings and before another Office, would be a sufficient and valid basis to divest the Labor Arbiter *a quo* of his authority which undoubtedly the law vests upon him as his exclusive jurisdiction. The jurisdiction conferred by Article 217 of the Labor Code upon the Labor Arbiter is "original and exclusive," and his authority to hear and decide case[s] vested upon him is to the exclusion of any other court or quasi-judicial body. By reason of their training, experience, and expertise, Labor Arbiters are in a better position to resolve controversies, for which they are conferred original and exclusive jurisdiction by law. Even Article 218 of the Labor Code does not empower the Regional Director of the Department of Labor and Employment to share original and exclusive jurisdiction conferred on the Labor Arbiter by Article 217 x x x.[63]

Such utter disregard by the NLRC of the findings of the Regional Director and DOLE Secretary amounts to grave abuse of discretion amounting to lack or excess of jurisdiction. As this Court's review of the records would confirm, a judicious study of the evidence presented by the parties would have supported the finding that Norkis Trading should be treated as the respondents' true employer, with PASAKA being merely an agent of said employer. PASAKA failed to sufficiently show that it had substantial capital or investment in the form of tools, equipment, machineries and work premises required from legitimate job contractors. The work required from the respondents, being welders and/or operators of industrial machines, were also directly related to Norkis Trading's principal business of manufacturing. The job contract supposedly executed

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[63] *Rollo*, pp. 246-247.

by and between PASAKA and Norkis International in 1999 deserved nil consideration given that the respondents had claimed early on that they began working for Norkis Trading on various dates from 1993 to 1994. Moreover, the records confirm that Norkis Trading was still among the clients of PASAKA as of July 1999, as clearly indicated in the memoranda it sent to respondents Buenavista, Fabroa and Dondoyano on July 22, 1999, which provide:

> Please take note that the recent action you have done in filing a case **against one of our client[s,] Norkis Trading Co., Inc.[,]** has greatly prejudiced the interest and welfare of the Cooperative.[64] (Emphasis ours)

This categorical statement of PASAKA that Norkis Trading was among its clients at the time the memoranda were issued only further bolsters the respondents' claim, and Regional Director Balanag's finding, that said respondents were deployed by PASAKA to Norkis Trading. This also contradicts petitioner's argument that its contract with PASAKA had ended in 1998.[65]

Finally, contrary to the insinuations of Norkis Trading, the fact that PASAKA was a duly-registered cooperative did not preclude the possibility that it was engaged in labor-only contracting, as confirmed by the findings of the Regional Director. An entity is characterized as a labor-only contractor based on the elements and guidelines established by law and jurisprudence, judging primarily on the relationship that the said entity has with the company to which the workers are deployed, and not on any special arrangement that the entity has with said workers.

Termination of an employment for no just or authorized cause amounts to an illegal dismissal.

As to the issue of whether the respondents were illegally dismissed by Norkis Trading, we answer in the affirmative,

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[64] *Id.* at 80-82.

[65] *Id.* at 103.

although not by constructive dismissal as declared by the CA, but by actual dismissal.

Where an entity is declared to be a labor-only contractor, the employees supplied by said contractor to the principal employer become regular employees of the latter. Having gained regular status, the employees are entitled to security of tenure and can only be dismissed for just or authorized causes and after they had been afforded due process.[66] Termination of employment without just or authorized cause and without observing procedural due process is illegal.

In claiming that they were illegally dismissed from their employment, the respondents alleged having been informed by PASAKA that they would be transferred, upon the behest of Norkis Trading, as Multicab washers or utility workers to Porta Coeli, a sister company of Norkis Trading. Norkis Trading does not dispute that such job transfer was relayed by PASAKA unto the respondents, although the company contends that the transfer was merely an "offer" that did not constitute a dismissal. It bears mentioning, however, that the respondents were not given any other option by PASAKA and Norkis Trading but to accede to said transfer. In fact, there is no showing that Norkis Trading would still willingly accept the respondents to work for the company. Worse, it still vehemently denies that the respondents had ever worked for it. Again, all defenses of Norkis Trading that anchor on the alleged lack of employer-employee relationship between it and the respondents no longer merit any consideration, given that this Court's findings in G.R. Nos. 180078-79 have become conclusive. Thus, the respondents' transfer to Porta Coeli, although relayed to the respondents by PASAKA was effectively an act of Norkis Trading. Where labor-only contracting exists, the Labor Code itself establishes an employer-employee relationship between the employer and the employees of the labor-only contractor. The statute establishes this relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the

[66] *Supra* note 49, at 747.

latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer.[67]

No further evidence or document should then be required from the respondents to prove such fact of dismissal, especially since Norkis Trading maintains that it has no duty to admit and treat said respondents as its employees. Considering that Porta Coeli is an entity separate and distinct from Norkis Trading, the respondents' employment with Norkis Trading was necessarily severed by the change in work assignment. It then did not even matter whether or not the transfer involved a demotion in the respondents' rank and work functions; the intention to dismiss, and the actual dismissal of the respondents were sufficiently established.

In the absence of a clear showing that the respondents' dismissal was for just or authorized causes, the termination of the respondents' employment was illegal. What may be reasonably deduced from the records was that Norkis Trading decided on the transfer, after the respondents had earlier filed their complaint for labor-only contracting against the company. Even Norkis Trading's contention that the transfer may be deemed a valid exercise of management prerogative is misplaced. First, the exercise of management prerogative presupposes that the transfer is only for positions within the business establishment. Second, the exercise of management prerogative by employers is not absolute, as it is limited by law and the general principles of fair play and justice.

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

SO ORDERED.

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

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[67] *Aliviado v. Procter and Gamble Phils., Inc.*, G.R. No. 160506, June 6, 2011, 650 SCRA 400, 417, citing *PCI Automation Center, Inc. v. NLRC*, 322 Phil. 536, 548 (1996).

SPECIAL SECOND DIVISION

[G.R. No. 183053. October 10, 2012]

EMILIO A.M. SUNTAY III, *petitioner, vs.* **ISABEL COJUANGCO-SUNTAY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; LETTERS TESTAMENTARY AND OF ADMINISTRATION, WHEN AND TO WHOM ISSUED; PARAMOUNT CONSIDERATION AND ORDER OF PREFERENCE IN THE APPOINTMENT OF ADMINISTRATOR, EXPLAINED.— The paramount consideration in the appointment of an administrator over the estate of a decedent is the prospective administrator's interest in the estate. This is the same consideration which Section 6, Rule 78 takes into account in establishing the order of preference in the appointment of administrator for the estate. The rationale behind the rule is that those who will reap the benefit of a wise, speedy and economical administration of the estate, or, in the alternative, suffer the consequences of waste, improvidence or mismanagement, have the highest interest and most influential motive to administer the estate correctly. In all, given that the rule speaks of an order of preference, the person to be appointed administrator of a decedent's estate must demonstrate not only an interest in the estate, but an interest therein greater than any other candidate. To illustrate, the preference bestowed by law to the surviving spouse in the administration of a decedent's estate presupposes the surviving spouse's interest in the conjugal partnership or community property forming part of the decedent's estate. Likewise, a surviving spouse is a compulsory heir of a decedent which evinces as much, if not more, interest in administering the entire estate of a decedent, aside from her share in the conjugal partnership or absolute community property. It is to this requirement of observation of the order of preference in the appointment of administrator of a decedent's estate, that the appointment of co-administrators has been allowed, but as an exception. We again refer to Section 6(a) of Rule 78 of the Rules of Court which specifically states that letters of administration may be issued to both the surviving

spouse and the next of kin. In addition and impliedly, we can refer to Section 2 of Rule 82 of the Rules of Court which say that "x x x [w]hen an executor or administrator dies, resigns, or is removed, the remaining executor or administrator may administer the trust alone, x x x." In a number of cases, we have sanctioned the appointment of more than one administrator for the benefit of the estate and those interested therein. We recognized that the appointment of administrator of the estate of a decedent or the determination of a person's suitability for the office of judicial administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment.Under certain circumstances and for various reasons well-settled in Philippine and American jurisprudence, we have upheld the appointment of co-administrators: (1) to have the benefits of their judgment and perhaps at all times to have different interests represented; (2) where justice and equity demand that opposing parties or factions be represented in the management of the estate of the deceased; (3) where the estate is large or, from any cause, an intricate and perplexing one to settle; (4) to have all interested persons satisfied and the representatives to work in harmony for the best interests of the estate; and when a person entitled to the administration of an estate desires to have another competent person associated with him in the office.

2. ID.; ID.; ID.; CIRCUMSTANCES SHOWING UNSUITABILITY OF THE APPOINTED ADMINISTRATOR.— [T]he evidence reveals that Emilio III has turned out to be an unsuitable administrator of the estate. Respondent Isabel points out that after Emilio III's appointment as administrator of the subject estate in 2001, he has not looked after the welfare of the subject estate and has actually acted to the damage and prejudice thereof as evidenced by the following: 1. Emilio III, despite several orders from the probate court for a complete inventory, omitted in the partial inventories he filed therewith properties of the estate including several parcels of land, cash, bank deposits, jewelry, shares of stock, motor vehicles, and other personal properties, contrary to Section 1, paragraph a, Rule 81 of the Rules of Court. 2. Emilio III did not take action on both occasions against Federico's settlement of the decedent's estate which adjudicated to himself a number of properties properly belonging to said estate (whether wholly or partially), and which contained a

declaration that the decedent did not leave any descendants or heirs, except for Federico, entitled to succeed to her estate. x x x While we can subscribe to Emilio III's counsel's explanation for the blamed delay in the filing of an inventory and his exposition on the nature thereof, partial as opposed to complete, in the course of the settlement of a decedent's estate, we do not find any clarification on Isabel's accusation that Emilio III had deliberately omitted properties in the inventory, which properties of Cristina he knew existed and which he claims to be knowledgeable about. The general denial made by Emilio III does not erase his unsuitability as administrator rooted in his failure to "make and return x x x **a true and complete inventory**" which became proven fact when he actually filed partial inventories before the probate court and by his inaction on two occasions of Federico's exclusion of Cristina's other compulsory heirs, herein Isabel and her siblings, from the list of heirs. As administrator, Emilio III enters into the office, posts a bond and executes an oath to faithfully discharge the duties of settling the decedent's estate with the end in view of distribution to the heirs, if any. This he failed to do. The foregoing circumstances of Emilio III's omission and inaction become even more significant and speak volume of his unsuitability as administrator as it demonstrates his interest adverse to those immediately interested in the estate of the decedent, Cristina. In this case, palpable from the evidence on record, the pleadings, and the protracted litigation, is the inescapable fact that Emilio III and respondent Isabel have a deep aversion for each other. To our mind, it becomes highly impractical, *nay*, improbable, for the two to work as co-administrators of their grandmother's estate. The allegations of Emilio III, the testimony of Federico and the other witnesses for Federico and Emilio III that Isabel and her siblings were estranged from their grandparents further drive home the point that Emilio III bears hostility towards Isabel. More importantly, it appears detrimental to the decedent's estate to appoint a co-administrator (Emilio III) who has shown an adverse interest of some kind or hostility to those, such as herein respondent Isabel, immediately interested in the said estate.

APPEARANCES OF COUNSEL

Honorato Y. Aquino for petitioner.
Estelito P. Mendoza for respondent.

R E S O L U T I O N

PEREZ, *J.*:

The now overly prolonged, all-too familiar and too-much-stretched imbroglio over the estate of Cristina Aguinaldo-Suntay has continued. We issued a Decision in the dispute as in *Inter Caetera*.[1] We now find a need to replace the decision.

Before us is a Motion for Reconsideration filed by respondent Isabel Cojuangco-Suntay (respondent Isabel) of our Decision[2] in G.R. No. 183053 dated 16 June 2010, directing the issuance of joint letters of administration to both petitioner Emilio A.M. Suntay III (Emilio III) and respondent. The dispositive portion thereof reads:

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. CV No. 74949 is **REVERSED** and **SET ASIDE**. Letters of Administration over the estate of decedent Cristina Aguinaldo-Suntay shall issue to both petitioner Emilio A.M. Suntay III and respondent Isabel Cojuangco-Suntay upon payment by each of a bond to be set by the Regional Trial Court, Branch 78, Malolos, Bulacan, in Special Proceeding Case No. 117-M-95. The Regional Trial Court, Branch 78, Malolos, Bulacan is likewise directed to make a determination and to declare the heirs of decedent Cristina Aguinaldo-Suntay according to the actual factual milieu as proven by the parties, and all other persons with legal interest in the subject estate. It is

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[1] The Papal Bull mentioned in our Decision of 16 June 2010 (*Suntay III v. Cojuangco-Suntay,* G.R. No. 183053, 16 June 2010, 621 SCRA 142, 144).

[2] Penned by Associate Justice Antonio Eduardo B. Nachura (now retired) with Associate Justices Antonio T. Carpio (Chairperson), Diosdado M. Peralta, Roberto A. Abad and Jose Portugal Perez of the Second Division, concurring. *Rollo*, pp. 231-246.

further directed to settle the estate of decedent Cristina Aguinaldo-Suntay with dispatch. No costs.[3]

We are moved to trace to its roots the controversy between the parties.

The decedent Cristina Aguinaldo-Suntay (Cristina) died intestate on 4 June 1990. Cristina was survived by her spouse, Dr. Federico Suntay (Federico) and five grandchildren: three legitimate grandchildren, including herein respondent, Isabel; and two illegitimate grandchildren, including petitioner Emilio III, all by Federico's and Cristina's only child, Emilio A. Suntay (Emilio I), who predeceased his parents.

The illegitimate grandchildren, Emilio III and Nenita, were both reared from infancy by the spouses Federico and Cristina. Their legitimate grandchildren, Isabel and her siblings, Margarita and Emilio II, lived with their mother Isabel Cojuangco, following the separation of Isabel's parents, Emilio I and Isabel Cojuangco. Isabel's parents, along with her paternal grandparents, were involved in domestic relations cases, including a case for *parricide* filed by Isabel Cojuangco against Emilio I. Emilio I was eventually acquitted.

In retaliation, Emilio I filed a complaint for legal separation against his wife, charging her among others with infidelity. The trial court declared as null and void and of no effect the marriage of Emilio I and Isabel Cojuangco on the finding that:

> From February 1965 thru December 1965 plaintiff was confined in the Veterans memorial Hospital. Although at the time of the trial of parricide case (September 8, 1967) the patient was already out of the hospital[,] he continued to be under observation and treatment.
>
> It is the opinion of Dr. Aramil that the symptoms of the plaintiffs mental aberration classified as schizophernia (sic) had made themselves manifest even as early as 1955; that the disease worsened with time, until 1965 when he was actually placed under expert neuro-psychiatrist (sic) treatment; that even if the subject has shown marked progress, the remains bereft of adequate understanding of right and wrong.

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[3] *Id*. at 244-245.

There is no controversy that the marriage between the parties was effected on July 9, 1958, years after plaintiffs mental illness had set in. This fact would justify a declaration of nullity of the marriage under Article 85 of the Civil Code which provides:

> Art. 95. (sic) A marriage may be annulled for any of the following causes after (sic) existing at the time of the marriage:
>
> x x x x x x x x x
>
> (3) That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.

There is a dearth of proof at the time of the marriage defendant knew about the mental condition of plaintiff; and there is proof that plaintiff continues to be without sound reason. The charges in this very complaint add emphasis to the findings of the neuro-psychiatrist handling the patient, that plaintiff really lives more in fancy than in reality, a strong indication of schizophernia (sic).[4]

Intent on maintaining a relationship with their grandchildren, Federico and Isabel filed a complaint for visitation rights to spend time with Margarita, Emilio II, and Isabel in the same special lower court. The Juvenile Domestic Relations Court in Quezon City (JDRC-QC) granted their prayer for one hour a month of visitation rights which was subsequently reduced to thirty minutes, and ultimately stopped, because of respondent Isabel's testimony in court that her grandparents' visits caused her and her siblings stress and anxiety.[5]

On 27 September 1993, more than three years after Cristina's death, Federico adopted his illegitimate grandchildren, Emilio III and Nenita.

On 26 October 1995, respondent Isabel, filed before the Regional Trial Court (RTC), Malolos, Bulacan, a petition for the issuance of letters of administration over Cristina's estate docketed as Special Proceeding Case No. 117-M-95. Federico, opposed the petition, pointing out that: (1) as the surviving spouse

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[4] *Suntay v. Cojuangco-Suntay,* 360 Phil. 932, 936-937 (1998).

[5] *Rollo,* pp. 43-44.

of the decedent, he should be appointed administrator of the decedent's estate; (2) as part owner of the mass of conjugal properties left by the decedent, he must be accorded preference in the administration thereof; (3) Isabel and her siblings had been alienated from their grandparents for more than thirty (30) years; (4) the enumeration of heirs in the petition was incomplete as it did not mention the other children of his son, Emilio III and Nenita; (5) even before the death of his wife, Federico had administered their conjugal properties, and thus, is better situated to protect the integrity of the decedent's estate; (6) the probable value of the estate as stated in the petition was grossly overstated; and (7) Isabel's allegation that some of the properties are in the hands of usurpers is untrue.

Federico filed a Motion to Dismiss Isabel's petition for letters of administration on the ground that Isabel had no right of representation to the estate of Cristina, she being an illegitimate grandchild of the latter as a result of Isabel's parents' marriage being declared null and void. However, in *Suntay v. Cojuangco-Suntay*, we categorically declared that Isabel and her siblings, having been born of a voidable marriage as opposed to a void marriage based on paragraph 3, Article 85 of the Civil Code, were legitimate children of Emilio I, who can all represent him in the estate of their legitimate grandmother, the decedent, Cristina.

Undaunted by the set back, Federico nominated Emilio III to administer the decedent's estate on his behalf in the event letters of administration issues to Federico. Consequently, Emilio III filed an Opposition-In-Intervention, echoing the allegations in his grandfather's opposition, alleging that Federico, or in his stead, Emilio III, was better equipped than respondent to administer and manage the estate of the decedent, Cristina.

On 13 November 2000, Federico died.

Almost a year thereafter or on 9 November 2001, the trial court rendered a decision appointing Emilio III as administrator of decedent Cristina's intestate estate:

WHEREFORE, the petition of Isabel Cojuangco[-]Suntay is DENIED and the Opposition[-]in[-]Intervention is GRANTED.

Accordingly, the Intervenor, Emilio A.M. Suntay, III (sic) is hereby appointed administrator of the estate of the decedent Cristina Aguinaldo Suntay, who shall enter upon the execution of his trust upon the filing of a bond in the amount of ₱200,000.00, conditioned as follows:

(1) To make and return within three (3) months, a true and complete inventory;

(2) To administer the estate and to pay and discharge all debts, legatees, and charge on the same, or dividends thereon;

(3) To render a true and just account within one (1) year, and at any other time when required by the court, and

(4) To perform all orders of the Court.

Once the said bond is approved by the court, let Letters of Administration be issued in his favor.[6]

On appeal, the Court of Appeals reversed and set aside the decision of the RTC, revoked the Letters of Administration issued to Emilio III, and appointed respondent as *administratrix* of the subject estate:

WHEREFORE, in view of all the foregoing, the assailed decision dated November 9, 2001 of Branch 78, Regional Trial Court of Malolos, Bulacan in SPC No. 117-M-95 is **REVERSED and SET ASIDE** and the letters of administration issued by the said court to Emilio A.M. Suntay III, if any, are consequently revoked. Petitioner Isabel Cojuangco[-]Suntay is hereby appointed administratrix of the intestate estate of Cristina Aguinaldo Suntay. Let letters of administration be issued in her favor upon her filing of a bond in the amount of Two Hundred Thousand (₱200,000.00) Pesos.[7]

As previously adverted to, on appeal by *certiorari*, we reversed and set aside the ruling of the appellate court. We decided to include Emilio III as co-administrator of Cristina's estate, giving weight to his interest in Federico's estate. In ruling for co-

[6] *Id.* at 60.

[7] *Id.* at 31.

administration between Emilio III and Isabel, we considered that:

1. Emilio III was reared from infancy by the decedent, Cristina, and her husband, Federico, who both acknowledged him as their grandchild;

2. Federico claimed half of the properties included in the estate of the decedent, Cristina, as forming part of their conjugal partnership of gains during the subsistence of their marriage;

3. Cristina's properties, forming part of her estate, are still commingled with those of her husband, Federico, because her share in the conjugal partnership remains undetermined and unliquidated; and

4. Emilio III is a legally adopted child of Federico, entitled to share in the distribution of the latter's estate as a direct heir, one degree from Federico, and not simply in representation of his deceased illegitimate father, Emilio I.

In this motion, Isabel pleads for total affirmance of the Court of Appeals' Decision in favor of her sole administratorship based on her status as a legitimate grandchild of Cristina, whose estate she seeks to administer.

Isabel contends that the explicit provisions of Section 6, Rule 78 of the Rules of Court on the order of preference for the issuance of letters of administration cannot be ignored and that Article 992 of the Civil Code must be followed. Isabel further asserts that Emilio III had demonstrated adverse interests and disloyalty to the estate, thus, he does not deserve to become a co-administrator thereof.

Specifically, Isabel bewails that: (1) Emilio III is an illegitimate grandchild and therefore, *not* an heir of the decedent; (2) corollary thereto, Emilio III, not being a "next of kin" of the decedent, has no interest in the estate to justify his appointment as administrator thereof; (3) Emilio III's actuations since his appointment as administrator by the RTC on 9 November 2001 emphatically demonstrate the validity and wisdom of the order

of preference in Section 6, Rule 78 of the Rules of Court; and (4) there is no basis for joint administration as there are no "opposing parties or factions to be represented."

To begin with, the case at bar reached us on the issue of who, as between Emilio III and Isabel, is better qualified to act as administrator of the decedent's estate. We did not choose. Considering merely his demonstrable interest in the subject estate, we ruled that Emilio III should likewise administer the estate of his illegitimate grandmother, Cristina, as a co-administrator. In the context of this case, we have to make a choice and therefore, reconsider our decision of 16 June 2010.

The general rule in the appointment of administrator of the estate of a decedent is laid down in Section 6, Rule 78 of the Rules of Court:

SEC. 6. *When and to whom letters of administration granted.* – If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is not such creditor competent and willing to serve, it may be granted to such other person as the court may select.

Textually, the rule lists a sequence to be observed, an order of preference, in the appointment of an administrator. This order of preference, which categorically seeks out the surviving spouse,

the next of kin and the creditors in the appointment of an administrator, has been reinforced in jurisprudence.[8]

The paramount consideration in the appointment of an administrator over the estate of a decedent is the prospective administrator's interest in the estate.[9] This is the same consideration which Section 6, Rule 78 takes into account in establishing the order of preference in the appointment of administrator for the estate. The rationale behind the rule is that those who will reap the benefit of a wise, speedy and economical administration of the estate, or, in the alternative, suffer the consequences of waste, improvidence or mismanagement, have the highest interest and most influential motive to administer the estate correctly.[10] In all, given that the rule speaks of an order of preference, the person to be appointed administrator of a decedent's estate must demonstrate not only an interest in the estate, but an interest therein greater than any other candidate.

To illustrate, the preference bestowed by law to the surviving spouse in the administration of a decedent's estate presupposes the surviving spouse's interest in the conjugal partnership or community property forming part of the decedent's estate.[11] Likewise, a surviving spouse is a compulsory heir of a decedent[12] which evinces as much, if not more, interest in administering the entire estate of a decedent, aside from her share in the conjugal partnership or absolute community property.

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[8] *Uy v. Court of Appeals,* 519 Phil. 673 (2006); *Angeles v. Angeles-Maglaya,* 506 Phil. 347 (2005); *Valarao v. Pascual*, 441 Phil. 226 (2002); *Silverio, Sr. v. Court of Appeals,* 364 Phil. 188 (1999).

[9] *Vda. de Dayrit v. Ramolete*, G.R. No. 59935, 30 September 1982, 117 SCRA 608, 612; *Corona v. Court of Appeals,* G.R. No. 59821, 30 August 1982, 116 SCRA 316, 320; *Matias v. Gonzales,* 101 Phil. 852, 858 (1957).

[10] *Gonzales v. Aguinaldo*, G.R. No. 74769, 28 September 1990, 190 SCRA 112, 117-118.

[11] *See* Articles 91 and 106 of the Family Code.

[12] *See* Article 887, paragraph 3 of the Civil Code.

It is to this requirement of observation of the order of preference in the appointment of administrator of a decedent's estate, that the appointment of co-administrators has been allowed, but as an exception. We again refer to Section 6(a) of Rule 78 of the Rules of Court which specifically states that letters of administration may be issued to both the surviving spouse and the next of kin. In addition and impliedly, we can refer to Section 2 of Rule 82 of the Rules of Court which say that "x x x [w]hen an executor or administrator dies, resigns, or is removed, the remaining executor or administrator may administer the trust alone, x x x."

In a number of cases, we have sanctioned the appointment of more than one administrator for the benefit of the estate and those interested therein.[13] We recognized that the appointment of administrator of the estate of a decedent or the determination of a person's suitability for the office of judicial administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment.[14]

Under certain circumstances and for various reasons well-settled in Philippine and American jurisprudence, we have upheld the appointment of co-administrators: (1) to have the benefits of their judgment and perhaps at all times to have different interests represented;[15] (2) where justice and equity demand that opposing parties or factions be represented in the management of the estate of the deceased; (3) where the estate is large or, from any cause, an intricate and perplexing one to settle;[16] (4) to have all interested persons satisfied and the representatives to work in harmony for the best interests of

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[13] *Matias v. Gonzales*; *Corona v. Court of Appeals*; *Vda. de Dayrit v. Ramolete*, *supra* note 9.

[14] *Uy v. Court of Appeals, supra* note 8 at 680; *Angeles v. Angeles-Maglaya, supra* note 8 at 365; *Valarao v. Pascual*, *supra* note 8 at 234; *Silverio, Sr. v. Court of Appeals, supra* note 8 at 210-211.

[15] *Gonzales v. Aguinaldo, supra* note 10 at 118-119.

[16] *Uy v. Court of Appeals*, *supra* note 8 at 681; *Gabriel v. Court of Appeals,* G.R. No. 101512, 7 August 1992, 212 SCRA 413, 423 citing *Copeland v. Shapley*, 100 NE. 1080.

the estate;[17] and when a person entitled to the administration of an estate desires to have another competent person associated with him in the office.[18]

In the frequently cited *Matias v. Gonzales*, we dwelt on the appointment of special co-administrators during the pendency of the appeal for the probate of the decedent's will. Pending the probate thereof, we recognized Matias' special interest in the decedent's estate as universal heir and executrix designated in the instrument who should not be excluded in the administration thereof. Thus, we held that justice and equity demands that the two (2) factions among the non-compulsory heirs of the decedent, consisting of an instituted heir (Matias) and intestate heirs (respondents thereat), should be represented in the management of the decedent's estate.[19]

Another oft-cited case is *Vda. de Dayrit v. Ramolete*, where we held that "inasmuch as petitioner-wife owns one-half of the conjugal properties and that she, too, is a compulsory heir of her husband, to deprive her of any hand in the administration of the estate prior to the probate of the will would be unfair to her proprietary interests."[20]

Hewing closely to the aforementioned cases is our ruling in *Ventura v. Ventura*[21] where we allowed the appointment of the surviving spouse and legitimate children of the decedent as co-administrators. However, we drew a distinction between the heirs categorized as next of kin, the nearest of kin in the category being preferred, thus:

In the case at bar, the surviving spouse of the deceased Gregorio Ventura is Juana Cardona while the next of kin are: Mercedes and Gregoria Ventura and Maria and Miguel Ventura. **The "next of kin" has been defined as those persons who are entitled under the statute**

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[17] *Gabriel v. Court of Appeals, id.*

[18] *In re* Fichter's Estate, 279 N.Y.S. 597.

[19] *Supra* note 9.

[20] *Supra* note 9 at 612.

[21] 243 Phil. 952 (1988).

of distribution to the decedent's property [citations omitted]**. It is generally said that "the nearest of kin, whose interest in the estate is more preponderant, is preferred in the choice of administrator. 'Among members of a class the strongest ground for preference is the amount or preponderance of interest. As between next of kin, the nearest of kin is to be preferred.'"** [citations omitted]

As decided by the lower court and sustained by the Supreme Court, Mercedes and Gregoria Ventura are the legitimate children of Gregorio Ventura and his wife, the late Paulina Simpliciano. Therefore, as the nearest of kin of Gregorio Ventura, they are entitled to preference over the illegitimate children of Gregorio Ventura, namely: Maria and Miguel Ventura. Hence, under the aforestated preference provided in Section 6 of Rule 78, the person or persons to be appointed administrator are Juana Cardona, as the surviving spouse, or Mercedes and Gregoria Ventura as nearest of kin, or Juana Cardona and Mercedes and Gregoria Ventura in the discretion of the Court, in order to represent both interests.[22] (Emphasis supplied)

In *Silverio, Sr. v. Court of Appeals*,[23] we maintained that the order of preference in the appointment of an administrator depends on the attendant facts and circumstances. In that case, we affirmed the legitimate child's appointment as special administrator, and eventually as regular administrator, of the decedent's estate as against the surviving spouse who the lower court found unsuitable. Reiterating *Sioca v. Garcia*[24] as good law, we pointed out that unsuitableness for appointment as administrator may consist in adverse interest of some kind or hostility to those immediately interested in the estate.

In *Valarao v. Pascual*,[25] we see another story with a running theme of heirs squabbling over the estate of a decedent. We found no reason to set aside the probate court's refusal to appoint as special co-administrator Diaz, even if he had a demonstrable interest in the estate of the decedent and

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[22] *Id.* at 962-963.

[23] *Supra* note 8.

[24] 44 Phil. 711 (1923).

[25] *Supra* note 8.

represented one of the factions of heirs, because the evidence weighed by the probate court pointed to Diaz's being remiss in his previous duty as co-administrator of the estate in the early part of his administration. Surveying the previously discussed cases of *Matias*, *Corona*, and *Vda. de Dayrit*, we clarified, thus:

> Respondents cannot take comfort in the cases of *Matias v. Gonzales*, *Corona v. Court of Appeals,* and *Vda. de Dayrit v. Ramolete*, cited in the assailed *Decision*. **Contrary to their claim, these cases do not establish an absolute right demandable from the probate court to appoint special co-administrators who would represent the respective interests of squabbling heirs. Rather, the cases constitute precedents for the authority of the probate court to designate not just one but also two or more special co-administrators for a single estate. Now whether the probate court exercises such prerogative when the heirs are fighting among themselves is a matter left entirely to its sound discretion.**
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> Furthermore, the cases of *Matias*, *Corona* and *Vda. de Dayrit* hinge upon factual circumstances other than the incompatible interests of the heirs which are glaringly absent from the instant case. In *Matias* this Court ordered the appointment of a special co-administrator because of the applicant's status as the universal heir and executrix designated in the will, which we considered to be a "*special interest*" deserving protection during the pendency of the appeal. Quite significantly, since the lower court in *Matias* had already deemed it best to appoint more than one special administrator, we found grave abuse of discretion in the act of the lower court in ignoring the applicant's distinctive status in the selection of another special administrator.
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> In *Corona* we gave "highest consideration" to the "executrix's choice of Special Administrator, considering her own inability to serve and the wide latitude of discretion given her by the testatrix in her will," for this Court to compel her appointment as special co-administrator. It is also manifest from the decision in *Corona* that the presence of conflicting interests among the heirs therein was not *per se* the key factor in the designation of a second special administrator as this fact was taken into account only to disregard or, in the words of *Corona*, to "overshadow" the objections to the appointment on grounds of "impracticality and lack of kinship."

Finally in *Vda. de Dayrit* we justified the designation of the wife of the decedent as special co-administrator because it was "our considered opinion that inasmuch as petitioner-wife owns one-half of the conjugal properties and that she, too, is a compulsory heir of her husband, to deprive her of any hand in the administration of the estate prior to the probate of the will would be unfair to her proprietary interests." The special status of a surviving spouse in the special administration of an estate was also emphasized in *Fule v. Court of Appeals* where we held that the widow would have more interest than any other next of kin in the proper administration of the entire estate since she possesses not only the right of succession over a portion of the exclusive property of the decedent but also a share in the conjugal partnership for which the good or bad administration of the estate may affect not just the fruits but more critically the naked ownership thereof. And in *Gabriel v. Court of Appeals* we recognized the distinctive status of a surviving spouse applying as regular administrator of the deceased spouse's estate when we counseled the probate court that "there must be a very strong case to justify the exclusion of the widow from the administration."

Clearly, the selection of a special co-administrator in *Matias*, *Corona* and *Vda. de Dayrit* was based upon the independent proprietary interests and moral circumstances of the appointee that were not necessarily related to the demand for representation being repeatedly urged by respondents.[26] (Emphasis supplied)

In *Gabriel v. Court of Appeals*, we unequivocally declared the mandatory character of the rule on the order of preference for the issuance of letters of administration:

Evidently, the foregoing provision of the Rules prescribes the order of preference in the issuance of letters of administration, it categorically seeks out the surviving spouse, the next of kin and the creditors, and requires that sequence to be observed in appointing an administrator. It would be a grave abuse of discretion for the probate court to imperiously set aside and insouciantly ignore that directive without any valid and sufficient reason therefor.[27]

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[26] *Id.* at 233-235.

[27] *Supra* note 16 at 420.

Subsequently, in *Angeles v. Angeles-Maglaya*,[28] we expounded on the legal contemplation of a "next of kin," thus:

> Finally, it should be noted that on the matter of appointment of administrator of the estate of the deceased, the surviving spouse is preferred over the next of kin of the decedent. When the law speaks of "*next of kin,*" the reference is to those who are entitled, under the statute of distribution, to the decedent's property; one whose relationship is such that he is entitled to share in the estate as distributed, or, in short, an heir. In resolving, therefore, the issue of whether an applicant for letters of administration is a next of kin or an heir of the decedent, the probate court perforce has to determine and pass upon the issue of filiation. A separate action will only result in a multiplicity of suits. Upon this consideration, the trial court acted within bounds when it looked into and pass[ed] upon the claimed relationship of respondent to the late Francisco Angeles.[29]

Finally, in *Uy v. Court of Appeals*,[30] we took into consideration the size of, and benefits to, the estate should respondent therein be appointed as co-administrator. We emphasized that where the estate is large or, from any cause, an intricate and perplexing one to settle, the appointment of co-administrators may be sanctioned by law.

In our Decision under consideration, we zeroed in on Emilio III's demonstrable interest in the estate and glossed over the order of preference set forth in the Rules. We gave weight to Emilio III's demonstrable interest in Cristina's estate and without a closer scrutiny of the attendant facts and circumstances, directed co-administration thereof. We are led to a review of such position by the foregoing survey of cases.

The collected teaching is that mere demonstration of interest in the estate to be settled does not *ipso facto* entitle an interested person to co-administration thereof. Neither does squabbling among the heirs nor adverse interests necessitate the discounting of the order of preference set forth in Section 6, Rule 78. Indeed,

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[28] *Supra* note 8.

[29] *Id.* at 365.

[30] *Supra* note 8.

in the appointment of administrator of the estate of a deceased person, the principal consideration reckoned with is the interest in said estate of the one to be appointed as administrator.[31] Given Isabel's unassailable interest in the estate as one of the decedent's legitimate grandchildren and undoubted nearest "next of kin," the appointment of Emilio III as co-administrator of the same estate, cannot be a demandable right. It is a matter left entirely to the sound discretion of the Court[32] and depends on the facts and the attendant circumstances of the case.[33]

Thus, we proceed to scrutinize the attendant facts and circumstances of this case even as we reiterate Isabel's and her sibling's apparent greater interest in the estate of Cristina.

These considerations do not warrant the setting aside of the order of preference mapped out in Section 6, Rule 78 of the Rules of Court. They compel that a choice be made of one over the other.

1. The bitter estrangement and long-standing animosity between Isabel, on the one hand, and Emilio III, on the other, traced back from the time their paternal grandparents were alive, which can be characterized as adverse interest of some kind by, or hostility of, Emilio III to Isabel who is immediately interested in the estate;

2. Corollary thereto, the seeming impossibility of Isabel and Emilio III working harmoniously as co-administrators may result in prejudice to the decedent's estate, ultimately delaying settlement thereof; and

3. Emilio III, for all his claims of knowledge in the management of Cristina's estate, has not looked after the estate's welfare and has acted to the damage and prejudice thereof.

Contrary to the assumption made in the Decision that Emilio III's demonstrable interest in the estate makes him a suitable

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[31] *Gonzales v. Aguinaldo*, *supra* note 10 at 117.

[32] *Fernandez v. Maravilla*, G.R. No. L-18799, 26 March 1965, 13 SCRA 416, 419-420.

[33] *Silverio, Sr. v. Court of Appeals*, *supra* note 8 at 211.

co-administrator thereof, the evidence reveals that Emilio III has turned out to be an unsuitable administrator of the estate. Respondent Isabel points out that after Emilio III's appointment as administrator of the subject estate in 2001, he has not looked after the welfare of the subject estate and has actually acted to the damage and prejudice thereof as evidenced by the following:

1. Emilio III, despite several orders from the probate court for a complete inventory, omitted in the partial inventories[34] he filed therewith properties of the estate[35] including several parcels of land, cash, bank deposits, jewelry, shares of stock, motor vehicles, and other personal properties, contrary to Section 1,[36] paragraph a, Rule 81 of the Rules of Court.

2. Emilio III did not take action on both occasions against Federico's settlement of the decedent's estate which adjudicated to himself a number of properties properly belonging to said estate (whether wholly or partially), and which contained a declaration that the decedent did not leave any descendants or heirs, except for Federico, entitled to succeed to her estate.[37]

In compliance to our Resolution dated 18 April 2012 requiring Emilio III to respond to the following imputations of Isabel that:

1. [Emilio III] did not file an inventory of the assets until November 14, 2002;

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[34] Annexes "3", "5", and "6", of respondent's Motion for Reconsideration. *Rollo,* pp. 318-331.

[35] Annex "4", of respondent's Motion for Reconsideration. *Id*. at 326.

[36] **Section 1.** *Bond to be given issuance of letters. Amount. Conditions*. – Before an executor or administrator enters upon the execution of his trust, and letters testamentary or of administration issue, he shall give a bond, in such sum as the court directs, conditioned as follows:

(a) To make and return to the court, within three (3) months, a true and complete inventory of all goods, chattels, rights, credits, and estate of the deceased which shall come to his possession or knowledge or to the possession of any other person for him;

[37] Annexes "1", and "2", of respondent's Motion for Reconsideration. *Rollo*, pp. 318-321.

2. [T]he inventory [Emilio III] submitted did not include several properties of the decedent;

3. [T]hat properties belonging to the decedent have found their way to different individuals or persons; several properties to Federico Suntay himself; and

4. [W]hile some properties have found their way to [Emilio III], by reason of falsified documents;[38]

Emilio III refutes Isabel's imputations that he was lackadaisical in assuming and performing the functions of administrator of Cristina's estate:

1. From the time of the RTC's Order appointing Emilio III as administrator, Isabel, in her pleadings before the RTC, had vigorously opposed Emilio III's assumption of that office, arguing that "[t]he decision of the [RTC] dated 9 November 2001 is not among the judgments authorized by the Rules of Court which may be immediately implemented or executed";

2. The delay in Emilio III's filing of an inventory was due to Isabel's vociferous objections to Emilio III's attempts to act as administrator while the RTC decision was under appeal to the Court of Appeals;

3. The complained partial inventory is only initiatory, inherent in the nature thereof, and one of the first steps in the lengthy process of settlement of a decedent's estate, such that it cannot constitute a complete and total listing of the decedent's properties; and

4. The criminal cases adverted to are trumped-up charges where Isabel, as private complainant, has been unwilling to appear and testify, leading the Judge of the Regional Trial Court, Branch 44 of Mamburao, Occidental Mindoro, to warn the prosecutor of a possible *motu proprio* dismissal of the cases.

While we can subscribe to Emilio III's counsel's explanation for the blamed delay in the filing of an inventory and his exposition on the nature thereof, partial as opposed to complete, in the

[38] *Id.* at 407.

course of the settlement of a decedent's estate, we do not find any clarification on Isabel's accusation that Emilio III had deliberately omitted properties in the inventory, which properties of Cristina he knew existed and which he claims to be knowledgeable about.

The general denial made by Emilio III does not erase his unsuitability as administrator rooted in his failure to "make and return x x x **a true and complete inventory**" which became proven fact when he actually filed partial inventories before the probate court and by his inaction on two occasions of Federico's exclusion of Cristina's other compulsory heirs, herein Isabel and her siblings, from the list of heirs.

As administrator, Emilio III enters into the office, posts a bond and executes an oath to faithfully discharge the duties of settling the decedent's estate with the end in view of distribution to the heirs, if any. This he failed to do. The foregoing circumstances of Emilio III's omission and inaction become even more significant and speak volume of his unsuitability as administrator as it demonstrates his interest adverse to those immediately interested in the estate of the decedent, Cristina.

In this case, palpable from the evidence on record, the pleadings, and the protracted litigation, is the inescapable fact that Emilio III and respondent Isabel have a deep aversion for each other. To our mind, it becomes highly impractical, *nay*, improbable, for the two to work as co-administrators of their grandmother's estate. The allegations of Emilio III, the testimony of Federico and the other witnesses for Federico and Emilio III that Isabel and her siblings were estranged from their grandparents further drive home the point that Emilio III bears hostility towards Isabel. More importantly, it appears detrimental to the decedent's estate to appoint a co-administrator (Emilio III) who has shown an adverse interest of some kind or hostility to those, such as herein respondent Isabel, immediately interested in the said estate.

Bearing in mind that the issuance of letters of administration is simply a preliminary order to facilitate the settlement of a decedent's estate, we here point out that Emilio III is not without

remedies to protect his interests in the estate of the decedent. In *Hilado v. Court of Appeals*,[39] we mapped out as among the allowable participation of "any interested persons" or "any persons interested in the estate" in either testate or intestate proceedings:

x x x x x x x x x

4. Section 6[40] of Rule 87, which allows an individual interested in the estate of the deceased "to complain to the court of the concealment, embezzlement, or conveyance of any asset of the decedent, or of evidence of the decedent's title or interest therein";

5. Section 10[41] of Rule 85, which requires notice of the time and place of the examination and allowance of the Administrator's account "to persons interested";

6. Section 7(b)[42] of Rule 89, which requires the court to give notice "to the persons interested" before it may hear and grant a petition

[39] G.R. No. 164108, 8 May 2009, 587 SCRA 464.

[40] **Section 6.** *Proceedings when property concealed, embezzled, or fraudulently conveyed.* – If an executor or administrator, heir, legatee, creditor, or other individual interested in the estate of the deceased, complains to the court having jurisdiction of the estate that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods, or chattels of the deceased, or that such person has in his possession or has knowledge of any deed, conveyance, bond, contract, or other writing which contains evidence of or tends to disclose the right, title, interest, or claim of the deceased to real or personal estate, or the last will and testament of the deceased, the court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint; and if the person so cited refuses to appear, or to answer on such examination or such interrogatories as are put to him, the court may punish him for contempt, and may commit him to prison until he submits to the order of the court. The interrogatories put to any such person, and his answers thereto, shall be in writing and shall be filed in the clerk's office.

[41] **Section 10.** *Account to be settled on notice.* – Before the account of an executor or administrator is allowed, notice shall be given to persons interested of the time and place of examining and allowing the same; and such notice may be given personally to such persons interested or by advertisement in a newspaper or newspapers, or both, as the court directs.

[42] **Section 7.** *Regulations for granting authority to sell, mortgage, or otherwise encumber estate.* x x x.

seeking the disposition or encumbrance of the properties of the estate; and

7. Section 1,[43] Rule 90, which allows "any person interested in the estate" to petition for an order for the distribution of the residue of the estate of the decedent, after all obligations are either satisfied or provided for.[44]

In addition to the foregoing, Emilio III may likewise avail of the remedy found in Section 2, Rule 82 of the Rules of Court, to wit:

Sec. 2. *Court may remove or accept resignation of executor or administrator. Proceedings upon death, resignation, or removal.* – If an executor or administrator neglects to render his account and settle the estate according to law, or to perform an order or judgment of the court, or a duty expressly provided by these rules, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge

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(a) x x x

(b) The court shall thereupon fix a time and place for hearing such petition, and cause notice stating the nature of the petition, the reason for the same, and the time and place of hearing, to be given personally or by mail to the persons interested, and may cause such further notice to be given, by publication or otherwise, as it shall deem proper.

[43] **Section 1.** *When order for distribution of residue made.* – When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to he distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above-mentioned has been made or provided for, unless the distributes, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

[44] *Hilado v. Court of Appeals, supra* note 37 at 472-473.

the trust, the court may remove him, or, in its discretion, may permit him to resign. When an executor or administrator dies, resigns, or is removed, the remaining executor or administrator may administer the trust alone, unless the court grants letters to someone to act with him. If there is no remaining executor or administrator, administration may be granted to any suitable person.

Once again, as we have done in the Decision, we exercise judicial restraint: we uphold that the question of who are the heirs of the decedent Cristina is not yet upon us. Article 992 of the Civil Code or the *curtain bar rule* is inapplicable in resolving the issue of who is better qualified to administer the estate of the decedent.

Thus, our disquisition in the assailed Decision:

> Nonetheless, it must be pointed out that judicial restraint impels us to refrain from making a final declaration of heirship and distributing the presumptive shares of the parties in the estates of Cristina and Federico, considering that the question on who will administer the properties of the long deceased couple has yet to be settled.
>
> Our holding in *Capistrano v. Nadurata* on the same issue remains good law:
>
> > [T]he declaration of heirs made by the lower court is premature, although the evidence sufficiently shows who are entitled to succeed the deceased. The estate had hardly been judicially opened, and the proceeding has not as yet reached the stage of distribution of the estate which must come after the inheritance is liquidated.
>
> Section 1, Rule 90 of the Rules of Court does not depart from the foregoing admonition:
>
> > Sec. 1. *When order for distribution of residue is made.* - x x x. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.
> >
> > No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to

be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.[45]

Lastly, we dispose of a peripheral issue raised in the Supplemental Comment[46] of Emilio III questioning the Special Second Division which issued the 18 April 2012 Resolution. Emilio III asseverates that "the operation of the Special Second Division in Baguio is unconstitutional and void" as the Second Division in Manila had already promulgated its Decision on 16 June 2010 on the petition filed by him:

7. The question is: who created the Special Second Division in Baguio, acting separately from the Second Division of the Supreme Court in Manila? There will then be two Second Divisions of the Supreme Court: one acting with the Supreme Court in Manila, and another Special Second Division acting independently of the Second Division of the Supreme Court in Manila.[47]

For Emilio III's counsels' edification, the Special Second Division in Baguio is not a different division created by the Supreme Court.

The Second Division which promulgated its Decision on this case on 16 June 2010, penned by Justice Antonio Eduardo B. Nachura, now has a different composition, with the advent of Justice Nachura's retirement on 13 June 2011. Section 7, Rule 2 of the Internal Rules of the Supreme Court provides:

Sec. 7. *Resolutions of motions for reconsideration or clarification of decisions or signed resolutions and all other motions and incidents subsequently filed;* ***creation of a Special Division***. – Motions for reconsideration or clarification of a decision or of a signed resolution and all other motions and incidents subsequently filed in the case shall be acted upon by the *ponente* and the other Members of the Division who participated in the rendition of the decision or signed resolution.

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[45] *Rollo,* pp. 243-244.

[46] *Id.* at 442-445.

[47] *Id.* at 443.

If the *ponente* has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, **he or she shall be replaced through raffle by a new *ponente* who shall be chosen among the new Members of the Division who participated in the rendition of the decision or signed resolution and who concurred therein. If only one Member of the Court who participated and concurred in the rendition of the decision or signed resolution remains, he or she shall be designated as the new *ponente*.**

If a Member (not the *ponente*) of the Division which rendered the decision or signed resolution has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a replacement Member who shall be chosen from the other Divisions until a new Justice is appointed as replacement for the retired Justice. Upon the appointment of a new Justice, he or she shall replace the designated Justice as replacement Member of the Special Division.

Any vacancy or vacancies in the Special Division shall be filled by raffle from among the other Members of the Court to constitute a Special Division of five (5) Members.

If the *ponente* and all the Members of the Division that rendered the Decision or signed Resolution are no longer Members of the Court, the case shall be raffled to any Member of the Court and the motion shall be acted upon by him or her with the participation of the other Members of the Division to which he or she belongs.

If there are pleadings, motions or incidents subsequent to the denial of the motion for reconsideration or clarification, the case shall be acted upon by the *ponente* on record with the participation of the other Members of the Division to which he or she belongs at the time said pleading, motion or incident is to be taken up by the Court. (Emphasis supplied)

As regards the operation thereof in Baguio City, such is simply a change in venue for the Supreme Court's summer session held last April.[48]

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[48] *See* Resolution dated 9 February 2012, A.M. No. 12-2-7-SC Re: 2012 Summer Session in Baguio City.

WHEREFORE, the Motion for Reconsideration is *PARTIALLY GRANTED*. Our Decision in G.R. No. 183053 dated 16 June 2010 is *MODIFIED*. Letters of Administration over the estate of decedent Cristina Aguinaldo-Suntay shall solely issue to respondent Isabel Cojuangco-Suntay upon payment of a bond to be set by the Regional Trial Court, Branch 78, Malolos, Bulacan, in Special Proceeding Case No. 117-M-95. The Regional Trial Court, Branch 78, Malolos, Bulacan is likewise directed to settle the estate of decedent Cristina Aguinaldo-Suntay with dispatch. No costs.

SO ORDERED.

Sereno,[*] *C.J., Carpio (Chairperson), Peralta,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. Nos. 184903-04. October 10, 2012]

DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC., *petitioner, vs.* **DIGITEL EMPLOYEES UNION (DEU), ARCEO RAFAEL A. ESPLANA, ALAN D. LICANDO, FELICITO C. ROMERO, JR., ARNOLD D. GONZALES, REYNEL FRANCISCO B. GARCIA, ZOSIMO B. PERALTA, REGINO T. UNIDAD and JIM L. JAVIER,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING; PENDENCY OF A PETITION FOR CANCELLATION OF UNION REGISTRATION DOES NOT PRECLUDE COLLECTIVE BARGAINING.— It is well-

[*] Per raffle dated 4 July 2011.

settled that the pendency of a petition for cancellation of union registration does not preclude collective bargaining. The 2005 case of *Capitol Medical Center, Inc. v. Hon. Trajano* is *apropos*. The respondent union therein sent a letter to petitioner requesting a negotiation of their CBA. Petitioner refused to bargain and instead filed a petition for cancellation of the union's certificate of registration. Petitioner's refusal to bargain forced the union to file a notice of strike. They eventually staged a strike. The Secretary of Labor assumed jurisdiction over the labor dispute and ordered all striking workers to return to work. Petitioner challenged said order by contending that its petition for cancellation of union's certificate of registration involves a prejudicial question that should first be settled before the Secretary of Labor could order the parties to bargain collectively. When the case eventually reached this Court, we agreed with the Secretary of Labor that the pendency of a petition for cancellation of union registration does not preclude collective bargaining[.]

2. ID.; ID.; LABOR-ONLY CONTRACTING; REQUIREMENTS TO BE AN INDEPENDENT CONTRACTOR, NOT MET IN CASE AT BAR.— After an exhaustive review of the records, there is no showing that first, Digiserv has substantial investment in the form of capital, equipment or tools. Under the Implementing Rules, substantial capital or investment refers to "capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out." The NLRC, as echoed by the Court of Appeals, did not find substantial Digiserv's authorized capital stock of One Million Pesos (₱1,000,000.00). It pointed out that only Two Hundred Fifty Thousand Pesos (₱250,000.00) of the authorized capital stock had been subscribed and only Sixty-Two Thousand Five Hundred Pesos (₱62,500.00) had been paid up. There was no increase in capitalization for the last ten (10) years. Moreover, in the Amended Articles of Incorporation, as well as in the General Information Sheets for the years 1994, 2001 and 2005, the primary purpose of Digiserv is to provide manpower services. x x x The services provided by employees of Digiserv are directly related to the business of Digitel[.] x x x Furthermore, Digiserv does not

exercise control over the affected employees. The NLRC highlighted the fact that Digiserv shared the same Human Resources, Accounting, Audit and Legal Departments with Digitel which manifested that it was Digitel who exercised control over the performance of the affected employees. The NLRC also relied on the letters of commendation, plaques of appreciation and certification issued by Digitel to the Customer Service Representatives as evidence of control.

3. ID.; ID.; ID.; EFFECTS WHERE AN EMPLOYER IS FOUND TO BE ENGAGED IN LABOR-ONLY CONTRACTING.— Considering that Digiserv has been found to be engaged in labor-only contracting, the dismissed employees are deemed employees of Digitel. Section 7 of the Implementing Rules holds that labor-only contracting would give rise to: (1) the creation of an employer-employee relationship between the principal and the employees of the contractor or sub-contractor; and (2) the solidary liability of the principal and the contractor to the employees in the event of any violation of the Labor Code. Accordingly, Digitel is considered the principal employer of respondent employees.

4. ID.; ID.; TERMINATION OF EMPLOYMENT; RETRENCHMENT; ELEMENTS OF A VALID RETRENCHMENT, NOT PRESENT.— Only the first 3 elements of a valid retrenchment had been here satisfied. Indeed, it is management prerogative to close a department of the company. Digitel's decision to outsource the call center operation of the company is a valid reason to close down the operations of a department under which the affected employees were employed. Digitel cited the decline in the volume of transaction of operator-assisted call services as supported by Financial Statements for the years 2003 and 2004, during which Digiserv incurred a deficit of ₱163,624.00 and ₱164,055.00, respectively. All affected employees working under Digiserv were served with individual notices of termination. DOLE was likewise served with the corresponding notice. All affected employees were offered separation pay. Only 9 out of the 45 employees refused to accept the separation pay and chose to contest their dismissal before this Court. The fifth element regarding the criteria to be observed by Digitel clearly does not apply because all employees under Digiserv were dismissed. The instant case is all about the fourth

element, that is, whether or not the affected employees were dismissed in good faith. We find that there was no good faith in the retrenchment.

5. ID.; ID.; ID.; CIRCUMSTANCES SHOWING BAD FAITH IN THE CLOSURE OF BUSINESS.— There is no doubt that Digitel defied the assumption order by abruptly closing down Digiserv. The closure of a department is not illegal *per se*. What makes it unlawful is when the closure is undertaken in bad faith. x x x [B]ad faith was manifested by the timing of the closure of Digiserv and the rehiring of some employees to Interactive Technology Solutions, Inc. (I-tech), a corporate arm of Digitel. The assumption order directs employees to return to work, and the employer to reinstate the employees. The existence of the assumption order should have prompted Digitel to observe the *status quo*. Instead, Digitel proceeded to close down Digiserv. The Secretary of Labor had to subsume the second notice of strike in the assumption order. This order notwithstanding, Digitel proceeded to dismiss the employees. The timing of the creation of I-tech is dubious. It was incorporated on 18 January 2005 while the labor dispute within Digitel was pending. I-tech's primary purpose was to provide call center/customer contact service, the same service provided by Digiserv. It conducts its business inside the Digitel office at *110 E. Rodriguez Jr. Avenue, Bagumbayan, Quezon City*. The former head of Digiserv, Ms. Teresa Taniega, is also an officer of I-tech. Thus, when Digiserv was closed down, some of the employees presumably non-union members were rehired by I-tech. Thus, the closure of Digiserv pending the existence of an assumption order coupled with the creation of a new corporation performing similar functions as Digiserv leaves no iota of doubt that the target of the closure are the union member-employees. These factual circumstances prove that Digitel terminated the services of the affected employees to defeat their security of tenure.

6. ID.; ID.; ID.; WHERE DISMISSAL OF EMPLOYEES CONSTITUTES AN UNFAIR LABOR PRACTICE.— It needs to be mentioned too that the dismissal constitutes an unfair labor practice under Article 248(c) of the Labor Code which refers to contracting out services or functions being performed by union members when such will interfere with, restrain or

coerce employees in the exercise of their rights to self-organization. At the height of the labor dispute, occasioned by Digitel's reluctance to negotiate with the Union, I-tech was formed to provide, as it did provide, the same services performed by Digiserv, the Union members' nominal employer. x x x The finding of unfair labor practice hinges on Digitel's contracting-out certain services performed by union member-employees to interfere with, restrain or coerce them in the exercise of their right to self-organization.

7. ID.; ID.; ID.; WHERE REINSTATEMENT OF ILLEGALLY DISMISSED EMPLOYEES IS NO LONGER POSSIBLE, PAYMENT OF SEPARATION PAY IS AN ACCEPTABLE ALTERNATIVE.— We have no basis to direct reinstatement of the affected employees to an ostensibly different corporation. The surrounding circumstance of the creation of I-tech point to bad faith on the part of Digitel, as well as constitutive of unfair labor practice in targeting the dismissal of the union member-employees. However, this bad faith does not contradict, much less negate, the impossibility of the employees' reinstatement because Digiserv has been closed and no longer exists. Even if it is a possibility that I-tech, as though Digitel, can absorb the dismissed union member-employees as I-tech was incorporated during the time of the controversy with the same primary purpose as Digiserv, we would be hard pressed to mandate the dismissed employees' reinstatement given the lapse of more than seven (7) years. x x x We adhere to the oft-quoted doctrine that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties. 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.

8. ID.; ID.; ID.; WHERE THE DISMISSAL OF EMPLOYEES WAS TAINTED WITH UNFAIR LABOR PRACTICE, AWARD OF MORAL AND EXEMPLARY DAMAGES IS WARRANTED.— [A]n illegally dismissed employee should be awarded moral and

> exemplary damages as their dismissal was tainted with unfair labor practice. Depending on the factual milieu, jurisprudence has awarded varying amounts as moral and exemplary damages to illegally dismissed employees when the dismissal is attended by bad faith or fraud; or constitutes an act oppressive to labor; or is done in a manner contrary to good morals, good customs or public policy; or if the dismissal is effected in a wanton, oppressive or malevolent manner. x x x In the case at hand, with the Union's manifestation that only 13 employees remain as respondents, as most had already accepted separation pay, and consistent with our finding that Digitel committed an unfair labor practice in violation of the employees' constitutional right to self-organization, we deem it proper to award each of the illegally dismissed union member-employees the amount of ₱10,000.00 and ₱5,000.00 as moral and exemplary damages, respectively.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako for petitioner.
Labor Advocates for Workers' Services (LAWS INC.) for respondents.

D E C I S I O N

PEREZ, *J.*:

This treats of the petition for review filed by Digital Telecommunications Philippines, Inc. (Digitel) assailing the 18 June 2008 Decision[1] and 9 October 2008 Resolution of the Court of Appeals 10th Division in CA-G.R. SP No. 91719, which affirms the Order of the Secretary of Labor and Employment directing Digitel to commence Collective Bargaining Agreement (CBA) negotiations and in CA-G.R. SP No. 94825, which declares the dismissal of affected Digitel employees as illegal.

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[1] Penned by Associate Justice Normandie B. Pizarro with Associate Justices Josefina Guevara-Salonga and Magdangal M. De Leon, concurring. *Rollo*, pp. 1042-1061.

The facts, as borne by the records, follow.

By virtue of a certification election, Digitel Employees Union (Union) became the exclusive bargaining agent of all rank and file employees of Digitel in 1994. The Union and Digitel then commenced collective bargaining negotiations which resulted in a bargaining deadlock. The Union threatened to go on strike, but then Acting Labor Secretary Bienvenido E. Laguesma assumed jurisdiction over the dispute and eventually directed the parties to execute a CBA.[2]

However, no CBA was forged between Digitel and the Union. Some Union members abandoned their employment with Digitel. The Union later became dormant.

Ten (10) years thereafter or on 28 September 2004, Digitel received from Arceo Rafael A. Esplana (Esplana), who identified himself as President of the Union, a letter containing the list of officers, CBA proposals and ground rules.[3] The officers were respondents Esplana, Alan D. Licando (Vice-President), Felicito C. Romero, Jr. (Secretary), Arnold D. Gonzales (Treasurer), Reynel Francisco B. Garcia (Auditor), Zosimo B. Peralta (PRO), Regino T. Unidad (Sgt. at Arms), and Jim L. Javier (Sgt. at Arms).

Digitel was reluctant to negotiate with the Union and demanded that the latter show compliance with the provisions of the Union's Constitution and By-laws on union membership and election of officers.

On 4 November 2004, Esplana and his group filed a case for Preventive Mediation before the National Conciliation and Mediation Board based on Digitel's violation of the duty to bargain. On 25 November 2004, Esplana filed a notice of strike.

On 10 March 2005, then Labor Secretary Patricia A. Sto. Tomas issued an Order[4] assuming jurisdiction over the labor dispute.

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[2] *Id.* at 255-263.

[3] *Id.* at 62-63.

[4] *Id.* at 289-291.

During the pendency of the controversy, Digitel Service, Inc. (Digiserv), a non-profit enterprise engaged in call center servicing, filed with the Department of Labor and Employment (DOLE) an Establishment Termination Report stating that it will cease its business operation. The closure affected at least 100 employees, 42 of whom are members of the herein respondent Union.

Alleging that the affected employees are its members and in reaction to Digiserv's action, Esplana and his group filed another Notice of Strike for union busting, illegal lock-out, and violation of the assumption order.

On 23 May 2005, the Secretary of Labor ordered the second notice of strike subsumed by the previous Assumption Order.[5]

Meanwhile, on 14 March 2005, Digitel filed a petition with the Bureau of Labor Relations (BLR) seeking cancellation of the Union's registration on the following grounds: 1) failure to file the required reports from 1994-2004; 2) misrepresentation of its alleged officers; 3) membership of the Union is composed of rank and file, supervisory and managerial employees; and 4) substantial number of union members are not Digitel employees.[6]

In a Decision dated 11 May 2005, the Regional Director of the DOLE dismissed the petition for cancellation of union registration for lack of merit. The Regional Director ruled that it does not have jurisdiction over the issue of non-compliance with the reportorial requirements. He also held that Digitel failed to adduce substantial evidence to prove misrepresentation and the mixing of non-Digitel employees with the Union. Finally, he declared that the inclusion of supervisory and managerial employees with the rank and file employees is no longer a ground for cancellation of the Union's certificate of registration.[7]

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[5] *Id.* at 123-124.

[6] *Id*. at 271-285.

[7] *Id*. at 125-127.

The appeal filed by Digitel with the BLR was eventually dismissed for lack of merit in a Resolution dated 9 March 2007, thereby affirming the 11 May 2005 Decision of the Regional Director.

CA-G.R. SP No. 91719

In an Order dated 13 July 2005, the Secretary of Labor directed Digitel to commence the CBA negotiation with the Union. Thus:

> WHEREFORE, all the foregoing premises considered, this Office hereby orders:
>
> 1. DIGITEL to commence collective bargaining negotiation with DEU without further delay; and,
>
> 2. The issue of unfair labor practice, consisting of union-busting, illegal termination/lockout and violation of the assumption of jurisdiction, specifically the return-to-work aspect of the 10 March 2005 and 03 June 2005 orders, be CERTIFIED for compulsory arbitration to the NLRC.[8]

Digitel moved for reconsideration on the contention that the pendency of the petition for cancellation of the Union's certificate of registration is a prejudicial question that should first be settled before the DOLE could order the parties to bargain collectively. On 19 August 2005, then Acting Secretary Manuel G. Imson of DOLE denied the motion for reconsideration, affirmed the 13 July 2005 Order and reiterated the order directing parties to commence collective bargaining negotiations.[9]

On 14 October 2005, Digitel filed a petition, docketed as CA-G.R. SP No. 91719, before the Court of Appeals assailing the 13 July and 19 August 2005 Orders of the DOLE Secretary and attributing grave abuse of discretion on the part of the DOLE Secretary for ordering Digitel to commence bargaining negotiations with the Union despite the pendency of the issue of union legitimacy.

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[8] *Id.* at 154.

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

CA-G.R. SP No. 94825

In accordance with the 13 July 2005 Order of the Secretary of Labor, the unfair labor practice issue was certified for compulsory arbitration before the NLRC, which, on 31 January 2006, rendered a Decision dismissing the unfair labor practice charge against Digitel but declaring the dismissal of the 13 employees of Digiserv as illegal and ordering their reinstatement. The Union manifested that out of 42 employees, only 13 remained, as most had already accepted separation pay. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the charge of unfair labor practice is hereby DISMISSED for lack of merit. However, the dismissal of the remaining thirteen (13) affected employees is hereby declared illegal and DIGITEL is hereby ORDERED to reinstate them to their former position with full backwages up to the time they are reinstated, computed as follows:
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> x x x x x x x x x.[10]

Upon motion for reconsideration filed by Digitel, four (4) affected employees, namely Ma. Loreta Eser, Marites Jereza, Leonore Tuliao and Aline G. Quillopras, were removed from entitlement to the awards pursuant to the deed of quitclaim and release which they all signed.[11]

In view of this unfavorable decision, Digitel filed another petition on 9 June 2006 in CA-G.R. SP No. 94825 before the Court of Appeals, challenging the above NLRC Decision and Resolution and arguing mainly that Digiserv employees are not employees of Digitel.

Ruling of the Court of Appeals

On 18 June 2008, the Tenth Division of the Court of Appeals consolidated the two petitions in CA-G.R. SP No. 91719 and CA-G.R. SP No. 94825, and disposed as follows:

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[10] *Id*. at 590-594.

[11] *Id*. at 624-632.

WHEREFORE, the petition in CA-G.R. SP No. 91719 is **DISMISSED**. The July 13, 2005 **Order** and the August 19, 2005 Resolution of the DOLE Secretary are **AFFIRMED** *in toto*. With costs.

The petition in CA-G.R. SP No. 94825 is partially **GRANTED**, with the effect that the assailed dispositions must be **MODIFIED**, as follows:

1) In addition to the order directing reinstatement and payment of full backwages to the nine (9) affected employees, Digital Telecommunications Philippines, Inc. is furthered **ORDERED**, should reinstatement is no longer feasible, to pay separation pay equivalent to one (1) month pay, or one-half (1/2) month pay for every year of service, whichever is higher.

2) The one hundred thousand (PhP100,000.00) peso-fine imposed on Digital Telecommunications Philippines, Inc. is **DELETED**. No costs.[12]

The Court of Appeals upheld the Secretary of Labor's Order for Digitel to commence CBA negotiations with the Union and emphasized that the pendency of a petition for the cancellation of a union's registration does not bar the holding of negotiations for a CBA. The Court of Appeals sustained the finding that Digiserv is engaged in labor-only contracting and that its employees are actually employees of Digitel.

Digitel filed a motion for reconsideration but was denied in a Resolution dated 9 October 2008.

Hence, this petition for review on *certiorari*.

Digitel argues that the Court of Appeals seriously erred when it condoned the act of the Secretary of Labor in issuing an assumption order despite the pendency of an appeal on the issue of union registration. Digitel maintains that it cannot be compelled to negotiate with a union for purposes of collective bargaining when the very status of the same as the exclusive bargaining agent is in question.

Digitel insists that had the Court of Appeals considered the nature of the activities performed by Digiserv, it would reach

[12] *Id*. at 1059-1060.

the conclusion that Digiserv is a legitimate contractor. To bolster its claim, Digitel asserts that the affected employees are registered with the Social Security System, *Pag-ibig*, Bureau of Internal Revenue and Philhealth with Digiserv as their employer. Digitel further contends that assuming that the affected Digiserv employees are employees of Digitel, they were nevertheless validly dismissed on the ground of closure of a department or a part of Digitel's business operation.

The three issues raised in this petition are: 1) whether the Secretary of Labor erred in issuing the assumption order despite the pendency of the petition for cancellation of union registration; 2) whether Digiserv is a legitimate contractor; and 3) whether there was a valid dismissal.

The pendency of a petition for cancellation of union registration does not preclude collective bargaining.

The first issue raised by Digitel is not novel. It is well-settled that the pendency of a petition for cancellation of union registration does not preclude collective bargaining.

The 2005 case of *Capitol Medical Center, Inc. v. Hon. Trajano*[13] is *apropos*. The respondent union therein sent a letter to petitioner requesting a negotiation of their CBA. Petitioner refused to bargain and instead filed a petition for cancellation of the union's certificate of registration. Petitioner's refusal to bargain forced the union to file a notice of strike. They eventually staged a strike. The Secretary of Labor assumed jurisdiction over the labor dispute and ordered all striking workers to return to work. Petitioner challenged said order by contending that its petition for cancellation of union's certificate of registration involves a prejudicial question that should first be settled before the Secretary of Labor could order the parties to bargain collectively. When the case eventually reached this Court, we agreed with the Secretary of Labor that the pendency of a petition for cancellation of union registration does not preclude collective bargaining, thus:

[13] 501 Phil. 144 (2005).

That there is a pending cancellation proceeding against the respondent Union is not a bar to set in motion the mechanics of collective bargaining. If a certification election may still be ordered despite the pendency of a petition to cancel the union's registration certificate (*National Union of Bank Employees vs. Minister of Labor, 110 SCRA 274*), more so should the collective bargaining process continue despite its pendency. We must emphasize that the majority status of the respondent Union is not affected by the pendency of the Petition for Cancellation pending against it. Unless its certificate of registration and its status as the certified bargaining agent are revoked, the Hospital is, by express provision of the law, duty bound to collectively bargain with the Union.[14]

Trajano was reiterated in *Legend International Resorts Limited v. Kilusang Manggagawa ng Legenda (KML-Independent).*[15] Legend International Resorts reiterated the rationale for allowing the continuation of either a CBA process or a certification election even during the pendency of proceedings for the cancellation of the union's certificate of registration. Citing the cases of *Association of Court of Appeals Employees v. Ferrer- Calleja*[16] and *Samahan ng Manggagawa sa Pacific Plastic v. Hon. Laguesma,*[17] it was pointed out at the time of the filing of the petition for certification election – or a CBA process as in the instant case – the union still had the personality to file a petition for certification – or to ask for a CBA negotiation – as in the present case.

Digiserv is a labor-only contractor.

Labor-only contracting is expressly prohibited by our labor laws. Article 106 of the Labor Code defines labor-only contracting as "supplying workers to an employer [who] does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities

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[14] *Id*. at 150.

[15] G.R. No. 169754, 23 February 2011, 644 SCRA 94, 106.

[16] G.R. No. 94716, 15 November 1991, 203 SCRA 596.

[17] 334 Phil. 955 (1997).

which are directly related to the principal business of such employer."

Section 5, Rule VIII-A, Book III of the Omnibus Rules Implementing the Labor Code (Implementing Rules), as amended by Department Order No. 18-02, expounds on the prohibition against labor-only contracting, thus:

> **Section 5**. *Prohibition against labor-only contracting*. — Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:
>
> i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.
>
> The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.
>
> x x x x x x x x x
>
> The "right to control" shall refer to the right reserved to the person for whom, the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

The law and its implementing rules allow contracting arrangements for the performance of specific jobs, works or services. Indeed, it is management prerogative to farm out any of its activities, regardless of whether such activity is peripheral or core in nature. However, in order for such outsourcing to be valid, it must be made to an independent contractor because the current labor rules expressly prohibit labor-only contracting.[18]

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[18] *Aliviado v. Procter & Gamble Phils., Inc.,* G.R. No. 160506, 6 June 2011, 650 SCRA 400, 412-414.

After an exhaustive review of the records, there is no showing that first, Digiserv has substantial investment in the form of capital, equipment or tools. Under the Implementing Rules, substantial capital or investment refers to "capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out." The NLRC, as echoed by the Court of Appeals, did not find substantial Digiserv's authorized capital stock of One Million Pesos (₱1,000,000.00). It pointed out that only Two Hundred Fifty Thousand Pesos (₱250,000.00) of the authorized capital stock had been subscribed and only Sixty-Two Thousand Five Hundred Pesos (₱62,500.00) had been paid up. There was no increase in capitalization for the last ten (10) years.[19]

Moreover, in the Amended Articles of Incorporation, as well as in the General Information Sheets for the years 1994, 2001 and 2005, the primary purpose of Digiserv is to provide manpower services. In *PCI Automation Center, Inc. v. National Labor Relations Commission,*[20] the Court made the following distinction: "the legitimate job contractor provides services while the labor-only contractor provides only manpower. The legitimate job contractor undertakes to perform a specific job for the principal employer while the labor-only contractor merely provides the personnel to work for the principal employer." The services provided by employees of Digiserv are directly related to the business of Digitel, as rationalized by the NLRC in this wise:

> It is undisputed that as early as March 1994, the affected employees, except for two, were already performing their job as Traffic Operator which was later renamed as Customer Service Representative (CSR). It is equally undisputed that all throughout their employment, their function as CSR remains the same until they were terminated effective May 30, 2005. Their long period of employment as such is an indication that their job is directly related to the main business of DIGITEL which is telecommunication[s]. Because, if it was not, DIGITEL would

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[19] *Rollo*, p. 582.

[20] 322 Phil. 536, 550 (1996).

not have allowed them to render services as Customer Service Representative for such a long period of time.[21]

Furthermore, Digiserv does not exercise control over the affected employees. The NLRC highlighted the fact that Digiserv shared the same Human Resources, Accounting, Audit and Legal Departments with Digitel which manifested that it was Digitel who exercised control over the performance of the affected employees. The NLRC also relied on the letters of commendation, plaques of appreciation and certification issued by Digitel to the Customer Service Representatives as evidence of control.

Considering that Digiserv has been found to be engaged in labor-only contracting, the dismissed employees are deemed employees of Digitel.

Section 7 of the Implementing Rules holds that labor-only contracting would give rise to: (1) the creation of an employer-employee relationship between the principal and the employees of the contractor or sub-contractor; and (2) the solidary liability of the principal and the contractor to the employees in the event of any violation of the Labor Code.

Accordingly, Digitel is considered the principal employer of respondent employees.

The affected employees were illegally dismissed.

In addition to finding that Digiserv is a labor-only contractor, records teem with proof that its dismissed employees are in fact employees of Digitel. The NLRC enumerated these evidences, thus:

> That the remaining thirteen (13) affected employees are indeed employees of DIGITEL is sufficiently established by the facts and evidence on record.
>
> It is undisputed that the remaining affected employees, except for two (2), were already hired by DIGITEL even before the existence of

[21] *Rollo*, p. 583.

DIGISERV. (The other two (2) were hired after the existence of DIGISERV). The UNION submitted a sample copy of their appointment paper (Annex "A" of UNION's Position Paper, Records, Vol. 1, p. 100) showing that they were appointed on March 1, 1994, almost three (3) months before DIGISERV came into existence on May 30, 1994 (Annex "B", *Ibid.*, Records, Vol. 1, p. 101). On the other hand, not a single appointment paper was submitted by DIGITEL showing that these remaining affected employees were hired by DIGISERV.

It is equally undisputed that the remaining, affected employees continuously held the position of Customer Service Representative, which was earlier known as Traffic Operator, from the time they were appointed on March 1, 1994 until they were terminated on May 30, 2005. The UNION alleges that these Customer Service Representatives were under the Customer Service Division of DIGITEL. The UNION's allegation is correct. Sample of letter of commendations issued to Customer Service Representatives (Annexes "C" and "C-1" of UNION's Position Paper, Records, pp. 100 and 111) indeed show that DIGITEL has a Customer Service Division which handles its Call Center operations.

Further, the Certificates issued to Customer Service Representative likewise show that they are employees of DIGITEL (Annexes "C-5", "C-6" - "C-7" of UNION's Position Paper, Records, Vol. 1, pp. 115 to 117), Take for example the "Service Award" issued to Ma. Loretta C. Esen, one of the remaining affected employees (Annex "C-5", *Supra*). The "Service Award" was signed by the officers of DIGITEL – the VP-Customer Services Division, the VP-Human Resources Division and the Group Head-Human Resources Division. It was issued by DIGITEL to Esen thru the above named officers **"In recognition of her seven (7) years continuous and valuable contributions to the achievement of Digitel's organization objectives."** It cannot be gainsaid that it is only the employer that issues service award to its employees.[22] (Emphasis not supplied)

As a matter of fact, even before the incorporation of Digiserv, the affected employees were already employed by Digitel as Traffic Operators, later renamed as Customer Service Representatives.

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[22] *Id*. at 587-588.

As an alternative argument, Digitel maintains that the affected employees were validly dismissed on the grounds of closure of Digiserv, a department within Digitel.

In the recent case of *Waterfront Cebu City Hotel v. Jimenez,*[23] we referred to the closure of a department or division of a company as retrenchment. The dismissed employees were undoubtedly retrenched with the closure of Digiserv.

For a valid retrenchment, the following elements must be present:

(1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

(2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

(3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least ½ month pay for every year of service, whichever is higher;

(4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

(5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[24]

Only the first 3 elements of a valid retrenchment had been here satisfied. Indeed, it is management prerogative to close a department of the company. Digitel's decision to outsource the call center operation of the company is a valid reason to close down the operations of a department under which the

[23] G.R. No. 174214, 13 June 2012.

[24] *Id.*

affected employees were employed. Digitel cited the decline in the volume of transaction of operator-assisted call services as supported by Financial Statements for the years 2003 and 2004, during which Digiserv incurred a deficit of ₱163,624.00 and ₱164,055.00, respectively.[25] All affected employees working under Digiserv were served with individual notices of termination. DOLE was likewise served with the corresponding notice. All affected employees were offered separation pay. Only 9 out of the 45 employees refused to accept the separation pay and chose to contest their dismissal before this Court.

The fifth element regarding the criteria to be observed by Digitel clearly does not apply because all employees under Digiserv were dismissed. The instant case is all about the fourth element, that is, whether or not the affected employees were dismissed in good faith. We find that there was no good faith in the retrenchment.

Prior to the cessation of Digiserv's operations, the Secretary of Labor had issued the first assumption order to enjoin an impending strike. When Digiserv effected the dismissal of the affected employees, the Union filed another notice of strike. Significantly, the Secretary of Labor ordered that the second notice of strike be subsumed by the previous assumption order. Article 263(g) of the Labor Code provides:

> When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure the compliance

[25] *Rollo*, p. 707.

with this provision as well as with such orders as he may issue to enforce the same.

The effects of the assumption order issued by the Secretary of Labor are two-fold. It enjoins an impending strike on the part of the employees and orders the employer to maintain the *status quo*.

There is no doubt that Digitel defied the assumption order by abruptly closing down Digiserv. The closure of a department is not illegal *per se*. What makes it unlawful is when the closure is undertaken in bad faith. In *St. John Colleges, Inc. v. St. John Academy Faculty and Employees Union,*[26] bad faith was evidenced by the timing of and reasons for the closure and the timing of and reasons for the subsequent opening. There, the collective bargaining negotiations between *St. John* and the Union resulted in a bargaining deadlock that led to the filing of a notice of strike. The labor dispute was referred to the Secretary of Labor who assumed jurisdiction. Pending resolution of the dispute, *St. John* closed the school prompting the Union to file a complaint for illegal dismissal and unfair labor practice. The Union members alleged that the closure of the high school was done in bad faith in order to get rid of the Union and render useless any decision of the SOLE on the CBA deadlocked issues. We held that closure was done to defeat the affected employees' security of tenure, thus:

> The determination of whether SJCI acted in bad faith depends on the particular facts as established by the evidence on record. Bad faith is, after all, an inference which must be drawn from the peculiar circumstances of a case. The two decisive factors in determining whether SJCI acted in bad faith are (1) the timing of, and reasons for the closure of the high school, and (2) the timing of, and the reasons for the subsequent opening of a college and elementary department, and, ultimately, the reopening of the high school department by SJCI after only one year from its closure.
>
> Prior to the closure of the high school by SJCI, the parties agreed to refer the 1997 CBA deadlock to the SOLE for assumption of jurisdiction under Article 263 of the Labor Code. As a result, the strike ended and classes resumed. After the SOLE assumed

[26] 536 Phil. 631 (2006).

jurisdiction, it required the parties to submit their respective position papers. However, instead of filing its position paper, SJCI closed its high school, allegedly because of the "irreconcilable differences between the school management and the Academy's Union particularly the safety of our students and the financial aspect of the ongoing CBA negotiations." Thereafter, SJCI moved to dismiss the pending labor dispute with the SOLE contending that it had become moot because of the closure. Nevertheless, a year after said closure, SJCI reopened its high school and did not rehire the previously terminated employees.

Under these circumstances, it is not difficult to discern that the closure was done to defeat the parties' agreement to refer the labor dispute to the SOLE; to unilaterally end the bargaining deadlock; to render nugatory any decision of the SOLE; and to circumvent the Union's right to collective bargaining and its members' right to security of tenure. By admitting that the closure was due to irreconcilable differences between the Union and school management, specifically, the financial aspect of the ongoing CBA negotiations, SJCI in effect admitted that it wanted to end the bargaining deadlock and eliminate the problem of dealing with the demands of the Union. **This is precisely what the Labor Code abhors and punishes as unfair labor practice since the net effect is to defeat the Union's right to collective bargaining.**[27] (Emphasis not supplied)

As in *St. John,* bad faith was manifested by the timing of the closure of Digiserv and the rehiring of some employees to Interactive Technology Solutions, Inc. (I-tech), a corporate arm of Digitel. The assumption order directs employees to return to work, and the employer to reinstate the employees. The existence of the assumption order should have prompted Digitel to observe the *status quo*. Instead, Digitel proceeded to close down Digiserv. The Secretary of Labor had to subsume the second notice of strike in the assumption order. This order notwithstanding, Digitel proceeded to dismiss the employees.

The timing of the creation of I-tech is dubious. It was incorporated on 18 January 2005 while the labor dispute within Digitel was pending. I-tech's primary purpose was to provide call center/customer contact service, the same service provided by Digiserv. It conducts its business inside the Digitel office

[27] *Id*. at 645-646.

at *110 E. Rodriguez Jr. Avenue, Bagumbayan, Quezon City*. The former head of Digiserv, Ms. Teresa Taniega, is also an officer of I-tech. Thus, when Digiserv was closed down, some of the employees presumably non-union members were rehired by I-tech.

Thus, the closure of Digiserv pending the existence of an assumption order coupled with the creation of a new corporation performing similar functions as Digiserv leaves no iota of doubt that the target of the closure are the union member-employees. These factual circumstances prove that Digitel terminated the services of the affected employees to defeat their security of tenure. The termination of service was not a valid retrenchment; it was an illegal dismissal of employees.

It needs to be mentioned too that the dismissal constitutes an unfair labor practice under Article 248(c) of the Labor Code which refers to contracting out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization. At the height of the labor dispute, occasioned by Digitel's reluctance to negotiate with the Union, I-tech was formed to provide, as it did provide, the same services performed by Digiserv, the Union members' nominal employer.

Under Article 279 of the Labor Code, an illegally dismissed employee is entitled to backwages and reinstatement. Where reinstatement is no longer viable as an option, as in this case where Digiserv no longer exists, separation pay equivalent to one (1) month salary, or one-half (1/2) month pay for every year of service, whichever is higher, should be awarded as an alternative.[28] The payment of separation pay is in addition to payment of backwages.[29]

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[28] *See* Book VI, Rule 1, Section 4(b) of the Omnibus Rules Implementing the Labor Code; *Purefoods Corporation v. Nagkakaisang Samahang Manggagawa ng Purefoods Rank-and-File,* G.R. No. 150896, 28 August 2008, 563 SCRA 471, 480-481.

[29] *Golden Ace Builders v. Talde,* G.R. No. 187200, 5 May 2010, 620 SCRA 283, 288-289 citing *Macasero v. Southern Industrial Gases Philippines,* G.R. No. 178524, 30 January 2009, 577 SCRA 500, 506-507.

Indeed, while we have found that the closure of Digiserv was undertaken in bad faith, badges thereof evident in the timing of Digiserv's closure, hand in hand, with I-tech's creation, the closure remains a foregone conclusion. There is no finding, and the Union makes no such assertion, that Digiserv and I-tech are one and the same corporation. The timing of Digiserv's closure and I-tech's ensuing creation is doubted, not the legitimacy of I-tech as a business process outsourcing corporation providing both inbound and outbound services to an expanded local and international *clientele*.[30]

The finding of unfair labor practice hinges on Digitel's contracting-out certain services performed by union member-employees to interfere with, restrain or coerce them in the exercise of their right to self-organization.

We have no basis to direct reinstatement of the affected employees to an ostensibly different corporation. The surrounding circumstance of the creation of I-tech point to bad faith on the part of Digitel, as well as constitutive of unfair labor practice in targeting the dismissal of the union member-employees. However, this bad faith does not contradict, much less negate, the impossibility of the employees' reinstatement because Digiserv has been closed and no longer exists.

Even if it is a possibility that I-tech, as though Digitel, can absorb the dismissed union member-employees as I-tech was incorporated during the time of the controversy with the same primary purpose as Digiserv, we would be hard pressed to mandate the dismissed employees' reinstatement given the lapse of more than seven (7) years.

This length of time from the date the incident occurred to its resolution[31] coupled with the demonstrated litigiousness of the disputants: (1) with all sorts of allegations thrown by either party against the other; (2) the two separate filings of a notice

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[30] *See* http://www.bestjobsph.com/bt-empd-itechsolutions.htm. (visited 2 October 2012).

[31] *Panday v. National Labor Relations Commission,* G.R. No. 67664, 20 May 1992, 209 SCRA 122, 126-127.

of strike by the Union; (3) the Assumption Orders of the DOLE; (4) our own finding of unfair labor practice by Digitel in targeting the union member-employees, abundantly show that the relationship between Digitel and the union member-employees is *strained*. Indeed, such discordance between the parties can very well be a necessary consequence of the protracted and branched out litigation. We adhere to the oft-quoted doctrine that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties.[32]

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.[33]

Finally, an illegally dismissed employee should be awarded moral and exemplary damages as their dismissal was tainted with unfair labor practice.[34] Depending on the factual milieu, jurisprudence has awarded varying amounts as moral and exemplary damages to illegally dismissed employees when the dismissal is attended by bad faith or fraud; or constitutes an act oppressive to labor; or is done in a manner contrary to good morals, good customs or public policy; or if the dismissal is effected in a wanton, oppressive or malevolent manner.[35]

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[32] *Velasco v. National Labor Relations Commission,* 525 Phil. 749, 761 (2006).

[33] *Golden Ace Builders v. Talde, supra* note 29 at 289-290.

[34] *Purefoods Corporation v. Nagkakaisang Samahang Manggagawa ng Purefoods Rank-and-File, supra* note 28 at 480; *Quadra v. Court of Appeals,* 529 Phil. 218, 224-225 (2006) citing *Nueva Ecija I Electric Cooperative, Inc. (NEECO I) Employees Association v. National Labor Relations Commission,* 380 Phil. 44, 57-58 (2000).

[35] *Woodridge School v. Pe Benito,* G.R. No. 160240, 29 October 2008, 570 SCRA 164, 186.

In *Nueva Ecija I Electric Cooperative, Inc. (NEECO I) Employees Association v. National Labor Relations Commission,* we intoned:

> Unfair labor practices violate the constitutional rights of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect; and disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. As the conscience of the government, it is the Court's sworn duty to ensure that none trifles with labor rights.[36]

We awarded moral damages in the amount of ₱10,000.00 and likewise awarded ₱5,000.00 as exemplary damages for each dismissed employee.

In the recent case of *Purefoods Corporation v. Nagkakaisang Samahang Manggagawa ng Purefoods Rank-and-File,*[37] we awarded the aggregate amount of ₱500,000.00 as moral and exemplary damages to the illegally dismissed union member-employees which exact number was undetermined.

In the case at hand, with the Union's manifestation that only 13 employees remain as respondents, as most had already accepted separation pay, and consistent with our finding that Digitel committed an unfair labor practice in violation of the employees' constitutional right to self-organization, we deem it proper to award each of the illegally dismissed union member-employees the amount of ₱10,000.00 and ₱5,000.00 as moral and exemplary damages, respectively.

WHEREFORE, the Petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. SP No. 91719 is **AFFIRMED**, while the Decision in CA-G.R. SP No. 94825 declaring the dismissal of affected union member-employees as illegal is **MODIFIED** to include the payment of moral and exemplary damages in amount of ₱10,000.00 and ₱5,000.00, respectively, to

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[36] *Supra* note 34 at 57-58.

[37] *Supra* note 28 at 481.

each of the thirteen (13) illegally dismissed union-member employees.

Petitioner Digital Telecommunications Philippines, Inc. is **ORDERED** to pay the affected employees backwages and separation pay equivalent to one (1) month salary, or one-half (1/2) month pay for every year of service, whichever is higher.

Let this case be **REMANDED** to the Labor Arbiter for the computation of monetary claims due to the affected employees.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186592. October 10, 2012]

GOVERNOR ENRIQUE T. GARCIA, JR., AURELIO C. ANGELES, JR., EMERLINDA S. TALENTO, and RODOLFO H. DE MESA, *petitioners, vs.* **LEO RUBEN C. MANRIQUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; TWO KINDS OF PUBLICATION PUNISHABLE WITH CONTEMPT.— [T]here are two kinds of publications relating to court and to court proceedings which can warrant the exercise of the power to punish for contempt: (1) that which tends to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding; and (2) that which tends to degrade the courts and to destroy public confidence in them or that which tends to bring them in any way into disrepute.

2. ID.; ID.; ID.; ID.; THE SUBJECT ARTICLE FALLS UNDER THE SECOND TYPE OF CONTEMPTUOUS PUBLICATION.— We find the subject article illustrative of the second kind of contemptuous publication for insinuating that this Court's issuance of TRO in G.R. No. 185132 was founded on an illegal cause. The glaring innuendos of illegality in the article is denigrating to the dignity of this Court and the ideals of fairness and justice that it represents. It is demonstrative of disrespect not only for this Court, but also for the judicial system as a whole, tends to promote distrust and undermines public confidence in the judiciary by creating the impression that the Court cannot be trusted to resolve cases impartially. This Court has always exercised utmost restraint and tolerance against criticisms on its decisions and issuances, bearing in mind that official actions are subject to public opinion as a means of ensuring accountability. Manrique's article, however, has transgressed the ambit of fair criticism and depicted a legitimate action of this Court as a reciprocated accommodation of the petitioners' interest. Contrary to Manrique's claim of objectivity, his article contained nothing but baseless suspicion and aspersion on the integrity of this Court, calculated to incite doubt on the mind of its readers on the legality of the issuance. It did not simply dwell on the propriety of the issuance on the basis of some sound legal criteria nor did it simply blame this Court of an irregularity in the discharge of duties but of committing the crime of bribery. The article insinuated that processes from this Court may be obtained for reasons other than that their issuance is necessary to the administration of justice. Judging from the title alone, "*TRO ng Korte Suprema binayaran ng ₱20M?*" the article does not aim for an academic discussion of the propriety of the issuance of the TRO but seeks to sow mistrust in the dispositions of this Court. To suggest that the processes of this Court can be obtained through underhand means or that their issuance is subject to negotiation and that members of this Court are easily swayed by money is a serious affront to the integrity of the highest court of the land. Such imputation smacks of utter disrespect to this Court and such temerity is deserving of contempt.

3. ID.; ID.; ID.; ID.; ID.; WHERE AN ARTICLE NO LONGER PARTAKES OF AN ADVERSE CRITICISM OF AN OFFICIAL

ACT BUT AN ATTEMPT TO MALIGN THE REPUTATION OF THE COURT.— There is thus a need to distinguish between adverse criticism of the court's decision after the case has ended and scandalizing the court itself. The latter is not criticism; it is personal and scurrilous abuse of a judge as such, in which case it shall be dealt with as a case for contempt. A reading of the subject article shows that Manrique was not simply passing judgment on an official act of the Court. He was actually intimating that the petitioners were able to obtain a TRO through illicit means, with the complicity of this Court. As he hurls accusation of corruption against petitioners, he also unfairly smeared the reputation of this Court by stirring the idea that one or some members of this Court yield to said illegal act. By no means can such an imputation be justified by mere curiosity or suspicion. That he was only mulling on the thought that such an illegal act transpired does not make his insinuation any less contemptuous. Manrique's article no longer partakes of an adverse criticism of an official act but an indecent attempt to malign the petitioners which ultimately brought equal harm to the reputation of this Court.

4. ID.; ID.; ID.; ID.; MALICIOUS PUBLICATIONS CANNOT SEEK THE PROTECTION OF THE CONSTITUTIONAL GUARANTIES OF FREE SPEECH AND PRESS.— Manrique tries to invoke the protection of the constitutional guaranties of free speech and press, albeit unpersuasively, to extricate himself from liability. However, said constitutional protection is not a shield against scurrilous publications, which are heaved against the courts with no apparent reason but to trigger doubt on their integrity based on some imagined possibilities. Contrary to nourishing democracy and strengthening judicial independence, which are the expected products of the guaranties of free speech and press, the irresponsible exercise of these rights wounds democracy and leads to division. x x x Freedom of speech is not absolute, and must occasionally be balanced with the requirements of equally important public interests, such as the maintenance of the integrity of the courts and orderly functioning of the administration of justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, of viable independent institutions

for delivery of justice which are accepted by the general community. Certainly, the making of contemptuous statements directed against the Court is not an exercise of free speech; rather, it is an abuse of such right. Unwarranted attacks on the dignity of the courts cannot be disguised as free speech, for the exercise of said right cannot be used to impair the independence and efficiency of courts or public respect therefore and confidence therein. Therefore, Manrique's article, lacking in social value and aimed solely at besmirching the reputation of the Court, is undeserving of the protection of the guaranties of free speech and press.

APPEARANCES OF COUNSEL

Aurelio C. Angeles, Jr. for petitioners.

D E C I S I O N

REYES, *J.*:

This is a Petition for Indirect Contempt under Rule 71 of the Rules of Court filed against respondent Leo Ruben C. Manrique (Manrique) for allegedly publishing statements which tend to directly impede, obstruct or degrade the administration of justice.

Factual Antecedents

The instant case stemmed from an article in *Luzon Tribune*, a newspaper of general circulation wherein respondent Manrique is the publisher/editor, which allegedly contained disparaging statements against the Supreme Court.

The petitioners, namely: Governor Enrique T. Garcia, Jr. (Gov. Garcia), Aurelio C. Angeles, Jr. (Angeles), Emerlinda S. Talento (Talento) and Rodolfo H. De Mesa (De Mesa) alleged that the subject article undermines the people's faith in the Supreme Court due to blunt allusion that they employed bribery in order to obtain relief from the Court, particularly in obtaining a temporary restraining order (TRO) in G.R. No. 185132. The pertinent portions of the article which was entitled, "*TRO ng Korte Suprema binayaran ng ₱20-M?*" and published in the

January 14 to 20, 2009 issue of the *Luzon Tribune*, are reproduced as follows:[1]

Bukod sa mga kontrobersiya na bumabalot ngayon sa Korte Suprema dahil sa isyu ng umano'y pagpapatalsik kay Chief Justice Renato Puno*, hindi maalis sa isip ng ilang Bataeño ang pagtatanong kung totoo nga kayang binayaran ng kampo ni* Bataan Governor Enrique Garcia, Jr. *ang isa o ilang Mahestrado ng Korte upang mag-isyu ng* Temporary Restraining Order *ang Korte na humarang sa implementasyon ng anim na buwang suspensyon ng Punong Lalawigan.*

Marami umano ang nagdududa kung papaano nakakuha ng TRO si Garcia gayung malinaw na ang kaso ay kasalukuyang dinidinig noon ng Court of Appeals*. Ito umano ay paglabag sa tinatawag na* Forum Shopping.

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Dalawang Division *ng* Court of Appeals *ang tumanggi na dinggin ang petisyon ni Garcia para sa TRO hanggang sa dininig ito ng isang* division. *Nagpadala ng liham ang* Court of Appeals *sa mga magkakatunggaling partido upang simulang dinggin ang kaso. Nakapagtataka umano kung bakit hindi ito binigyang galang ng Korte Suprema.*

Nang inilabas ng Korte ang TRO, malinaw na naihain na ang suspension order *kay Garcia ng DILG kaya't opisyal ng epektibo ang suspensyon. Ano pa ba kaya ng na-TRO gayung sinisimulan na ni Garcia ang kanyang suspensyon.*

May mga nagsasabing binayaran umano ng hanggang sa [₱]20-Milyon ang isang mahestrado ng Korte upang pagbigyan ang kahilingan ni Garcia.

Madiin naman itong itinanggi ni Garcia at nagsabing hindi dapat bahiran ng dumi ang Korte Suprema at dapat igalang ang desisyon nito.

Gayunpaman, marami ang nagtataka at laging nakakakuha ng TRO sa Korte Suprema si Garcia lalu na sa mga mahahalagang kasong kanyang hinaharap.

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[1] *Rollo*, p. 23.

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Ang kompiyansa ni Garcia umano ay kitang-kita sa mga miting kung saan siya ay nagsasalita na kayang-kaya niyang lusutan ang lahat ng mga kaso niya at maging kung mayroon pang kasunod na mga kaso na isasampa sa kanya.

Kaya naman hindi maalis ng ilan ang magduda na ang taong gipit sa kaso ay maaaring magbayad ng milyung-milyon piso upang upuan ng Korte Suprema ang kaso at manatiling habang buhay ang TRO.

Prior to the publication of the foregoing article, two (2) interrelated petitions were filed before this Court, docketed as G.R. Nos. 185132 and 181311, entitled *Governor Enrique T. Garcia, Jr. v. Court of Appeals, et al.* and *Province of Bataan v. Hon. Remigio M. Escalada*, respectively.

In G.R. No. 185132, the Provincial Government of Bataan ordered for the conduct of a tax delinquency sale of all the properties of Sunrise Paper Products Industries, Inc. (Sunrise) situated in Orani, Bataan. When no public bidder participated in the delinquency sale, the provincial government acquired all the properties of Sunrise which consisted of machineries and equipment, including the parcel of land where the factory stood. Subsequently, Sunrise filed a petition for injunction which was docketed as Civil Case No. 8164, to annul the auction sale and prevent the provincial government from consolidating its title over the properties. Two (2) other creditors of Sunrise intervened in the proceedings. The provincial government entered into a compromise agreement with Sunrise and the intervening creditors and thereafter filed a motion to dismiss Civil Case No. 8164. However, the trial court refused to dismiss the case and proceeded to hear the same on the merits. Subsequently, it rendered a Decision dated June 15, 2007, which was thereafter challenged in another petition docketed as G.R. No. 181311.

Meanwhile, former workers of Sunrise, namely: Josechito B. Gonzaga (Gonzaga), Ruel A. Magsino (Magsino) and Alfredo B. Santos (Santos), filed criminal and administrative charges against petitioners Gov. Garcia, Angeles, Talento and De Mesa, among others, before the Office of the Ombudsman, docketed

as OMB-L-A-08-0039-A. Subsequently, Deputy Ombudsman Orlando S. Casimiro (Ombudsman Casimiro) issued an Order dated October 28, 2008, preventively suspending the petitioners.

Unyielding, the petitioners filed a petition for *certiorari* with the Court of Appeals (CA), assailing the Order dated October 28, 2008 of Ombudsman Casimiro, with an urgent prayer for the issuance of a TRO and a writ of preliminary injunction. The CA, however, deferred the resolution of the prayer for the issuance of TRO and instead issued Resolution dated November 14, 2008, requiring Gonzaga, Magsino and Santos to file a comment. Dissatisfied with the action of the CA, the petitioners filed a petition for *certiorari*, prohibition and *mandamus* with urgent prayer for the issuance of a TRO and writ of preliminary injunction with this Court, which was docketed as G.R. No. 185132. On November 19, 2008, this Court issued a TRO enjoining the public respondents in OMB-L-A-08-0039-A from implementing the Order dated October 28, 2008 of Ombudsman Casimiro, specifically the order for the petitioners' preventive suspension, until further orders of the Court. The issuance of this TRO is the incident mentioned in Manrique's article.

In his Comment,[2] Manrique alleged that there was nothing malicious or defamatory in his article since he only stated the facts or circumstances which attended the issuance of the TRO. He likewise denied that he made any degrading remarks against the Supreme Court and claimed that the article simply posed academic questions. If the article ever had a critical undertone, it was directed against the actions of the petitioners, who are public officers, and never against the Supreme Court. At any rate, he asseverated that whatever was stated in his article is protected by the constitutional guaranties of free speech and press.

The subject article falls under the second type of contemptuous publication.

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[2] *Id.* at 30-35.

The pivotal issue in this case is whether the contents of Manrique's article would constitute indirect contempt under Section 3(d), Rule 71 of the Rules of Court which reads:

> (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice[.]

The power to punish for contempt is inherent in all courts as it is indispensable to their right of self-preservation, to the execution of their powers, and to the maintenance of their authority; and consequently to the due administration of justice.[3] It must however be exercised on the preservative not vindictive principle, and on the corrective not retaliatory idea of punishment. The courts must exercise the power to punish for contempt for purposes that are impersonal, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.[4]

The power to punish for contempt does not, however, render the courts impenetrable to public scrutiny nor does it place them beyond the scope of legitimate criticism. Every citizen has the right to comment upon and criticize the actuations of public officers and such right is not diminished by the fact that the criticism is aimed at judicial authority.[5] It is the cardinal condition of all such criticisms however that it shall be

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[3] *Garcia v. Court of Appeals*, 330 Phil. 420, 435 (1996), citing *In re Kelly*, 35 Phil. 944, 950 (1916); *In re Lozano and Quevedo*, 54 Phil. 801 (1930); *Slade Perkins v. Director of Prisons*, 58 Phil. 271 (1933); *Commissioner of Immigration v. Hon. Cloribel*, 127 Phil. 716 (1967).

[4] *Oclarit v. Paderangga*, 403 Phil. 146, 153-154 (2001), citing *Commissioner of Immigration v. Cloribel*, 127 Phil. 716 (1967); *Nazareno v. Hon. Barnes*, 220 Phil. 451, 463 (1985); *Atty. Pacuribut v. Judge Lim, Jr.*, 341 Phil. 544, 548 (1997); *Austria v. Hon. Masaquel*, 127 Phil. 677, 690-691 (1967); *Angeles v. Gernale, Jr.,* A.M. No. P-96-1221, June 19, 1997, 274 SCRA 10.

[5] *In re Almacen*, G.R. No. L-27654, February 18, 1970, 31 SCRA 562, 576, citing *United States v. Bustos*, 37 Phil. 731 (1918); *In re Gomez*, 43 Phil. 376 (1922); *Salcedo v. Hernandez*, 61 Phil. 724 (Malcolm, J., dissenting); *Austria v. Hon. Masaquel*, *id.*; *Cabansag v. Fernandez*, *et al.*, 102 Phil. 152 (1957).

bona fide, and shall not spill the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand; and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty to respect courts[6] and therefore warrants the wielding of the power to punish for contempt.

In his erudite dissenting opinion in *People v. Alarcon*,[7] which was impliedly adopted in subsequent cases dealing with contempt,[8] Justice Manuel V. Moran noted the two kinds of publication which are punishable with contempt, to wit:

> Contempt, by reason of publications relating to court and to court proceedings, are of two kinds. A publication which tends to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding, constitutes criminal contempt which is summarily punishable by courts. This is the rule announced in the cases relied upon by the majority. *A publication which tends to degrade the courts and to destroy public confidence in them or that which tends to bring them in any way into disrepute, constitutes likewise criminal contempt, and is equally punishable by courts*. In the language of the majority, what is sought, in the first kind of contempt, to be shielded against the influence of newspaper comments, is the all-important duty of the courts to administer justice in the decision of a pending case. In the second kind of contempt, the punitive hand of justice is extended to vindicate the courts from any act or conduct calculated to bring them into disfavor or to destroy public confidence in them. In the first, there is no contempt where there is no action pending, as there is no decision which might in any way be influenced by the newspaper publication. In the second, the contempt exists, with or without a pending case, as what is sought to be protected is the court itself and its dignity. x x x Courts would lose their utility if public confidence in them is destroyed.[9] (Italics ours)

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[6] *Id.* at 580.

[7] 69 Phil. 265 (1939).

[8] *People v. Godoy*, 312 Phil. 977, 1012 (1995), citing *In re Francisco Brillantes*, 42 O.G. 59; *In re Almacen*, *supra* note 5.

[9] *Supra* note 7, at 274-275, citing 12 Am. Jur. pp. 416-417.

Succinctly, there are two kinds of publications relating to court and to court proceedings which can warrant the exercise of the power to punish for contempt: (1) that which tends to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding; and (2) that which tends to degrade the courts and to destroy public confidence in them or that which tends to bring them in any way into disrepute.

We find the subject article illustrative of the second kind of contemptuous publication for insinuating that this Court's issuance of TRO in G.R. No. 185132 was founded on an illegal cause. The glaring innuendos of illegality in the article is denigrating to the dignity of this Court and the ideals of fairness and justice that it represents. It is demonstrative of disrespect not only for this Court, but also for the judicial system as a whole, tends to promote distrust and undermines public confidence in the judiciary by creating the impression that the Court cannot be trusted to resolve cases impartially.[10]

This Court has always exercised utmost restraint and tolerance against criticisms on its decisions and issuances, bearing in mind that official actions are subject to public opinion as a means of ensuring accountability. Manrique's article, however, has transgressed the ambit of fair criticism and depicted a legitimate action of this Court as a reciprocated accommodation of the petitioners' interest. Contrary to Manrique's claim of objectivity, his article contained nothing but baseless suspicion and aspersion on the integrity of this Court, calculated to incite doubt on the mind of its readers on the legality of the issuance. It did not simply dwell on the propriety of the issuance on the basis of some sound legal criteria nor did it simply blame this Court of an irregularity in the discharge of duties but of committing the crime of bribery. The article insinuated that processes from this Court may be obtained for reasons other than that their issuance is necessary to the administration of justice. Judging

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[10] *In Re: Published Alleged Threats against Members of the Court in the Plunder Case Hurled by Atty. Leonard De Vera*, 434 Phil. 503, 510 (2002), citing *Nestle Philippines, Inc. v. Hon. Sanchez*, 238 Phil. 543 (1987).

from the title alone, "*TRO ng Korte Suprema binayaran ng ₱20M?*" the article does not aim for an academic discussion of the propriety of the issuance of the TRO but seeks to sow mistrust in the dispositions of this Court. To suggest that the processes of this Court can be obtained through underhand means or that their issuance is subject to negotiation and that members of this Court are easily swayed by money is a serious affront to the integrity of the highest court of the land. Such imputation smacks of utter disrespect to this Court and such temerity is deserving of contempt.

Manrique claims that he was only being critical of the actions of the petitioners as public officers and that no disrespect was meant to the Court. While he claims good faith, the contents of his article bespeak otherwise. A person's intent, however good it maybe, cannot prevail over the plain import of his speech or writing. It is gathered from what is apparent, not on supposed or veiled objectives.

The truth is we consider public scrutiny of our decisions and official acts as a healthy component of democracy. However, such must not transcend the wall of tolerable criticism and its end must always be to uphold the dignity and integrity of the justice system and not to destroy public confidence in them. In *People v. Godoy*,[11] we stressed:

> Generally, criticism of a court's rulings or decisions is not improper, and may not be restricted after a case has been finally disposed of and has ceased to be pending. So long as critics confine their criticisms to facts and base them on the decisions of the court, they commit no contempt no matter how severe the criticism may be; but when they pass beyond that line and charge that judicial conduct was influenced by improper, corrupt, or selfish motives, or that such conduct was affected by political prejudice or interest, the tendency is to create distrust and destroy the confidence of the people in their courts.[12]

There is thus a need to distinguish between adverse criticism of the court's decision after the case has ended and scandalizing

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[11] *Supra* note 8.

[12] *Id.* at 1018-1019, citing 17 C.J.S, Contempt, Sec. 25, p. 64.

the court itself. The latter is not criticism; it is personal and scurrilous abuse of a judge as such, in which case it shall be dealt with as a case for contempt.[13]

A reading of the subject article shows that Manrique was not simply passing judgment on an official act of the Court. He was actually intimating that the petitioners were able to obtain a TRO through illicit means, with the complicity of this Court. As he hurls accusation of corruption against petitioners, he also unfairly smeared the reputation of this Court by stirring the idea that one or some members of this Court yield to said illegal act. By no means can such an imputation be justified by mere curiosity or suspicion. That he was only mulling on the thought that such an illegal act transpired does not make his insinuation any less contemptuous. Manrique's article no longer partakes of an adverse criticism of an official act but an indecent attempt to malign the petitioners which ultimately brought equal harm to the reputation of this Court.

It bears stressing that the Supreme Court of the Philippines is, under the Constitution, the last bulwark to which the Filipino people may repair to obtain relief for their grievances or protection of their rights when these are trampled upon, and if the people lose their confidence in the honesty and integrity of the members of this Court and believe that they cannot expect justice therefrom, they might be driven to take the law into their own hands, and disorder and perhaps chaos might be the result.[14] Thus, the inflexible demand to adhere to the highest tenets of judicial conduct is imposed upon all members of the judiciary. They are required to keep their private as well as official conduct at all times free from all appearances of impropriety and be beyond reproach.[15]

Malicious publications cannot seek the protection of the constitutional guaranties of free speech and press.

[13] *Id.* at 1018, citing *State v. Hildreth*, 74 A. 71.

[14] *In re Sotto*, 82 Phil. 595, 602 (1949).

[15] *De la Cruz v. Judge Bersamira*, 402 Phil. 671, 680 (2001).

Manrique tries to invoke the protection of the constitutional guaranties of free speech and press, albeit unpersuasively, to extricate himself from liability. However, said constitutional protection is not a shield against scurrilous publications, which are heaved against the courts with no apparent reason but to trigger doubt on their integrity based on some imagined possibilities. Contrary to nourishing democracy and strengthening judicial independence, which are the expected products of the guaranties of free speech and press, the irresponsible exercise of these rights wounds democracy and leads to division.

In *Alarcon*, we emphasized:

> It is true that the Constitution guarantees the freedom of speech and of the press. But license or abuse of that freedom should not be confused with freedom in its true sense. Well-ordered liberty demands no less unrelaxing vigilance against abuse of the sacred guaranties of the Constitution than the fullest protection of their legitimate exercise. As important as is the maintenance of a judiciary unhampered in its administration of justice and secure in its continuous enjoyment of public confidence. x x x.[16]

Freedom of speech is not absolute, and must occasionally be balanced with the requirements of equally important public interests, such as the maintenance of the integrity of the courts and orderly functioning of the administration of justice.[17] For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, of viable independent institutions for delivery of justice which are accepted by the general community.[18]

Certainly, the making of contemptuous statements directed against the Court is not an exercise of free speech; rather, it

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[16] Justice Manuel V. Moran, Dissenting Opinion, *People v. Alarcon*, *supra* note 7, at 275-276.

[17] *In Re: Published Alleged Threats against Members of the Court in the Plunder Case Hurled by Atty. Leonard De Vera*, *supra* note 10, at 508, citing *Zaldivar v. Gonzales*, G.R. Nos. 79690-707, October 7, 1988, 166 SCRA 316, 354.

[18] *Zaldivar v. Gonzales*, *id*.

is an abuse of such right. Unwarranted attacks on the dignity of the courts cannot be disguised as free speech, for the exercise of said right cannot be used to impair the independence and efficiency of courts or public respect therefore and confidence therein.[19] Therefore, Manrique's article, lacking in social value and aimed solely at besmirching the reputation of the Court, is undeserving of the protection of the guaranties of free speech and press.

The critical role of the Supreme Court as the court of last resort renders it imperative that it maintains the ideals of neutrality, integrity and independence, the characteristics in which the people's trust and confidence are built, alive and unscathed. Thus, justices and judges alike are constantly reminded to live up to the stringent standards of the profession or else suffer the consequences. In return, the people are expected to respect and abide by the rulings of this Court and must not be instrumental to its disrepute.

WHEREFORE, in view of the foregoing disquisitions, respondent Leo Ruben C. Manrique is hereby adjudged **GUILTY** of **INDIRECT CONTEMPT** and is ordered to pay a fine of Twenty Thousand Pesos (₱20,000.00).

SO ORDERED.

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

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[19] *In Re: Published Alleged Threats against Members of the Court in the Plunder Case Hurled by Atty. Leonard De Vera*, *supra* note 10, at 508.

FIRST DIVISION

[G.R. No. 188571. October 10, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARICAR BRAINER *y* MANGULABNAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, PRESENT IN CASE AT BAR.— For the successful prosecution of illegal sale of dangerous drugs, the following elements must be established: (1) the identity 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 is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti.* The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. In other words, 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 exchange of money and drugs between the buyer and the seller takes place. A review of the records of this case reveals that the prosecution was able to prove all the essential elements of illegal sale of *shabu.* PO2 Gatdula, the poseur-buyer, was able to positively identify Brainer as the person who sold to him the plastic sachet containing white crystalline substance, later determined to be *shabu*, for the sum of ₱1,000.00, during a legitimate buy-bust operation. As the RTC expressly observed, Gatdula's narration of the circumstances leading to the consummation of the sale of illegal drugs and the arrest of Brainer was given in a clear, positive, and straightforward manner.

2. ID.; ID.; NON-COMPLIANCE WITH SECTION 21 OF R.A. 9165 CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— Non-compliance by the buy-bust team with Section 21, Article II of Republic Act No. 9165 was raised for the

first time by Brainer in her appeal before this Court. Settled rule is that no question will be entertained on appeal unless it had been raised in the court below. Points of law, theories, issues, and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal.

3. ID.; ID.; SAVING MECHANISM FOR NOT COMPLYING STRICTLY WITH THE PROCEDURE IN SECTION 21 OF R.A. 9165, APPLIED.— The Court calls Brainer's attention to Section 21(a) of the Implementing Rules and Regulations which expounds on how Section 21, Article II of Republic Act No. 9165 is to be applied and, notably, also provides for a saving mechanism in case the procedure laid down in the law was not strictly complied with, to wit: x x x **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**. This Court has already ruled in several cases that the failure of the arresting officer to comply strictly with Section 21 of Republic Act No. 9165 is not fatal. It will not render the arrest of the accused illegal or the items seized or confiscated from him inadmissible. What is of utmost important is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

4. ID.; ID.; UNBROKEN CHAIN OF CUSTODY OVER THE *SHABU* SEIZED FROM THE ACCUSED, ESTABLISHED.— In this case, the prosecution adequately established that there was an unbroken chain of custody over the *shabu* seized from Brainer: *First,* during the buy-bust operation, Brainer handed over a green Safeguard soap box, inside of which was a small transparent plastic sachet containing white crystalline substance, to PO2 Gatdula upon the latter's payment of ₱1,000.00. *Second*, after Brainer's arrest, PO2 Gatdula marked the green Safeguard soap box, with the small transparent plastic sachet containing the white crystalline substance still inside said soap box. The marked soap box

was always in PO2 Gatdula's custody. Upon reaching the police station, PO2 Gatdula removed the small transparent plastic sachet containing white crystalline substance from the marked soap box, and marked the sachet itself with "MMB." *Third*, Police Inspector David, as SAID-SOTU Chief, prepared the Request for Laboratory Examination, and said Request, together with the small transparent plastic sachet marked "MMB" containing white crystalline substance, was delivered by PO2 Mercado to the PNP Crime Laboratory, where it was received by Police Inspector and Forensic Chemical Officer Reyes. In her Chemistry Report No. D-1158-04, Police Inspector and Forensic Chemical Officer Reyes confirmed that the marked item seized from Brainer was positive for *methylamphetamine hydrochloride* or *shabu*. And *fourth*, the small transparent plastic sachet marked with "MMB" and the white crystalline substance it contains were presented and identified in open court by PO2 Gatdula. PO2 Gatdula confirmed that these were the very items confiscated from Brainer and the marking "MMB" on the small transparent plastic sachet was his own handwriting.

5. ID.; ID.; PENALTY FOR ILLEGAL SALE OF DANGEROUS DRUGS.— [T]here is no reason for the Court to disturb the findings of the RTC, as affirmed *in toto* by the Court of Appeals. There is evidence beyond reasonable doubt that Brainer is guilty of the offense of illegal sale of dangerous drug, as defined and penalized under Section 5, Article II of Republic Act No. 9165 x x x Hence, the RTC, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00 upon Brainer.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Dulcisima S. Lotoc for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated July 23, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02463, which affirmed the Decision[2] dated July 3, 2006 of the Regional Trial Court (RTC), Branch 2, Manila in Criminal Case No. 04-227764, finding accused-appellant Maricar M. Brainer *aka* "Cacay" (Brainer) guilty of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002."

In an Information[3] dated June 28, 2004, Brainer was charged as follows:

> That on or about June 23, 2004, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully, and knowingly sell One (1) heat-sealed transparent plastic sachet with markings "MMB" containing ONE POINT ZERO THREE THREE (1.033) grams, of white crystalline substance, containing methamphetamine hydrochloride known as "*shabu*" which is a dangerous drug.

When arraigned on October 11, 2004, Brainer pleaded not guilty to the crime charged.[4]

The prosecution presented the following version of events based on the testimonies of Police Officer (PO) 2 Leandro Gatdula (Gatdula) and Police Inspector and Forensic Chemical Officer Elisa G. Reyes (Reyes):

At around 6:00 p.m. on June 22, 2004, a confidential informant (CI) apprised PO2 Gatdula of the Western Police District,

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[1] *Rollo*, pp. 2-11; penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Amelita G. Tolentino and Japar B. Dimaampao, concurring.

[2] CA *rollo*, pp. 78-88; penned by Presiding Judge Alejandro G. Bijasa.

[3] Records, p. 1.

[4] *Id.* at 20.

Sampaloc Police Station 4 (PS4), that a certain Cacay was looking for a *shabu* buyer. PO2 Gatdula relayed the information to Police Inspector Alfredo David (David), Chief of the Station Anti-Illegal Drug-Special Operation Task Unit (SAID-SOTU), who immediately organized a buy-bust team composed of himself, PO3 Renaldo Robles (Robles), PO3 Ronaldo Intia (Intia), PO3 Jonathan Dy, PO1 Arnel Pornillosa (Pornillosa), and PO2 Gatdula as the poseur-buyer. A coordination report was faxed to the Philippine Drug Enforcement Agency stating that the entrapment would be conducted on June 22-23, 2004.[5]

Police Inspector David then gave PO2 Gatdula one ₱1,000.00 bill as buy-bust money. PO2 Gatdula marked the said ₱1,000.00 bill with his initials "GAT" and "SAID-SOTU." Police Inspector David also signed the ₱1,000.00 bill. Before the buy-bust operation, PO2 Gatdula had the marked ₱1,000.00 bill photocopied.[6]

The CI, who was in personal contact with Cacay, arranged for the transaction to take place the following day, on June 23, 2004, at the Holy Trinity Church in Calabash Road, Sampaloc, Manila.[7]

On June 23, 2004, at around 5:30 p.m., the buy-bust team, accompanied by the CI, arrived at the Holy Trinity Church compound. Only the CI and PO2 Gatdula went inside the gate of the Church, while the other team members stayed in close proximity. Brainer arrived a few minutes later and approached the CI. Brainer and the CI talked for a while. Thereafter, the CI introduced PO2 Gatdula to Brainer as the person in need of and willing to pay ₱1,000.00 for *shabu*. Since Brainer said that she already had the *shabu* with her, PO2 Gatdula handed the marked money to Brainer. After receiving the marked money, Brainer took a green Safeguard soap box from the right front pocket of her pants and informed PO2 Gatdula that the *shabu* was inside the box. PO2 Gatdula opened the soap box and saw

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[5] TSN, January 19, 2005, pp. 5-9.

[6] *Id.* at 10-15.

[7] *Id.* at 16.

inside one small transparent plastic sachet containing white crystalline substance, suspected to be *shabu*. PO2 Gatdula touched his nose, the pre-arranged signal to indicate that the transaction was completed. Two members of the buy-bust team came forward and immediately arrested Brainer. PO2 Gatdula marked the green Safeguard soap box with "MMB-1." Meanwhile, PO1 Pornillosa seized the marked money from Brainer's left pocket. Brainer was subsequently brought to PS4.[8] At the police station, PO2 Gatdula marked the small transparent plastic sachet containing white crystalline substance with "MMB."[9]

The transparent plastic sachet with "MMB" marking, containing 1.033 grams of white crystalline substance, was sent to the Crime Laboratory of the Philippine National Police (PNP) for testing. Police Inspector and Forensic Chemical Officer Reyes conducted the physical examination of the specimen and stated in her Chemistry Report No. D-1158-04[10] that the said specimen positively tested for *methamphetamine hydrochloride*, a dangerous drug.

Thus, Brainer was charged with violation of Section 5, Article II of Republic Act No. 9165.

Brainer testified in her own defense. According to Brainer, the buy-bust operation did not take place and the *shabu* allegedly confiscated during the said operation was not hers.

Brainer testified that on June 21, 2004, at around 3:00 p.m., she agreed to accompany her friend Patty to the Holy Trinity Church. Patty and her husband had a quarrel earlier and Patty asked Brainer to help talk to her husband at the Church. Brainer was about to leave the Church premises after talking to Patty's husband when somebody held her and told her not to run. Brainer did not know the person who grabbed her, but she was able to recognize some of the latter's companions as PO3 Intia (who

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[8] *Id.* at 16-22.

[9] Records, p. 2.

[10] *Id.* at 9.

was Brainer's neighbor) and PO2 Gatdula (who was introduced to her before).[11]

Brainer was ordered to board a tricycle with Patty and was told, "*Cacay, pera-pera lang ito sakay na.*"[12] Brainer was taken to PS4 where she was put in a small room. There, Brainer's wallet, bracelet, watch, and shoes were taken. Brainer asked what crime did she commit and the police officers answered that she was arrested for "drugs." When Brainer asked to see the evidence against her, PO3 Robles ordered the one called Sanchez to produce *shabu* and thereafter told Brainer, "*Ito na, Section 5 ka*." The arresting police officers then demanded that Brainer pay them ₱300,000.00, otherwise, the police officers threatened to file a case for violation of Section 5, Article II, of Republic Act No. 9165 against Brainer.[13]

When Brainer's siblings went to PS4 with ₱30,000.00, PO3 Intia said "*Kainin ni(n)yo iyan kung hindi ihulog ko kayo sa hagdanan*." The arresting police officers insisted that the ₱30,000.00 was not enough as the amount would be divided among many people. Since Brainer was unable to come up with the ₱300,000.00, she was brought to the City Jail and later criminally charged.[14]

The defense also called on several other people to testify for the defense, namely, Reynaldo Morquia (Morquia), Brainer's brother; Roque Nerecina (Nerecina), *Barangay* Chairman of *Barangay* 583 where Brainer was residing; and Evelyn Talan (Talan), a *barangay kagawad* and Brainer's friend.

Morquia corroborated Brainer's testimony regarding the arresting police officers' demand for ₱300,000.00 in exchange for Brainer's freedom. Morquia testified that the day following Brainer's arrest, a police officer went to his house, demanding ₱50,000.00 just to lower the charge against Brainer from selling

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[11] TSN, August 11, 2005, pp. 5-15.

[12] *Id.* at 12.

[13] *Id.* at 19-26.

[14] *Id.* at 38-43.

to mere possession of dangerous drugs. In the evening of June 25, 2004, Morquia and his other sister went to PS4 with ₱30,000.00, but the arresting police officers refused to accept the money. Thus, Morquia told Brainer, "*ilaban na lang natin.*"[15]

Nerecina declared that he knew Brainer since childhood as they were neighbors; and there had never been a report in the *barangay* that Brainer used or pushed illegal drugs.[16]

Talan claimed that she was the one who introduced Brainer to PO2 Gatdula when Brainer's friend was in trouble. Upon learning of Brainer's arrest sometime in 2005, Talan immediately went to PS4 to confront PO2 Gatdula. PO2 Gatdula denied that he was Brainer's arresting officer, pointing instead to PO3 Robles. Talan asked, "*Bakit naman po ganoon, sir, hindi naman pala kayo ang arresting*?" PO2 Gatdula replied that Brainer's case was turned over to him since PO3 Robles already had a lot of assigned cases. Talan also vouched that Brainer never engaged in drugs. Brainer had lived with Talan for a long time and drugs were forbidden at Talan's house.[17]

The prosecution recalled PO2 Gatdula as rebuttal witness. PO2 Gatdula admitted that he knew Talan but denied that Talan had previously introduced Brainer to him. PO2 Gatdula maintained that he was the poseur-buyer during the buy-bust operation against Brainer. PO2 Gatdula also could not remember whether or not Talan went to PS4 after Brainer's arrest.[18]

On sur-rebuttal, the defense called Edison S. Gullera (Gullera) and Brainer to the witness stand.

Gullera gave a very detailed account of the events he had witnessed. His entire testimony was summarized as follows:

[T]hat on June 21, 2004 at about 3:00 o'clock in the afternoon he was seating in front of the Holy Trinity Church located at Sampaloc,

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[15] TSN, August 25, 2005, pp. 4-10.

[16] TSN, November 16, 2005, pp. 5-8.

[17] TSN, March 1, 2006, pp. 11-17.

[18] TSN, March 29, 2006, pp. 3-4.

Manila; that he was at the Plaza waiting for his friend, Lara and then he saw an orange tricycle stopped; that two (2) female[s] alighted one was small and thin and the other a "meztiza" with short hair; that the duo entered the gate of Holy Trinity Parish and stayed near the guard's house on the left side; that he saw them talking and then a thin, tall man arrived who talked to the "*tomboy*"; that afterwards the man put his arm on the tomboy's shoulders and then the man and the woman embraced each other; that he saw the trio going outside and when they were about to step off the gutter he saw two (2) male[s] and one (1) female alighted from a blue-black vehicle which was parked on the left side of the church; that at the time he saw the trio going outside he had just crossed the street and was lighting a cigarette; that the man who was on the driver seat went at [Brainer]'s back and held her collar while the other two (2) went in front of her; that the two companion of [Brainer] stepped back and then the man ran towards Santisima Trinidad St., while the woman remained; that he heard the man behind [Brainer] uttered "*pera, pera*"; that he heard [Brainer] uttered "*Tulungan nyo po ako*," and he did nothing because he was about to leave; that then he saw the male companion already apprehended and he was boarded to a long van; that [Brainer] and the woman was boarded to blue black van; that from his position at time of the arrest of the accused which was on the right side of the plaza the accused was arrested on the left side of the gate of the Holy Trinity Parish Church; that thereafter the blue-black van followed by the long van sped away; that aside from the male and female accused did not talk to anyone else.

On cross he stated that one week after the incident the tricycle drivers stationed at Holy Trinity Church told him that somebody was looking for him and they were teasing him that he was involved in the incident. The tricycle drivers knew him because he is well known at Calabash Road. He knew the details of the incident because two days before June 21, 2004 he was paying volleyball with his friend Lara and they played volleyball on a Saturday.

On re-direct witness stated that on April 25 or 26 which was a Tuesday he was seating near a computer shop located at Santisima Trinidad St. when two (2) women approached and asked him if he was Edison; that he replied why are they looking for "Edison" and who were they; that the women answered that they will ask help from him and if he saw the incident that happened on Holy Trinity Parish; that he asked them what about the incident and the women explained, regarding the apprehension of two (2) female and one (1) male; that

they asked him to testify in court and just tell what he saw; that on June 21, 2004 it was the first time he saw accused and after talking to the two relatives of [Brainer] he went to the City Jail to talk to her and that was on April 27 or 28, a Friday; that he asked accused whether she remembers him and accused answered "I was the one who shouted for help during that time and I saw you there"; that it is only now he come to testify because the relatives asked and he pity the accused; that he did not come voluntarily because he was afraid since the tricycle boys kept on teasing him that he was involved.[19]

In her rebuttal testimony, Brainer reiterated that she knew PO2 Gatdula as they were introduced before by Talan and that she often visited PS4. Brainer avowed this time that PO2 Gatdula was not around during her arrest and it was one Sanchez who held her at the back. Brainer was certain that she was set up by Patty. Patty knew that Brainer had money because the latter's girlfriend was working in Japan. Patty had even told Brainer, "*Asenso ka na.*"[20]

The RTC promulgated its Decision on July 3, 2006. The trial court gave full faith and credit to PO2 Gatdula's straight, clear, and convincing testimony, and found that an entrapment actually took place on June 23, 2004 at the Holy Trinity Church, Sampaloc, Manila. The dispositive portion of said RTC Decision reads:

WHEREFORE, from the foregoing finding the accused, Maricar Brainer *y* Mangulabnan @ Cacay GUILTY beyond reasonable doubt of the crime charged, is hereby sentenced to life imprisonment and to pay a fine of ₱500,000 without subsidiary imprisonment in case of insolvency and to pay costs.

The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.[21]

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[19] CA *rollo*, pp. 83-84.

[20] TSN, June 21, 2006, pp. 2-4.

[21] CA *rollo*, p. 88.

On July 7, 2006, Brainer was committed at the Correctional Institution for Women in Mandaluyong City.[22]

In the meantime, Brainer appealed to the Court of Appeals. In a Decision dated July 23, 2008, the appellate court denied Brainer's appeal, ruling that PO2 Gatdula's testimony was credible. Brainer failed to show any motive why PO2 Gatdula would falsely impute a serious crime against her. Without such proof, the presumption that official duty was performed regularly prevails. The Court of Appeals decreed thus:

> WHEREFORE, the appeal is dismissed and the Decision on appeal is affirmed *in toto*.[23]

In her Brief[24] filed before the Court of Appeals, Brainer made the following assignment of errors:

I

THE HONORABLE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY AS CHARGED ON THE BASIS OF THE UNCORROBORATED TESTIMONY OF PO2 GATDULA WHICH IT GAVE FULL FAITH AND CREDIT GIVEN THE ASSUMPTION THAT HE HAD PERFORMED HIS DUTIES REGULARLY.

II

CONTRARY TO THE FINDINGS OF THE HONORABLE TRIAL COURT, THE TESTIMONY OF PO2 GATDULA WAS NOT GIVEN IN A STRAIGHT, CLEAR AND CONVINCING MANNER, AS IN FACT HE GAVE HIS TESTIMONY INDECISIVELY AS BORNE BY THE TRANSCRIPT OF STENOGRAPHIC NOTES.

III

THE HONORABLE TRIAL COURT, WITH DUE RESPECT, OVERLOOKED, MISUNDERSTOOD, MISAPPLIED SOME FACTS/ CIRCUMSTANCES OF WEIGHT AND SUBSTANCE WHICH WOULD HAVE OTHERWISE WORKED IN THE ACQUITTAL OF THE ACCUSED.

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[22] Records, p. 108.

[23] *Rollo*, p. 10.

[24] CA *rollo*, pp. 42-77.

IV

THE HONORABLE TRIAL COURT ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF THE PERCEIVED FLAWS IN THE EVIDENCE OF THE DEFENSE.[25]

Brainer filed a Supplemental Brief before this Court with a lone assignment of error, to wit:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED WAS PROVEN BEYOND REASONABLE DOUBT.[26]

There is no merit in the appeal.

Brainer is urging this Court to give credence and probative value to her testimony that no entrapment occurred on June 23, 2004 which resulted in her arrest; and that she could not have sold *shabu* to PO2 Gatdula because she knew the police officer personally. Essentially, Brainer is attacking PO2 Gatdula's credibility, asserting that the police officer was ill motivated to extract money from her.

Time and again, this Court has ruled that the evaluation by the trial court of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case. The reason for this rule is that the trial court is in a better position to decide thereon, having personally heard the witnesses and observed their deportment and manner of testifying during the trial.[27] In this case, the Court finds no reason to deviate from the foregoing rule.

For the successful prosecution of illegal sale of dangerous drugs, the following elements must be established: (1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and the payment therefor.

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[25] *Id.* at 52.

[26] *Rollo*, p. 40.

[27] *People v. Domingcil*, 464 Phil. 342, 350-351 (2004).

What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. In other words, 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 exchange of money and drugs between the buyer and the seller takes place.[28]

A review of the records of this case reveals that the prosecution was able to prove all the essential elements of illegal sale of *shabu*. PO2 Gatdula, the poseur-buyer, was able to positively identify Brainer as the person who sold to him the plastic sachet containing white crystalline substance, later determined to be *shabu*, for the sum of ₱1,000.00, during a legitimate buy-bust operation. As the RTC expressly observed, Gatdula's narration of the circumstances leading to the consummation of the sale of illegal drugs and the arrest of Brainer was given in a clear, positive, and straightforward manner. Pertinent parts of PO2 Gatdula's testimony are reproduced below:

Asst. City Prosecutor Yap

Q So did the operation proceed?

A Yes, Sir.

Q Then what transpired?

A During that time, the confidential informant having a close contact to *alias* Cacay and the place was set at Holy Trinity Church, Calabash Road, Sir.

Q Then what time was that?

A Based on the information given by the confidential informant the time was on 6:00 p.m. of June 23, Sir.

Q So what did the team do in connection with the operation?

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[28] *People v. Arriola,* G.R. No. 187736, February 8, 2012.

A After the confidential informant relayed the information to us on or about 5:30 p.m. of June 23, we were dispatched by our Chief, Sir.

Q Did you arrive at the target area?
A Yes, Sir.

Q So what did you do in particular as poseur buyer?
A We proceeded inside the gate of [the] Holy Trinity Church together with the confidential informant, Sir.

Q Where were your other members of the operation?
A They positioned themselves closer to me together with the confidential informant, Sir.

Q So what happened next?
A After we arrived, Sir, we waited for a moment then *alias* Cacay arrived and approached the confidential informant, Sir.

Q So when this *alias* Cacay approached the confidential informant, what happened?
A The confidential informant and Cacay talked to each other, Sir.

Q How long?
A A few minutes, Sir. Then after that the confidential informant called me and introduced me to the suspect, Sir.

Q How were you introduced by the confidential informant to *alias* Cacay?
A Then he introduced me that I was the one who will buy *shabu* from her in the amount of ₱1,000.00, Sir.

Q So what was the response of this *alias* Cacay?
A And then she told me that she already brought the item, Sir.

Q So what transpired next?
A After that, sir, I gave to her the one thousand peso-bill (₱1,000.00) marked money, sir.

Q Now, what did Cacay do when you gave that to her?
A After I handed to her the one thousand peso-bill marked money, she took from her right front pocket of the maong denim pants that she was wearing a color green safeguard

soap pack and told me that the said *shabu* is inside of this pack, and when I opened this pack I saw a one small transparent plastic sachet or *shabu* and when I confirmed that it is a *shabu*, I touched my nose as a signal to my co-operatives and they approached and arrest the suspect, Sir.

x x x x x x x x x

Q Who made that marking?

A I was the one, Sir.[29]

Clear from the foregoing is that a legitimate buy-bust operation took place on June 23, 2004 at the Holy Trinity Church that ended in Brainer's arrest.

Chemistry Report No. D-1158-04 prepared by Police Inspector and Forensic Chemical Officer Reyes confirmed that the crystalline substance in the confiscated plastic sachet, weighing 1.033 grams, tested positively for *methamphetamine hydrochloride* or *shabu*.

In contrast, the RTC and the Court of Appeals were correct in not giving much weight and credence to the testimonies of the defense witnesses, these being inconsistent and illogical for the most part. The Court quotes hereunder the astute and extensive examination by the RTC of the testimonial evidence of the defense:

1. The testimony of witness Edison S. Gullera appears to be rehearsed. He was too quick in answering questions and it was uncanny that he knew and saw everything. He knew too much and there seems to be no reason why he should be too engrossed with the activity of [Brainer] at the time. In fact he did not do anything when she allegedly shouted for help. He turned his back. He left without waiting for his date, Lara. He tried to dovetail all the allegation of [Brainer] even to the extent of hearing the word "*Pera Pera,*" considering that he was allegedly observing from a distance. If indeed he took pity on [Brainer] he should have at least exerted efforts to help her either by reporting the incident to the local "*barangay*" or asking the person there if someone knows her and ultimately looking for her relatives. Likewise, there was no documentary proof whatsoever that after

[29] TSN, January 19, 2005, pp. 15-19.

talking to the two (2) women he came to visit accused at the Manila City [Jail].

His testimony was replete with details which could be believed if his testimony was given at most a week after the incident, not two (2) years ago unless of course he was guided by something. The transcript of accused testimony perhaps? Thus witness appears to be intelligent and no visible means of livelihood, he is jobless.

2. Aside from the bare testimony of Mrs. Talan there is no documentary evidence to show that PO2 Gatdula is assigned in the office of PS-4 as an investigator only and not as an operative in the field. At the bottom portion of the Booking Sheet and Arrest Report of accused it is clearly indicated that he was the Arresting Officer.

3. It was only an afterthought that accused denied the participation of PO2 Gatdula as a poseur-buyer since from her initial testimony she saw Gatdula as one of the companions of the person who held her back. She initially identified Intia and Gatdula as the persons who accompanied the one who held her.

Testimony of accused, pages 13 &14.

Q And you said that you were able to recognize one of the companions of this person who accosted you, would you tell us what is the name of that person, Miss Witness?

The Witness

A Roland Intia, sir.

x x x x x x x x x

Q Now, who else among the companion of Sanchez that you recognized?

A *Kilala ko rin po si Gatdula, sir.*

She is even quick in pointing PO Intia as having an axe to grind because of a certain Cheng, her former girlfriend (accused is a lesbian). This was never corroborated. Accused has no visible means of livelihood and that she is blaming the whole world for her predicament. Accused also pictured Patty to be almost feeding from her hands yet she suspected Patty of putting her down. The big question is what will Patty gain by that?

4. The innocence of accused was put in issue when her alleged brother, Reynaldo Morquia haggled with the police from the demand of a big amount to a low of ₱30,000.00.

Demand for money by the police in exchange for freedom is now a standard defense of accused.

5. And if indeed Gatdula knew her he would voluntarily shy away from the operation much more being delegated as the poseur-buyer. Some consider policemen as dumb but not as dumb to compromise an entrapment. Nevertheless, in People v. Amable Flores, G.R. No. 80914, April 6, 1995, the Supreme Court held; "knowledge by the accused-appellant that poseur-buyer is a policeman is not a ground to support the theory that he could not have sold narcotics to the latter. Drugs are sold to police officers nowadays," some users, if not pushers, in fact.[30]

The defense utterly failed to prove any ill motive on PO2 Gatdula's part which would have spurred the police officer to falsely impute a serious crime against Brainer. Where there is nothing to indicate that the witnesses for the prosecution were moved by improper motives, the presumption is that they were not so moved, and that their testimony is entitled to full faith and credit.[31]

Neither was Brainer able to present clear and convincing evidence of frame-up and extortion to overturn the presumption that PO2 Gatdula regularly performed his duty. In *People v. Uy,*[32] the Court enunciated the following position:

We are not unaware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilian[s]. However, like alibi, frame-up is a defense that has been invariably viewed by the Court with disfavor as it can be easily concocted [and] hence commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well being of society, if the

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[30] CA *rollo*, pp. 85-87.

[31] *People v. Pacis*, 434 Phil. 148, 159 (2002).

[32] 392 Phil. 773, 788 (2000).

courts, [rely] solely on the basis of the policemen's alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists. x x x. (Citations omitted.)

The Court further pronounced in *People v. Capalad*[33] that:

Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit. (Citations omitted.)

Besides, the Court notes that even when Brainer alleges herein that PO2 Gatdula and the rest of the buy-bust team tried to extort money from her, Brainer did not pursue any administrative case against said police officers.

In a further attempt to exculpate herself of the criminal charge against her, Brainer alleges that the buy-bust team did not strictly comply with Section 21, Article II of Republic Act No. 9165.

Non-compliance by the buy-bust team with Section 21, Article II of Republic Act No. 9165 was raised for the first time by Brainer in her appeal before this Court. Settled rule is that no question will be entertained on appeal unless it had been raised in the court below. Points of law, theories, issues, and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal.[34]

At any rate, there is little merit in Brainer's arguments on this matter that would warrant a reversal of the judgment of

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[33] G.R. No. 184174, April 7, 2009, 584 SCRA 717, 727.

[34] *Santos v. People*, 520 Phil. 58, 69 (2006).

conviction rendered against her by the RTC and affirmed by the Court of Appeals.

In every prosecution for the illegal sale of prohibited drugs, the presentation of the drug, *i.e.*, the *corpus delicti*, as evidence in court is material. In fact, the existence of the dangerous drug is crucial to a judgment of conviction. It is, therefore, indispensable that the identity of the prohibited drug be established beyond doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[35]

Section 21, Article II of Republic Act No. 9165 lays down the procedure for the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs, among other things. Paragraph 1 thereof reads:

> (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.

Brainer contends that the item allegedly seized and confiscated from her was not immediately marked after her arrest. Per PO2 Gatdula's testimony, he only marked the green Safeguard soap box, purportedly containing a small transparent plastic sachet, at the crime scene; and he marked the small transparent plastic sachet at the police station. Brainer added that there was no physical inventory and photograph of the item supposedly seized and confiscated from her.

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[35] *People v. Guiara,* G.R. No. 186497, September 17, 2009, 600 SCRA 310, 328-333.

The Court calls Brainer's attention to Section 21(a) of the Implementing Rules and Regulations which expounds on how Section 21, Article II of Republic Act No. 9165 is to be applied and, notably, also provides for a saving mechanism in case the procedure laid down in the law was not strictly complied with, to wit:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**. (Emphasis ours.)

This Court has already ruled in several cases that the failure of the arresting officer to comply strictly with Section 21 of Republic Act No. 9165 is not fatal. It will not render the arrest of the accused illegal or the items seized or confiscated from him inadmissible. What is of utmost important is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[36]

Next, Brainer tries to raise doubts on the chain of custody of the item seized and confiscated from her. Brainer argues that since no one testified as to how the alleged seized and confiscated transparent plastic sachet, containing *shabu*, reached the PNP

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[36] *People v. Abedin*, G.R. No. 179936, April 11, 2012.

Crime Laboratory, then there is reasonable suspicion whether the item physically examined by the Forensic Chemical Officer was the very same one seized and confiscated by the buy-bust team from her.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, series of 2002, which implements Republic Act No. 9165, defines "chain of custody" as follows:

> Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In this case, the prosecution adequately established that there was an unbroken chain of custody over the *shabu* seized from Brainer: *First,* during the buy-bust operation, Brainer handed over a green Safeguard soap box, inside of which was a small transparent plastic sachet containing white crystalline substance, to PO2 Gatdula upon the latter's payment of ₱1,000.00. *Second*, after Brainer's arrest, PO2 Gatdula marked the green Safeguard soap box, with the small transparent plastic sachet containing the white crystalline substance still inside said soap box. The marked soap box was always in PO2 Gatdula's custody. Upon reaching the police station, PO2 Gatdula removed the small transparent plastic sachet containing white crystalline substance from the marked soap box, and marked the sachet itself with "MMB." *Third*, Police Inspector David, as SAID-SOTU Chief, prepared the Request for Laboratory Examination, and said Request, together with the small transparent plastic sachet marked "MMB" containing white crystalline substance, was delivered by PO2 Mercado to the PNP Crime Laboratory, where it was received by Police Inspector and Forensic Chemical Officer Reyes. In her Chemistry Report No. D-1158-04, Police Inspector and Forensic Chemical Officer Reyes confirmed that the marked

item seized from Brainer was positive for *methylamphetamine hydrochloride* or *shabu*. And *fourth*, the small transparent plastic sachet marked with "MMB" and the white crystalline substance it contains were presented and identified in open court by PO2 Gatdula. PO2 Gatdula confirmed that these were the very items confiscated from Brainer and the marking "MMB" on the small transparent plastic sachet was his own handwriting.

The Court acknowledged in *People v. Cortez*[37] that a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. The Court stresses that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. There is nothing herein that would have convinced the Court that the integrity and evidentiary value of the seized items could have been jeopardized.

All told, there is no reason for the Court to disturb the findings of the RTC, as affirmed *in toto* by the Court of Appeals. There is evidence beyond reasonable doubt that Brainer is guilty of the offense of illegal sale of dangerous drug, as defined and penalized under Section 5, Article II of Republic Act No. 9165, which reads:

> SEC. 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 such transactions.

Hence, the RTC, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00 upon Brainer.

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[37] G.R. No. 183819, July 23, 2009, 593 SCRA 743, 763-765.

WHEREFORE, the instant appeal is **DENIED**. The Decision dated July 23, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02463 is **AFFIRMED** *in toto.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 189820. October 10, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO M. BASAO *alias* "Dodong," JOVEL S. APOLE, MELQUIADES L. APOLE, ESTRELITA[1] G. APOLE, ROLANDO A. APOLE *alias* "Bebot," VICENTE C. SALON, JAIME TANDAN, RENATO C. APOLE *alias* "Boboy," ROLANDO M. OCHIVILLO *alias* "Allan," LORENZO L. APOLE, JOHN DOE, PETER DOE and MIKE DOE,** *accused,* **JOVEL S. APOLE, ROLANDO A. APOLE, and RENATO C. APOLE,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ACCORDED HIGH RESPECT.— As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the

[1] Also referred to as Estrella or Esterlita in some parts of the 4 records.

various *indicia* available but not reflected on the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch – these can reveal if the witness is telling the truth or lying through his teeth. Consequently, the settled rule is that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed. The Court finds no cogent reason to disturb, and is, therefore, conclusively bound by the findings of fact and judgments of conviction rendered by the RTC, subsequently affirmed by the Court of Appeals.

2. CRIMINAL LAW; ROBBERY; ELEMENTS; ESTABLISHED IN CASE AT BAR.— The crime of robbery under Article 293 of the Revised Penal Code has the following elements: (a) intent to gain, (b) unlawful taking, (c) personal property belonging to another, and (d) violence against or intimidation of person or force upon things. Under Article 296 of the same Code, "when more than three armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band." It further provides that "[a]ny member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same." All of the foregoing elements had been satisfactorily established herein. At least five (5) people, including accused-appellants, carrying guns and a hand grenade, barged into the home of, and forcibly took pieces of jewelry and other personal properties belonging to, spouses Yatsumitsu and Emelie Hashiba. Accused-appellants themselves made their

intent to gain clear when they assured their victims that they were only after the money.

3. ID.; KIDNAPPING; ELEMENTS; PRESENT IN CASE AT BAR.— As for the crime of kidnapping, the following elements, as provided in Article 267 of the Revised Penal Code, must be proven: (a) a person has been deprived of his liberty, (b) the offender is a private individual, and (c) the detention is unlawful. The deprivation required by Article 267 means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time. It involves a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move. In other words, the essence of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation. In the present case, Yasumitsu was evidently deprived by accused-appellants of his liberty for seven days. Armed with guns and a grenade, accused-appellants and their cohorts took Yasumitsu from the latter's home in Lanuza, Surigao del Sur, to Surigao City, by car; and then all the way to Tubajon, Surigao del Norte, by boat. Accused-appellants held Yasumitsu from January 23 to January 29, 2003. During said period, Yasumitsu was unable to communicate with his family or to go home. Also during the same period, accused-appellants called Emelie several times to ask whether the ₱3,000,000.00 ransom payment was already available.

4. REMEDIAL LAW; EVIDENCE; CONSPIRACY, PRESENT.— There is conspiracy among accused-appellants and their cohorts when they kidnapped Yasumitsu. Their community of criminal design could be inferred from their arrival at the Hashiba's home already armed with weapons, as well as from their clearly designated roles upon entry into the house (*i.e.*, some served as lookouts; some accompanied Emelie to the second floor to look for jewelry, cash, and other property to take; and some guarded and hogtied the other people in the house) and in the abduction of Yasumitsu (*i.e.*, Jovel S. Apole went back to Surigao City to secure the release of the ransom money while Renato C. Apole and Rolando A. Apole stayed in Tubajon to guard Yasumitsu). The Court concurs with the RTC that "all these acts were complimentary to one another and geared toward

the attainment of a common ultimate objective to extort a ransom of three (3) million in exchange for the Japanese[’s] freedom."

5. CRIMINAL LAW; ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS COMMITTED BY A BAND; PENALTY.— In Criminal Case No. C-368, accused-appellants are convicted of the crime of Robbery with Violence Against or Intimidation of Persons Committed by a Band. The penalty prescribed for said crime under Article 294(5), in relation to Article 295 of the Revised Penal Code, is the maximum period of the penalty *prision correccional* in its maximum period to *prision mayor* in its medium period. The Indeterminate Sentence Law additionally provides that the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code. In accused-appellants' case, the maximum of the sentence should be within the range of the maximum period of *prision correccional* in its maximum period to *prision mayor* in its medium period, which shall be from eight (8) years and twenty-one (21) days to ten (10) years; while the minimum of the sentence should be within the range of *arresto mayor* in its maximum period to *prision correccional* in its medium period, which has a duration of four (4) months and one (1) day to four (4) years and two (2) months. As a result, the Court imposes upon accused-appellants the penalty of imprisonment for Four (4) years and Two (2) months of *prision correccional*, as minimum, to Ten (10) years of *prision mayor*, as maximum.

6. ID.; ID.; CIVIL LIABILITY.— The Court sustains the award of actual or compensatory, moral, and exemplary damages in favor of private complainants. Actual damages are awarded as the compensation for such pecuniary loss suffered by the complainant as he has duly proved while moral damages may be recovered if the complainant suffered, among others, mental anguish, fright, serious anxiety, and similar injuries. Exemplary damages, on the other hand, are imposed by way of example or correction for the public good and may be adjudicated in criminal cases if the crime was committed with one or more aggravating circumstances and the complainant has shown that he is entitled to moral, temperate, or compensatory damages. In this case, private complainants have duly proven that they

were robbed of their cash and jewelries, and that they felt terrified during such time, thus, entitling them to be paid actual and moral damages. Considering also that the robbery was committed with the inherent aggravating circumstance of a band, and to set an example for the public good, the award of exemplary damages is in order. The award of additional civil indemnity, however, should be deleted for lack of legal basis.

7. ID.; KIDNAPPING FOR RANSOM AND SERIOUS ILLEGAL DETENTION; PENALTY.— In Criminal Case No. C-369, where accused-appellants are convicted of the crime of Kidnapping for Ransom and Serious Illegal Detention, the Court of Appeals correctly reduced their sentence from death to *reclusion perpetua* considering the passage of Republic Act No. 9346, prohibiting the imposition of the death penalty. The Court likewise emphasizes that accused-appellants shall not be eligible for parole. Under Section 3 of Republic Act No. 9346, "[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."

8. ID.; ID.; CIVIL LIABILITY.— There is also need to modify the damages awarded in Criminal Case No. C-369 in line with prevailing jurisprudence. Accused-appellants are to pay Yasumitsu the amounts of ₱75,000.00 as civil indemnity, which is awarded if the crime warrants the imposition of the death penalty; ₱75,000.00 as moral damages, because the victim is assumed to have suffered moral injuries without need of proof; and ₱30,000.00 as exemplary damages, to set an example for the public good.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[2] dated May 29, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00428-MIN, which affirmed with modification the Joint Decision[3] dated April 20, 2006 of the Regional Trial Court (RTC), Branch 41 of Cantilan, Surigao del Sur, finding accused-appellants Jovel S. Apole, Renato C. Apole, and Rolando A. Apole guilty beyond reasonable doubt in Criminal Case Nos. C-368 (Robbery with Violence Against or Intimidation of Persons by a Band) and C-369 (Kidnapping [for Ransom] and Serious Illegal Detention).

Accused-appellants, together with seven identified co-accused, namely, Alberto M. Basao (Basao), Melquiades L. Apole, Estrelita G. Apole, Lorenzo L. Apole, Vicente C. Salon (Salon), Jaime Tandan (Tandan), and Rolando M. Ochivillo (Ochivillo), plus three other unidentified persons, were charged under the following criminal Informations:

Criminal Case No. C-368
For Robbery with Violence Against or Intimidation of Persons by a Band

That on or about the 23rd day of January, 2003 at about 7:30 o'clock in the evening, more or less, at *Barangay* Bunga, municipality of Lanuza, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to gain, and armed with a short caliber unlicensed firearms, did then and there willfully, unlawfully and feloniously, take and carry away from spouses YASUMITSU YASUDA HASHIBA and EMELIE LOPIO HASHIBA cash money amounting to Forty[-]Eight Thousand Pesos (₱48,000.00), one (1) eighteen gold carats Sapphire ring, one (1) carat emerald ring, color green, eighteen carats gold ruby ring, color red, two (2) eighteen carats wedding rings (engraved

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[2] *Rollo*, pp. 3-24; penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Elihu A. Ybañez and Ruben C. Ayson, concurring.

[3] Records, pp. 300-314; penned by Judge Romeo C. Buenaflor.

with initial E to Y and Y to E) and eighteen carats gold necklace, and other personal belongings worth more or less Thirty Thousand Pesos (₱30,000.00), in the total amount of Seventy[-]Eight Thousand Pesos (₱78,000.00), against their consent, to the damage and prejudice of Mr. and Mrs. Emelie Lopio Hashiba in the aforestated amount.

Criminal Case No. C-369
For Kidnapping (for Ransom) and Serious Illegal Detention

That on the 23rd day of January 2003 at about 7:30 o'clock in the evening, at *Barangay* Bunga, municipality of Lanuza, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, armed with unlicensed firearms, did then and there willfully, unlawfully and feloniously, kidnap one YASUMITSU YASUDA HASHIBA, 48 years old and a Japanese National to undisclosed place for the purpose of extorting ransoms, wherein the latter was detained and deprived of his liberty for the period of more than five (5) days to the damage and prejudice of said victim.[4]

Accused-appellants and their identified co-accused, except for Tandan, were arraigned. They pleaded not guilty to the criminal charges against them.[5] After the pre-trial proceedings, trial ensued.[6]

The prosecution called to the witness stand private complainant Emelie Lopio Hashiba[7] (Emelie) and her brother Crisologo Pamad Lopio (Crisologo),[8] who testified as follows:

Witness, Emelie Hashiba testified that on January 23, 2003 at 7:30 o'clock in the evening, she and her maid were cooking supper at their house at Bgy. Bunga, Lanuza, Surigao del Sur. At the sala were her husband, her three (3) children Hashiba Yuri, Hashiba Yu and Hashiba Hisayu, her mother and the son of their housemaid Loloy, five (5) men entered their house with gun pointed to her younger

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[4] *Id.* at 256-257.

[5] *Id.* at 86-96 and 189.

[6] *Id.* at 126-127.

[7] TSN, September 12, 2003.

[8] TSN, February 4, 2004.

brother, Crisologo Lopio. One of them announced and said; "Don't worry, we are NPA" (New Peoples Army) and continued to say; *"Huwag kayo matakot, pera lang ang kailangan namin,"* which means, (Do not be afraid, we only need money.) *"Hindi kayo maano."* (You will not be harmed.) All of them were terrified seeing the armed men with their guns and a hand grenade. She identified the armed men, with their height, built, complexion and the faces, except one who was wearing bonnet mask. Although she does not know their names at the time of the incident on January 23, 2003, she recognized them during the trial and identified each one of them, Jovel Apole, Renato Apole and Rolando Apole except the two (2), whom she failed to recognize as she forgot them.

Joven Apole and his companion brought Emelie Hashiba upstair at the second floor at their bedroom, which was lighted and there she was divested of money and jewelries, 2 necklace 18 k, 4 rings 14 k, opal, rubi, emerald and sapphire and 2 wedding rings, worth a total of ₱30,000.00; cash money from the wallet of ₱20,000.00 and another ₱28,000.00 from the collection of their passenger jeep, samurai sword ₱4,000.00 and icom radio, ₱5,000.00. She was asked if that was her only money and she told them "yes." She was also asked about the gun of her husband, which she denied that her husband does not possess firearm. Then Jovel Apole asked her if that was the only money they had and she answered in the affirmative.

Dissatisfied with the value of their loot, Jovel Apole and companion demanded three (3) million pesos from her with the threat that if she will not give the amount demanded they would bring with them her son.

Shortly thereafter, they went down and back to the sala where YASUMITSU HASHIBA and companions were gathered. EMELIE HASHIBA informed the accused that they could not bring her son because he was sick, so she offered herself as the hostage, but brought YASUMITSU YASUDA HASHIBA instead. Yasumitsu Hashiba vehemently objected and offered to give them the money as soon as he goes back to Japan, but the group did not agree and insisted on the three (3) million pesos. Helpless, they brought YASUMITSU HASHIBA with them after hog-tying the occupants of the house. Before they left, they again threatened EMELIE HASHIBA that if she failed to produce the three (3) million pesos, YASUMITSU HASHIBA will be killed.

Thereafter, they left riding on the Yasumitsu Hashiba's automobile towards the National Highway. Regaining composures she immediately called Yasumitsu Hashiba's father in Japan thru SMART LINK. She told him that his son was kidnapped and the kidnappers are demanding three (3) million pesos. She informed him further that if she cannot produce the money, his son will be killed to which threat the father assured her that he will be sending two (2) million pesos thru the PNB, Tandag, Surigao del Sur.

On or about 7:00 o'clock in the morning of January 24, 2003 the *Barangay* Captain of Bunga, Lanuza, Surigao del Sur who learned of the incident visited her house. The latter confronted her why she did not report the incident to the Police Station to which query she answered that she was apprehensive her husband would be killed if she reports the incident to the police.

At about 10:00 o'clock of the same day she went to the PNB Tandag to verify if the money was already deposited in the bank, but none was deposited so she went home empty handed. When she arrived home, policemen from Lanuza and Tandag, Surigao del Sur were already waiting for her. She was advised to go to Tandag for the execution of her affidavit, which she agreed.

On the 25th day the kidnappers called her but she was not around. On the 26th day of January the kidnappers again called her and instructed her to buy a cellular phone, which she obliged. With a cellular phone she was able to talk with the kidnappers while in Tandag, Surigao del Sur. They asked if the money has arrived, and she was advised not to withdraw the money in the bank and wait for further instructions. On January 27th and 28th, 2003 they again called but after these dates did not receive any call from them.

On January 29, 2003[,] a policeman from Dinagat Island informed her that her husband was released by the kidnappers. Probably thinking that it was a ploy of the kidnappers she did not go to Dinagat Island, San Jose and instead waited for her husband in a hotel in Tandag, Surigao del Sur.

Emelie Hashiba's version of the incident was corroborated by Crisologo Lopio, a younger brother of the former. He declared that he is the driver of Yasumitsu Hashiba of a passenger jitney. At six (6) P.M. on January 23, 2003, he was at the house of his parents which is only 15 meters away from his house at Bunga, Lanuza, Surigao del Sur. He watched T.V. for five (5) to ten (10) minutes

and left proceeding to the house of his sister Emelie about 30 meters from the house of his parents. Reaching the gate of the house of Emelie, which was lighted, he was met by two (2) armed men with .45 cal. pistols pointed their guns to him and told him to enter the house so that they will talk. Entering the sala, they were ordered to sit on the sala, his mother, Yasumitsu Hashiba, the 3 children of Yasumitsu Hashiba, a child of their maid, his nephew, Emelie and Mercedita were all fetched from the kitchen and brought to the sala. Then another two (2) armed men with .38 cal. revolver entered. The latter armed men guarded them at the sala, while the other two (2) brought Emelie upstairs to their bedroom. Returning to the sala with Emelie, the two men told them that they will bring the son of Yasumitsu Hashiba and to be redeemed for two (2) million. Emelie told them that the child is sick and offered herself instead but the armed men said, "We will just kidnap Yasumitsu Hashiba." Hashiba objected, and asked, he will give the money if he will be allowed to return to Japan but of no use. The armed men did not agree and after hog-tying them, they brought out of the house leaving a threat not to report to the Police otherwise, they will kill Hashiba. They left, carnapping the car owned by Yasumitsu Hashiba.

Witness Crisologo Lopio identified in Court Jovel Apole, Rolando Apole and Renato Apole and accordingly, one is at-large. After they left, Emelie told them that all her jewelries and money from her collections of their passenger jitney were taken.[9]

Both Emelie and Crisologo positively identified the three accused-appellants in court. Private complainant Yasumitsu Yasuda Hashiba (Yasumitsu) was also supposed to take the witness stand for the prosecution and identify the other accused in the case, but Yasumitsu was unable to give his testimony for lack of competent Japanese interpreters. Thus, for lack of evidence, the prosecution moved for the provisional dismissal of the charges against accused Alberto Basao, Melquiades L. Apole, Estrelita G. Apole, Lorenzo L. Apole, Vicente Salon, and Rolando Ochivillo, which the RTC granted in its Orders[10] dated May 26, 2004 and January 13, 2005.

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[9] Records, pp. 302-306, RTC Decision dated April 20, 2006.

[10] *Id.* at 158-159 and 214-216.

During their turn, the defense presented the testimonies of accused-appellants Rolando Apole[11] and Jovel Apole;[12] and dispensed with the testimony of accused-appellant Renato Apole as he would be merely corroborating those of the first two.[13] Accused-appellants denied the charges against them and proffered the following version of events:

That on January 23, 2003, Rolando Apole was brought by his cousins Jovel Apole and Renato Apole to the house of Allan Ochivillo in Lanuza, Surigao del Sur. They came from Tubajon, Dinagat Island, Surigao del Norte to Surigao City. From Surigao City, they boarded the Bachelor bus in going to Lanuza, Surigao del Sur. Arriving at three (3) o'clock in the afternoon, they went directly to the house of Allan Ochivillo. They saw Ochivillo for the first time and they were told by Ochivillo to stay, as he will go to the house of his friend married to a Japanese national. When Ochivillo returned home at 6:30 P.M., same day, they were informed that they will proceed there because the Japanese will see their map.

The four of them, Rolando, Jovel, Renato and Allan Ochivillo went to the house of the Japanese arriving there at 7:00 o'clock P.M. Allan Ochivillo went inside first followed by Jovel, while Rolando and Renato stayed outside. They were met by the Japanese wife and shook hands. Allan Ochivillo talked to the wife of the Japanese at the sala and after the Japanese signal to go up because there were children viewing T.V., Jovel brought with him the map. The Japanese, his wife, Allan and Jovel went up the second floor. They stayed there for 10 minutes, more or less, then they went down. Then Allan Ochivillo said, "let's go." The Japanese wife said; "Take care of my husband because we can still make money." She further said; "You just use my car and her[e] is the key," given to Allan Ochivillo. The car was driven by the Japanese with Allan Ochivillo in the front seat.

On the way, the Japanese looked at the map for a while and talked to Allan Ochivillo in Tagalog, "this map have signs, and there is treasure in there, a tree, fish, starfish and a mountain."

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[11] TSN, November 11, 2005 and January 31, 2006.

[12] TSN, February 21, 2006.

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

Arriving at Surigao City, they alighted at Sabang and they took a pumpboat and proceeded to the area where the treasure was to be found at Tambongan, Tubajon, while Ochivillo remained at Surigao City.

They arrived at Tambungan, Tubajon, Surigao del Norte on the 24th of January 2003. They were housed in the house of their uncle. In the afternoon, they verified and found that the treasure was already dug up, as there were signs of digging already.

On January 25, 2003, Jovel Apole arrived and informed Rolando and Renato that according to Allan Ochivillo, the wife of the Japanese will file a case against them and was told that each of them will receive ₱100,000.00 to kill the Japanese.

They did not kill the Japanese but released him in San Jose, Dinagat Island, Surigao del Norte.

Their uncle Lorenzo Apole, Estrelita Apole and Melquiades were arrested in connection with the kidnapping of the Japanese. Rolando and Renato went to the house of the brother of Police Director Gonzales at Surigao City to ask why Lorenzo, Melquiades and Estrelita Apole were arrested. Jovel Apole followed and the 3 of them went to the house of Gonzales guided by Nay Nita. They saw Melquiades, Lorenzo and Estrelita Apole in the house of Gonzales and after that they were brought to the barracks at Tandag. Then, they were charged of two cases. They denied the truth of the testimonies of Emelie Hashiba and Crisologo Lopio. They denied having robbed and kidnapped Yasumitsu Hashiba.[14]

For rebuttal, the prosecution recalled Emelie[15] and presented Ochivillo[16] as witnesses. Both prosecution witnesses refuted accused-appellants' version of events. Emelie denied seeing Ochivillo at their house or any treasure map. She added that accused-appellants carried short firearms; that when accused-appellants left with Yasumitsu, Renato C. Apole drove the car; and that the ₱3,000,000.00 would be paid within four days and would be taken from the parked car. Ochivillo, for his part, avowed that he did not know accused-appellants personally;

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[14] Records, pp. 306-308, RTC Decision dated April 20, 2006.

[15] TSN, February 21, 2006, pp. 23-28.

[16] *Id.* at 28-43.

that he had not seen a treasure map; that at the time of the incident, he was having a drinking spree with his neighbor; and that he only met accused-appellants for the first time in Tandag when he was arrested.

The cases were submitted for decision without any documentary evidence for the prosecution and the defense.[17]

On April 20, 2006, the RTC promulgated its Joint Decision, with a dispositive portion that reads:

> WHEREFORE, finding the accused JOVEL APOLE *y* SALVADOR, ROLANDO APOLE *y* ARANA, and RENATO APOLE *y* CANTORNE, guilty beyond reasonable doubt of the crimes:
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> A. For the crime of Robbery in Band in Criminal Case No. C-368, each of the accused Jovel Apole *y* Salvador, Rolando Apole *y* Arana and Renato Apole *y* Cantorne, is sentenced to suffer the indeterminate penalty of SIX (6) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *prision mayor* as minimum to EIGHT (8) YEARS, TEN (10) MONTHS and ONE (1) DAY of *prision mayor* medium as maximum; to pay the private complainants the sum of ₱78,000.00; ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages and to pay the cost.
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> B. For the crime of kidnapping for ransom and serious illegal detention in Criminal Case No. C-369, each of the accused Jovel Apole *y* Salvador, Rolando Apole *y* Arana, and Renato Apole *y* Cantorne, is sentenced to suffer the supreme penalty of death; to pay the private complainants the sum of ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages and to pay the cost.
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> In line with the decision of the Supreme Court in *People vs. Mateo*, G.R. No[s]. 147678-87, dated July 7, 2004, let this decision be forwarded to the Court of Appeals, YMCA Building, Cagayan de Oro City for automatic review within twenty (20) days but not earlier than fifteen (15) days after the promulgation of judgment. Let the living body of the convicted prisoners, Jovel Apole *y* Salvador, Rolando Apole *y* Arana and Renato Apole *y* Cantorne, be brought to the New Bilibid Prison, Muntinlupa City, on maximum security.[18]

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[17] CA *rollo*, p. 1.

[18] Records, pp. 313-314.

Pursuant to the Commitment of Final Sentence[19] issued by the RTC on May 12, 2006, accused-appellants were received and imprisoned at the New Bilibid Prison, Muntinlupa City, on even date.[20]

In the meantime, the cases were forwarded to the Court of Appeals on automatic review. Accused-appellants, represented by the Public Attorney's Office, filed their Brief[21] on January 17, 2008 while plaintiff-appellee, represented by the Office of the Solicitor General, filed its Brief[22] on May 12, 2008.

The Court of Appeals rendered its Decision on May 29, 2009, agreeing with the findings of fact and judgments of conviction of the RTC, but modifying the penalties imposed and amount of damages awarded, to wit:

> Anent the penalty imposed in Criminal Case No. C-369, the court *a quo* convicted accused-appellants with the supreme penalty of death as provided under Article 267 of the Revised Penal Code. However, with the enactment of Republic Act No. 9346 which proscribed the death penalty, the appropriate penalty for the crime of kidnapping and serious illegal detention with ransom is now *reclusion perpetua*.
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> Furthermore, under Article 100 of the Revised Penal Code, every person criminally liable for a felony is also civilly liable.
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> In the case of kidnapping for ransom, the amount of ₱50,000.00 as civil indemnity is awarded in favor of complainant Emelie Hashiba in conformity with jurisprudence. Likewise, another amount of ₱50,000.00 as civil indemnity is awarded for the crime of robbery in band.[23]

Ultimately, the appellate court decreed:

> WHEREFORE, premises foregoing, the instant appeal is hereby **DISMISSED** and the assailed Decision is hereby **AFFIRMED** with

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[19] *Rollo*, p. 30.

[20] *Id.* at 31.

[21] CA *rollo*, pp. 55-78.

[22] *Id.* at 102-133.

[23] *Rollo*, pp. 21-22.

modification insofar as the penalty imposed and the award of damages are concerned. Consequently, accused-appellants are hereby **SENTENCED** to the following:

1. For the crime of Robbery in Band in Criminal Case No. C-368, each of the accused-appellant Jovel Apole *y* Salvador, Rolando Apole *y* Arana and Renato Apole *y* Cantorne, is sentenced to suffer the indeterminate penalty of SIX (6) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *prision mayor* as minimum to EIGHT (8) YEARS, TEN (10) MONTHS and ONE (1) DAY of *prision mayor* medium as maximum; to pay the private complainants the sum of ₱78,000.00 as actual damages; ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱25,000.00 as exemplary damages and to pay the cost.

2. For the crime of Kidnapping for Ransom and Serious Illegal Detention in Criminal Case No. C-369, each of the accused Jovel Apole *y* Salvador, Rolando Apole *y* Arana, and Renato Apole *y* Cantorne, is sentenced to suffer the penalty of *reclusion perpetua*; to pay the private complainants the sum of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱25,000.00 as exemplary damages and to pay the cost.[24]

Accused-appellants now seek recourse from this Court through the instant appeal.

The Court required the parties to file their respective supplemental briefs, if they so desire, in a Resolution[25] dated December 2, 2009. However, all the parties manifested that they have exhausted their arguments before the Court of Appeals, thus, they would no longer file any supplemental brief.[26]

In their Brief, accused-appellants assigned the following errors allegedly committed by the RTC:

I.

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES

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

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

[26] *Id.* at 36-40 and 41-44.

DESPITE THEIR INHERENT INCREDIBILITIES AND IRRECONCILABLE INCONSISTENCIES.

II.

THE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[27]

Plaintiff-appellee contends that accused-appellants were correctly convicted and even prays that the civil indemnity awarded in Criminal Case No. C-369 be increased.

The appeal is bereft of merit.

In this case, accused-appellants' appeal is chiefly grounded on their challenge of the credibility of the prosecution witnesses and veracity of the latter's testimonies, to which both the RTC and the Court of Appeals gave more credence and weight.

As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch – these can reveal if the witness is telling the truth or lying through his teeth.[28]

Consequently, the settled rule is that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's

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[27] CA *rollo*, p. 57.

[28] *People v. Ramirez*, 409 Phil. 238, 245 (2001).

findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[29] Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.[30]

The Court finds no cogent reason to disturb, and is, therefore, conclusively bound by the findings of fact and judgments of conviction rendered by the RTC, subsequently affirmed by the Court of Appeals.

The testimonies of Emelie and Crisologo established beyond reasonable doubt the commission by accused-appellants of the crimes of robbery by a band and kidnapping for ransom.

The crime of robbery under Article 293 of the Revised Penal Code has the following elements: (a) intent to gain, (b) unlawful taking, (c) personal property belonging to another, and (d) violence against or intimidation of person or force upon things. Under Article 296 of the same Code, "when more than three armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band." It further provides that "[a]ny member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same."[31]

All of the foregoing elements had been satisfactorily established herein. At least five (5) people, including accused-appellants, carrying guns and a hand grenade, barged into the home of, and forcibly took pieces of jewelry and other personal properties belonging to, spouses Yatsumitsu and Emelie Hashiba. Accused-appellants themselves made their intent to gain clear when they assured their victims that they were only after the money.

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[29] *Decasa v. Court of Appeals*, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 287.

[30] *Nueva España v. People*, 499 Phil. 547, 556 (2005).

[31] *People v. Lumiwan*, 356 Phil. 521, 533 (1998).

As for the crime of kidnapping, the following elements, as provided in Article 267 of the Revised Penal Code, must be proven: (a) a person has been deprived of his liberty, (b) the offender is a private individual, and (c) the detention is unlawful.[32] The deprivation required by Article 267 means not only the imprisonment of a person, but also the deprivation of his liberty in whatever form and for whatever length of time. It involves a situation where the victim cannot go out of the place of confinement or detention or is restricted or impeded in his liberty to move. In other words, the essence of kidnapping is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation.[33]

In the present case, Yasumitsu was evidently deprived by accused-appellants of his liberty for seven days. Armed with guns and a grenade, accused-appellants and their cohorts took Yasumitsu from the latter's home in Lanuza, Surigao del Sur, to Surigao City, by car; and then all the way to Tubajon, Surigao del Norte, by boat. Accused-appellants held Yasumitsu from January 23 to January 29, 2003. During said period, Yasumitsu was unable to communicate with his family or to go home. Also during the same period, accused-appellants called Emelie several times to ask whether the ₱3,000,000.00 ransom payment was already available.

The Court rejects accused-appellants' claim that Yasumitsu went with them voluntarily. As the RTC acutely observed:

> The claim of the defense that the victim Hashiba was not kidnapped but on his volition to go with them by reason of the treasure map implying that the Japanese would join them in the treasure hunt, is a ridiculous attempt of the accused to extricate themselves from the offense they are in. This Court is not convinced. Having observed all the demeanors of the witnesses, the Prosecution's evidence is more in accord with reason and logic. The accused protestations that they sought the services of the Japanese to interpret the treasure map and finally went with them freely to Tubajon, taxes credulity.

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[32] *Id.* at 531.

[33] *People v. Baluya*, G.R. No. 181822, April 13, 2011, 648 SCRA 708, 716-717.

Simple imagination militates against such pretended defenses. Firstly, if the intention of the accused was only for the purpose of requesting the Japanese to interpret the treasure map, why would the reading and interpretation be brought to the second floor and right at the bedroom of the victim, whom it could have been done at the living room? Secondly, why only the Japanese was brought to the alleged location in Tubajon? This Court takes notice that the Japanese cannot speak Filipino language or dialect. It was even the reason why the Japanese was not able to testify because of the lack of interpreter due to the objection of the accused for the wife to interpret the supposed testimony of the Japanese. Bringing along with them the Japanese to read the treasure map is not in keeping with reason because the Japanese could not be understood. Certainly, the Japanese needs interpreter.

Again, the claim of the accused that they freely released the Japanese at San Jose after finding that the area was already dug up did not convince the Court. They released the Japanese after they knew that the authorities were looking for them and that Melquiades, Lorenzo and Estrelita Apole were already arrested.[34]

Under Article 8 of the Revised Penal Code, there is conspiracy when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances. To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[35]

[34] Records, pp. 310-311.

[35] *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 506-507.

There is conspiracy among accused-appellants and their cohorts when they kidnapped Yasumitsu. Their community of criminal design could be inferred from their arrival at the Hashiba's home already armed with weapons, as well as from their clearly designated roles upon entry into the house (*i.e.*, some served as lookouts; some accompanied Emelie to the second floor to look for jewelry, cash, and other property to take; and some guarded and hogtied the other people in the house) and in the abduction of Yasumitsu (*i.e.*, Jovel S. Apole went back to Surigao City to secure the release of the ransom money while Renato C. Apole and Rolando A. Apole stayed in Tubajon to guard Yasumitsu). The Court concurs with the RTC that "all these acts were complimentary to one another and geared toward the attainment of a common ultimate objective to extort a ransom of three (3) million in exchange for the Japanese[']s freedom."

The alleged inconsistencies or conflict in the prosecution witnesses' testimonies were already rejected by the Court of Appeals for the same only pertain to minor details which have inconsequential significance. The appellate court elaborated thus:

> Accused-appellants now insist that the conflicting testimonies of the prosecution witnesses are inconsistent thereby creating reasonable doubt as to their culpability. One such inconsistency is when Emelie allegedly testified that her husband vehemently objected to go with the assailants contrary to her statements in her affidavit that her husband voluntarily went with the malefactors in lieu of their son. Accused-appellants also allege that Emelie's testimony that there were five (5) armed men contradicted with Crisologo Lopio's testimony that there were only four (4) armed men. Accused-appellants further allege that it is rather unusual in a kidnapping situation that the kidnappers failed to give instructions as to how the ransom money would be delivered and how the victim would then be released. Likewise, it was allegedly disturbing that during the incident it was Emelie herself who gave her telephone number to the armed men and told them to call her and even offered the car instead of the [jeepney]. Accused-appellants also point out that after Emelie withdrew the ransom money from the bank, she seemed to have just lost contact with the alleged kidnappers and records allegedly failed to show that she exerted efforts to ascertain the whereabouts of her husband. x x x.

We disagree.

The above alleged inconsistencies are of minor and inconsequential importance. Both witnesses agreed and identified the three accused-appellants to have been the armed malefactors. The testimonies of the victims were straightforward and there was no showing of any ill motive on their part to falsely testify against accused-appellants. Clearly, positive identification of the accused where categorical and consistent and without any showing of ill motive on the part of the eyewitnesses testifying on the matter prevails over his defense. When there is no evidence to show any dubious reasons or improper motive why a prosecution witness would testify falsely against the accused or falsely implicate them in a heinous crime, the testimony is worthy of full faith and credit. Furthermore, issues of sufficiency of evidence are resolved by reference to findings of the trial court that are entitled to the highest respect on appeal in the absence of any clear and overwhelming showing that the trial court neglected, misunderstood or misapplied some facts or circumstances of weight and substance affecting the result of the case.[36]

In *People v. Delim*,[37] the Court further pronounced that a truth-telling witness is not always expected to give an error-free testimony considering the lapse of time and the treachery of human memory. What is primordial is that the mass of testimony jibes on material points, the slight clashing of statements dilute neither the witnesses' credibility nor the veracity of his testimony. Variations on the testimony of witnesses on the same side with respect to minor, collateral, or incidental matters do not impair the weight of their united testimony to the prominent facts. Inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses for they erase the suspicion of rehearsed testimony.

Despite affirming the judgments of conviction against accused-appellants, the Court still modifies the penalties imposed and amounts of damages awarded by the Court of Appeals.

In Criminal Case No. C-368, accused-appellants are convicted of the crime of Robbery with Violence Against or Intimidation

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[36] *Rollo,* pp. 17-19.

[37] 444 Phil. 430, 465 (2003).

of Persons Committed by a Band. The penalty prescribed for said crime under Article 294(5), in relation to Article 295 of the Revised Penal Code, is the maximum period of the penalty *prision correccional* in its maximum period to *prision mayor* in its medium period.[38] The Indeterminate Sentence Law

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[38] **ART. 294.** *Robbery with violence against or intimidation of persons – Penalties.* - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of from *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.
2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, when or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted.
3. The penalty of *reclusion temporal*, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.
4. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said Article 263.
5. **The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.**

ART. 295. *Robbery with physical injuries, committed in an uninhabited place and by a band or with the use of firearm on a street, road or alley.* – If the offenses mentioned in subdivisions three, four, and **five** of the next preceding article shall have been committed in an uninhabited place or **by a band** or by attacking a moving train, street car, motor vehicle or airship, or by entering the passengers' compartments in a train or, in any manner, taking the passengers thereof by surprise in the respective conveyances, or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm, **the offender shall be punished by the maximum period of the proper penalties**.

In the same cases, the penalty next higher in degree shall be imposed upon the leader of the band. (Emphases added.)

additionally provides that the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code.

In accused-appellants' case, the maximum of the sentence should be within the range of the maximum period of *prision correccional* in its maximum period to *prision mayor* in its medium period, which shall be from eight (8) years and twenty-one (21) days to ten (10) years; while the minimum of the sentence should be within the range of *arresto mayor* in its maximum period to *prision correccional* in its medium period, which has a duration of four (4) months and one (1) day to four (4) years and two (2) months. As a result, the Court imposes upon accused-appellants the penalty of imprisonment for Four (4) years and Two (2) months of *prision correccional*, as minimum, to Ten (10) years of *prision mayor*, as maximum.

The Court sustains the award of actual or compensatory, moral, and exemplary damages in favor of private complainants. Actual damages are awarded as the compensation for such pecuniary loss suffered by the complainant as he has duly proved while moral damages may be recovered if the complainant suffered, among others, mental anguish, fright, serious anxiety, and similar injuries.[39] Exemplary damages, on the other hand, are imposed by way of example or correction for the public good and may be adjudicated in criminal cases if the crime was committed with one or more aggravating circumstances and the complainant has shown that he is entitled to moral, temperate, or compensatory damages.[40] In this case, private complainants have duly proven that they were robbed of their cash and jewelries, and that they felt terrified during such time, thus, entitling them to be paid actual and moral damages. Considering also that the robbery was committed with the inherent aggravating circumstance of a band, and to set an example for the public good, the award of

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[39] CIVIL CODE, Articles 2199 and 2217.

[40] I*d.*, Articles 2229, 2230, and 2234.

exemplary damages is in order. The award of additional civil indemnity, however, should be deleted for lack of legal basis.

In Criminal Case No. C-369, where accused-appellants are convicted of the crime of Kidnapping for Ransom and Serious Illegal Detention, the Court of Appeals correctly reduced their sentence from death to *reclusion perpetua* considering the passage of Republic Act No. 9346, prohibiting the imposition of the death penalty. The Court likewise emphasizes that accused-appellants shall not be eligible for parole. Under Section 3 of Republic Act No. 9346, "[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."[41]

There is also need to modify the damages awarded in Criminal Case No. C-369 in line with prevailing jurisprudence.[42] Accused-appellants are to pay Yasumitsu the amounts of ₱75,000.00 as civil indemnity, which is awarded if the crime warrants the imposition of the death penalty; ₱75,000.00 as moral damages, because the victim is assumed to have suffered moral injuries without need of proof; and ₱30,000.00 as exemplary damages, to set an example for the public good.

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the Decision dated May 29, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00428-MIN, which affirmed with modification the Joint Decision dated April 20, 2006 of the Regional Trial Court, Branch 41 of Cantilan, Surigao del Sur, to read as follows:

1) In **Criminal Case No. C-368**, the Court finds accused-appellants Jovel S. Apole, Renato C. Apole and Rolando A. Apole **GUILTY** beyond reasonable doubt of the crime of Robbery with Violence Against or Intimidation of Persons by a Band and sentences accused-appellants to suffer the penalty of

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[41] *People v. Tadah*, G.R. No. 186226, February 1, 2012, 664 SCRA 744, 747.

[42] *Id.*

imprisonment for Four (4) years and Two (2) months of *prision correccional*, as minimum, to Ten (10) years of *prision mayor*, as maximum, and to pay private complainants the amounts of ₱78,000.00 as actual damages; ₱50,000.00 as moral damages; and ₱25,000.00 as exemplary damages.

2) In **Criminal Case No. C-369**, the Court finds accused-appellants Jovel S. Apole, Renato C. Apole and Rolando A. Apole **GUILTY** beyond reasonable doubt of the crime of Kidnapping for Ransom and Serious Illegal Detention and sentences accused-appellants to suffer the penalty of *reclusion perpetua*, without the possibility of parole, and to pay private complainants the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194366. October 10, 2012]

NAPOLEON D. NERI, ALICIA D. NERI-MONDEJAR, VISMINDA D. NERI-CHAMBERS, ROSA D. NERI-MILLAN, DOUGLAS D. NERI, EUTROPIA D. ILLUT-COCKINOS and VICTORIA D. ILLUT-PIALA, *petitioners, vs.* **HEIRS OF HADJI YUSOP UY and JULPHA[*] IBRAHIM UY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; SUMMARY SETTLEMENT OF ESTATES; EXTRAJUDICIAL

[*] Erroneously referred to as Ulpha in the Regional Trial Court's Decision and Jolpha in the Petition for Review.

SETTLEMENT BY AGREEMENT; THE SETTLEMENT OF ESTATE IS A TOTAL NULLITY WHERE THE HEIRS WERE ADMITTEDLY EXCLUDED OR NOT PROPERLY REPRESENTED THEREIN; CASE AT BAR.— It bears to stress that all the petitioners herein are indisputably legitimate children of Anunciacion from her first and second marriages with Gonzalo and Enrique, respectively, and consequently, are entitled to inherit from her in equal shares, pursuant to Articles 979 and 980 of the Civil Code x x x. As such, upon the death of Anunciacion on September 21, 1977, her children and Enrique acquired their respective inheritances, entitling them to their *pro indiviso* shares in her whole estate x x x. Hence, in the execution of the Extra-Judicial Settlement of the Estate with Absolute Deed of Sale in favor of spouses Uy, all the heirs of Anunciacion should have participated. Considering that Eutropia and Victoria were admittedly excluded and that then minors Rosa and Douglas were not properly represented therein, the settlement was not valid and binding upon them and consequently, a total nullity.

2. CIVIL LAW; SUCCESSION; HEIRS ACQUIRE THEIR RESPECTIVE SHARES IN THE PROPERTIES OF THE DECEDENT FROM THE MOMENT OF THE LATTER'S DEATH AND AS OWNERS THEREOF, THEY CAN VERY WELL SELL THEIR UNDIVIDED SHARE IN THE ESTATE.— However, while the settlement of the estate is null and void, the subsequent sale of the subject properties made by Enrique and his children, Napoleon, Alicia and Visminda, in favor of the respondents is valid but only with respect to their proportionate shares therein. It cannot be denied that these heirs have acquired their respective shares in the properties of Anunciacion from the moment of her death and that, as owners thereof, they can very well sell their undivided share in the estate.

3. ID.; PERSONS AND FAMILY RELATIONS; PARENTAL AUTHORITY; A FATHER OR MOTHER, AS THE NATURAL GUARDIAN OF THE MINOR IS MERELY CLOTHED WITH POWERS OF ADMINISTRATION OVER THE PROPERTIES OF THE LATTER.— With respect to Rosa and Douglas who were minors at the time of the execution of the settlement and sale, their natural guardian and father, Enrique, represented them in the transaction.

However, on the basis of the laws prevailing at that time, Enrique was merely clothed with powers of administration and bereft of any authority to dispose of their 2/16 shares in the estate of their mother, Anunciacion. x x x Administration includes all acts for the preservation of the property and the receipt of fruits according to the natural purpose of the thing. Any act of disposition or alienation, or any reduction in the substance of the patrimony of child, exceeds the limits of administration. Thus, a father or mother, as the natural guardian of the minor under parental authority, does not have the power to dispose or encumber the property of the latter. Such power is granted by law only to a judicial guardian of the ward's property and even then only with courts' prior approval secured in accordance with the proceedings set forth by the Rules of Court.

4. ID.; OBLIGATIONS AND CONTRACTS; UNENFORCEABLE CONTRACTS; A SALE ENTERED INTO BY THE FATHER IN BEHALF OF HIS MINOR CHILDREN WITHOUT PROPER JUDICIAL AUTHORITY IS UNENFORCEABLE UNLESS RATIFIED; RATIFICATION, DEFINED.— [T]he disputed sale entered into by Enrique in behalf of his minor children without the proper judicial authority, unless ratified by them upon reaching the age of majority, is unenforceable in accordance with Articles 1317 and 1403(1) of the Civil Code x x x. Ratification means that one under no disability voluntarily adopts and gives sanction to some unauthorized act or defective proceeding, which without his sanction would not be binding on him. It is this voluntary choice, knowingly made, which amounts to a ratification of what was theretofore unauthorized, and becomes the authorized act of the party so making the ratification. Once ratified, expressly or impliedly such as when the person knowingly received benefits from it, the contract is cleansed from all its defects from the moment it was constituted, as it has a retroactive effect. Records, however, show that Rosa had ratified the extrajudicial settlement of the estate with absolute deed of sale.

5. ID.; ID.; IMPLIED CONSTRUCTIVE TRUST; ESTABLISHED IN CASE AT BAR.— Considering, thus, that the extrajudicial settlement with sale is invalid and therefore, not binding on Eutropia, Victoria and Douglas, only the shares

of Enrique, Napoleon, Alicia, Visminda and Rosa in the homestead properties have effectively been disposed in favor of spouses Uy. "A person can only sell what he owns, or is authorized to sell and the buyer can as a consequence acquire no more than what the seller can legally transfer." On this score, Article 493 of the Civil Code is relevant x x x. Consequently, spouses Uy or their substituted heirs became *pro indiviso* co-owners of the homestead properties with Eutropia, Victoria and Douglas, who retained title to their respective 1/16 shares. They were deemed to be holding the 3/16 shares of Eutropia, Victoria and Douglas under an implied constructive trust for the latter's benefit, conformably with Article 1456 of the Civil Code which states: "if property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." As such, it is only fair, just and equitable that the amount paid for their shares equivalent to ₱5,000.00 each or a total of ₱15,000.00 be returned to spouses Uy with legal interest.

6. ID.; ID.; VOID OR INEXISTENT CONTRACTS; AN ACTION OR DEFENSE FOR THE DECLARATION OF THE INEXISTENCE OF A CONTRACT DOES NOT PRESCRIBE.— [T]he present action has not prescribed in so far as it seeks to annul the extrajudicial settlement of the estate. Contrary to the ruling of the CA, the prescriptive period of 2 years provided in Section 1 Rule 74 of the Rules of Court reckoned from the execution of the extrajudicial settlement finds no application to petitioners Eutropia, Victoria and Douglas, who were deprived of their lawful participation in the subject estate. Besides, an "action or defense for the declaration of the inexistence of a contract does not prescribe" in accordance with Article 1410 of the Civil Code.

7. ID.; PRESCRIPTION OF ACTIONS; AN ACTION TO RECOVER PROPERTY HELD IN TRUST PRESCRIBES AFTER TEN YEARS FROM THE TIME THE CAUSE OF ACTION ACCRUES.— [T]he action to recover property held in trust prescribes after 10 years from the time the cause of action accrues, which is from the time of actual notice in case of unregistered deed. In this case, Eutropia, Victoria and Douglas claimed to have knowledge of the

extrajudicial settlement with sale after the death of their father, Enrique, in 1994 which spouses Uy failed to refute. Hence, the complaint filed in 1997 was well within the prescriptive period of 10 years.

APPEARANCES OF COUNSEL

Cesar M. Dureza for petitioners.
Batacan Montero & Vicencio Law Firm for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, petitioners Napoleon D. Neri (Napoleon), Alicia D. Neri-Mondejar (Alicia), Visminda D. Neri-Chambers (Visminda), Rosa D. Neri-Millan (Rosa), Douglas D. Neri (Douglas), Eutropia D. Illut-Cockinos (Eutropia), and Victoria D. Illut-Piala (Victoria) seek to reverse and set aside the April 27, 2010 Decision[2] and October 18, 2010 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 01031-MIN which annulled the October 25, 2004 Decision[4] of the Regional Trial Court (RTC) of Panabo City, Davao del Norte and instead, entered a new one dismissing petitioners' complaint for annulment of sale, damages and attorney's fees against herein respondents heirs of spouses Hadji Yusop Uy and Julpha Ibrahim Uy (heirs of Uy).

The Facts

During her lifetime, Anunciacion Neri (Anunciacion) had seven children, two (2) from her first marriage with Gonzalo Illut (Gonzalo), namely: Eutropia and Victoria, and five (5) from

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[1] *Rollo*, pp. 14-36.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Leoncia R. Dimagiba and Angelita A. Gacutan, concurring. *Id.* at 41-57.

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

[4] Penned by Judge Jesus L. Grageda. *Id.* at 151-155.

her second marriage with Enrique Neri (Enrique), namely: Napoleon, Alicia, Visminda, Douglas and Rosa. Throughout the marriage of spouses Enrique and Anunciacion, they acquired several homestead properties with a total area of 296,555 square meters located in Samal, Davao del Norte, embraced by Original Certificate of Title (OCT) Nos. (P-7998) P-2128[5], (P-14608) P-5153[6] and P-20551 (P-8348)[7] issued on February 15, 1957, August 27, 1962 and July 7, 1967, respectively.

On September 21, 1977, Anunciacion died intestate. Her husband, Enrique, in his personal capacity and as natural guardian of his minor children Rosa and Douglas, together with Napoleon, Alicia, and Visminda executed an Extra-Judicial Settlement of the Estate with Absolute Deed of Sale[8] on July 7, 1979, adjudicating among themselves the said homestead properties, and thereafter, conveying them to the late spouses Hadji Yusop Uy and Julpha Ibrahim Uy (spouses Uy) for a consideration of ₱80,000.00.

On June 11, 1996, the children of Enrique filed a complaint for annulment of sale of the said homestead properties against spouses Uy (later substituted by their heirs) before the RTC, docketed as Civil Case No. 96-28, assailing the validity of the sale for having been sold within the prohibited period. The complaint was later amended to include Eutropia and Victoria as additional plaintiffs for having been excluded and deprived of their legitimes as children of Anunciacion from her first marriage.

In their amended answer with counterclaim, the heirs of Uy countered that the sale took place beyond the 5-year prohibitory period from the issuance of the homestead patents. They also denied knowledge of Eutropia and Victoria's exclusion from the extrajudicial settlement and sale of the subject properties, and interposed further the defenses of prescription and laches.

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[5] *Id.* at 113-114.

[6] *Id.* at 115-116.

[7] *Id.* at 117-118.

[8] *Id.* at 92-96.

The RTC Ruling

On October 25, 2004, the RTC rendered a decision ordering, among others, the annulment of the Extra-Judicial Settlement of the Estate with Absolute Deed of Sale. It ruled that while the sale occurred beyond the 5-year prohibitory period, the sale is still void because Eutropia and Victoria were deprived of their hereditary rights and that Enrique had no judicial authority to sell the shares of his minor children, Rosa and Douglas.

Consequently, it rejected the defenses of laches and prescription raised by spouses Uy, who claimed possession of the subject properties for 17 years, holding that co-ownership rights are imprescriptible.

The CA Ruling

On appeal, the CA reversed and set aside the ruling of the RTC in its April 27, 2010 Decision and dismissed the complaint of the petitioners. It held that, while Eutropia and Victoria had no knowledge of the extrajudicial settlement and sale of the subject properties and as such, were not bound by it, the CA found it unconscionable to permit the annulment of the sale considering spouses Uy's possession thereof for 17 years, and that Eutropia and Victoria belatedly filed their action in 1997, or more than two years from knowledge of their exclusion as heirs in 1994 when their stepfather died. It, however, did not preclude the excluded heirs from recovering their legitimes from their co-heirs.

Similarly, the CA declared the extrajudicial settlement and the subsequent sale as valid and binding with respect to Enrique and his children, holding that as co-owners, they have the right to dispose of their respective shares as they consider necessary or fit. While recognizing Rosa and Douglas to be minors at that time, they were deemed to have ratified the sale when they failed to question it upon reaching the age of majority. It also found laches to have set in because of their inaction for a long period of time.

The Issues

In this petition, petitioners impute to the CA the following errors:

I. WHEN IT UPHELD THE VALIDITY OF THE "EXTRA JUDICIAL SETTLEMENT OF THE ESTATE WITH ABSOLUTE DEED OF SALE" AS FAR AS THE SHARES OF EUTROPIA AND VICTORIA WERE CONCERNED, THEREBY DEPRIVING THEM OF THEIR INHERITANCE;

II. WHEN IT DID NOT NULLIFY OR ANNUL THE "EXTRA JUDICIAL SETTLEMENT OF THE ESTATE WITH ABSOLUTE DEED OF SALE" WITH RESPECT TO THE SHARES OF ROSA AND DOUGLAS, THEREBY DEPRIVING THEM OF THEIR INHERITANCE; and

III. WHEN IT FOUND THAT LACHES OR PRESCRIPTION HAS SET IN.

The Ruling of the Court

The petition is meritorious.

It bears to stress that all the petitioners herein are indisputably legitimate children of Anunciacion from her first and second marriages with Gonzalo and Enrique, respectively, and consequently, are entitled to inherit from her in equal shares, pursuant to Articles 979 and 980 of the Civil Code which read:

ART. 979. Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages.

x x x x x x x x x

ART. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

As such, upon the death of Anunciacion on September 21, 1977, her children and Enrique acquired their respective inheritances,[9] entitling them to their *pro indiviso* shares in her whole estate, as follows:

[9] CIVIL CODE, Art. 777.

Enrique	9/16 (1/2 of the conjugal assets + 1/16)
Eutropia	1/16
Victoria	1/16
Napoleon	1/16
Alicia	1/16
Visminda	1/16
Rosa	1/16
Douglas	1/16

Hence, in the execution of the Extra-Judicial Settlement of the Estate with Absolute Deed of Sale in favor of spouses Uy, all the heirs of Anunciacion should have participated. Considering that Eutropia and Victoria were admittedly excluded and that then minors Rosa and Douglas were not properly represented therein, the settlement was not valid and binding upon them and consequently, a total nullity.

Section 1, Rule 74 of the Rules of Court provides:

SECTION 1. *Extrajudicial settlement by agreement between heirs.* – x x x

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof. (Underscoring added)

The effect of excluding the heirs in the settlement of estate was further elucidated in *Segura v. Segura*,[10] thus:

It is clear that Section 1 of Rule 74 does not apply to the partition in question which was null and void as far as the plaintiffs were concerned. The rule covers only valid partitions. The partition in the present case was invalid because it excluded six of the nine heirs who were entitled to equal shares in the partitioned property. Under

[10] G.R. No. L-29320, September 19, 1988, 165 SCRA 367, 373.

the rule "no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof." As the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years from its execution…

However, while the settlement of the estate is null and void, the subsequent sale of the subject properties made by Enrique and his children, Napoleon, Alicia and Visminda, in favor of the respondents is valid but only with respect to their proportionate shares therein. It cannot be denied that these heirs have acquired their respective shares in the properties of Anunciacion from the moment of her death[11] and that, as owners thereof, they can very well sell their undivided share in the estate.[12]

With respect to Rosa and Douglas who were minors at the time of the execution of the settlement and sale, their natural guardian and father, Enrique, represented them in the transaction. However, on the basis of the laws prevailing at that time, Enrique was merely clothed with powers of administration and bereft of any authority to dispose of their 2/16 shares in the estate of their mother, Anunciacion.

Articles 320 and 326 of the Civil Code, the laws in force at the time of the execution of the settlement and sale, provide:

ART. 320. The father, or in his absence the mother, is the legal administrator of the property pertaining to the child under parental authority. If the property is worth more than two thousand pesos, the father or mother shall give a bond subject to the approval of the Court of First Instance.

ART. 326. When the property of the child is worth more than two thousand pesos, the father or mother shall be considered a guardian of the child's property, subject to the duties and obligations of guardians under the Rules of Court.

Corollarily, Section 7, Rule 93 of the Rules of Court also provides:

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[11] *Supra* note 9.

[12] *Flora v. Prado,* G.R. No. 156879, January 20, 2004, 420 SCRA 396, 404.

SEC. 7. *Parents as Guardians.* – When the property of the child under parental authority is worth two thousand pesos or less, the father or the mother, without the necessity of court appointment, shall be his legal guardian. When the property of the child is worth more than two thousand pesos, the father or the mother shall be considered guardian of the child's property, with the duties and obligations of guardians under these Rules, and shall file the petition required by Section 2 hereof. For good reasons, the court may, however, appoint another suitable persons.

Administration includes all acts for the preservation of the property and the receipt of fruits according to the natural purpose of the thing. Any act of disposition or alienation, or any reduction in the substance of the patrimony of child, exceeds the limits of administration.[13] Thus, a father or mother, as the natural guardian of the minor under parental authority, does not have the power to dispose or encumber the property of the latter. Such power is granted by law only to a judicial guardian of the ward's property and even then only with courts' prior approval secured in accordance with the proceedings set forth by the Rules of Court.[14]

Consequently, the disputed sale entered into by Enrique in behalf of his minor children without the proper judicial authority, unless ratified by them upon reaching the age of majority,[15] is unenforceable in accordance with Articles 1317 and 1403(1) of the Civil Code which provide:

ART. 1317. No one may contract in the name of another without being authorized by the latter or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly,

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[13] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. 1, p. 644 (1974).

[14] Herrera, *Remedial Law*, Vol. III-A, p. 279 (2005), *citing* G.R. No. L-4155, December 17, 1952.

[15] *Ibañez v. Rodriguez,* 47 Phil. 554, 563 (1925).

by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

ART. 1403. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

x x x x x x x x x

Ratification means that one under no disability voluntarily adopts and gives sanction to some unauthorized act or defective proceeding, which without his sanction would not be binding on him. It is this voluntary choice, knowingly made, which amounts to a ratification of what was theretofore unauthorized, and becomes the authorized act of the party so making the ratification.[16] Once ratified, expressly or impliedly such as when the person knowingly received benefits from it, the contract is cleansed from all its defects from the moment it was constituted,[17] as it has a retroactive effect.

Records, however, show that Rosa had ratified the extrajudicial settlement of the estate with absolute deed of sale. In Napoleon and Rosa's Manifestation[18] before the RTC dated July 11, 1997, they stated:

"Concerning the sale of our parcel of land executed by our father, Enrique Neri concurred in and conformed to by us and our other two sisters and brother (the other plaintiffs), in favor of Hadji Yusop Uy and his spouse Hadja Julpa Uy on July 7, 1979, we both confirmed that the same was voluntary and freely made by all of us and therefore the sale was absolutely valid and enforceable as far as we all plaintiffs in this case are concerned"; (Underscoring supplied)

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[16] *Coronel v. Constantino,* G.R. No. 121069, February 7, 2003, 397 SCRA 128, 134, *citing Maglucot-Aw v. Maglucot,* 329 SCRA 78, 94 (2000).

[17] CIVIL CODE, Art. 1396.

[18] Original records, pp. 82-83.

In their June 30, 1997 Joint-Affidavit,[19] Napoleon and Rosa also alleged:

> "That we are surprised that our names are included in this case since we do not have any intention to file a case against Hadji Yusop Uy and Julpha Ibrahim Uy and their family and we respect and acknowledge the validity of the Extra-Judicial Settlement of the Estate with Absolute Deed of Sale dated July 7, 1979". (Underscoring supplied)

Clearly, the foregoing statements constituted ratification of the settlement of the estate and the subsequent sale, thus, purging all the defects existing at the time of its execution and legitimizing the conveyance of Rosa's 1/16 share in the estate of Anunciacion to spouses Uy. The same, however, is not true with respect to Douglas for lack of evidence showing ratification.

Considering, thus, that the extrajudicial settlement with sale is invalid and therefore, not binding on Eutropia, Victoria and Douglas, only the shares of Enrique, Napoleon, Alicia, Visminda and Rosa in the homestead properties have effectively been disposed in favor of spouses Uy. "A person can only sell what he owns, or is authorized to sell and the buyer can as a consequence acquire no more than what the seller can legally transfer."[20] On this score, Article 493 of the Civil Code is relevant, which provides:

> Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Consequently, spouses Uy or their substituted heirs became *pro indiviso* co-owners of the homestead properties with Eutropia, Victoria and Douglas, who retained title to their respective 1/16 shares. They were deemed to be holding the 3/16 shares of

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

[20] *Supra* note 10, at 374.

Eutropia, Victoria and Douglas under an implied constructive trust for the latter's benefit, conformably with Article 1456 of the Civil Code which states: "if property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." As such, it is only fair, just and equitable that the amount paid for their shares equivalent to ₱5,000.00[21] each or a total of ₱15,000.00 be returned to spouses Uy with legal interest.

On the issue of prescription, the Court agrees with petitioners that the present action has not prescribed in so far as it seeks to annul the extrajudicial settlement of the estate. Contrary to the ruling of the CA, the prescriptive period of 2 years provided in Section 1 Rule 74 of the Rules of Court reckoned from the execution of the extrajudicial settlement finds no application to petitioners Eutropia, Victoria and Douglas, who were deprived of their lawful participation in the subject estate. Besides, an "action or defense for the declaration of the inexistence of a contract does not prescribe" in accordance with Article 1410 of the Civil Code.

However, the action to recover property held in trust prescribes after 10 years from the time the cause of action accrues,[22] which is from the time of actual notice in case of unregistered deed.[23] In this case, Eutropia, Victoria and Douglas claimed to have knowledge of the extrajudicial settlement with sale after the death of their father, Enrique, in 1994 which spouses Uy failed to refute. Hence, the complaint filed in 1997 was well within the prescriptive period of 10 years.

WHEREFORE, the instant petition is **GRANTED.** The April 27, 2010 Decision and October 18, 2010 Resolution of the Court of Appeals are **REVERSED** and **SET ASIDE** and a new judgment is entered:

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[21] ₱80,000.00 (purchase price) ÷16 shares = ₱5,000.00.

[22] CIVIL CODE, Art. 1144.

[23] *Aznar Brothers Realty Company vs. Aying*, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 511.

1. Declaring the Extra-Judicial Settlement of the Estate of Anunciacion Neri **NULL** and **VOID**;

2. Declaring the Absolute Deed of Sale in favor of the late spouses Hadji Yusop Uy and Julpha Ibrahim Uy as regards the 13/16 total shares of the late Enrique Neri, Napoleon Neri, Alicia D. Neri-Mondejar, Visminda D. Neri-Chambers and Rosa D. Neri-Millan **VALID**;

3. Declaring Eutropia D. Illut-Cockinos, Victoria D. Illut-Piala and Douglas D. Neri as the *LAWFUL OWNERS* of the 3/16 portions of the subject homestead properties, covered by Original Certificate of Title Nos. (P-7998) P-2128, (P-14608) P-5153 and P-20551 (P-8348); and

4. Ordering the estate of the late Enrique Neri, as well as Napoleon Neri, Alicia D. Neri-Mondejar, Visminda D. Neri-Chambers and Rosa D. Neri-Millan to return to the respondents jointly and solidarily the amount paid corresponding to the 3/16 shares of Eutropia, Victoria and Douglas in the total amount of ₱15,000.00, with legal interest at 6% per annum computed from the time of payment until finality of this decision and 12% per annum thereafter until fully paid.

No pronouncement as to costs.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 196539. October 10, 2012]

MARIETTA N. PORTILLO, *petitioner, vs.* **RUDOLF LIETZ, INC., RUDOLF LIETZ and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CANNOT CO-EXIST WITH AN APPEAL OR ANY OTHER ADEQUATE REMEDY.— Section 1, Rule 45 of the Rules of Court expressly provides that a party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals may file a verified petition for review on *certiorari*. Considering that, in this case, appeal by *certiorari* was available to Portillo, that available recourse foreclosed her right to resort to a special civil action for *certiorari*, a limited form of review and a remedy of last recourse, which lies only where there is no appeal or plain, speedy and adequate remedy in the ordinary course of law. A petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65 are mutually exclusive remedies. *Certiorari* cannot co-exist with an appeal or any other adequate remedy. If a petition for review is available, even prescribed, the nature of the questions of law intended to be raised on appeal is of no consequence. It may well be that those questions of law will treat exclusively of whether or not the judgment or final order was rendered without or in excess of jurisdiction, or with grave abuse of discretion. This is immaterial. The remedy is appeal, not *certiorari* as a special civil action.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; REASONABLE CAUSAL CONNECTION WITH THE EMPLOYER-EMPLOYEE RELATIONSHIP IS A REQUIREMENT IN EMPLOYEES' MONEY CLAIMS AGAINST THE EMPLOYER AND A CONDITION WHEN THE CLAIMANT IS THE EMPLOYER.— We thereafter ruled that the "reasonable causal connection with the employer-employee relationship" is a requirement not only

in employees' money claims against the employer but is, likewise, a condition when the claimant is the employer.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; GOODWILL CLAUSE; BREACH THEREOF IS A CIVIL LAW DISPUTE.— In *Dai-Chi Electronics Manufacturing Corporation v. Villarama, Jr.*, which reiterated the *San Miguel* ruling and allied jurisprudence, we pronounced that a non-compete clause, as in the "Goodwill Clause" referred to in the present case, with a stipulation that a violation thereof makes the employee liable to his former employer for liquidated damages, refers to post-employment relations of the parties. x x x That the "Goodwill Clause" in this case is likewise a post-employment issue should brook no argument. There is no dispute as to the cessation of Portillo's employment with Lietz Inc. She simply claims her unpaid salaries and commissions, which Lietz Inc. does not contest. At that juncture, Portillo was no longer an employee of Lietz Inc. The "Goodwill Clause" or the "Non-Compete Clause" is a contractual undertaking effective after the cessation of the employment relationship between the parties. In accordance with jurisprudence, breach of the undertaking is a civil law dispute, not a labor law case.

4. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; COMPENSATION; THE DIFFERENCE OF THE FORUM WHERE THE DIFFERENT CREDITS CAN BE ENFORCED PREVENTS THE APPLICATION OF COMPENSATION; CASE AT BAR.— It is clear x x x that while Portillo's claim for unpaid salaries is a money claim that arises out of or in connection with an employer-employee relationship, Lietz Inc.'s claim against Portillo for violation of the goodwill clause is a money claim based on an act done after the cessation of the employment relationship. And, while the jurisdiction over Portillo's claim is vested in the labor arbiter, the jurisdiction over Lietz Inc.'s claim rests on the regular courts. x x x In the case at bar, the difference in the nature of the credits that one has against the other, conversely, the nature of the debt one owes another, which difference in turn results in the difference of the forum where the different credits can be enforced, prevents the application of compensation. Simply, the labor tribunal in an employee's claim for unpaid wages is without authority to allow the compensation of such

claims against the post employment claim of the former employer for breach of a post employment condition. The labor tribunal does not have jurisdiction over the civil case of breach of contract.

APPEARANCES OF COUNSEL

Carmelino Pansacola for petitioner.
Castro Canilao & Associates for respondents.

D E C I S I O N

PEREZ, *J.*:

Before us is a petition for *certiorari* assailing the Resolution[1] dated 14 October 2010 of the Court of Appeals in CA-G.R. SP No. 106581 which modified its Decision[2] dated 31 March 2009, thus allowing the legal compensation of petitioner Marietta N. Portillo's (Portillo) monetary claims against respondent corporation Rudolf Lietz, Inc.'s (Lietz Inc.)[3] claim for liquidated damages arising from Portillo's alleged violation of the "Goodwill Clause" in the employment contract executed by the parties.

The facts are not in dispute.

In a letter agreement dated 3 May 1991, signed by individual respondent Rudolf Lietz (Rudolf) and conformed to by Portillo, the latter was hired by the former under the following terms and conditions:

A copy of [Lietz Inc.'s] work rules and policies on personnel is enclosed and an inherent part of the terms and conditions of employment.

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[1] Penned by Associate Justice Isaias Dicdican with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Marlene Gonzales-Sison, concurring. *Rollo*, pp. 40-42.

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

[3] Designated as such to distinguish from respondent Rudolf Lietz, the individual, simply designated herein as Rudolf.

> We acknowledge your proposal in your application specifically to the effect that you will not engage in any other gainful employment by yourself or with any other company either directly or indirectly without written consent of [Lietz Inc.], and we hereby accept and henceforth consider your proposal an undertaking on your part, a breach of which will render you liable to [Lietz Inc.] for liquidated damages.
>
> If you are in agreement with these terms and conditions of employment, please signify your conformity below.[4]

On her tenth (10th) year with Lietz Inc., specifically on 1 February 2002, Portillo was promoted to Sales Representative and received a corresponding increase in basic monthly salary and sales quota. In this regard, Portillo signed another letter agreement containing a "Goodwill Clause":

> It remains understood and you agreed that, on the termination of your employment by act of either you or [Lietz Inc.], and for a period of three (3) years thereafter, you shall not engage directly or indirectly as employee, manager, proprietor, or solicitor for yourself or others in a similar or competitive business or the same character of work which you were employed by [Lietz Inc.] to do and perform. Should you breach this good will clause of this Contract, you shall pay [Lietz Inc.] as liquidated damages the amount of 100% of your gross compensation over the last 12 months, it being agreed that this sum is reasonable and just.[5]

Three (3) years thereafter, on 6 June 2005, Portillo resigned from Lietz Inc. During her exit interview, Portillo declared that she intended to engage in business—a rice dealership, selling rice in wholesale.

On 15 June 2005, Lietz Inc. accepted Portillo's resignation and reminded her of the "Goodwill Clause" in the last letter agreement she had signed. Upon receipt thereof, Portillo jotted a note thereon that the latest contract she had signed in February 2004 did not contain any "Goodwill Clause" referred to by Lietz Inc. In response thereto, Lietz Inc. categorically wrote:

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[4] *Rollo*, p. 22.

[5] *Id.* at 23.

Please be informed that the standard prescription of prohibiting employees from engaging in business or seeking employment with organizations that directly or indirectly compete against [Lietz Inc.] for three (3) years after resignation remains in effect.

The documentation you pertain to is an internal memorandum of your salary increase, not an employment contract. The absence of the three-year prohibition clause in this document (or any document for that matter) does not cancel the prohibition itself. We did not, have not, and will not issue any cancellation of such in the foreseeable future[.] [T]hus[,] regretfully, it is erroneous of you to believe otherwise.[6]

In a subsequent letter dated 21 June 2005, Lietz Inc. wrote Portillo and supposed that the exchange of correspondence between them regarding the "Goodwill Clause" in the employment contract was a moot exercise since Portillo's articulated intention to go into business, selling rice, will not compete with Lietz Inc.'s products.

Subsequently, Lietz Inc. learned that Portillo had been hired by Ed Keller Philippines, Limited to head its Pharma Raw Material Department. Ed Keller Limited is purportedly a direct competitor of Lietz Inc.

Meanwhile, Portillo's demands from Lietz Inc. for the payment of her remaining salaries and commissions went unheeded. Lietz Inc. gave Portillo the run around, on the pretext that her salaries and commissions were still being computed.

On 14 September 2005, Portillo filed a complaint with the National Labor Relations Commission (NLRC) for non-payment of 1½ months' salary, two (2) months' commission, 13th month pay, plus moral, exemplary and actual damages and attorney's fees.

In its position paper, Lietz Inc. admitted liability for Portillo's money claims in the total amount of ₱110,662.16. However, Lietz Inc. raised the defense of legal compensation: Portillo's money claims should be offset against her liability to Lietz Inc.

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

for liquidated damages in the amount of ₱869,633.09[7] for Portillo's alleged breach of the "Goodwill Clause" in the employment contract when she became employed with Ed Keller Philippines, Limited.

On 25 May 2007, Labor Arbiter Daniel J. Cajilig granted Portillo's complaint:

> WHEREFORE, judgment is hereby rendered ordering respondents Rudolf Lietz, Inc. to pay complainant Marietta N. Portillo the amount of Php110,662.16, representing her salary and commissions, including 13th month pay.[8]

On appeal by respondents, the NLRC, through its Second Division, affirmed the ruling of Labor Arbiter Daniel J. Cajilig. On motion for reconsideration, the NLRC stood pat on its ruling.

Expectedly, respondents filed a petition for *certiorari* before the Court of Appeals, alleging grave abuse of discretion in the labor tribunals' rulings.

As earlier adverted to, the appellate court initially affirmed the labor tribunals:

> **WHEREFORE,** considering the foregoing premises, judgment is hereby rendered by us **DENYING** the petition filed in this case. The Resolution of the National Labor Relations Commission (NLRC), Second Division, in the labor case docketed as NLRC NCR Case No. 00-09-08113-2005 [NLRC LAC No. 07-001965-07(5)] is hereby **AFFIRMED**.[9]

The disposition was disturbed. The Court of Appeals, on motion for reconsideration, modified its previous decision, thus:

> **WHEREFORE,** in view of the foregoing premises, we hereby **MODIFY** the decision promulgated on March 31, 2009 in that, while we uphold the monetary award in favor of the [petitioner] in the aggregate sum of ₱110,662.16 representing the unpaid salary,

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[7] Varied amount of ₱980,295.25 in the 14 October 2010 Resolution of the Court of Appeals. *Id*. at 42.

[8] *Id.* at 25.

[9] *Id.* at 30.

commission and 13th month pay due to her, we hereby allow legal compensation or set-off of such award of monetary claims by her liability to [respondents] for liquidated damages arising from her violation of the "Goodwill Clause" in her employment contract with them.[10]

Portillo's motion for reconsideration was denied.

Hence, this petition for *certiorari* listing the following acts as grave abuse of discretion of the Court of Appeals:

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION BY EVADING TO RECOGNIZE (*sic*) THAT THE RESPONDENTS' EARLIER PETITION IS FATALLY DEFECTIVE[;]

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION BY OVERSTEPPING THE BOUNDS OF APPELLATE JURISDICTION[;]

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION BY MODIFYING ITS PREVIOUS DECISION BASED ON AN ISSUE THAT WAS RAISED ONLY ON THE FIRST INSTANCE AS AN APPEAL BUT WAS NEVER AT THE TRIAL COURT AMOUNTING TO DENIAL OF DUE PROCESS[;]

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION BY EVADING THE POSITIVE DUTY TO UPHOLD THE RELEVANT LAWS[.][11]

Simply, the issue is whether Portillo's money claims for unpaid salaries may be offset against respondents' claim for liquidated damages.

Before anything else, we address the procedural error committed by Portillo, *i.e.*, filing a petition for *certiorari*, a special civil action under Rule 65 of the Rules of Court, instead of a petition for review on *certiorari*, a mode of appeal, under Rule 45 thereof. On this score alone, the petition should have been dismissed outright.

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[10] *Id.* at 42.

[11] *Id.* at 6.

Section 1, Rule 45 of the Rules of Court expressly provides that a party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals may file a verified petition for review on *certiorari*. Considering that, in this case, appeal by *certiorari* was available to Portillo, that available recourse foreclosed her right to resort to a special civil action for *certiorari*, a limited form of review and a remedy of last recourse, which lies only where there is no appeal or plain, speedy and adequate remedy in the ordinary course of law.[12]

A petition for review on *certiorari* under Rule 45 and a petition for *certiorari* under Rule 65 are mutually exclusive remedies. *Certiorari* cannot co-exist with an appeal or any other adequate remedy.[13] If a petition for review is available, even prescribed, the nature of the questions of law intended to be raised on appeal is of no consequence. It may well be that those questions of law will treat exclusively of whether or not the judgment or final order was rendered without or in excess of jurisdiction, or with grave abuse of discretion. This is immaterial. The remedy is appeal, not *certiorari* as a special civil action.[14]

Be that as it may, on more than one occasion, to serve the ultimate purpose of all rules of procedures—attaining substantial justice as expeditiously as possible[15]—we have accepted procedurally incorrect petitions and decided them on the merits. We do the same here.

The Court of Appeals anchors its modified ruling on the ostensible causal connection between Portillo's money claims and Lietz Inc.'s claim for liquidated damages, both claims

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[12] Section 1, Rule 65 of the Rules of Court.

[13] *Estinozo v. Court of Appeals*, G.R. No. 150276, 12 February 2008, 544 SCRA 422, 431.

[14] *Id.*

[15] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, 6 June 2011, 650 SCRA 656, 659.

apparently arising from the same employment relations. Thus, did it say:

> x x x [T]his Court will have to take cognizance of and consider the "Goodwill Clause" contained [in] the employment contract signed by and between [respondents and Portillo]. There is no gainsaying the fact that such "Goodwill Clause" is part and parcel of the employment contract extended to [Portillo], and such clause is not contrary to law, morals and public policy. There is thus a causal connection between [Portillo's] monetary claims against [respondents] and the latter's claim for liquidated damages against the former. Consequently, we should allow legal compensation or set-off to take place. [Respondents and Portillo] are both bound principally and, at the same time, are creditors of each other. [Portillo] is a creditor of [respondents] in the sum of ₱110,662.16 in connection with her monetary claims against the latter. At the same time, [respondents] are creditors of [Portillo] insofar as their claims for liquidated damages in the sum of ₱980,295.25[16] against the latter is concerned.[17]

We are not convinced.

Paragraph 4 of Article 217 of the Labor Code appears to have caused the reliance by the Court of Appeals on the "causal connection between [Portillo's] monetary claims against [respondents] and the latter's claim from liquidated damages against the former."

> **Art. 217. Jurisdiction of Labor Arbiters and the Commission.** – (a) Except as otherwise provided under this code, the Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following case involving all workers, whether agricultural or non-agricultural:
>
> x x x x x x x x x
>
> 4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations; (Underscoring supplied)

[16] *Rollo,* p. 42.

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

Evidently, the Court of Appeals is convinced that the claim for liquidated damages emanates from the "Goodwill Clause of the employment contract and, therefore, is a claim for damages arising from the employer-employee relations."

As early as *Singapore Airlines Limited v. Paño*,[18] we established that not all disputes between an employer and his employee(s) fall within the jurisdiction of the labor tribunals. We differentiated between abandonment *per se* and the manner and consequent effects of such abandonment and ruled that the first, is a labor case, while the second, is a civil law case.

> Upon the facts and issues involved, jurisdiction over the present controversy must be held to belong to the civil Courts. While seemingly petitioner's claim for damages arises from employer-employee relations, and the latest amendment to Article 217 of the Labor Code under PD No. 1691 and BP Blg. 130 provides that all other claims arising from employer-employee relationship are cognizable by Labor Arbiters [citation omitted], in essence, petitioner's claim for damages is grounded on the "wanton failure and refusal" without just cause of private respondent Cruz to report for duty despite repeated notices served upon him of the disapproval of his application for leave of absence without pay. This, coupled with the further averment that Cruz "maliciously and with bad faith" violated the terms and conditions of the conversion training course agreement to the damage of petitioner removes the present controversy from the coverage of the Labor Code and brings it within the purview of Civil Law.
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> Clearly, the complaint was anchored not on the abandonment *per se* by private respondent Cruz of his job—as the latter was not required in the Complaint to report back to work—but on the *manner* and *consequent effects* of such abandonment of work translated in terms of the damages which petitioner had to suffer.
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> Squarely in point is the ruling enunciated in the case of Quisaba *vs.* Sta. Ines Melale Veneer & Plywood, Inc. [citation omitted], the pertinent portion of which reads:
>
> "Although the acts complained of seemingly appear to constitute 'matter involving employee-employer' relations as Quisaba's

[18] 207 Phil. 585 (1983).

> dismissal was the severance of a pre-existing employee-employer relations, his complaint is grounded not on his dismissal *per se*, as in fact he does not ask for reinstatement or backwages, but on the manner of his dismissal and the consequent effects of such dismissal.
>
> "Civil law consists of that 'mass of precepts that determine or regulate the relations . . . that exist between members of a society for the protection of private interest (1 Sanchez Roman 3). "
>
> The 'right' of the respondents to dismiss Quisaba should not be confused with the manner in which the right was exercised and the effects flowing therefrom. If the dismissal was done anti-socially or oppressively as the complaint alleges, then the respondents violated Article 1701 of the Civil Code which prohibits acts of oppression by either capital or labor against the other, and Article 21, which makes a person liable for damages if he wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy, the sanction for which, by way of moral damages, is provided in article 2219, No. 10. [citation omitted]"

Stated differently, petitioner seeks protection under the civil laws and claims no benefits under the Labor Code. The primary relief sought is for liquidated damages for breach of a contractual obligation. The other items demanded are not labor benefits demanded by workers generally taken cognizance of in labor disputes, such as payment of wages, overtime compensation or separation pay. The items claimed are the natural consequences flowing from breach of an obligation, intrinsically a civil dispute.[19] (Emphasis supplied)

Subsequent rulings amplified the teaching in *Singapore Airlines.* The *reasonable causal connection* rule was discussed. Thus, in *San Miguel Corporation v. National Labor Relations Commission*,[20] we held:

> While paragraph 3 above refers to "all money claims of workers," it is not necessary to suppose that the entire universe of money claims that might be asserted by workers against their employers

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[19] *Id.* at 589-591.

[20] 244 Phil. 741 (1988).

has been absorbed into the original and exclusive jurisdiction of Labor Arbiters. In the first place, paragraph 3 should be read not in isolation from but rather within the context formed by paragraph 1 (relating to unfair labor practices), paragraph 2 (relating to claims concerning terms and conditions of employment), paragraph 4 (claims relating to household services, a particular species of employer-employee relations), and paragraph 5 (relating to certain activities prohibited to employees or to employers). It is evident that there is a unifying element which runs through paragraph 1 to 5 and that is, that they all refer to cases or disputes arising out of or in connection with an employer-employee relationship. This is, in other words, a situation where the rule of *noscitur a sociis* may be usefully invoked in clarifying the scope of paragraph 3, and any other paragraph of Article 217 of the Labor Code, as amended. We reach the above conclusion from an examination of the terms themselves of Article 217, as last amended by B.P. Blg. 227, and even though earlier versions of Article 217 of the Labor Code expressly brought within the jurisdiction of the Labor Arbiters and the NLRC "cases arising from employer-employee relations, [citation omitted]" which clause was not expressly carried over, in printer's ink, in Article 217 as it exists today. For it cannot be presumed that money claims of workers which do not arise out of or in connection with their employer-employee relationship, and which would therefore fall within the general jurisdiction of regular courts of justice, were intended by the legislative authority to be taken away from the jurisdiction of the courts and lodged with Labor Arbiters on an exclusive basis. **The Court, therefore, believes and so holds that the "money claims of workers" referred to in paragraph 3 of Article 217 embraces money claims which arise out of or in connection with the employer-employee relationship, or some aspect or incident of such relationship. Put a little differently, that money claims of workers which now fall within the original and exclusive jurisdiction of Labor Arbiters are those money claims which have some *reasonable causal connection* with the employer-employee relationship**.[21] (Emphasis supplied)

We thereafter ruled that the "reasonable causal connection with the employer-employee relationship" is a requirement not only in employees' money claims against the employer but is, likewise, a condition when the claimant is the employer.

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[21] *Id*. at 747-748.

In *Dai-Chi Electronics Manufacturing Corporation v. Villarama, Jr.*,[22] which reiterated the *San Miguel* ruling and allied jurisprudence, we pronounced that a non-compete clause, as in the "Goodwill Clause" referred to in the present case, with a stipulation that a violation thereof makes the employee liable to his former employer for liquidated damages, refers to post-employment relations of the parties.

In *Dai-Chi*, the trial court dismissed the civil complaint filed by the employer to recover damages from its employee for the latter's breach of his contractual obligation. We reversed the ruling of the trial court as we found that the employer did not ask for any relief under the Labor Code but sought to recover damages agreed upon in the contract as redress for its employee's breach of contractual obligation to its "damage and prejudice." We iterated that Article 217, paragraph 4 does not automatically cover all disputes between an employer and its employee(s). We noted that the cause of action was within the realm of Civil Law, thus, jurisdiction over the controversy belongs to the regular courts. At bottom, we considered that the stipulation referred to post-employment relations of the parties.

That the "Goodwill Clause" in this case is likewise a post-employment issue should brook no argument. There is no dispute as to the cessation of Portillo's employment with Lietz Inc.[23] She simply claims her unpaid salaries and commissions, which Lietz Inc. does not contest. At that juncture, Portillo was no longer an employee of Lietz Inc.[24] The "Goodwill Clause" or the "Non-Compete Clause" is a contractual undertaking effective after the cessation of the employment relationship between the parties. In accordance with jurisprudence, breach of the undertaking is a civil law dispute, not a labor law case.

It is clear, therefore, that while Portillo's claim for unpaid salaries is a money claim that arises out of or in connection with an employer-employee relationship, Lietz Inc.'s claim against

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[22] G.R. No. 112940, 21 November 1994, 238 SCRA 267.

[23] *See* Article 212, paragraph (l) of the Labor Code.

[24] *See* Article 212, paragraph (f) of the Labor Code.

Portillo for violation of the goodwill clause is a money claim based on an act done after the cessation of the employment relationship. And, while the jurisdiction over Portillo's claim is vested in the labor arbiter, the jurisdiction over Lietz Inc.'s claim rests on the regular courts. Thus:

> As it is, petitioner does not ask for any relief under the Labor Code. It merely seeks to recover damages based on the parties' contract of employment as redress for respondent's breach thereof. Such cause of action is within the realm of Civil Law, and jurisdiction over the controversy belongs to the regular courts. More so must this be in the present case, what with the reality that the stipulation refers to the post-employment relations of the parties.
>
> For sure, a plain and cursory reading of the complaint will readily reveal that the subject matter is one of claim for damages arising from a breach of contract, which is within the ambit of the regular court's jurisdiction. [citation omitted]
>
> It is basic that jurisdiction over the subject matter is determined upon the allegations made in the complaint, irrespective of whether or not the plaintiff is entitled to recover upon the claim asserted therein, which is a matter resolved only after and as a result of a trial. Neither can jurisdiction of a court be made to depend upon the defenses made by a defendant in his answer or motion to dismiss. If such were the rule, the question of jurisdiction would depend almost entirely upon the defendant.[25] [citation omitted]
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>
> Whereas this Court in a number of occasions had applied the jurisdictional provisions of Article 217 to claims for damages filed by employees [citation omitted], we hold that by the designating clause "arising from the employer-employee relations" Article 217 should apply with equal force to the claim of an *employer* for actual damages against its dismissed employee, where the basis for the claim arises from or is necessarily connected with the fact of termination, and should be entered as a counterclaim in the illegal dismissal case.[26]

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[25] *Yusen Air & Sea Service Phils., Inc. v. Villamor,* 504 Phil. 437, 447 (2005).

[26] *Bañez v. Hon. Valdevilla,* 387 Phil. 601, 608 (2000).

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This is, of course, to distinguish from cases of actions for damages where the employer-employee relationship is merely incidental and the cause of action proceeds from a different source of obligation. Thus, the jurisdiction of regular courts was upheld where the damages, claimed for were based on tort [citation omitted]**, malicious prosecution** [citation omitted]**, or breach of contract, as when the claimant seeks to recover a debt from a former employee** [citation omitted] **or seeks liquidated damages in enforcement of a prior employment contract.** [citation omitted]

Neither can we uphold the reasoning of respondent court that because the resolution of the issues presented by the complaint does not entail application of the Labor Code or other labor laws, the dispute is intrinsically civil. Article 217(a) of the Labor Code, as amended, clearly bestows upon the Labor Arbiter original and exclusive jurisdiction over claims for damages arising from employer-employee relations — in other words, the Labor Arbiter has jurisdiction to award not only the reliefs provided by labor laws, but also damages governed by the Civil Code.[27] (Emphasis supplied)

In the case at bar, the difference in the nature of the credits that one has against the other, conversely, the nature of the debt one owes another, which difference in turn results in the difference of the forum where the different credits can be enforced, prevents the application of compensation. Simply, the labor tribunal in an employee's claim for unpaid wages is without authority to allow the compensation of such claims against the post employment claim of the former employer for breach of a post employment condition. The labor tribunal does not have jurisdiction over the civil case of breach of contract.

We are aware that in *Bañez v. Hon. Valdevilla*, we mentioned that:

Whereas this Court in a number of occasions had applied the jurisdictional provisions of Article 217 to claims for damages filed by employees [citation omitted], we hold that by the designating clause "arising from the employer-employee relations" Article 217

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[27] *Id*. at 610-611.

should apply with equal force to the claim of an *employer* for actual damages against its dismissed employee, where the basis for the claim arises from or is necessarily connected with the fact of termination, and should be entered as a counterclaim in the illegal dismissal case.[28]

While on the surface, *Bañez* supports the decision of the Court of Appeals, the facts beneath premise an opposite conclusion. There, the salesman-employee obtained from the NLRC a final favorable judgment of illegal dismissal. Afterwards, the employer filed with the trial court a complaint for damages for alleged nefarious activities causing damage to the employer. Explaining further why the claims for damages should be entered as a counterclaim in the illegal dismissal case, we said:

> Even under Republic Act No. 875 (the 'Industrial Peace Act,' now completely superseded by the Labor Code), jurisprudence was settled that where the plaintiff's cause of action for damages arose out of, or was necessarily intertwined with, an alleged unfair labor practice committed by the union, the jurisdiction is exclusively with the (now defunct) Court of Industrial Relations, and the assumption of jurisdiction of regular courts over the same is a nullity. To allow otherwise would be "to sanction split jurisdiction, which is prejudicial to the orderly administration of justice." Thus, even after the enactment of the Labor Code, where the damages separately claimed by the employer were allegedly incurred as a consequence of strike or picketing of the union, such complaint for damages is deeply rooted from the labor dispute between the parties, and should be dismissed by ordinary courts for lack of jurisdiction. As held by this Court in *National Federation of Labor vs. Eisma*, 127 SCRA 419:
>
> > Certainly, the present Labor Code is even more committed to the view that on policy grounds, and equally so in the interest of greater promptness in the disposition of labor matters, a court is spared the often onerous task of determining what essentially is a factual matter, namely, the damages that may be incurred by either labor or management as a result of disputes or controversies arising from employer-employee relations.[29]

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[28] *Supra* note 26 at 608.

[29] *Id*. at 608-609.

Evidently, the ruling of the appellate court is modeled after the basis used in *Bañez* which is the "intertwined" facts of the claims of the employer and the employee or that the "complaint for damages is deeply rooted from the labor dispute between the parties." Thus, did the appellate court say that:

> There is no gainsaying the fact that such "Goodwill Clause" is part and parcel of the employment contract extended to [Portillo], and such clause is not contrary to law, morals and public policy. There is thus a causal connection between [Portillo's] monetary claims against [respondents] and the latter's claim for liquidated damages against the former. Consequently, we should allow legal compensation or set-off to take place.[30]

The Court of Appeals was misguided. Its conclusion was incorrect.

There is no causal connection between the petitioner employees' claim for unpaid wages and the respondent employers' claim for damages for the alleged "Goodwill Clause" violation. Portillo's claim for unpaid salaries did not have anything to do with her alleged violation of the employment contract as, in fact, her separation from employment is not "rooted" in the alleged contractual violation. She resigned from her employment. She was not dismissed. Portillo's entitlement to the unpaid salaries is not even contested. Indeed, Lietz Inc.'s argument about legal compensation necessarily admits that it owes the money claimed by Portillo.

The alleged contractual violation did not arise during the existence of the employer-employee relationship. It was a post-employment matter, a post-employment violation. Reminders are apt. That is provided by the fairly recent case of *Yusen Air and Sea Services Phils., Inc. v. Villamor*,[31] which harked back to the previous rulings on the necessity of "reasonable causal connection" between the tortious damage and the damage arising from the employer-employee relationship. *Yusen* proceeded to pronounce that the absence of the connection results in the

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[30] *Rollo*, pp. 41-42.

[31] *Supra* note 25.

absence of jurisdiction of the labor arbiter. Importantly, such absence of jurisdiction cannot be remedied by raising before the labor tribunal the tortious damage as a defense. Thus:

> When, as here, the cause of action is based on a quasi-delict or tort, which has no reasonable causal connection with any of the claims provided for in Article 217, jurisdiction over the action is with the regular courts. [citation omitted]
>
> As it is, petitioner does not ask for any relief under the Labor Code. It merely seeks to recover damages based on the parties' contract of employment as redress for respondent's breach thereof. Such cause of action is within the realm of Civil Law, and jurisdiction over the controversy belongs to the regular courts. More so must this be in the present case, what with the reality that the stipulation refers to the post-employment relations of the parties.
>
> For sure, a plain and cursory reading of the complaint will readily reveal that the subject matter is one of claim for damages arising from a breach of contract, which is within the ambit of the regular court's jurisdiction. [citation omitted]
>
> It is basic that jurisdiction over the subject matter is determined upon the allegations made in the complaint, irrespective of whether or not the plaintiff is entitled to recover upon the claim asserted therein, which is a matter resolved only after and as a result of a trial. Neither can jurisdiction of a court be made to depend upon the defenses made by a defendant in his answer or motion to dismiss. If such were the rule, the question of jurisdiction would depend almost entirely upon the defendant.[32] (Underscoring supplied).

The error of the appellate court in its Resolution of 14 October 2010 is basic. The original decision, the right ruling, should not have been reconsidered.

Indeed, the application of compensation in this case is effectively barred by Article 113 of the Labor Code which prohibits wage deductions except in three circumstances:

> ART. 113. Wage Deduction. – No employer, in his own behalf or in behalf of any person, shall make any deduction from wages of his employees, except:

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[32] *Id.* at 446-447.

(a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

(c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor.

WHEREFORE, the petition is **GRANTED**. The Resolution of the Court of Appeals in CA-G.R. SP No. 106581 dated 14 October 2010 is **SET ASIDE**. The Decision of the Court of Appeals in CA-G.R. SP No. 106581 dated 31 March 2009 is **REINSTATED**. No Costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 197309. October 10, 2012]

ACE NAVIGATION CO., INC., VELA INTERNATIONAL MARINE LTD., and/or RODOLFO PAMINTUAN, *petitioners, vs.* **TEODORICO FERNANDEZ, assisted by GLENITA FERNANDEZ,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION AND LABOR ARBITERS; SHALL USE ALL REASONABLE MEANS TO ASCERTAIN THE FACTS IN EACH CASE WITHOUT REGARD TO TECHNICALITIES OF LAW OR PROCEDURE.— In *Indiana Aerospace University v. Comm.*

on Higher Educ., the Court declared that "[a]n order denying a motion to dismiss is interlocutory;" the proper remedy in this situation is to appeal after a decision has been rendered. Clearly, the denial of the petitioners' motion to dismiss in the present case was an interlocutory order and, therefore, not subject to appeal as the CA aptly noted. The petition's procedural lapse notwithstanding, the CA proceeded to review the merits of the case and adjudged the petition unmeritorious. We find the CA's action in order. The Labor Code itself declares that "it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process."

2. ID.; LABOR RELATIONS; GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION; VOLUNTARY ARBITRATORS OR PANEL OF VOLUNTARY ARBITRATORS; HAS JURISDICTION WHERE THE COLLECTIVE BARGAINING AGREEMENT UNMISTAKABLY REFLECTS THE AGREEMENT OF THE PARTIES TO SUBMIT THEIR DISPUTES TO VOLUNTARY ARBITRATION; CASE AT BAR.— [T]he voluntary arbitrator or panel of voluntary arbitrators has original and exclusive jurisdiction over Fernandez's disability claim. There is no dispute that the claim arose out of Fernandez's employment with the petitioners and that their relationship is covered by a CBA — the AMOSUP/TCC or the AMOSUP-VELA CBA. The CBA provides for a grievance procedure for the resolution of grievances or disputes which occur during the employment relationship and, like the grievance machinery created under Article 261 of the Labor Code, it is a two-tiered mechanism, with voluntary arbitration as the last step. x x x Read in its entirety, the CBA's Article 14 (Grievance Procedure) unmistakably reflects the parties' agreement to submit any unresolved dispute at the grievance resolution stage to mandatory voluntary arbitration under Article 14.7(h) of the CBA. And, it should be added that, in compliance with Section 29 of the POEA-SEC which requires that in cases of claims and disputes arising from a seafarer's employment, the parties covered by a CBA shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. Since the parties used unequivocal language in their CBA for the submission of their disputes to

voluntary arbitration (a condition laid down in *Vivero* for the recognition of the submission to voluntary arbitration of matters within the original and exclusive jurisdiction of labor arbiters), we find that the CA committed a reversible error in its ruling; it disregarded the clear mandate of the CBA between the parties and the POEA-SEC for submission of the present dispute to voluntary arbitration.

3. ID.; ID.; ID.; ID.; JURISDICTION THEREOF IS UPHELD IN RECOGNITION OF THE STATE'S EXPRESS PREFERENCE FOR VOLUNTARY MODES OF DISPUTE SETTLEMENT.— It bears stressing at this point that we are upholding the jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators over the present dispute, not only because of the clear language of the parties' CBA on the matter; more importantly, we so uphold the voluntary arbitrator's jurisdiction, in recognition of the State's express preference for voluntary modes of dispute settlement, such as conciliation and voluntary arbitration as expressed in the Constitution, the law and the rules.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Capuyan & Quimpo Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

For resolution is the petition for review on *certiorari*[1] which seeks to nullify the decision[2] dated September 22, 2010 and the resolution[3] dated May 26, 2011 of the Court of Appeals (*CA*) in CA-G.R. SP No. 112081.

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[1] *Rollo*, pp. 33-52; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 61-73; penned by Associate Justice Mariflor P. Punzalan-Castillo, and concurred in by Associates Justices Josefina Guevara-Salonga and Franchito N. Diamante.

[3] *Id.* at 75-77.

The Antecedents

On October 9, 2008, seaman Teodorico Fernandez (*Fernandez*), assisted by his wife, Glenita Fernandez, filed with the National Labor Relations Commission (*NLRC*) a complaint for disability benefits, with prayer for moral and exemplary damages, plus attorney's fees, against Ace Navigation Co., Inc., Vela International Marine Ltd., and/or Rodolfo Pamintuan (*petitioners*).

The petitioners moved to dismiss the complaint,[4] contending that the labor arbiter had no jurisdiction over the dispute. They argued that exclusive original jurisdiction is with the voluntary arbitrator or panel of voluntary arbitrators, pursuant to Section 29 of the POEA Standard Employment Contract (*POEA-SEC*), since the parties are covered by the AMOSUP-TCC or AMOSUP-VELA (as later cited by the petitioners) collective bargaining agreement (*CBA*). Under Section 14 of the CBA, a dispute between a seafarer and the company shall be settled through the grievance machinery and mandatory voluntary arbitration.

Fernandez opposed the motion.[5] He argued that inasmuch as his complaint involves a money claim, original and exclusive jurisdiction over the case is vested with the labor arbiter.

The Compulsory Arbitration Rulings

On December 9, 2008, Labor Arbiter Romelita N. Rioflorido denied the motion to dismiss, holding that under Section 10 of Republic Act (*R.A.*) No. 8042, the Migrant Workers and Overseas Filipinos Act of 1995, the labor arbiter has original and exclusive jurisdiction over money claims arising out of an employer-employee relationship or by virtue of any law or contract, notwithstanding any provision of law to the contrary.[6]

The petitioners appealed to the NLRC, but the labor agency denied the appeal. It agreed with the labor arbiter that the case

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[4] CA *rollo*, pp. 58-66.

[5] *Id.* at 102-111.

[6] *Id.* at 56; Order issued by Labor Arbiter Rioflorido.

involves a money claim and is within the jurisdiction of the labor arbiter, in accordance with Section 10 of R.A. No. 8042. Additionally, it declared that the denial of the motion to dismiss is an interlocutory order which is not appealable. Accordingly, it remanded the case to the labor arbiter for further proceedings. The petitioners moved for reconsideration, but the NLRC denied the motion, prompting the petitioners to elevate the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision

Through its decision of September 22, 2010,[7] the CA denied the petition on procedural and substantive grounds.

Procedurally, it found the petitioners to have availed of the wrong remedy when they challenged the labor arbiter's denial of their motion to dismiss by way of an appeal to the NLRC. It stressed that pursuant to the NLRC rules,[8] an order denying a motion to dismiss is interlocutory and is not subject to appeal.

On the merits of the case, the CA believed that the petition cannot also prosper. It rejected the petitioners' submission that the grievance and voluntary arbitration procedure of the parties' CBA has jurisdiction over the case, to the exclusion of the labor arbiter and the NLRC. As the labor arbiter and the NLRC did, it opined that under Section 10 of R.A. No. 8042, the labor arbiter has the original and exclusive jurisdiction to hear Fernandez's money claims.

Further, the CA clarified that while the law[9] allows parties to submit to voluntary arbitration other labor disputes, including matters falling within the original and exclusive jurisdiction of the labor arbiters under Article 217 of the Labor Code as this Court recognized in *Vivero v. Court of Appeals*,[10] the parties'

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[7] *Supra* note 2.

[8] The 2005 Revised Rules of Procedure of the NLRC, Rule VI, Section 10.

[9] LABOR CODE, Article 262.

[10] 398 Phil. 158, 169 (2000).

submission agreement must be expressed in unequivocal language. It found no such unequivocal language in the AMOSUP/TCC CBA that the parties agreed to submit money claims or, more specifically, claims for disability benefits to voluntary arbitration.

The CA also took note of the POEA-SEC[11] which provides in its Section 29 that in cases of claims and disputes arising from a Filipino seafarer's employment, the parties covered by a CBA shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. The CA explained that the relevant POEA-SEC provisions should likewise be qualified by the ruling in the *Vivero* case, the Labor Code, and other applicable laws and jurisprudence.

In sum, the CA stressed that the jurisdiction of voluntary arbitrators is limited to the seafarers' claims which do not fall within the labor arbiter's original and exclusive jurisdiction or even in cases where the labor arbiter has jurisdiction, the parties have agreed in unmistakable terms (through their CBA) to submit the case to voluntary arbitration.

The petitioners moved for reconsideration of the CA decision, but the appellate court denied the motion, reiterating its earlier pronouncement that on the ground alone of the petitioners' wrong choice of remedy, the petition must fail.

The Petition

The petitioners are now before this Court praying for a reversal of the CA judgment on the following grounds:

1. The CA committed a reversible error in disregarding the Omnibus Implementing Rules and Regulations (*IRR*) of the Migrant Workers and Overseas Filipinos Act of 1995,[12] as

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[11] *Rollo,* pp. 90-138; Department Order No. 4, s. of 2000; and the Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.

[12] R.A. No. 8042.

amended by R.A. No. 10022,[13] mandating that "For OFWs with collective bargaining agreements, the case shall be submitted for voluntary arbitration in accordance with Articles 261 and 262 of the Labor Code."[14]

The petitioners bewail the CA's rejection of the above argument for the reason that the remedy they pursued was inconsistent with the 2005 Revised Rules of Procedure of the NLRC. Citing *Municipality of Sta. Fe v. Municipality of Aritao*,[15] they argue that the "dismissal of a case for lack of jurisdiction may be raised at any stage of the proceedings."

In any event, they posit that the IRR of R.A. No. 10022 is in the nature of an adjective or procedural law which must be given retroactive effect and which should have been applied by the CA in resolving the present case.

2. The CA committed a reversible error in ruling that the AMOSUP-VELA CBA does not contain unequivocal wordings for the mandatory referral of Fernandez's claim to voluntary arbitration.

The petitioners assail the CA's failure to explain the basis "for ruling that no explicit or unequivocal wordings appeared on said CBA for the mandatory referral of the disability claim to arbitration."[16] They surmise that the CA construed the phrase "either party **may** refer the case to a MANDATORY ARBITRATION COMMITTEE" under Section 14.7(a) of the CBA as merely permissive and not mandatory because of the use of the word "**may**." They contend that notwithstanding the use of the word "**may**," the parties unequivocally and unmistakably agreed to refer the present disability claim to mandatory arbitration.

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[13] An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, As Amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and For Other Purposes.

[14] *Rollo*, p. 109.

[15] G.R. No. 140474, September 21, 2007, 533 SCRA 586, 599.

[16] *Supra* note 1, at 47.

3. The CA committed a reversible error in disregarding the NLRC memorandum prescribing the appropriate action for complaints and/or proceedings which were initially processed in the grievance machinery of existing CBAs. In their motion for reconsideration with the CA, the petitioners manifested that the appellate court's assailed decision had been modified by the following directive of the NLRC:

> As one of the measures being adopted by our agency in response to the Platform and Policy Pronouncements on Labor Employment, you are hereby directed to immediately dismiss the complaint and/or terminate proceedings which were initially processed in the grievance machinery as provided in the existing Collective Bargaining Agreements (CBAs) between parties, through the issuance of an Order of Dismissal and referral of the disputes to the National Conciliation Mediation Board (NCMB) for voluntary arbitration.
>
> FOR STRICT COMPLIANCE.[17]

4. On July 31, 2012,[18] the petitioners manifested before the Court that on June 13, 2012, the Court's Second Division issued a ruling in G.R. No. 172642, entitled *Estate of Nelson R. Dulay, represented by his wife Merridy Jane P. Dulay v. Aboitiz Jebsen Maritime, Inc.,* and *General Charterers, Inc.*, upholding the jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators over a seafarer's money claim. They implore the Court that since the factual backdrop and the issues involved in the case are similar to the present dispute, the *Dulay* ruling should be applied to this case and which should accordingly be referred to the National Conciliation and Mediation Board for voluntary arbitration.

The Case for Fernandez

In compliance with the Court's directive,[19] Fernandez filed on October 7, 2011 his Comment[20] (on the Petition) with the

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[17] *Id.* at 51.

[18] *Rollo,* pp. 185-190.

[19] *Rollo,* pp. 167-168; Resolution dated August 15, 2011.

[20] *Id.* at 173-183.

plea that the petition be dismissed for lack of merit. Fernandez presents the following arguments:

1. The IRR of the Migrant Workers and Overseas Filipinos Act of 1995 (R.A. No. 8042), as amended by R.A. No. 10022,[21] did not divest the labor arbiters of their original and exclusive jurisdiction over money claims arising from employment, for nowhere in said IRR is there such a divestment.

2. The voluntary arbitrators do not have jurisdiction over the present controversy as can be deduced from Articles 261 and 262 of the Labor Code. Fernandez explains that his complaint does not involve any "unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement [nor] from the interpretation or enforcement of company personnel policies[.]"[22] As he never referred his claim to the grievance machinery, there is no "unresolved grievance" to speak of. His complaint involves a claim for compensation and damages which is outside the voluntary arbitrator's jurisdiction under Article 261. Further, only disputes involving the union and the company shall be referred to the grievance machinery and to voluntary arbitration, as the Court held in *Sanyo Philippines Workers Union-PSSLU v. Cañizares*[23] and *Silva v. CA*.[24]

3. The CA correctly ruled that no unequivocal wordings appear in the CBA for the mandatory referral of Fernandez's disability claim to a voluntary arbitrator.

The Court's Ruling

We first rule on the procedural question arising from the labor arbiter's denial of the petitioners' motion to dismiss the complaint. On this point, Section 6, Rule V of The 2005 Revised Rules of Procedure of the NLRC provides:

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[21] *Supra* note 13.

[22] *Rollo*, p. 175.

[23] G.R. No. 101619, July 8, 1992, 211 SCRA 361, 373.

[24] G.R. No. 110226, June 19, 1997, 274 SCRA 159, 170.

On or before the date set for the mandatory conciliation and mediation conference, the respondent may file a motion to dismiss. Any motion to dismiss on the ground of lack of jurisdiction, improper venue, or that the cause of action is barred by prior judgment, prescription, or forum shopping, shall be immediately resolved by the Labor Arbiter through a written order. An order denying the motion to dismiss, or suspending its resolution until the final determination of the case, is not appealable. [underscoring ours]

Corollarily, Section 10, Rule VI of the same Rules states:

Frivolous or Dilatory Appeals. – No appeal from an interlocutory order shall be entertained. To discourage frivolous or dilatory appeals, including those taken from interlocutory orders, the Commission may censure or cite in contempt the erring parties and their counsels, or subject them to reasonable fine or penalty.

In *Indiana Aerospace University v. Comm. on Higher Educ.*,[25] the Court declared that "[a]n order denying a motion to dismiss is interlocutory"; the proper remedy in this situation is to appeal after a decision has been rendered. Clearly, the denial of the petitioners' motion to dismiss in the present case was an interlocutory order and, therefore, not subject to appeal as the CA aptly noted.

The petition's procedural lapse notwithstanding, the CA proceeded to review the merits of the case and adjudged the petition unmeritorious. We find the CA's action in order. The Labor Code itself declares that "it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process."[26]

We now address the focal question of who has the original and exclusive jurisdiction over Fernandez's disability claim —

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[25] 408 Phil. 483, 501 (2001); see also *Locsin v. Nissan Lease Phils., Inc.*, G.R. No. 185567, October 20, 2010, 634 SCRA 392, 403-404.

[26] LABOR CODE, Article 221.

the labor arbiter under Section 10 of R.A. No. 8042, as amended, or the voluntary arbitration mechanism as prescribed in the parties' CBA and the POEA-SEC?

The answer lies in the State's labor relations policy laid down in the Constitution and fleshed out in the enabling statute, the Labor Code. Section 3, Article XIII (on Social Justice and Human Rights) of the Constitution declares:

x x x x x x x x x

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

Article 260 of the Labor Code (Grievance machinery and voluntary arbitration) states:

The parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies.

Article 261 of the Labor Code (Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators), on the other hand, reads in part:

The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies[.]

Article 262 of the Labor Code (Jurisdiction over other labor disputes) declares:

The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

Further, the POEA-SEC, which governs the employment of Filipino seafarers, provides in its Section 29 on Dispute Settlement Procedures:

> **In cases of claims and disputes arising from this employment, the parties covered by a collective bargaining agreement shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators**. If the parties are not covered by a collective bargaining agreement, the parties may at their option submit the claim or dispute to either the original and exclusive jurisdiction of the National Labor Relations Commission (NLRC), pursuant to Republic Act (RA) 8042 otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995 or to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. If there is no provision as to the voluntary arbitrators to be appointed by the parties, the same shall be appointed from the accredited voluntary arbitrators of the National Conciliation and Mediation Board of the Department of Labor and Employment. [emphasis ours]

We find merit in the petition.

Under the above-quoted constitutional and legal provisions, the voluntary arbitrator or panel of voluntary arbitrators has original and exclusive jurisdiction over Fernandez's disability claim. There is no dispute that the claim arose out of Fernandez's employment with the petitioners and that their relationship is covered by a CBA — the AMOSUP/TCC or the AMOSUP-VELA CBA. The CBA provides for a grievance procedure for the resolution of grievances or disputes which occur during the employment relationship and, like the grievance machinery created under Article 261 of the Labor Code, it is a two-tiered mechanism, with voluntary arbitration as the last step.

Contrary to the CA's reading of the CBA's Article 14, there is unequivocal or unmistakable language in the agreement which mandatorily requires the parties to submit to the grievance procedure any dispute or cause of action they may have against each other. The relevant provisions of the CBA state:

> **14.6 Any Dispute, grievance, or misunderstanding concerning any ruling, practice, wages or working conditions in the**

COMPANY or any breach of the Contract of Employment, or any dispute arising from the meaning or application of the provisions of this Agreement or a claim of violation thereof or any complaint or cause of action that any such Seaman may have against the COMPANY, as well as complaints which the COMPANY may have against such Seaman shall be brought to the attention of the GRIEVANCE RESOLUTION COMMITTEE before either party takes any action, legal or otherwise. Bringing such a dispute to the Grievance Resolution Committee shall be unwaivable prerequisite or condition precedent for bringing any action, legal or otherwise, in any forum and the failure to so refer the dispute shall bar any and all legal or other actions.

14.7a) **If by reason of the nature of the Dispute, the parties are unable to amicably settle the dispute, either party may refer the case to a MANDATORY ARBITRATION COMMITTEE.** The MANDATORY ARBITRATION COMMITTEE shall consist of one representative to be designated by the UNION, and one representative to be designated by the COMPANY and a third member who shall act as Chairman and shall be nominated by mutual choice of the parties. xxx

h) **Referral of all unresolved disputes from the Grievance Resolution Committee to the Mandatory Arbitration Committee shall be unwaivable prerequisite or condition precedent for bringing any action, claim, or cause of action, legal or otherwise, before any court, tribunal, or panel in any jurisdiction. The failure by a party or seaman to so refer and avail oneself to the dispute resolution mechanism contained in this action shall bar any legal or other action. All parties expressly agree that the orderly resolution of all claims in the prescribed manner served the interests of reaching settlements or claims in an orderly and uniform manner, as well as preserving peaceful and harmonious labor relations between seaman, the Union, and the Company**.[27] (emphases ours)

What might have caused the CA to miss the clear intent of the parties in prescribing a grievance procedure in their CBA is, as the petitioners' have intimated, the use of the auxiliary verb

[27] *Rollo,* pp. 159-160.

"**may**" in Article 14.7(a) of the CBA which, to reiterate, **provides that "[i]f by reason of the nature of the Dispute, the parties are unable to amicably settle the dispute, either party may refer the case to a MANDATORY ARBITRATION COMMITTEE**."[28]

While the CA did not qualify its reading of the subject provision of the CBA, it is reasonable to conclude that it viewed as optional the referral of a dispute to the mandatory arbitration committee when the parties are unable to amicably settle the dispute.

We find this a strained interpretation of the CBA provision. The CA read the provision separately, or in isolation of the other sections of Article 14, especially 14.7(h), which, in clear, explicit language, states that **the "referral of all unresolved disputes from the Grievance Resolution Committee to the Mandatory Arbitration Committee shall be unwaivable prerequisite or condition precedent for bringing any action, claim, or cause of action, legal or otherwise, before any court, tribunal, or panel in any jurisdiction"**[29] **and that the failure by a party or seaman to so refer the dispute to the prescribed dispute resolution mechanism shall bar any legal or other action**.

Read in its entirety, the CBA's Article 14 (Grievance Procedure) unmistakably reflects the parties' agreement to submit any unresolved dispute at the grievance resolution stage to mandatory voluntary arbitration under Article 14.7(h) of the CBA. And, it should be added that, in compliance with Section 29 of the POEA-SEC which requires that in cases of claims and disputes arising from a seafarer's employment, the parties covered by a CBA shall submit the claim or dispute to the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators.

Since the parties used unequivocal language in their CBA for the submission of their disputes to voluntary arbitration (a condition laid down in *Vivero* for the recognition of the submission

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[28] *Id.* at 160; emphasis ours.

[29] *Ibid.*; emphasis ours.

to voluntary arbitration of matters within the original and exclusive jurisdiction of labor arbiters), we find that the CA committed a reversible error in its ruling; it disregarded the clear mandate of the CBA between the parties and the POEA-SEC for submission of the present dispute to voluntary arbitration.

Consistent with this finding, Fernandez's contention — that his complaint for disability benefits is a money claim that falls within the original and exclusive jurisdiction of the labor arbiter under Section 10 of R.A. No. 8042 — is untenable. We likewise reject his argument that he never referred his claim to the grievance machinery (so that no unresolved grievance exists as required under Article 261 of the Labor Code), and that the parties to the case are not the union and the employer.[30] Needless to state, no such distinction exists in the parties' CBA and the POEA-SEC.

It bears stressing at this point that we are upholding the jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators over the present dispute, not only because of the clear language of the parties' CBA on the matter; more importantly, we so uphold the voluntary arbitrator's jurisdiction, in recognition of the State's express preference for voluntary modes of dispute settlement, such as conciliation and voluntary arbitration as expressed in the Constitution, the law and the rules.

In this light, we see no need to further consider the petitioners' submission regarding the IRR of the Migrant Workers and Overseas Filipinos Act of 1995, as amended by R.A. No. 10022, except to note that the IRR lends further support to our ruling.

In closing, we quote with approval a most recent Court pronouncement on the same issue, thus –

It is settled that when the parties have validly agreed on a procedure for resolving grievances and to submit a dispute to voluntary

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[30] *Sanyo Philippines Workers Union-PSSLU v. Cañizares, supra* note 23, at 373; and *Silva v. CA, supra* note 24 at 170.

arbitration then that procedure should be strictly observed.[31] (emphasis ours)

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed decision and resolution of the Court of Appeals are **SET ASIDE**. Teodorico Fernandez's disability claim is **REFERRED** to the Grievance Resolution Committee of the parties' collective bargaining agreement and/or the Mandatory Arbitration Committee, if warranted.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 197315. October 10, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ANGEL T. DOMINGO and BENJAMIN T. DOMINGO,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; REPUBLIC ACT NO. 26 (AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED); THE PROCEDURES AND REQUIREMENTS IN THE RECONSTITUTION OF LOST OR DESTROYED CERTIFICATES OF TITLE DEPEND ON THE SOURCE OF PETITION FOR RECONSTITUTION.— Sections

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[31] *Estate of Nelson R. Dulay, represented by his wife Merridy Jane P. Dulay v. Aboitiz Jebsen Maritime, Inc. and General Charterer, Inc.,* G.R. No. 172642, June 13, 2012, citing *Vivero v. Court of Appeals, supra* note 10.

2 and 3 of RA No. 26 enumerate the sources from which certificates of title may be reconstituted x x x. RA No. 26 provides two procedures and sets of requirements in the reconstitution of lost or destroyed certificates of title depending on the source of the petition for reconstitution. Section 10 in relation to Section 9 provides the procedure and requirements for sources falling under Sections 2(a), 2(b), 3(a), 3(b) and 4(a). Sections 12 and 13 provide the procedure and requirements for sources falling under Sections 2(c), 2(d), 2(e) 2(f), 3(c), 3(d), 3(e), and 3(f).

2. ID.; ID.; ID.; WHERE THE SOURCE OF THE PETITION FOR RECONSTITUTION FALLS UNDER SECTION 2(a), THE PROCEDURE AND REQUIREMENTS THAT SHOULD BE OBSERVED ARE THOSE PROVIDED UNDER SECTION 10 IN RELATION TO SECTION 9; CASE AT BAR.— In the present case, the records show that the source of the petition for reconstitution is the owners' duplicate of OCT No. 17472, which falls under Section 2(a). x x x Since the source of the petition for reconstitution falls under Section 2(a), the procedure and requirements that should be observed are those provided under Section 10 in relation to Section 9, not Sections 12 and 13. x x x Section 10 of RA No. 26 states that the notice shall "be published in the manner stated in section nine." x x x Section 9 of RA No. 26 specifies what should be included in the notice. x x x In the present case, the notice stated the number of the certificate of title, the name of the registered owner, the names of the interested parties appearing in the reconstituted certificate of title, the location of the property, and the date on which all persons having an interest in the property must appear and file such claim as they may have. Thus, the RTC validly acquired jurisdiction to hear and decide the petition for reconstitution.

3. ID.; ID.; ID.; THE REQUIREMENTS UNDER SECTIONS 12 AND 13 DO NOT APPLY TO ALL PETITIONS FOR JUDICIAL RECONSTITUTION.— The requirements under Sections 12 and 13 do not apply to petitions for reconstitution based on Section 2(a). In *Puzon*, the Court held that, "the requirements under Sections 12 and 13 do not apply to all petitions for judicial reconstitution, but only to those based on any of the sources specified in Section 12; that is, 'sources enumerated in Section 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of this Act.'" In *Angat v. Republic*, the Court held that, "Sections 12 and 13 of Republic Act No. 26 x x x are actually irrelevant to the Petition

for Reconstitution considering that these provisions apply particularly to petitions for reconstitution from sources enumerated under Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of Republic Act No. 26."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rogelio M. Cortez for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 17 June 2011 Decision[2] of the Court of Appeals in CA-G.R. CV No. 93594, affirming the 31 October 2008 Order[3] of the Regional Trial Court (RTC), Judicial Region 3, Branch 31, Guimba, Nueva Ecija, in Case No. 1179-G.

The Facts

Angel Casimiro M. Tinio (Tinio) inherited from his sister, Trinidad T. Ramoso (Trinidad), an 8,993-square meter parcel of land situated in Guimba, Nueva Ecija. The estate of Trinidad was settled in Special Proceedings No. 19382 entitled "In the Matter of the Testate Estate of Trinidad *Vda. De* Ramoso." The property is covered by Original Certificate of Title (OCT) No. 17472[4] under the names of spouses Feliciano and Trinidad Ramoso (Spouses Ramoso).

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[1] *Rollo*, pp. 7-24.

[2] *Id*. at 27-36. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Mario L. Guariña and Manuel M. Barrios concurring.

[3] CA *rollo*, pp. 11-19. Penned by Judge Napoleon R. Sta. Romana.

[4] Records, pp. 8-9.

In a deed[5] of sale dated 22 February 1978, Tinio sold the property to respondents Angel and Benjamin T. Domingo (Domingos). Tinio gave to the Domingos the owners' duplicate of OCT No. 17472. The Domingos inquired with the Register of Deeds of North Nueva Ecija, Talavera, Nueva Ecija, about the original copy of OCT No. 17472. The Registry of Deeds could not find the original copy despite diligent efforts; thus, it was deemed lost or destroyed.

In a petition[6] dated 18 August 2006 and filed with the RTC, the Domingos prayed for the reconstitution of the original copy of OCT No. 17472. They filed the petition pursuant to Section 10 of Republic Act (RA) No. 26.[7] The RTC included in the notice[8] of hearing the names of the owners of the adjoining lots, the Spouses Ramoso, the Domingos, Tinio, and the concerned government agencies.

RTC's Ruling

In its 31 October 2008 Order, the RTC found sufficient basis for the reconstitution of OCT No. 17472. The RTC ordered the Land Registration Authority to reconstitute the original copy of OCT No. 17472.

Petitioner Republic of the Philippines, through the Office of the Solicitor General (OSG), appealed to the Court of Appeals. The OSG raised as issue that the Domingos did not comply with Sections 12 and 13 of RA No. 26 because they failed to notify the heirs of the Spouses Ramoso and a certain Senen J. Gabaldon (Gabaldon) of the reconstitution proceedings. The names of the heirs of the Spouses Ramoso and Gabaldon do not appear in the owners' duplicate of OCT No. 17472.

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[5] *Id*. at 5-7.

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

[7] Entitled "An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed."

[8] Records, pp. 13-14.

The Court of Appeals' Ruling

In its 17 June 2011 Decision, the Court of Appeals dismissed the appeal and affirmed the RTC's 31 October 2008 Order. The Court of Appeals held:

> The contention of the OSG is devoid of merit. The OSG's assertion that Sections 12 and 13 of R.A. No. 26 was [sic] not complied with is misplaced because the said provisions find no application in the petition for reconstitution that was filed by the petitioners-appellees.
>
> Section 2 of the said Act explicitly provides from what sources the original certificate of title shall be reconstituted. x x x
>
> A perusal of the petition x x x reveals that the same was filed pursuant to Section 10 of R.A. No. 26 and not Sections 12 and 13 of the said Act which refer to other sources aside from the owner's or co-owner's duplicate of the certificate of title. It is clear from the averments of the petition that the source for reconstitution was the owner's duplicate of OCT No. 17472 which remained in the petitioners-appellees' custody. x x x
>
> x x x x x x x x x
>
> x x x [T]he names of the interested parties are x x x required to be listed in the notice of the petition. In this case, however, the rule only provides that the interested parties to be named in the notice are those whose names that [sic] appeared in the certificate of title to be reconstituted. An examination of the owner's duplicate of OCT No. 17472 shows that the title does not contain the names of the heirs of the registered owners and even the name of Senen Gabaldon or his heirs.[9]

Hence, the present petition. The OSG again raises as issue that the Domingos did not comply with Sections 12 and 13 of RA No. 26 because they failed to notify the heirs of the Spouses Ramoso and Gabaldon of the reconstitution proceedings.

The Court's Ruling

The petition is unmeritorious.

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[9] *Rollo*, pp. 33-35.

Sections 2 and 3 of RA No. 26 enumerate the sources from which certificates of title may be reconstituted:

Section 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

Section 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) The deed of transfer or other document, on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is

mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

RA No. 26 provides two procedures and sets of requirements in the reconstitution of lost or destroyed certificates of title depending on the source of the petition for reconstitution. Section 10 in relation to Section 9 provides the procedure and requirements for sources falling under Sections 2(a), 2(b), 3(a), 3(b) and 4(a). Sections 12 and 13 provide the procedure and requirements for sources falling under Sections 2(c), 2(d), 2(e) 2(f), 3(c), 3(d), 3(e), and 3(f). In *Puzon v. Sta. Lucia Realty & Development, Inc.*,[10] the Court held:

x x x RA 26 separates petitions for reconstitution of lost or destroyed certificates of title into two main groups with two different requirements and procedures. Sources enumerated in Sections 2(a), 2(b), 3(a), 3(b) and 4(a) of RA 26 are lumped under one group (Group A); and sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and 3(f) are placed together under another group (Group B). For Group A, the requirements for judicial reconstitution are set forth in Section 10 in relation to Section 9 of RA 26; while for Group B, the requirements are in Sections 12 and 13 of the same law.[11]

In the present case, the records show that the source of the petition for reconstitution is the owners' duplicate of OCT No. 17472, which falls under Section 2(a). Paragraphs 4, 5, 6 and 13 of the petition state:

4. That after the execution of the Deed of Absolute Sale, the **owner's copy of OCT No. 17472** was turned over by the [vendor], Angel Tinio, to herein [petitioners] being the [vendees] of the subject property which remained in the possession and custody of the petitioners up to the present. A photocopy of the **owner's copy of OCT No. 17472** is hereto attached and marked as ANNEX B;

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[10] 406 Phil. 263 (2001).

[11] *Id*. at 276.

5. The Register of Deeds for the Province of Nueva Ecija has custody over the original copy of OCT No. 17472. However, verification of the records of the said office revealed that the said original copy of OCT No. 17472 "is not on file and the same could not be located despite diligent efforts exerted by the records personel," and thus, OCT No. 17472 must be deemed to have been lost or destroyed. A photocopy of the Certification dated October 3, 2003 issued by Atty. Elias L. Estrella, Acting Register of Deeds, is hereto attached and made part hereof as ANNEX C;

6. Original Certificate of Title No. 17472 was in full force and effect at the time of the loss and that its **owner's duplicate copy** is in due form, without any apparent intentional alteration or erasure;

x x x x x x x x x

13. The instant petition was filed pursuant to Section 10, in relation to Section 2(a), of Republic Act No. 26, otherwise known as an Act Providing a Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed.[12] (Boldfacing supplied)

Since the source of the petition for reconstitution falls under Section 2(a), the procedure and requirements that should be observed are those provided under Section 10 in relation to Section 9, not Sections 12 and 13. In *Republic of the Philippines v. Spouses Bondoc*,[13] citing *Puzon* and *Republic of the Philippines v. Planes*,[14] the Court held:

Upon close scrutiny of the records, as well as the evidence adduced in this case, this Court finds that the petition for reconstitution filed with the RTC is governed by Section 10 in relation to Section 9 of Republic Act No. 26 and not by Sections 12 and 13 of the same Act, as argued by the parties.

Paragraph 8 of the petition for reconstitution states:

8. Petitioners desire that the burned originals of the aforecited certificates of title on file in the Office of the Register of Deeds

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[12] Records, pp. 2-3.

[13] 485 Phil. 64 (2004).

[14] 430 Phil. 848 (2002).

of Lucena City be judicially reconstituted and for this purpose, it is respectfully requested that the 3rd owner's duplicate certificate copy of Original Certificate of Title No. 1733 (394) and 2nd owner's duplicate certificate copy of Original Certificate of Title No. 1767 (406), respectively, which are under the possession and custody of herein petitioners, be made sources thereof, photo copies of the aforementioned owner's duplicate copies of said titles are attached hereto as Annexes "D" and "E", respectively.

Pursuant to *Puzon v. Sta. Lucia Realty and Development, Inc.*, and *Republic v. Planes*, **since the source of the petition for reconstitution [is] the owner's duplicate copy** of OCT No. 1733 (394) and OCT No. 1767 (406), **the procedure and requirements for the trial court to validly acquire jurisdiction over the case, are governed by Section 10 in relation to Section 9 of Republic Act No. 26**.[15] (Boldfacing supplied)

In *Republic of the Philippines v. Planes*, citing *Puzon*, the Court held that, "In the case at bar, the source of the petition for reconstitution was the owner's duplicate copy of OCT No. 219. Thus, pursuant to *Puzon vs. Sta. Lucia Realty and Development, Inc.*, the petition is governed by Section 10 of R.A. No. 26."[16]

Section 10 of RA No. 26 states that the notice shall "be published in the manner stated in section nine." Section 10 states:

Section 10. Nothing hereinbefore provided shall prevent any registered owner or person in interest from filing the petition mentioned in section five of this Act directly with the proper Court of First Instance, based on sources enumerated in Sections 2(a), 2(b), 3(a), 3(b), and/or 4(a) of this Act: Provided, however, That **the Court shall cause a notice of the petition, before hearing and granting the same, to be published in the manner stated in section nine** hereof: and, provided, further, That certificates of title reconstituted pursuant to this section shall not be subject to the encumbrance referred to in section seven of this Act. (Boldfacing supplied)

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[15] *Supra* note 13 at 68-69.

[16] *Supra* note 14 at 867.

Section 9 of RA No. 26 specifies what should be included in the notice. Section 9 states:

> Section 9. A registered owner desiring to have his reconstituted certificate of title freed from the encumbrance mentioned in section seven of this Act, may file a petition to that end with the proper Court of First Instance, giving his reason or reasons therefor. A similar petition may, likewise, be filed by a mortgagee, lessee or other lien holder whose interest is annotated in the reconstituted certificate of title. Thereupon, the court shall cause a notice of the petition to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land lies, at least thirty days prior to the date of hearing, and after hearing shall determine the petition and render such judgment as justice and equity may require. **The notice shall specify, among other things, the number of the certificate of title, the name of the registered owner, the names of the interested parties appearing in the reconstituted certificate of title, the location of the property, and the date on which all persons having an interest in the property must appear and file such claim as they may have**. (Boldfacing supplied)

In *Republic of the Philippines v. Spouses Bondoc*, the Court held:

> x x x [F]or the trial court to validly acquire jurisdiction to hear and decide a petition for reconstitution filed under Section 10, in relation to Section 9 of Republic Act No. 26, it is required that thirty days before the date of hearing, (1) a notice be published in two successive issues of the Official Gazette at the expense of the petitioner, and that (2) such notice be posted at the main entrances of the provincial building and of the municipal hall where the property is located. **The notice shall state the following: (1) the number of the certificate of title, (2) the name of the registered owner, (3) the names of the interested parties appearing in the reconstituted certificate of title, (4) the location of the property, and (5) the date on which all persons having an interest in the property must appear and file such claim as they may have**.[17] (Boldfacing supplied)

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[17] *Supra* note 13 at 70.

In the present case, the notice stated the number of the certificate of title, the name of the registered owner, the names of the interested parties appearing in the reconstituted certificate of title, the location of the property, and the date on which all persons having an interest in the property must appear and file such claim as they may have. Thus, the RTC validly acquired jurisdiction to hear and decide the petition for reconstitution.

The requirements under Sections 12 and 13 do not apply to petitions for reconstitution based on Section 2(a). In *Puzon*, the Court held that, "the requirements under Sections 12 and 13 do not apply to all petitions for judicial reconstitution, but only to those based on any of the sources specified in Section 12; that is, 'sources enumerated in Section 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of this Act.'"[18] In *Angat v. Republic*,[19] the Court held that, "Sections 12 and 13 of Republic Act No. 26 x x x are actually irrelevant to the Petition for Reconstitution considering that these provisions apply particularly to petitions for reconstitution from sources enumerated under Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of Republic Act No. 26."[20]

WHEREFORE, the petition is **DENIED**. The Court **AFFIRMS** the 17 June 2011 Decision of the Court of Appeals in CA-G.R. CV No. 93594.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

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[18] *Supra* note 10 at 272-273.

[19] G.R. No. 175788, 30 June 2009, 591 SCRA 364.

[20] *Id.* at 387-388.

SECOND DIVISION

[G.R. No. 198733. October 10, 2012]

JOHANSEN WORLD GROUP CORPORATION and ANNA LIZA F. HERNANDEZ, *petitioners, vs.* **RENE MANUEL GONZALES III,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT WILL NOT ROUTINELY UNDERTAKE THE RE-EXAMINATION OF THE EVIDENCE PRESENTED BY THE CONTENDING PARTIES AS IT IS NOT A TRIER OF FACTS.—** As a general rule, this Court, not being a trier of facts, will not routinely undertake the re-examination of the evidence presented by the contending parties, in consonance with the rule that the findings of fact of the Court of Appeals are conclusive and binding on the Court. Factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are likewise generally accorded not only respect, but even finality, as long as the findings are supported by substantial evidence.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; SERIOUS MISCONDUCT; REQUISITES.—** In order for serious misconduct to justify dismissal from employment under the law: (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer. For misconduct to be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial and unimportant.

3. **ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; BREACH MUST BE WILLFUL.—** The Court ruled that ordinary breach of trust and confidence will not suffice and that it must be willful. The Court clarified that the breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done

carelessly, thoughtlessly, heedlessly or inadvertently. The Court emphasized that the loss of trust must be founded on clearly established facts.

4. ID.; ID.; ID.; DOCTRINE OF STRAINED RELATIONS; PAYMENT OF SEPARATION PAY IS ALLOWED IN LIEU OF REINSTATEMENT IF THE EMPLOYEE NO LONGER WISHES TO BE REINSTATED.— The payment of separation pay in lieu of reinstatement is an accepted doctrine particularly if the employee no longer wishes to be reinstated. Thus: "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."

APPEARANCES OF COUNSEL

Bruno Law Office for petitioners.
Julian R. Torcuator, Sr. for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the 20 May 2011 Decision[2] and the 23 September 2011 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 117758.

The Antecedent Facts

We gathered the following facts from the assailed decision of the Court of Appeals.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 36-49. Penned by Associate Justice Leoncia R. Dimagiba with Associate Justices Noel G. Tijam and Ramon R. Garcia, concurring.

[3] *Id.* at 51-56.

Johansen World Group Corporation (JWGC) is a domestic corporation engaged in the manufacture and supply of antique adaptations furniture for local and foreign markets. Johansen Hernandez (Hans) is JWGC's President and CEO while his wife Anna Liza Hernandez (Liza) is its Executive Vice-President for Finance.

On 1 August 1997, Hans hired his former high school classmate, Rene Manuel Gonzales III (Gonzales) as JWGC's General Manager. At that time, Gonzales was working in the United States of America. Hans provided Gonzales with a compensation package that included a monthly salary of ₱50,000, medical insurance coverage, the use of company vehicle, gas allowance of ₱1,000 a week, and a company cellphone subsidy of ₱1,500. Gonzales also received a 3% commission on all sales personally made by him and a 1% overhead commission on all sales attributable to the sales group. Gonzales worked on a flexi-time basis of 40 to 48 hours from Monday to Saturday. His performance was subject to review four to six months from the date he was hired. When Gonzales became a regular employee, he received a ₱20,000 salary increase.

Gonzales alleged that during his tenure as JWGC's General Manager, he was able to put the company's operational and legal issues and problems, particularly its liquidity and administrative problems, in order. Gonzales claimed that under his term as General Manager, JWGC, a bankrupt business enterprise when he joined the company, began to flourish. Gonzales further alleged that with the concurrence of the spouses Hernandez, he closed JWGC's showroom at Shangrila Mall where the company was spending a ₱200,000 monthly rental with minimal if not zero sales, thus improving JWGC's cash flow. Gonzales further alleged that JWGC increased its sales to ₱26 million in 2008 and ₱50 million in 2009, paid its debts, bought a new CnC machine worth US$30,000, participated in prestigious trade shows in Dubai, and locked in a US$750,000 contract in Monaco as well as a US$300,000 project. Gonzales claimed that JWGC had so much work that it even had to subcontract some of its work to MCGK and rent additional warehouse and open space.

Gonzales further alleged that he and his wife Margie became close to the spouses Hernandez. Liza would hitch a ride with him and confide with him. In 2008, Liza learned that he was engaged in a part-time job with Internet Service Corporation of Asia Philippines. The work required Gonzales to work via the internet in the evening but he assured Liza that it would not interfere with his work at JWGC. Gonzales alleged that on 25 July 2009, Margie, Liza and JWGC's former counsel, one Atty. Caedo, went out. Hans later joined the group. In the course of the conversation, Hans allegedly complained about Liza's limited time at home because of her work. Their companions took the cudgels for Liza and told Hans to allow her to work. Hans then vented his ire on Gonzales and told Margie that he was not satisfied with her husband's work. When Gonzales heard about the conversation, he refused to talk to Hans.

On 12 August 2009, Gonzales learned that Hans was on his way to the office. He left the office at around 3:00 p.m. and sent a text message to Liza that he could not face Hans yet. Liza responded that his work should not be affected by his feelings towards Hans. Gonzales responded with harsh words and called the spouses Hernandez "*gago.*" Liza was offended and refused to talk to Gonzales after the incident.

On 24 August 2009, Liza texted Gonzales to meet her at the Valle Verde Country Club at 2:00 p.m. Gonzales claimed that he went to meet Liza to find out why she was not going to the plant and not communicating with him. During their meeting, Liza told him that he had to resign by the end of the month because she needed a manager who would be in the office early, something which he could not do. Liza told Gonzales to stop reporting for work but promised that she would give what was due him. Gonzales asked Liza why she suddenly became concerned with his working hours instead of the results of his work. He told Liza that he would not resign but that she had to fire him. Gonzales then realized that Liza was actually firing him. That night, Gonzales had an internet chat with Liza and turned over to her the pending matters in the office, including shipment status and the negotiations for additional warehouse and office space. The next day, he sent a text message to Liza

to inform her that he would send her his proposed work severance package. When he was about to send his proposal, he found out that he could no longer access his company e-mail. When he called up Liza, he learned that his company e-mail had been deleted and Liza created another e-mail in the name of her sister, Anna Barbara Fernandez, who was not connected with the company. On 26 August 2009, using his other e-mail, he sent Liza his proposed severance package of ₱783,489.17 plus commission of US$5,075.96. After that, Gonzales and Liza had an argument about the proposal. Nevertheless, he continued to communicate with Liza regarding work-related matters. Gonzales sent another text message to Liza to inform her that he would register the company car in his name. He was therefore surprised to learn that a carnapping charge had been filed against him before the National Bureau of Investigation, prompting him to immediately return the car to JWGC.

Liza had another version of the incidents. She alleged that she went out with Margie and Atty. Caedo on 8 August 2009. Liza claimed that Hans made the comment only after Margie asked him about her husband's performance at work. As regards the 24 August 2009 meeting, Liza allegedly informed Gonzales of his new work schedule from 9:00 a.m. to 5:00 p.m. to enable him to accomplish all the tasks assigned to him and to ensure that the deadlines set by clients were met. Gonzales reacted violently to the new schedule and told her that as General Manager, he had the prerogative to come to the office and leave as he wished. Gonzales told Liza that if the company would insist on the new work schedule, it would have to terminate his services. Liza asked Gonzales if he wanted to resign but Gonzales insisted on being terminated from work. He told her that he would e-mail to her his severance package proposal.

Liza sent Gonzales two letters, both dated 27 August 2009, regarding the new work schedule but Gonzales found them premature and unfounded. JWGC and Liza (petitioners) then sent Gonzales a show-cause notice dated 14 September 2009 ordering him to explain his alleged misconduct, particularly: (1) his text message to Liza on 12 August 2009 where he called

the spouses Hernandez "*gago*"; (2) his non-compliance with the directive to report for work from 9:00 a.m. to 5:00 p.m.; (3) his failure to report for work starting 25 August 2009 which resulted in his failure to perform his duties as General Manager; and (4) his lackluster performance as General Manager. An administrative hearing was scheduled on 21 September 2009 but it was later moved to 23 September 2009. In a letter dated 25 September 2009, petitioners sent a Notice of Termination to Gonzales informing him of their decision to terminate his services for serious misconduct or willful disobedience of the company's lawful orders or policies, gross and habitual neglect of duty, and breach of trust and confidence. Earlier however, or on 17 September 2009 and three days after receiving the show-cause notice, Gonzales filed a complaint for illegal dismissal against petitioners. The case was docketed as NLRC Case No. RAB-IV-09-01197-09-RI.

The Decisions of the Labor Arbiter and the NLRC

In a Decision dated 5 April 2010,[4] the Labor Arbiter dismissed the complaint for illegal dismissal. The Labor Arbiter found that the option to resign that Liza gave to Gonzales on 24 August 2009 was an offer to give him a graceful exit with the company. The Labor Arbiter noted that petitioners gave Gonzales an opportunity to explain his alleged misconduct but he chose to file the illegal dismissal complaint prior to the investigation. However, the Labor Arbiter found that Gonzales was not paid, and should be entitled to, his proportionate 13th month pay for 2009. The dispositive portion of the Labor Arbiter's decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaint for illegal dismissal. The respondent corporation is, however, ordered to pay complainant his proportionate 13th month pay for the year 2009 in the sum of Fifty One Thousand Three Hundred Thirty Three [P]esos and [T]hirty Three Centavos (Php51,333.33).
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> All other claims are hereby dismissed for lack of merit.

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[4] *Id.* at 335-355. Penned by Labor Arbiter Enrico Angelo C. Portillo.

SO ORDERED.[5]

Gonzales filed an appeal before the National Labor Relations Commission (NLRC) which was docketed as NLRC LAC No. 05-001195-10.

In a Decision promulgated on 29 June 2010,[6] the NLRC reversed the Labor Arbiter's decision. The NLRC ruled that Gonzales was illegally dismissed from employment. The NLRC ruled that Liza made it clear during the 24 August 2009 meeting with Gonzales that she wanted him out of the company. The NLRC found that Hans sent Gonzales the change in work schedule on 27 August 2009, three days after the meeting with Liza, only as an afterthought. The NLRC ruled that the show-cause notice was done only because petitioners realized that they had to comply with due process in terminating Gonzales from work but it was done after his dismissal from employment was effected. However, in lieu of reinstatement, the NLRC ordered petitioners to pay Gonzales separation pay at the rate of one month salary for every year of service. The NLRC dismissed the claims for commission and damages prayed for by Gonzales. The dispositive portion of the NLRC decision reads:

WHEREFORE, premises considered, the instant appeal is GRANTED. The decision appealed from is REVERSED and SET ASIDE, and [a new] one is issued ordering Johansen World Group Corporation and Anna Liza Hernandez to pay, jointly and severally, Rene Manuel Gonzales III the following:

1. backwages computed from August 24, 2009 up to the promulgation of this Decision amounting to ₱770,000.00[;]

2. separation pay in the amount of ₱210,000.00;

3. 13th month pay for the year 2009 up to promulgation in the amount of ₱110,833.33.

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[5] *Id.* at 355.

[6] *Id.* at 88-97. Penned by Commissioner Pablo C. Espiritu, Jr., concurred in by Presiding Commissioner Alex A. Lopez and Gregorio O. Bilog III.

All other monetary claims are hereby dismissed for lack of merit.

SO ORDERED.[7]

Petitioners filed a motion for reconsideration. In its 14 December 2010 Resolution,[8] the NLRC denied the motion for reconsideration for lack of merit.

Petitioners filed a petition for *certiorari* before the Court of Appeals. The case was docketed as CA-G.R. SP No. 117758.

The Decision of the Court of Appeals

In its 20 May 2011 Decision, the Court of Appeals denied the petition and affirmed the decision of the NLRC.

The Court of Appeals concurred with the factual findings of the NLRC that during the meeting of 24 August 2009, Liza had already set her mind to terminate Gonzales from employment and that the show-cause order was only an afterthought on the part of petitioners to cure their wrong action. The Court of Appeals ruled that the exchange of messages between Liza and Gonzales showed that the latter was actually trying to smoothly turn over work-related matters to the former. The Court of Appeals ruled that Gonzales would not turn over his responsibilities to Liza and e-mail her his proposed severance package if he believed that he was still connected with the company.

The Court of Appeals ruled that petitioners were not able to substantiate their claim of lackluster performance exhibited by Gonzales. The Court of Appeals noted that in the Review that Hans gave Gonzales, Hans indirectly admitted that the company was on the road to success and he praised Gonzales for creating a more professional atmosphere at work as well as for his adeptness in negotiations.

The Court of Appeals thus concluded that the NLRC did not commit grave abuse of discretion in reversing the Labor Arbiter's decision.

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[7] *Id.* at 97.

[8] *Id.* at 85-86.

Petitioners filed a motion for reconsideration as well as a motion for inhibition on the ground that petitioners had reservations on the impartiality and objectivity of the *ponente*. In its 23 September 2011 Resolution, the Court of Appeals denied both motions for lack of merit.

Hence, the petition before this Court.

The Issues

Petitioners raise two issues in the case before us:

(1) Whether Gonzales was illegally dismissed from employment; and

(2) Whether Gonzales is entitled to the award of backwages, separation pay, and 13th month pay.

The Ruling of this Court

The petition has no merit.

Illegal Dismissal

Petitioners allege that Gonzales was validly terminated from employment for a just cause and for loss of trust and confidence. Petitioners allege that while Gonzales claimed that he was constructively dismissed, the NLRC and the Court of Appeals deviated from this allegation by finding that Gonzales was illegally dismissed from employment. Petitioners further allege that the Court of Appeals had no factual and legal basis in arriving at its conclusion.

We do not agree with petitioners.

As a general rule, this Court, not being a trier of facts, will not routinely undertake the re-examination of the evidence presented by the contending parties, in consonance with the rule that the findings of fact of the Court of Appeals are conclusive and binding on the Court.[9] Factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are likewise generally accorded

[9] *Carlos v. Court of Appeals*, G.R. No. 168096, 28 August 2007, 531 SCRA 461.

not only respect, but even finality, as long as the findings are supported by substantial evidence.[10]

In this case, we find that the findings of fact of the NLRC and the Court of Appeals are in accord with the evidence on record.

Article 282 of the Labor Code provides for the just causes for termination of employment, as follows:

(a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or the latter's representative in connection with the employee's work;

(b) gross and habitual neglect by the employee of his duties;

(c) fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative;

(d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) other causes analogous to the foregoing.

Petitioners allege that the Court of Appeals erred in finding that at the time of the 24 August 2009 meeting, Liza already set her mind to terminate Gonzales from employment. Petitioners claim that the meeting was only for the purpose of apprising Gonzales of his new work schedule as demanded by JWGC to meet its business demands. Petitioners further allege that, assuming that it was Liza's intention to terminate Gonzales from employment, she had no authority to effect the dismissal without authority from JWGC's Board of Directors. Petitioners further allege that the response of Gonzales during the 24 August 2009 meeting amounted to willful disobedience, insubordination and misconduct that warranted his dismissal from employment. In addition, petitioners allege that his misconduct was aggravated when he called the spouses Hernandez "*gago*" in a text message. Petitioners further allege that Gonzales was a managerial employee

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[10] *Id.*

and the loss of trust and confidence alone justified his dismissal from employment.

However, as found by the Court of Appeals, there was nothing in the records that would show that petitioners had issues against Gonzales before the 24 August 2009 meeting with Liza. If at all, the tension only started when Hans told Margie that he was not satisfied with the performance of Gonzales as General Manager, when Gonzales left the office when he learned Hans was coming over, and when he called the spouses Hernandez *"gago"* in a text message. The NLRC found credence in Gonzales' narration of what transpired during the 24 August 2009 meeting which showed that Liza already decided to terminate Gonzales from employment, thus:

> During the meeting at the Valle Verde Club on August 24, 2009, Liza was already decided to dismiss him when she told complainant, ***"Rene, this is not working, and this will never work. Kayo ni Hans may conflict, kami ni Hans may conflict. I just need a simple manager, that will be there early, I know you are not willing to do that."*** And when complainant asked Liza what he should do, Liza replied ***"You can resign, pwede naman up to the end of the month, wag ka na pumasok and we'll still pay you. You don't have to worry, we will give you what's due you. Yung laptop and car, no rush, anytime at your convenience."*** He answered Liza and told her "***Why should I resign? If you want me out, fire me,"*** to which Liza said, ***"Ok what should I write?"*** Complainant answered ***"You have to justify it."*** [11] (Emphasis in the original)

At the outset, Liza already informed Gonzales that their employment relationship was not working and she made it clear that they wanted him out of the company. She even told him that he could stop reporting for work. Liza told Gonzales that they would give him what is due him and Gonzales, in an e-mail dated 26 August 2009, sent Liza his proposed severance package. Further, Gonzales found out the next day after the meeting that his company e-mail had been deleted. Thus, he started turning over his work, as indicated by the following incidents enumerated by the Court of Appeals:

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[11] *Rollo*, p. 94.

x x x [I]n a text message sent to Liza on August 24, 2009 at 3:11 pm, (after respondent was fired) respondent told her that he would tell Becky of MCGK, (the company that [JWGC] hired to subcontract some of [JWGC] projects), to communicate with her and that he had faxed to [JWGC] lawyer Atty. Caedo the lease contract and for Liza to take charge. He also forwarded to Liza the text he received from a certain Mau Abad about the lighting installation in the plant to be rented by JWGC. More telling is the e-mail message respondent sent to Liza telling her that he would e-mail his work severance proposal in a few days so that it would coincide exactly with the 30th day. On August 26, 2009, respondent sent via e-mail his computation of his severance pay.[12]

Gonzales started turning over his work and projects because he was eased out of the company. Further, as pointed out by the Court of Appeals, Gonzales would not send the work severance proposal if he was still connected with JWGC.

We also agree with the Court of Appeals that the allegation of lackluster performance of Gonzales to justify his termination from employment was not sufficiently established. The Court of Appeals found:

Additionally, the petitioners were also unable to prove the alleged lackluster performance of respondent. We peruse the Review made by Hans on respondent's performance and saw nothing derogatory except for the purported importance given by respondent to big clients. In the last paragraph of page 1 of said Review, Hans even indirectly admitted that the company is on to road to success. He even praised respondent's effectiveness in creating a more professional atmosphere in the work place and his adeptness in negotiation – negotiations that brought thousands of dollars to the company coffer.

The petitioners question the claim of respondent that JWGC flourished under his stewardship. The burden of proof lies not with respondent but with the petitioners as the financial statements and sales record of the company for 2008 and 2009 are in their possession and custody. They could have easily rebutted the claim of respondent by producing the said records but did not. Section 1(e) of [R]ule 131 of the 1997 Rules of Court provide *"that evidence willfully*

[12] *Id.* at 47.

suppressed would be adverse if produced."[13] (Emphasis in the original)

For misconduct to be a ground for dismissal of an employee, it must be serious in nature and in connection with the employee's work. Thus, the Court ruled:

> Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies 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. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.[14]

In order for serious misconduct to justify dismissal from employment under the law: (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[15] For misconduct to be serious within the meaning and intendment of the law, the misconduct must be of such grave and aggravated character and not merely trivial and unimportant.[16]

The alleged misconduct of Gonzales, which was his failure to report for work on the new time schedule specified by petitioners, could not be considered a ground for his termination from employment. As discussed earlier, Liza already dismissed Gonzales from employment in their 24 August 2009 meeting. The letter of Hans, dated 27 August 2009, and the show-cause notice, dated 14 September 2009, were belated attempts to comply with due process in effecting the dismissal of Gonzales from

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

[14] See *Baron v. National Labor Relations Commission*, G.R. No. 182299, 22 February 2010, 613 SCRA 351, 361.

[15] *Blazer Car Marketing, Inc. v. Bulauan*, G.R. No. 181483, 9 March 2010, 614 SCRA 713.

[16] *Id.*

employment. Even the allegation that Gonzales called the spouses Hernandez *"gago"* was not sufficient to be considered as serious misconduct. The full text of the message sent by Gonzales to Liza reads: *"B[a]kit naman na affect? So [you] want to impress na na affect work? Ang lupit mo d[i]n. Wala na kong inisip kundi negosyo nyo sasabihan mo pa ko ng ganyan? Pareho pala kayong gago e."* It was obviously an outburst for what he perceived as unfair treatment he was receiving from petitioners rather than a willful and improper act that would constitute serious misconduct. Besides, the outburst was made after Gonzales was already terminated from employment.

Petitioners further assert that Gonzales was a managerial employee and that mere loss of trust and confidence justified his dismissal from employment.

This Court, ruling on this matter, held:

> x x x [A]s regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.
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> On the other hand, loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature. It should not be used as a subterfuge for causes which are illegal, improper, and unjustified. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith. Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure.
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> Stated differently, the loss of trust and confidence must be based not on ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282 (c) of the Labor Code, on willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished

from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence. Moreover, the burden of proof required in labor cases must be amply discharged.[17]

The Court ruled that ordinary breach of trust and confidence will not suffice and that it must be willful.[18] The Court clarified that the breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[19] The Court emphasized that the loss of trust must be founded on clearly established facts.[20]

In this case, the allegation of loss of trust and confidence was not supported by substantial evidence. Hence, we find no valid ground that will justify petitioners in terminating the services of Gonzales.

Award of Backwages and Separation Pay

The payment of separation pay in lieu of reinstatement is an accepted doctrine particularly if the employee no longer wishes to be reinstated.[21] Thus:

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

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[17] *Lima Land, Inc. v. Cuevas*, G.R. No. 169523, 16 June 2010, 621 SCRA 36, 46-48. Citations omitted.

[18] See *Norsk Hydro (Phils.), Inc. v. Rosales, Jr.*, G.R. No. 162871, 31 January 2007, 513 SCRA 583.

[19] *Id.*

[20] *Id.*

[21] *Golden Ace Builders v. Talde*, G.R. No. 187200, 5 May 2010, 620 SCRA 283.

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.[22]

Petitioners allege that Gonzales, not having been illegally dismissed, is not entitled to the award of backwages and separation pay but only to the proportionate payment of his 13th month salary.

We have already established that Gonzales was illegally dismissed from employment. In his Comment[23] dated 21 February 2012, Gonzales called the attention of this Court that the parties have already reached a settlement for the judgment awarded to him. In an Acknowledgement[24] dated 20 October 2011, Gonzales acknowledged receipt of six checks with the total amount of ₱1,090,833.33 representing six tranches of payment for the satisfaction of the judgment in this case. Gonzales stated in the Acknowledgement that the amount "shall be deemed fully satisfied only upon my encashment of all the checks stated above."[25] The last check was dated 15 March 2012 and there is nothing in the records to show that any of the check was dishonored and that payment was not satisfied. In their Reply[26] dated 27 April 2012, petitioners also manifested that they have already paid in full the monetary award to Gonzales as contained in the 29 June 2010 NLRC Resolution and affirmed by the Court of Appeals in its 20 May 2011 Decision.

WHEREFORE, we *DENY* the petition and *AFFIRM* the 20 May 2011 Decision and the 23 September 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 117758.

SO ORDERED.

Brion, del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

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

[23] *Rollo,* pp. 453-480.

[24] *Id.* at 481.

[25] *Id.*

[26] *Id.* at 489-495.

THIRD DIVISION

[A.M. No. MTJ-11-1787. October 11, 2012]
(Formerly A.M. No. 08-5-146-MeTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **MARIANITO C. SANTOS, Presiding Judge, Metropolitan Trial Court, Branch 57, San Juan City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; LOWER COURTS ARE REQUIRED TO DECIDE OR RESOLVE ALL CASES AND MATTERS WITHIN A PERIOD OF THREE MONTHS FROM SUBMISSION.— Section 15, Article VIII of the 1987 Constitution requires lower courts to decide or resolve cases or matters for decision or final resolution within three (3) months from date of submission. Corollary to this constitutional mandate, Canon 1, Rule 1.02, of the Code of Judicial Conduct directs that a judge should administer justice impartially and *without delay*. Specifically, Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and to decide cases within the required period. All cases or matters must be decided or resolved by all lower courts within a period of three (3) months from submission. To stress the importance of prompt disposition of cases, the Court, in Administrative Circular No. 3-99, dated January 15, 1999, reminded all judges to strictly follow the periods prescribed by the Constitution for deciding cases because failure to comply with the said period violates the parties' constitutional right to speedy disposition of their cases. Hence, failure to decide cases within the ninety (90)-day reglementary period may warrant imposition of administrative sanctions on the defaulting judge.

2. ID.; ID.; ID.; HEAVY CASELOAD AND DEMANDING WORKLOAD, NOT VALID REASONS TO FALL BEYOND THE MANDATORY PERIOD FOR DISPOSITION OF CASES.— Heavy caseload and demanding workload are not valid reasons to fall behind the mandatory period for disposition of cases. Any delay, no matter how short, in the disposition of cases weakens the people's faith and confidence

in our judicial system. Judge Santos' full compliance of the Court's directive to decide all pending 294 cases submitted for decision does not exculpate him from administrative sanction.

3. JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER; SANCTIONS.— Sections 9(1) and 11(B), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, categorize undue delay in rendering a decision or order as a less serious charge with the following administrative sanctions: (a) suspension from office without salary and other benefits for not less than one (1) or more than three months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

D E C I S I O N

MENDOZA, *J.*:

The matter before this Court is an administrative case against Judge Marianito C. Santos *(Judge Santos)*, Presiding Judge of Metropolitan Trial Court, San Juan City, Branch 57 *(MeTC)*, who accumulated 294 undecided cases outside the required period of disposition.

In a Letter, dated May 5, 2008,[1] Judge Santos requested from the Office of the Court Administrator *(OCA)* additional time to try and decide two election cases, namely: (a) Special Proceedings No. 2007-02 (*Election Protest No. 2007-02*) filed by a certain Felicisimo Gavino against Raymundo Jucutan; and (b) Special Proceedings No. 2007-03 *(Election Protest No. 2007-03)* initiated by Angel Marinas against Edgardo Corre.

The OCA, in its Report,[2] dated May 22, 2008, favorably recommended the extension requested by Judge Santos which was adopted by the Court in its July 21, 2008 Resolution.[3] Judge Santos was granted an extension of thirty (30) days or until June 7, 2008 to decide both election cases and was directed

[1] *Rollo*, p. 2.

[2] *Id.* at 1.

[3] *Id.* at 6.

to furnish the Court with copies of his decisions on said cases within ten (10) days from the promulgation of judgment.

Thereafter, in a Letter,[4] dated March 03, 2009, Judge Santos provided the Court with a copy of his February 16, 2009 Decision[5] in Election Protest No. 2007-03. The OCA, however, noticed that the said decision was rendered eight (8) months beyond the extension granted to Judge Santos. In its March 11, 2009 Report,[6] the OCA recommended:

> IN VIEW OF THE FOREGOING, it is respectfully recommended for the consideration of the Honorable Court that: (1) the letter, dated 2 March 2009 of Presiding Judge Marianito C. Santos of the Metropolitan Trial Court, Branch 57, San Juan City, be NOTED; (2) the submission of a copy of the decision in Election Protest No. 2007-03 be treated as PARTIAL COMPLIANCE with the resolution dated 21 July 2008; (3) Judge Santos be ADVISED to decide cases within the period as requested by him with WARNING that repetition of the same infraction in the future shall be dealt with more severely; and (4) Judge Santos be REQUIRED to submit to the Court, through the Office of the Court Administrator, a copy of the decision in Election Protest No. 2007-02 within ten (10) days from notice hereof.

Accordingly, on June 1, 2009, the Court resolved to (1) note the March 2, 2009 Letter of Judge Santos; (2) treat the submission of a copy of the decision in Election Protest No. 2007-03 as partial compliance with the July 21, 2008 Resolution; (3) advise Judge Santos to decide cases within the period as requested by him with warning that a repetition of the same infraction in the future would be dealt with more severely; and (4) require Judge Santos to submit to the Court, through the OCA, a copy of his decision in Election Protest No. 2007-02 within ten (10) days from this notice.[7]

In a letter, dated July 10, 2009, Judge Santos sought another extension of thirty (30) days or until August 10, 2009 to decide

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[4] *Id.* at 7.

[5] *Id.* at 8-16.

[6] *Id.* at 20.

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

Special Proceedings No. 2007-02 as he apparently needed more time to evaluate the voluminous records of the case.[8]

The OCA, in its Memorandum,[9] dated July 22, 2009, recommended that (1) the Letter, dated July 10, 2009, be noted; (2) Judge Santos be directed to explain within ten (10) days from notice why he failed to decide, Election Protest No. 2007-02 within the requested period; (3) Judge Santos be granted a period until August 10, 2009 within which to decide on Election Protest No. 2007-02 and to submit to the Court, through the OCA, a copy of the decision in Election Protest No. 2007-02 within ten (10) days from rendition thereof.

Through a Letter,[10] dated August 19, 2009, Judge Santos submitted a copy of the promulgated decision[11] in Election Protest No. 2007-02, dated August 10, 2009. In its September 4, 2009 Report,[12] the OCA recommended that the letters dated July 10, 2009 and August 19, 2009 from Judge Santos be noted and that he be required to explain within ten (10) days from notice why he failed to dispose of the case within the requested period. Acting thereon, the Court, in its September 23, 2009 Resolution,[13] noted Judge Santos' letters and ordered him to explain within ten (10) days from notice why he failed to decide the case within the period requested.

In his Letter,[14] dated October 29, 2009, Judge Santos explained that although he only requested for a period until August 9, 2009 to submit the decision in Election Protest No. 2007-02, he miscalculated the period he originally asked as there were other cases due for decision while acting as Pairing Judge of

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[8] *Id.* at 23.

[9] *Id.* at 28-29.

[10] *Id.* at 30.

[11] *Id.* at 31-40.

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

[13] *Id.* at 43-44.

[14] *Id.* at 45-46.

Branch 58, MeTC, also in San Juan City, after the death of its Presiding Judge, Judge Philip G. Labastiada. This was in addition to his regular duties as Executive Judge of MeTC, San Juan City. He also had to monitor the administrative supervision of the Office of the Clerk of Court because the Officer-in-Charge was only performing it in an acting capacity. As such, he likewise had to occasionally check the flow of funds in the said office.

In its Resolution,[15] dated February 1, 2010, the Court took note of Judge Santos' October 29, 2009 Letter and referred it to the OCA for evaluation, report and recommendation within sixty (60) days from notice.

In its Memorandum,[16] dated December 13, 2010, the OCA found that, as of September 2010, Branch 57, had a total of 708 pending cases with 304 pending cases already submitted for decision. Of these 304 cases, 294 were already beyond the reglementary period. Of the 294 cases, 143 were left by previous judges while 151 cases had been submitted for decision before Judge Santos. The OCA recommended that the matter be re-docketed as a regular administrative matter, among others.

Hence, in its February 28, 2011 Resolution,[17] the Court resolved to:

1. RE-DOCKET this administrative matter as a regular administrative matter;

2. DIRECT Presiding Judge Marianito C. Santos, MeTC, Br. 57, San Juan City, to: (a) SHOW CAUSE within twenty (20) days from receipt hereof why no administrative sanction shall be imposed on him for failure to decide within the reglementary period some 151 cases that have been submitted for decision before him and some 143 cases that have been submitted for decision before the other judges previously assigned at the said court, all of which cases had been listed in the court's Monthly Report of Cases for September 2010, (b) TAKE APPROPRIATE ACTION within ten (10) days from receipt hereof on the cases submitted for decision before Presiding

[15] *Id.* at 71.

[16] *Id.* at 72-75.

[17] *Id.* at 145-147.

Judge Marilou D. Runes-Tamang, MeTC, Br. 73, Pateros, in accordance with the Resolution of the Court dated 08 June 2004 in A.M. No. 04-5-19-SC, (c) DECIDE within four (4) months from receipt hereof all the said cases submitted to him for decision and those of his predecessors (many BP 22 cases with several counts), and (d) CEASE AND DESIST from conducting trial at Branch 57 during the said four (4)-month period when he will be deciding the cases; and

3. DIRECT Ms. Nelita R. de Dumo, Branch Clerk of Court, same court, to SUBMIT to the OCA a report on the status of the aforementioned undecided cases within the first ten (10) days of each month.

x x x x x x x x x[18]

Nelita R. de Dumo, Clerk of Court III, MeTC, Branch 58, San Juan City, submitted her Manifestation and Comment[19] to clarify that the Court's February 28, 2011 Resolution erroneously named her as the Branch Clerk of Court of Branch 57, MeTC, San Juan City. She informed the Court that Melissa Perez *(Perez)* was the Branch Clerk of Court of Branch 57. She prayed that she be relieved from complying with the Court's Resolution and that Perez be directed to comply with the resolution instead.

Thus, in its Resolution,[20] dated June 6, 2011, the Court ordered the correction of paragraph 3 of the February 28, 2011 Resolution so it would read as follows: "DIRECT Ms. Melissa B. Perez, Branch Clerk of Court, Metropolitan Trial Court, Br. 57, San Juan City, to SUBMIT to the OCA a report on the status of the aforementioned undecided cases within the first ten (10) days of each month."[21]

In compliance with the June 6, 2011 Resolution of this Court, Perez submitted a list of cases submitted for decision in two

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[18] *Id.* at 146.

[19] *Id.* at 148-151.

[20] *Id.* at 207-208.

[21] *Id.* at 207.

letters, dated September 1, 2011[22] and November 4, 2011,[23] respectively.

In a Letter,[24] dated November 8, 2011, Judge Santos informed the Court that he had already decided the 294 cases submitted for decision and requested that the administrative matter against him be dismissed in view of his full compliance. Similarly, Perez reported that the pending cases listed in the September 2010 OCA Report were already decided and promulgated.[25]

In the Court's Resolution,[26] dated December 5, 2011, this administrative matter was referred to the OCA for further evaluation, report and recommendation within sixty (60) days from notice.

The OCA, in its Memorandum,[27] dated July 16, 2012, found Judge Santos' justification insufficient. The OCA observed that Judge Santos "did not voluntarily mention or reveal the subject 294 cases and did not include them in his request for extension of time to decide the two (2) election cases. Although they could be found in the monthly reports of cases and in the semestral docket inventories, he should have been more forthright in stating such fact."[28] Thus, the OCA made the following recommendation:

> In view of the foregoing, we respectfully submit for the consideration of the Honorable Court that Presiding Judge Marianito C. Santos, Metropolitan Trial Court, Branch 57, San Juan City, be: (a) found GUILTY of undue delay in rendering decision in 294 cases and FINED in the amount of Twenty Thousand Pesos (₱20,000.00); and (b) REMINDED to take priority action on all cases which are submitted for decision before him, especially those already beyond

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[22] *Id.* at 210.

[23] *Id.* at 225.

[24] *Id.* at 216-217.

[25] *Id.* at 223.

[26] *Id.* at 221.

[27] *Id.* at 240-242.

[28] *Id.* at 241.

the reglementary period to decide, with WARNING that the repetition of a similar infraction shall be dealt with more severely.[29]

After a careful examination of the records of this case, the Court finds the recommendation of the OCA to be well-taken.

Section 15, Article VIII of the 1987 Constitution requires lower courts to decide or resolve cases or matters for decision or final resolution within three (3) months from date of submission. Corollary to this constitutional mandate, Canon 1, Rule 1.02, of the Code of Judicial Conduct directs that a judge should administer justice impartially and *without delay*. [Emphasis supplied]

Specifically, Canon 3, Rule 3.05 of the Code of Judicial Conduct enjoins judges to dispose of their business promptly and to decide cases within the required period. All cases or matters must be decided or resolved by all lower courts within a period of three (3) months from submission.

To stress the importance of prompt disposition of cases, the Court, in Administrative Circular No. 3-99, dated January 15, 1999, reminded all judges to strictly follow the periods prescribed by the Constitution for deciding cases because failure to comply with the said period violates the parties' constitutional right to speedy disposition of their cases.[30] Hence, failure to decide cases within the ninety (90)-day reglementary period may warrant imposition of administrative sanctions on the defaulting judge.[31]

In this case, Judge Santos failed to render the decision in 294 cases within the reglementary period or to even ask for

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[29] *Id.* at 242.

[30] *Re: Cases submitted for Decision before Hon. Meliton G. Emuslan, Former Judge, Regional Trial Court, Branch 147, Urdaneta City, Pangasinan*, A.M. No. RTJ-10-2226, March 22, 2010, 616 SCRA 280, 282.

[31] *Office of the Court Administrator v. Garcia-Blanco*, 522 Phil. 87, 99 (2006).

extension.[32] "The Court, in its aim to dispense speedy justice, is not unmindful of circumstances that justify the delay in the disposition of the cases assigned to judges. It is precisely for this reason why the Court has been sympathetic to requests for extensions of time within which to decide cases and resolve matters and incidents related thereto. When a judge sees such circumstances before the reglementary period ends, all that is needed is to simply ask the Court, with the appropriate justification, for an extension of time within which to decide the case. Thus, a request for extension within which to render a decision filed beyond the 90-day reglementary period is obviously a subterfuge to both the constitutional edict and the Code of Judicial Conduct."[33]

Judge Santos could have easily asked the Court for an extension of time to decide on these cases like what he had done in the two election cases. He, however, opted not to do so. The Court cannot understand why Judge Santos asked for extension in the two election cases but not in the 294 cases already waiting for disposition in his sala. The Court can only surmise that it was deliberate so he could not be directed by the Court to immediately resolve all of them. The fact that the cases were mentioned in the monthly report of cases and semestral docket inventories is not extenuating. The indelible fact is that he was in delay in resolving those cases. Under the circumstances, it was inexcusable.

Heavy caseload and demanding workload are not valid reasons to fall behind the mandatory period for disposition of cases. Any delay, no matter how short, in the disposition of cases weakens the people's faith and confidence in our judicial system.[34] Judge Santos' full compliance of the Court's

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[32] *Re: Report on the Judicial Audit Conducted in the RTC-Br. 220, Quezon City*, 412 Phil. 680, 684-685 (2001).

[33] *Re: Request of Judge Roberto S. Javellana, RTC-Br. 59, San Carlos City (Negros Occidental) for Extension of Time to decide Civil Cases Nos. X-98 & RTC 363*, 452 Phil. 463, 467 (2003).

[34] *Office of the Court Administrator v. Judge Eisma*, 439 Phil. 601, 609 (2002).

directive to decide all pending 294 cases submitted for decision does not exculpate him from administrative sanction.

Sections 9(1) and 11(B), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC,[35] categorize undue delay in rendering a decision or order as a less serious charge with the following administrative sanctions: (a) suspension from office without salary and other benefits for not less than one (1) or more than three months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

WHEREFORE, Presiding Judge Marianito C. Santos, Metropolitan Trial Court, Branch 57, San Juan City, is found **GUILTY** of undue delay in rendering the decision in 294 cases. Accordingly, he is ordered to pay a **FINE** of **TWENTY THOUSAND PESOS** (₱20,000.00). He is hereby reminded to take priority action on all cases which are submitted for decision and **WARNED** that a repetition of a similar infraction would be dealt with more severely.

SO ORDERED.

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

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[35] Promulgated on September 11, 2001 and took effect on October 1, 2001.

[*] Designated acting member, per Special Order No. 1299-A, dated August 28, 2012.

THIRD DIVISION

[G.R. No. 166803. October 11, 2012]

CREWLINK, INC. and/or GULF MARINE SERVICES, *petitioners, vs.* **EDITHA TERINGTERING, for her behalf and in behalf of minor EIMAEREACH ROSE DE GARCIA TERINGTERING,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING ERRORS OF LAW.— In a petition for review on *certiorari*, our jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous. We are not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF LABOR OFFICIALS ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY BY THE COURTS.— [F]actual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. More so, when there is no showing that said findings were arrived at arbitrarily or in disregard of the evidence on record.

3. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA STANDARD EMPLOYMENT CONTRACT

GOVERNING THE EMPLOYMENT OF ALL FILIPINO SEAMEN ON-BOARD OCEAN-GOING VESSELS; THE DEATH OF A SEAMAN DURING THE TERM OF EMPLOYMENT MAKES THE EMPLOYER LIABLE FOR DEATH COMPENSATION BENEFITS; EXCEPTION.— Under No. 6, Section C, Part II of the POEA "Standard Employment Contract Governing the Employment of All Filipino Seamen On-Board Ocean-Going Vessels" (POEA-SEC), it is provided that x x x in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. This rule, however, is not absolute. The employer may be exempt from liability if it can successfully prove that the seaman's death was caused by an injury directly attributable to his deliberate or willful act.

4. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; ESTABLISHING INSANITY REQUIRES OPINION TESTIMONY.—** Homesickness and/or family problems may result to depression, but the same does not necessarily equate to mental disorder. The issue of insanity is a question of fact; for insanity is a condition of the mind not susceptible of the usual means of proof. As no man would know what goes on in the mind of another, the state or condition of a person's mind can only be measured and judged by his behavior. Establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted with the person claimed to be insane, or who has rational basis to conclude that a person was insane based on the witness' own perception of the person, or who is qualified as an expert, such as a psychiatrist.

5. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA STANDARD EMPLOYMENT CONTRACT GOVERNING THE EMPLOYMENT OF ALL FILIPINO SEAMEN ON-BOARD OCEAN-GOING VESSELS; HOW CONSTRUED.—** [W]hile it is true that labor contracts are impressed with public interest and the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be

dispensed with in the light of established facts, the applicable law, and existing jurisprudence.

APPEARANCES OF COUNSEL

Puracan Law Office and Associates for petitioners.
Linsangan Linsangan & Linsangan Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated July 8, 2004 and Resolution[2] dated January 17, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 79966, setting aside the Resolutions dated February 20, 2003[3] and July 31, 2003[4] of the National Labor Relations Commission (NLRC), which affirmed *in toto* the Decision[5] dated February 12, 2002 of the Labor Arbiter.

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

Respondent Editha Teringtering (Teringtering), spouse of deceased Jacinto Teringtering (Jacinto), and in behalf of her minor child, filed a complaint against petitioner Crewlink, Inc. (Crewlink), and its foreign principal Gulf Marine Services for the payment of death benefits, benefit for minor child, burial assistance, damages and attorney's fees.

Respondent alleged that her husband Jacinto entered into an overseas employment contract with Crewlink, Inc. for and

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Rodrigo V. Cosico and Danilo B. Pine, concurring; *rollo*, pp. 40-47.

[2] *Id.* at 49-50.

[3] CA *rollo*, pp. 27-37.

[4] *Id.* at 38-39.

[5] *Id.* at 21-26.

in behalf of its foreign principal Gulf Marine Services, the details of which are as follows:

Duration of Contract	:	12 months
Position	:	Oiler
Basic Monthly Salary	:	US $385.00
Hours of Work	:	48 hrs/wk
Overtime	:	US $115.50
Vacation Leave with pay	:	1 mo. leave after 12 months
Point of Hire	:	Manila, Philippines
x x x	x x x	x x x

Teringtering claimed that before her husband was employed, he was subjected to a pre-employment medical examination wherein he was pronounced as "fit to work." Thus, her husband joined his vessel of assignment and performed his duties as Oiler.

On or about April 18, 2001, a death certificate was issued by the Ministry of Health of the United Arab Emirates wherein it was stated that Jacinto died on April 9, 2001 due to asphyxia of drowning. Later on, an embalming and sealing certificate was issued after which the remains of Jacinto was brought back to the Philippines.

After learning of the death of Jacinto, respondent claimed from petitioners the payment of death compensation in the amount of US$50,000.00 and burial expenses in the amount of US$1,000.00, as well as additional death compensation in the amount of US$7,000.00, for the minor Eimaereach Rose de Gracia Teringtering but was refused without any valid cause. Hence, a complaint was filed against the petitioners.

Respondent claimed that in order for her husband's death to be compensable it is enough that he died during the term of his contract and while still on board. Respondent asserted that Jacinto was suffering from a psychotic disorder, or Mood Disorder Bipolar Type, which resulted to his jumping into the sea and his eventual death. Respondent further asserted that her

husband's death was not deliberate and not of his own will, but was a result of a mental disorder, thus, compensable.

For its part, petitioner Crewlink alleged that sometime on April 9, 2001, around 8:20 p.m. while at Nasr Oilfield, the late Jacinto Teringtering suddenly jumped into the sea, but the second engineer was able to recover him. Because of said incident, one personnel was directed to watch Jacinto. However, around 10:30 p.m., while the boat dropped anchor south of Nasr Oilfield and went on standby, Jacinto jumped off the boat again. Around 11:00 p.m., the A/B watchman reported that Jacinto was recovered but despite efforts to revive him, he was already dead from drowning.

Petitioner asserted that Teringtering was not entitled to the benefits being claimed, because Jacinto committed suicide. Despite the non-entitlement, however, Teringtering was even given burial assistance in the amount of ₱35,800.00 and ₱13,273.00 on May 21, 2001. She likewise received the amount of US$792.51 representing donations from the GMS staff and crew. Petitioner likewise argued that Teringtering is not entitled to moral and exemplary damages, because petitioner had nothing to do with her late husband's untimely demise as the same was due to his own doing.

As part of the record, respondent submitted Ship Captain Oscar C. Morado's report on the incident, which we quote:

> At around 2000 hrs. M/V Raja 3404 still underway to Nasr Complex w/ 1 passenger. 2018 hrs. A/side Nasr Complex boatlanding to drop 1 passenger At 2020 hrs. Mr. Jacinto Tering Tering suddenly jump to the sea, while the boat cast off from Nasr Complex boatlanding. And the second Engr. Mr. Sudarto jump and recover Mr. Jacinto Tering Tering the oiler.
>
> 2040 hrs. Dropped anchor south of Nasr oilfield and standby. And that time informed to GMS personnel about the accident, And we informed to A/B on duty to watch Mr. Jacinto Tering Tering. 2230 hrs. The A/B watch man informed that Mr. Jacinto Tering Tering jump again to the sea. And that time the wind NW 10-14 kts. and strong current. And the second Engr. jump to the sea with life ring to recover Mr. Jacinto Tering Tering. 2300 hrs. We recovered Mr.

Jacinto Tering Tering onboard the vessel and apply Respiration Kiss of life Mouth to Mouth, And proceed to Nasr Complex to take doctor.

2320 hrs. A/side Nasr Complex boatlanding and the doctor onboard to check the patient. 2330 hrs. As per Nasr Complex Doctor the patient was already dead. Then informed to GMS personnel about the accident.

I Captain Oscar C. Morado certify this report true and correct with the best of my knowledge and reserve the right, modify, ratify and/or enlarge this statement at any time and place, According to the law.[6]

In a Decision dated February 12, 2002, the Labor Arbiter, after hearing, dismissed the case for lack of merit. The Labor Arbiter held that, while it is true that Jacinto Teringtering died during the effectivity of his contract of employment and that he died of asphyxiation, nevertheless, his death was the result of his deliberate or intentional jumping into the sea. Thus, his death was directly attributable to him.

Teringtering then appealed before the NLRC which affirmed *in toto* the ruling of the Labor Arbiter.

Unsatisfied, Teringtering filed a petition for *certiorari* under Rule 65 before the Court of Appeals and sought the nullification of the NLRC Resolution, dated February 20, 2003, which affirmed the Labor Arbiter's Decision dated February 12, 2002.

On July 8, 2004, the CA reversed and set aside the assailed Resolution of the NLRC, the dispositive portion of which reads:

WHEREFORE, premises considered, the Resolution dated February 20, 2003 is hereby REVERSED and SET ASIDE. Respondents Crewlink, Inc. and Gulf Marine Services are hereby DECLARED jointly and severally liable and, accordingly, are directed to pay deceased Jacinto Teringtering's beneficiaries, namely respondent Editha Teringtering and her daughter Eimaereach Rose de Gracia, the Philippine Currency equivalent to US$50,000.00, and an additional amount of US$7,000, both at the exchange rate prevailing at the time of payment.

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[6] *Id.* at 93.

SO ORDERED.[7]

Thus, before this Court, Crewlink, Inc. and/or Gulf Marine Services, as petitioner, raised the following issues:

I

WHETHER A SPECIAL CIVIL ACTION OF *CERTIORARI* INCLUDES CORRECTION OF THE NLRC'S EVALUATION OF THE EVIDENCE AND FACTUAL FINDINGS BASED THEREON OR CORRECTION OF ERRORS OF FACTS IN THE JUDGMENT OF THE NLRC;

II

WHETHER THE NEGLIGENT ACTS OF SUPPOSEDLY FAILING TO TAKE SUCH MEASURES FOR THE COMFORT AND SAFETY OF THE DECEASED SEAFARER, AMONG OTHERS, WHICH WERE ESPECIALLY EMPHASIZED IN THE ASSAILED CA DECISION AND WHICH ACTUALLY REFERRED TO ACTS COMMITTED BY THE SHIPMATES OF THE DECEASED, BUT POSITIVELY ATTRIBUTED TO PETITIONERS AND FOR WHICH THE LATTER ARE NOW BEING HELD LIABLE – ARE IN THE NATURE OF AN ENTIRELY DIFFERENT SOURCE OF OBLIGATION THAT IS PREDICATED ON QUASI-DELICT OR TORT AS PROVIDED UNDER OUR CIVIL LAWS AND, THUS, HAS NO REFERENCE TO OUR LABOR CODE;

III

WHETHER THE DEATH OF SEAFARER IN THIS CASE WAS A RESULT OF A DELIBERATE/WILLFUL ACT ON HIS OWN LIFE, AN ACT DIRECTLY ATTRIBUTABLE TO THE DECEASED, AND NO OTHER, AS FOUND AND SO RULED BY THE LABOR ARBITER AND NLRC, AS TO RENDER HIS DEATH NOT COMPENSABLE.

Petitioner claimed that Jacinto's death is not compensable, considering that the latter's death resulted from his willful act. It argued that the rule that the employer becomes liable once it is established that the seaman died during the effectivity of his employment contract is not absolute. The employer may be exempt from liability if he can successfully prove that the seaman's death was caused by an injury directly attributable to his deliberate or willful act, as in this case.

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[7] *Rollo*, p. 46.

We find merit in the petition.

In a petition for review on *certiorari*, our jurisdiction is limited to reviewing errors of law in the absence of any showing that the factual findings complained of are devoid of support in the records or are glaringly erroneous. We are not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record. This case is no different.

As found by the Labor Arbiter, Jacinto's jumping into the sea was not an accident but was deliberately done. Indeed, Jacinto jumped off twice into the sea and it was on his second attempt that caused his death. The accident report of Captain Oscar Morado narrated in detail the circumstances that led to Jacinto's death. The circumstances of Jacinto's actions before and at the time of his death were likewise entered in the Chief Officer's Log Book and were attested to by Captain Morado before the Philippine Embassy. Even the A/B personnel, Ronald Arroga, who was tasked to watch over Jacinto after his first attempt of committing suicide, testified that despite his efforts to prevent Jacinto from jumping again overboard, Jacinto was determined and even shoved him and jumped anew which eventually caused his death.

Considering the foregoing, we do not find any reason to discredit the evidence presented as well as the findings of the Labor Arbiter. Settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, *i.e.*, the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. More so, when there is no showing that said findings were arrived at arbitrarily or in disregard of the evidence on record.

Likewise, the provisions of the Code of Commerce are certainly inapplicable in this case. For precisely, the issue for resolution here is the obligation of the employer to its employee should the latter die during the term of his employment. The relationship between the petitioner and Jacinto is one based on contract of employment and not one of contract of carriage.

Under No. 6, Section C, Part II of the POEA "Standard Employment Contract Governing the Employment of All Filipino Seamen On-Board Ocean-Going Vessels" (POEA-SEC), it is provided that:

x x x x x x x x x

6. **No compensation shall be payable in respect of any injury, incapacity, disability or death resulting from a willful act on his own life by the seaman, provided, however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to him.** (Emphasis ours)

Indeed, in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. This rule, however, is not absolute. The employer may be exempt from liability if it can successfully prove that the seaman's death was caused by an injury directly attributable to his deliberate or willful act.

In the instant case, petitioner was able to substantially prove that Jacinto's death was attributable to his deliberate act of killing himself by jumping into the sea. Meanwhile, respondent, other than her bare allegation that her husband was suffering from a mental disorder, no evidence, witness, or any medical report was given to support her claim of Jacinto's insanity. The record does not even show when the alleged insanity of Jacinto did start. Homesickness and/or family problems may result to depression, but the same does not necessarily equate to mental disorder. The issue of insanity is a question of fact; for insanity is a condition of the mind not susceptible of the usual means of proof. As no man would know what goes on in the mind of another, the state or condition of a person's

mind can only be measured and judged by his behavior. Establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted with the person claimed to be insane, or who has rational basis to conclude that a person was insane based on the witness' own perception of the person, or who is qualified as an expert, such as a psychiatrist.[8] No such evidence was presented to support respondent's claim.

The Court commiserates with the respondent, but absent substantial evidence from which reasonable basis for the grant of benefits prayed for can be drawn, the Court is left with no choice but to deny her petition, lest an injustice be caused to the employer. Otherwise stated, while it is true that labor contracts are impressed with public interest and the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[9]

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals in CA-G.R. SP No. 79966, dated July 8, 2004, and its January 17, 2005 Resolution denying the motion for reconsideration are **REVERSED** and **SET ASIDE.** The February 20, 2003 and July 31, 2002 Resolutions of the National Labor Relations Commission in NLRC NCR OFW Case No. (M) 01-06-1144-00, affirming the February 12, 2002 Decision of the Labor Arbiter, are hereby **REINSTATED and AFFIRMED.**

SO ORDERED.

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

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[8] *People v. Florendo*, G.R. No. 136845, October 8, 2003, 413 SCRA 132, 139; 459 Phil. 470, 478-479 (2003).

[9] *Panganiban v. Tara Trading Shipmanagement, Inc., and Shinline SDN BHD*, G.R. No. 187032, October 18, 2010, 633 SCRA 353, 369.

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

THIRD DIVISION

[G.R. No. 168331. October 11, 2012]

UNITED INTERNATIONAL PICTURES AB, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; CORPORATE INCOME TAX; OPTION TO CARRY-OVER EXCESS TAX; ONCE A CORPORATION EXERCISES THE OPTION TO CARRY-OVER, SUCH OPTION IS IRREVOCABLE FOR THAT TAXABLE PERIOD.— Section 76 of the NIRC of 1997 x x x is clear that once a corporation exercises the option to carry-over, such option is irrevocable "*for that taxable period*." Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment. To avoid confusion, this Court has properly explained the phrase "*for that taxable period*" in *Commissioner of Internal Revenue v. Bank of the Philippine Islands.* In said case, the Court held that the phrase merely identifies the excess income tax, subject of the option, by referring to the "***taxable period when it was acquired by the taxpayer***."

2. ID.; ID.; TAX REFUND; REQUIREMENTS.— In claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following basic requirements: "(1) The claim for refund was filed within two years as prescribed under Section 229 of the NIRC of 1997; (2) The income upon which the taxes were withheld were included in the return of the recipient (Section 10, Revenue Regulations No. 6-85); (3) The fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom (Section 10, Revenue Regulations No. 6-85)."

APPEARANCES OF COUNSEL

Lina Lavares Didulo & Leviste-Avellana Law Offices for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated August 31, 2004 and Resolution[2] dated May 17, 2005 of the Court of Appeals in CA-G.R. SP No. 76173.

The facts follow.

On April 15, 1999, petitioner filed with the Bureau of Internal Revenue (BIR) its Corporation Annual Income Tax Return for the calendar year ended December 31, 1998 reflecting, among others, a net taxable income from operations in the sum of ₱24,961,200.00, an income tax liability of ₱8,486,808.00, but with an excess income tax payment in the amount of ₱4,325,152.00 arising from quarterly income tax payments and creditable taxes withheld at source, computed as follows:

Gross Income	₱	42,905,466.00
Less: Deductions		17,944,266.00
Taxable Income	₱	24,961,200.00
Tax Due	₱	8,468,808.00
Less: Tax Credits/Payments		12,811,960.00
Tax Overpayment	**₱**	**4,325,152.00**

[1] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Godardo A. Jacinto and Jose C. Mendoza (now a member of this Court), concurring; *rollo*, pp. 97-105.

[2] *Id.* at 125.

Petitioner opted to carry-over as tax credit to the succeeding taxable year the said overpayment by putting an "x" mark on the corresponding box.

On April 17, 2000, petitioner filed its Corporation Annual Income Tax Return for the calendar year ended December 31, 1999 wherein it reported, among others, a taxable income in the amount of ₱7,071,651.00, an income tax due of ₱2,333,645.00, but with an excess income tax payment in the amount of ₱9,309,292.00, detailed as follows:

Gross Income	₱ 25,240,148.00	
Less: Deductions	18,168,497.00	
Taxable Income	₱ 7,071,651.00	
Tax Due	₱ 2,333,645.00	
Less: Tax Credits/Payments		
a. Prior Years Excess Credits	₱ 4,325,152.00	
b. Creditable Tax Withheld	7,317,785.00	11,642,937.00
Tax Overpayment		**₱9,309,292.00**

On the face of the 1999 return, petitioner indicated its option by putting an "x" mark on the box "To be refunded."

On April 28, 2000, petitioner filed with the BIR an administrative claim for refund in the amount of ₱9,309,292.00.

As respondent did not act on petitioner's claim, the latter filed a petition for review before the Court of Tax Appeals (CTA) to toll the running of the two-year prescriptive period.

On September 12, 2001, the CTA rendered a Decision[3] denying petitioner's claim for refund for taxable year 1998. It reasoned that since petitioner opted to carry over the 1998 tax overpayment as tax credit to the succeeding taxable year, the same cannot be refunded pursuant to Section 76 of the National Internal Revenue Code (NIRC) of 1997. The decretal portion of the decision reads:

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[3] *Rollo*, pp. 11-20.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND,** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of ₱7,269,078.40 representing unutilized creditable withholding tax for the year 1999.[4]

Dissatisfied, both parties filed their respective motions for reconsideration, but the same were denied by the CTA per Resolution dated March 11, 2003.

Consequently, respondent elevated the case to the Court of Appeals (CA).

In its petition, respondent argued that petitioner is not entitled to the refund awarded by the CTA, because it failed to present sufficient proof that the subject taxes were erroneously or illegally collected.

On August 31, 2004, the CA annulled and set aside the decision of the CTA. The CA ruled in this wise:

All told, the CTA erred in granting respondent's claim for tax refund, albeit in a reduced amount. As earlier discussed, the law specifically outlines the evidentiary requirements for the grant of tax credit or refund and failure on the part of the taxpayer to justify its claim in accordance with said standard is fatal to its cause. Considering the doubts cast on the documentary evidence presented by respondent in support of its claim, said evidence cannot be the basis for the grant of a refund. Indeed, it is the height of absurdity to allow a taxpayer to claim a refund when there is doubt as to whether it had, in fact, paid the correct amount of taxes due to the government.

WHEREFORE, the instant petition is **GRANTED**. The assailed decision of the Court of Tax Appeals is **ANNULLED** and **SET ASIDE** and another rendered **DISMISSING** the claim for tax refund of respondent.

SO ORDERED.[5]

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[4] *Id*. at 20. (Emphasis in the original.)

[5] *Id*. at 104-105. (Emphasis in the original.)

Thereafter, petitioner filed a motion for reconsideration against the aforementioned decision, but the same was denied in a Resolution dated May 17, 2005.

Accordingly, petitioner filed a petition for review on *certiorari* before this Court praying that the decision of the CA be set aside and that an income tax refund or tax credit certificate in the full amount of ₱9,260,585.40 be issued in its favor.

In its petition, petitioner submitted the following issues for this Court's disposition:

A. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN ANNULLING THE DECISION OF THE COURT OF TAX APPEALS THEREBY DENYING THE CLAIM FOR REFUND OF [PETITIONER] UIP.

B. WHETHER UIP IS PERPETUALLY PRECLUDED FROM [SUBMITTING] AN APPLICATION FOR INCOME TAX REFUND ON ITS EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR THE YEAR 1998 AFTER IT HAS INDICATED ITS OPTION TO CARRY-OVER THIS EXCESS CREDITABLE INCOME TAX TO THE FOLLOWING TAXABLE YEAR 1999.[6]

The foregoing issues can be simplified as follows: *first*, whether petitioner is perpetually barred to refund its tax overpayment for taxable year 1998 since it opted to carry-over its excess tax; and *second*, whether petitioner has proven its entitlement to the refund.

Let us discuss the issues *in seriatim*.

Anent the first issue, petitioner asserts that there is nothing in the law which perpetually prohibits the refund of carried over excess tax. It maintains that the option to carry-over is irrevocable only for the next "taxable period" where the excess tax payment was carried over.

We are not convinced.

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[6] *Id.* at 137.

Section 76 of the NIRC of 1997 states –

Section 76. ***Final Adjustment Return*****.** – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

(A) Pay the balance of tax still due; or

(B) Carry-over the excess credit; or

(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore**. (Emphasis supplied)

From the aforequoted provision, it is clear that once a corporation exercises the option to carry-over, such option is irrevocable *"for that taxable period."* Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment.[7]

To avoid confusion, this Court has properly explained the phrase "*for that taxable period*" in *Commissioner of*

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[7] *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation*, G.R. Nos. 171742 and 176165, June 15, 2011, 652 SCRA 80, 89-90.

Internal Revenue v. Bank of the Philippine Islands.[8] In said case, the Court held that the phrase merely identifies the excess income tax, subject of the option, by referring to the "***taxable period when it was acquired by the taxpayer***." Thus:

x x x **Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable.** It mentioned no exception or qualification to the *irrevocability rule*.

Hence, the controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."

The last sentence of Section 76 of the NIRC of 1997 reads: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option **shall be considered irrevocable for that taxable period** and no application for tax refund or issuance of a tax credit certificate shall be allowed therefore." **The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.** In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

The Court of Appeals mistakenly understood the phrase "for that taxable period" as a prescriptive period for the *irrevocability rule* x x x. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as

[8] G.R. No. 178490, July 7, 2009, 592 SCRA 219.

regards said taxpayer's excess tax credit. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.[9]

Plainly, petitioner's claim for refund for 1998 should be denied as its option to carry over has precluded it from claiming the refund of the excess 1998 income tax payment.

Apropos, we now resolve the issue of whether petitioner had sufficiently proven entitlement to refund its tax overpayments for taxable year 1999.

As to this issue, petitioner contends that the CA erred when it annulled the decision of the CTA and insists that it had substantially established its claim for refund through documentary and testimonial evidence.

For its part, respondent maintains that petitioner is not entitled to the refund awarded by the CTA, because it failed to present sufficient proof that the subject taxes were erroneously or illegally collected. It asserts that the 1999 certificate of withholding tax is defective, since petitioner failed to file the same together with the 1999 corporate return and include in its return income payments from which the taxes were withheld.

We find for respondent.

In claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following basic requirements:

(1) The claim for refund was filed within two years as prescribed under Section 229[10] of the NIRC of 1997;

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[9] *Commissioner of Internal Revenue v. Bank of the Philippine Islands, supra*, at 231-232. (Emphasis supplied.)

[10] Section 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, until a claim for refund or credit has been duly filed with the Commissioner; but such suit

(2) The income upon which the taxes were withheld were included in the return of the recipient (Section 10, Revenue Regulations No. 6-85);

(3) The fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom (Section 10, Revenue Regulations No. 6-85).

Here, it is undisputed that the claim for refund was filed within the two-year prescriptive period prescribed under Section 229 of the NIRC of 1997 and that the taxpayer was able to present its certificate of creditable tax withheld from its payor. However, records show that petitioner failed to reconcile the discrepancy between income payments per its income tax return and the certificate of creditable tax withheld.

A perusal of the certificate of tax withheld would reveal that petitioner earned ₱146,355,699.80. On the contrary, its annual income tax return reflects a gross income from film rentals in the amount of ₱145,381,568.00. However, despite the ₱974,131.80 difference, both the certificate of taxes withheld and income tax return filed by petitioner for taxable year 1999 indicate the same amount of ₱7,317,785.00 as creditable tax withheld. What's more, petitioner failed to present sufficient proof to allow the Court to trace the discrepancy between the certificate of taxes withheld and the income tax return.

Parenthetically, the Office of the Solicitor General correctly pointed out that the amount of income payments in the income

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or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

tax return must correspond and tally to the amount indicated in the certificate of withholding, since there is no possible and efficacious way by which the BIR can verify the precise identity of the income payments as reflected in the income tax return.

Therefore, petitioner's claim for tax refund for taxable year 1999 must be denied, since it failed to prove that the income payments subjected to withholding tax were declared as part of the gross income of the taxpayer.

WHEREFORE, in view of the foregoing, the instant petition is hereby **DENIED.** The Decision dated August 31, 2004 and Resolution dated May 17, 2005 of the Court of Appeals are hereby **AFFIRMED.**

SO ORDERED.

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

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[*] Designated as Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated October 1, 2012.

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

THIRD DIVISION

[G.R. No. 170454. October 11, 2012]

CECILIA T. MANESE, JULIETES E. CRUZ, and EUFEMIO PEÑANO II, *petitioners, vs.* **JOLLIBEE FOODS CORPORATION, TONY TAN CAKTIONG, ELIZABETH DELA CRUZ, DIVINA EVANGELISTA, and SYLVIA M. MARIANO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; MERE EXISTENCE OF A BASIS FOR THE LOSS OF TRUST AND CONFIDENCE JUSTIFIES THE DISMISSAL OF MANAGERIAL EMPLOYEES.— The mere existence of a basis for the loss of trust and confidence justifies the dismissal of the managerial employee because when an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence, such employee gives up some of the rigid guaranties available to ordinary workers. Infractions, which if committed by others would be overlooked or condoned or penalties mitigated, may be visited with more severe disciplinary action. Proof beyond reasonable doubt is not required provided there is a valid reason for the loss of trust and confidence, such as when the employer has a reasonable ground to believe that the managerial employee concerned is responsible for the purported misconduct and the nature of his participation renders him unworthy of the trust and confidence demanded by his position.

2. ID.; ID.; ID.; ID.; MUST BE SUBSTANTIAL AND FOUNDED ON CLEARLY ESTABLISHED FACTS SUFFICIENT TO WARRANT THE MANAGERIAL EMPLOYEE'S SEPARATION FROM THE COMPANY.— [T]he right of the management to dismiss must be balanced against the managerial employee's right to security of tenure which is *not* one of the guaranties he gives up. This Court has consistently ruled that managerial

employees enjoy security of tenure and, although the standards for their dismissal are less stringent, the loss of trust and confidence must be substantial and founded on clearly established facts sufficient to warrant the managerial employee's separation from the company. Substantial evidence is of critical importance and the burden rests on the employer to prove it.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS, WHERE THERE IS ABSOLUTE AGREEMENT WITH THOSE OF THE NATIONAL LABOR RELATIONS COMMISSION ARE ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY.— In this case, the acts and omissions enumerated in the respective memorandum with notice of termination of petitioners Cruz and Peñano were valid bases for their termination, which was grounded on gross negligence and/or loss of trust and confidence. The Labor Arbiter, the NLRC and the Court of Appeals all found that the dismissal of petitioners Manese and Peñano from employment was justified. The findings of fact of the Court of Appeals, where there is absolute agreement with those of the NLRC, are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence. The Court has carefully reviewed the records of this case and finds no reason to disturb the findings of the Court of Appeals that the dismissal of petitioners Manese and Peñano from employment due to loss of trust and confidence is valid.

4. ID.; ID.; ID.; APPEAL BY *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEW OF QUESTIONS OF LAW.— Under Section 1, Rule 45, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth. The Court may resolve questions of fact only in exceptional cases, which do not apply to this case.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; THE EMPLOYER'S DEMAND FOR PAYMENT OF THE EMPLOYEE'S BALANCE ON THE CAR LOAN OR FOR THE RETURN OF THE CAR IS A CIVIL DISPUTE WHICH INVOLVES DEBTOR-CREDITOR RELATIONS; CASE AT BAR.— [T]he Court upholds the ruling of the Court of Appeals that petitioner Manese's unpaid balance on her car loan cannot be set off against the monetary benefits due her. The Court

has held in ***Nestlé Philippines, Inc. v. NLRC*** that the employer's demand for payment of the employees' amortization on their car loans, or, in the alternative, the return of the cars to the employer, is not a labor, but a civil, dispute. It involves debtor-creditor relations, rather than employee-employer relations. In this case, petitioner Manese has an obligation to pay the balance on the car loan to respondent Jollibee. If she cannot afford to pay the balance, she can return the car to Jollibee. Otherwise, Jollibee can file a civil case for the payment of the balance on the car loan or for the return of the car. The legal remedy of respondent company is civil in nature, arising from a contractual obligation.

APPEARANCES OF COUNSEL

Pro-Labor Legal Assistance Center for petitioners.
Idlama Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision[2] of the Court of Appeals, dated August 30, 2005, in CA-G.R. SP No. 88223, and its Resolution[3] dated November 16, 2005 denying petitioners' motion for reconsideration.

The Decision of the Court of Appeals affirmed the Resolution[4] of the National Labor Relations Commission (NLRC) dated June 30, 2004, with the following modifications: (1) declaring petitioner Julietes Cruz as legally dismissed in accordance with Article 282, paragraph (c) of the Labor Code, and (2) holding respondent Jollibee Foods Corporation liable for the payment

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Arturo D. Brion (now a Member of this Court) and Jose C. Reyes, Jr., concurring, *rollo*, pp. 41-59.

[3] *Rollo*, p. 60.

[4] *Id.* at 93-99.

of the unpaid salary of petitioner Cecilia Manese from June 1 to 15, 2001; the payment of sick leave from May 16 to 31, 2001; and the payment of cooperative savings. It also directed the Labor Arbiter to compute the monetary claims.

The facts, culled from the decisions of the Court of Appeals and the Labor Arbiter, are as follows:

Petitioners were employees of respondent Jollibee Foods Corporation (Jollibee). At the time of their termination, petitioner Cecilia T. Manese (Manese), hired on September 16, 1996, was First Assistant Store Manager Trainee with the latest monthly salary of ₱21,040.00; petitioner Julietes E. Cruz (Cruz), hired on May 7, 1996, was Second Assistant Store Manager with the latest monthly salary of ₱16,729.00; and Eufemio M. Peñano II (Peñano), hired on June 22, 1998, was Shift Manager, who functioned as Assistant Store Manager Trainee (equivalent to Kitchen Manager), with the latest monthly salary of ₱10,330.00.

Petitioners were part of the team tasked to open a new Jollibee branch at Festival Mall, Level 4, in Alabang, Muntinlupa City on December 12, 2000. In preparation for the opening of the new branch, petitioner Cruz requested the Commissary Warehouse and Distribution (commissary) for the delivery of wet and frozen goods on December 9, 2000 to comply with the 30-day thawing process of the wet goods, particularly the Jollibee product called "Chickenjoy."

However, the opening of the store was postponed thrice. When the opening was rescheduled to December 24, 2000, petitioner Cruz made another requisition for the delivery of the food on December 23, 2000, but the opening date was again postponed. Thereafter, Jollibee's Engineering Team assured the operations manager, respondent Elizabeth dela Cruz, that the new store could proceed to open on December 28, 2000. Petitioner Cruz, upon the advice of their Opening Team Manager Jun Reonal, did not cancel the request for delivery of the products.

On December 23, 2000, 450 packs of Chickenjoy were delivered and petitioners placed them in the freezer. On December 26, 2000, petitioner Cruz thawed the 450 packs of Chickenjoy

(ten pieces in each pack), or 4,500 pieces of Chickenjoy, in time for the branch opening on December 28, 2000. The shelf life of the Chickenjoy is 25 days from the time it is marinated; and, once thawed, it should be served on the third day. Its shelf life cannot go beyond three days from thawing. After that, the remaining Chickenjoy products are no longer served, and they are packed in plastic, ten pieces in each pack, and placed in a garbage bag to be stored in the freezer. Within the period provided for in the company policy, valid Chickenjoy rejects are usually returned to the commissary, while rejects which are unreturnable are wasted and disposed of properly.

Despite postponements of the store's opening, the store's sales targets for December 28 and 29, 2000, considered peak times, were not revised by the operations manager. The sales targets of ₱200,000.00 for the first day and ₱225,000.00 for the second day were not reached, as the store's actual sales were only ₱164,000.00 and ₱159,000.00, respectively.

Sometime in January 2001, petitioner Cruz attempted to return 150 pieces of Chickenjoy rejects to the commissary, but the driver of the commissary refused to accept them due to the discoloration and deteriorated condition of the Chickenjoy rejects, and for fear that the rejects may be charged against him. Thus, the Chickenjoy rejects were returned to the freezer.

On February 13, 2001, the area manager conducted a store audit in all departments. The audit's results, which included food stocks and safety, were fair and satisfactory for petitioners' branch.

During the first week of March 2001, the team of petitioners had a meeting on what to do with the stored Chickenjoy rejects. They decided to soak and clean the Chickenjoy rejects in soda water and segregate the valid rejects from the wastes.

On April 2, 2001, petitioner Cruz was transferred to Jollibee Shell South Luzon Tollway branch in Alabang, Muntinlupa. She estimated that the total undisposed Chickenjoy rejects from the 450 packs (4,500 pieces of Chickenjoy) delivered on December 23, 2000 was only about 1,140 pieces as of January 2001. She

failed to make the proper indorsement as the area manager directed her to report immediately to her new assignment.

On May 3, 2001, the area manager, Divina Evangelista, visited four stores, including the subject Jollibee branch at Festival Mall, Level 4. When Evangelista arrived at the subject Jollibee branch, she saw petitioner Peñano cleaning the Chickenjoy rejects. Evangelista told petitioner Manese to dispose of the Chickenjoy rejects, but Manese replied that they be allowed to find a way to return them to the Commissary.[5]

On May 8, 2001, Evangelista required petitioners Cruz and Manese to submit an incident report on the Chickenjoy rejects. On May 10, 2001, a corporate audit was conducted to spot check the waste products. According to the audit, 2,130 pieces of Chickenjoy rejects were declared wastage.

On May 15, 2001, Evangelista issued a memorandum with a charge sheet,[6] requiring petitioners to explain in writing within 48 hours from receipt why they should not be meted the appropriate penalty under the respondent company's Code of Discipline for extremely serious misconduct, gross negligence, product tampering, fraud or falsification of company records and insubordination in connection with their findings that 2,130 pieces of Chickenjoy rejects were kept inside the walk-in freezer, which could cause product contamination and threat to food safety.

The petitioners and other store managers submitted their respective letters of explanation.

In her letter[7] of explanation dated May 20, 2001, petitioner Manese said that the foul smell and discoloration of the Chickenjoy rejects were due to the breakdown of the walk-in facilities prior to the store's grand opening. During that time, the store was using temporary power supply, so that it could

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[5] CA Decision, *id*. at 44; Petitioners' Amended Affidavit-Complaint/ Position Paper, *id*. at 111.

[6] *Rollo*, p. 183.

[7] *Id*. at 184.

open during Christmas Day and the Metro Manila Film Festival. She admitted that she was not able to immediately inform Area Manager Divina Evangelista about it. She appealed that they be not accused of gross negligence, because they did their best, but they were not able to save a bulk of the said Chickenjoy due to the holiday season. Manese explained that petitioner Peñano, the kitchen manager at that time, asked for assistance from other stores, but they could only accommodate a few stocks, as most of their storage areas were filled with their own stocks. She said that they did not immediately dispose of the Chickenjoy rejects out of fear of being reprimanded and it would add to the existing problems of the branch regarding low sales and profit. She explained that the Chickenjoy rejects were not disposed immediately, as instructed by Evangelista on May 3, out of desperation and fear. She admitted that this was wrong, but wasting such a big amount made her so worried, considering that the store was already suffering from cost problems. Manese pleaded with respondent corporation to try to understand their situation, and that they did their best for the sake of Jollibee; that they did not intend to hide something or neglect their respective jobs; that some things were just beyond their control; that some of them were not well trained in the kitchen and that she tried training them, but she could only do so much.

In his letter[8] of explanation dated May 20, 2001, petitioner Peñano said that in December 2000, he was the Service Manager of Jollibee Festival Mall branch and was transferred from Level 1 to Level 4. One of his key responsibility areas was service, which included hiring and scheduling of the crew members. According to him, he was not familiar with the duties pertaining to the management of the kitchen area, as he had no proper training, and that Lee Macayana failed to make an indorsement when he was transferred to Level 4 branch and designated as kitchen manager from April 2 to 19, 2001. He was aware that there were Chickenjoy rejects, but he did not know that they

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[8] *Rollo*, p. 189.

were so many (2,130 pieces). Since he had no training in the kitchen, he merely followed Manese's instructions.

In her letter[9] of explanation dated May 21, 2001, petitioner Cruz stated that before her transfer to the Jollibee Shell branch on April 2, 2001, the Chickenjoy rejects were only about 1,200 pieces. Some of those were valid rejects scheduled for pull-out until April 8, 2001, while some could no longer be pulled out because they were already greenish, as they were the Chickenjoy products delivered when the store first opened. The Chickenjoy products turned greenish or quickly deteriorated because those were the ones delivered when the walk-in freezers were still on pre-setting temperature and were operating on temporary power. She tried reporting them as rejects, but the driver would not accept them because of their condition. She decided that it was not practical to report the rejects in one month as it would hurt the newly-opened store. They could not just throw the rejects, as they were also considering proper waste disposal. She denied any involvement in the alleged product tampering, since it happened after she was already assigned to the Jollibee Shell branch on April 2, 2001.

Thereafter, respondents Human Resource Manager Sylvia Mariano, Operations Manager Elizabeth dela Cruz, and Atty. Rey Montoya, lawyer for corporate affairs, conducted an administrative hearing on the incident.

On June 11, 2001, the Investigating Committee sent petitioner Cruz a Memorandum[10] on its administrative findings and decision, and the said memorandum notified her that she was terminated from employment due to loss of trust and confidence.

On June 13, 2001, petitioners Manese and Peñano each received a similar Memorandum[11] on the administrative findings

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[9] *Id.* at 181.

[10] *Id.* at 199.

[11] *Id.* at 197.

and decision of the Investigating Committee, and the said Memoranda also notified them that they were terminated from employment due to loss of trust and confidence.

Thereafter, petitioners Manese and Cruz filed a Complaint[12] against respondents for illegal dismissal with a claim for separation pay, retirement benefits, illegal deduction, unfair labor practice, damages, non-payment of maternity leave, non-payment of last salary, non-payment of sick leave and release of cooperative contributions and damages and attorney's fees. Petitioner Peñano also filed a complaint[13] for illegal dismissal, non-payment of 13th month pay, damages and attorney's fees. These complaints were consolidated.

Petitioners contended that they did not waste the Chickenjoy rejects, because there were so many rejects since the opening of the store. Hence, they planned to report the Chickenjoy rejects to the commissary on a staggered basis, but the driver of the commissary refused to accept the rejects. They tried to find some solutions so that they could convince the driver of the commissary to accept their rejects, and they were able to return some 400 pieces of Chickenjoy rejects. They emphasized that their food cost was relatively high and the profit margins were low, so they could not declare the rejects as wastes and charge it to the store. Their purpose was salutary, and they even decided to pay for the rejects themselves if the same would no longer be accepted by the commissary.

Petitioners further argued that there was no product contamination, as the rejects were packed by tens and wrapped in plastic, placed in garbage bags, then placed in a crate before being stored in the freezer. From the opening of the store until their dismissal, they had not experienced any wastage of other wet and frozen items. In addition, they claimed that there was no insubordination, considering that the last word of Area Manager Evangelista on the wastage was "*[s]ige kung gusto niyong remedyuhan at makapagsasauli kayo.*" She allegedly

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[12] Docketed as NLRC Case No. 30-05-03495-01, *rollo*, p. 107.

[13] Docketed as NLRC Case No. 30-09-04109-01, *id.*

did not direct petitioner Manese to waste the Chickenjoy. Her parting words to Manese were considered the green light to their attempts to find a solution for the proper disposal of the rejects.

In its Position Paper,[14] respondent Jollibee replied that as a policy, a store can request for the return of the ordered products to the commissary for re-delivery on another date, especially if there are reasons to return them like postponement of the store opening or defective storage freezers. A store can also request other nearby Jollibee stores to accommodate wet products in their walk-in freezers and even allow the use of these products. Petitioner Cruz failed to resort to these remedies. All 450 packs of Chickenjoy were thawed for the store opening on December 28, 2000, and since not all were consumed, she allowed the same to be served beyond their shelf life until December 31. When the area manager visited the store on May 6, 2001 to make sure that her instruction on May 3, 2001 to dispose of the greenish Chickenjoy products was carried out, she found out that the greenish Chickenjoy products were still in the store. Hence, respondent Jollibee contended that there was no illegal dismissal, as petitioners were dismissed for gross negligence and/or incompetence, and for breach of trust and confidence reposed in them as managerial employees.

On July 31, 2003, the Labor Arbiter rendered a Decision,[15] the dispositive portion of which reads:

> WHEREFORE, premises considered, the complaints for illegal dismissal of complainants Cecilia T. Manese and Eufemio M. Peñano II, are hereby dismissed for want of merit. Cecilia A. Manese's money claims further, are likewise dismissed for similar reason.
>
> The complaint for illegal dismissal filed by complainant Julietes E. Cruz is resolved in her favor, against respondent herein. On ground of strained relationship, respondent Jollibee, Inc. is hereby held liable for the payment of her separation pay computed at one (1) month

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[14] *Rollo,* p. 141.

[15] *Id.* at 303.

pay for every year of service, or the amount of ₱59,530.00 instead of reinstatement. The payment of backwages is ruled out as an equitable solution to the losses sustained by the respondent.

SO ORDERED.[16]

The Labor Arbiter stated that the charges against petitioners of having caused possible product contamination and endangering public health should not be collective, because at the time the incident was discovered on May 3, 2001, petitioner Cruz was no longer working at Jollibee Festival Mall, Level 4, as she was already transferred to Jollibee Shell South Luzon Tollway, Alabang, Muntinlupa on April 2, 2001. Thus, the Labor Arbiter held that Cruz could not be held liable therefor; hence, her dismissal was illegal. The Labor Arbiter also found no sufficient basis for the other charges foisted on Cruz. However, the Labor Arbiter awarded separation pay to Cruz, considering the strained relationship between the parties. Moreover, on the basis of equitable consideration for the losses sustained by the company on account of some errors of judgment, the Labor Arbiter resolved not to award backwages to Cruz.

Further, the Labor Arbiter held that petitioner Manese was not entitled to her money claims, particularly unpaid salary, sick leave for the period from May 16-31, 2001, cooperative savings, maternity benefit, mid-year bonus and retirement pay, because she was either not entitled thereto by reason of company policy and practice, or her accountabilities to the company/ cooperative far exceed that which may be due her. The Labor Arbiter took note of respondents' argument in their Position Paper as follows:

x x x Cecilia's payroll for June 1-15 and coop savings together with other benefits due her like 13th month and encashment were not yet given to her because she has in her position the case (car plan given by the company) still with outstanding balance of ₱70,266.67. Even after computing the amount due her *vis-a-vis* the car loan balance she still has a negative balance of ₱14,262.76. She was informed of this amount and she promised to pay but

[16] *Id.* at 313-314.

has not settled to date. We asked her to surrender the car first but she gave excuses.[17]

Petitioners appealed the Decision of the Labor Arbiter to the NLRC. Respondents filed an Opposition to Appeal[18] on October 10, 2003.

On June 30, 2004, the NLRC issued a Resolution,[19] the dispositive portion of which reads:

> WHEREFORE, premises considered, respondents' appeal is hereby ordered DISMISSED and the assailed Decision is hereby AFFIRMED *in toto*.[20]

However, the NLRC held that the Labor Arbiter erred in ruling that petitioner Cruz was illegally dismissed as it found that she committed the offenses enumerated in paragraphs 1.1 to 1.5 and paragraph 2 of the Memorandum[21] sent to her.

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[17] *Id.* at 313.

[18] *Id.* at 332.

[19] Penned by Commissioner Romeo L. Go, with Presiding Commissioner Roy V. Señeres and Commissioner Ernesto S. Dinopol, concurring; *id.* at 93-99.

[20] *Rollo*, p. 99.

[21] Memorandum to Julietes E. Cruz

x x x x x x x x x

1. As the Kitchen Manager prior to store opening of Festival Level 4 until April 2, you failed to do the following:

1.1 Work it out with Commissary to pull-out and defer deliveries for wet and frozen items due to delay in store opening because it is part of Commissary system to allow pull-out of deliveries during first two weeks of store opening;

1.2 Follow the Production Guide which resulted to excess thawed Chickenjoy when you transferred 450 packs from freezer to chiller last December 25;

1.3 Try swapping the thawed Chickenjoy with other stores, much less inform your Area Manager to help you swap with other stores in the area;

1.4 To take other alternative in storing the Chickenjoy like renting a reefer van instead of taking the risk of storing the Chickenjoy in

Nevertheless, since respondents failed to interpose a timely appeal, the NLRC stated that it was constrained to affirm the findings and award of separation pay granted to petitioner Cruz by the Labor Arbiter.

Petitioners' motion for reconsideration was denied by the NLRC in a Resolution[22] dated October 29, 2004.

Petitioners appealed the Resolutions dated June 30, 2004 and October 29, 2004 of the NLRC to the Court of Appeals via a petition for *certiorari* under Rule 65 of the Rules of Court.

Before the Court of Appeals, petitioners raised the following issues: (1) the NLRC acted with grave abuse of discretion in sustaining the findings of the Labor Arbiter that petitioners Manese and Peñano were responsible for the charges of having caused possible product contamination and endangered public health, and in concluding that their dismissal was due to a valid cause; (2) the NLRC acted with grave abuse of discretion in sustaining the Labor Arbiter's ruling denying petitioner Cruz's reinstatement with full backwages after declaring her dismissal illegal; and (3) the NLRC acted with grave abuse of discretion in sustaining the Labor Arbiter's ruling denying outright the money claims of petitioners.[23]

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the freezer/chiller knowing that there is power trip off/fluctuation from time to time;

1.5 To properly dispose of the thawed Chickenjoy after their 3-day shelf life, and not to serve Chickenjoy from the same 450 packs after thawing for three days. Some of these Chickenjoy were served until January and the rest were returned to the walk-in freezer after being over thawed.

2. As the Kitchen Manager then, you did not take the action of wasting or at least recommend to your Store OIC to waste the Chickenjoy which were already greening, but rather, you worked on returning them to Commissary for pull-out as rejects. It has been taught even during the BOTP that greenish cjoy is not an acceptable criterion for valid reject..

[22] *Rollo*, p. 100.

[23] CA Decision, *rollo*, p. 49.

On August 30, 2005, the Court of Appeals rendered a Decision affirming the Resolutions of the NLRC with modification. The dispositive portion of the decision reads:

> *WHEREFORE,* the resolution dated June 30, 2004 of public respondent NLRC is hereby *AFFIRMED* with the following *modifications:*
>
> (1) Petitioner Julietes Cruz is declared legally dismissed in accordance with Article 282, par. (c) of the Labor Code; and
>
> (2) Private respondent Jollibee Foods Corporation is liable for the payment of petitioner Cecilia Manese's unpaid salary for the period of June 1-15, 2001, sick leave for the period of May 16-31, 2001, and cooperative savings. The Labor Arbiter is hereby directed to compute the said monetary claims.[24]

The Court of Appeals found that petitioners were terminated based on the result of the clarificatory hearing and administrative findings of respondent company. The Court held that since petitioners were managerial employees, the mere existence of a basis for believing that they have breached the trust of their employer would suffice for their dismissal. It held that it cannot fault the respondent corporation for terminating petitioners, considering their acts and omissions, enumerated in their respective notices of termination, constituting the breach. Hence, the Court of Appeals held that the NLRC did not commit grave abuse of discretion in issuing the assailed resolutions.

However, the Court of Appeals declared that the Labor Arbiter erred in adjudging that petitioner Cruz was illegally dismissed and in denying petitioner Manese's money claims.

The Court of Appeals stated that it is not disputed that petitioner Manese had already earned her monetary claims; hence, she is entitled to the same, except for the maternity benefit claimed by her. As the maternity benefit is usually given two weeks before the delivery date, Manese is not entitled to the same.

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[24] *Id.* at 58.

Moreover, the Court of Appeals held that the Labor Arbiter cannot offset Manese's remaining balance on the car loan with her monetary claims, because the balance on the car loan does not come within the scope of jurisdiction of the Labor Arbiter. The respondent corporation's demand for payment of Manese's balance on the car loan or the demand for the return of the car is not a labor dispute, but a civil dispute. It involves debtor-creditor relations, rather than employer-employee relations.

Petitioners' motion for reconsideration was denied by the Court of Appeals in a Resolution[25] dated November 16, 2005.

Hence, petitioners filed this petition raising the following issues:

I

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN PASSING UPON THE LEGALITY OF THE DISMISSAL OF PETITIONER JULIETES CRUZ, CONSIDERING THAT THE RESOLUTION OF THE HONORABLE LABOR ARBITER *A QUO* HAD BECOME FINAL AND EXECUTORY WHEN NO TIMELY APPEAL WAS FILED BY THE PRIVATE RESPONDENT AS FAR AS THE LEGALITY OF HER DISMISSAL IS CONCERNED.

II

THE COURT OF APPEALS GRAVELY ERRED IN PATENTLY DEVIATING IN THE APPRECIATION OF FACTS AND ISSUES ANCHORING THE DISMISSAL OF THE PETITIONERS BASED ON LOSS OF TRUST AND CONFIDENCE BEING MANAGERIAL EMPLOYEES.

III.

THE COURT OF APPEALS GRAVELY ERRED IN ITS FINDINGS OF FACTS WHEN IT HELD THAT PETITIONERS HAD SERVED THE CHICKENJOYS BEYOND THE THREE-DAY SERVING PERIOD, THUS EXPOSING THE PUBLIC HEALTH IN JEOPARDY.[26]

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[25] *Id*. at 60.

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

Petitioners contend that the Court of Appeals exceeded its jurisdiction in dismissing petitioner Cruz as the decision of the Labor Arbiter that the dismissal of petitioner Cruz was illegal had become final and executory, considering that respondents failed to file a timely appeal from the said ruling. Although petitioner Cruz filed a partial appeal, the issues raised were limited to reinstatement and backwages.

The contention is meritorious.

SMI Fish Industries, Inc. v. NLRC[27] held:

> It is a well-settled procedural rule in this jurisdiction, and we see no reason why it should not apply in this case, that **an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below**. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed. He can assign errors on appeal if such is required to strengthen the views expressed by the court *a quo*. Such assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of modifying the judgment in the appellee's favor and giving him other affirmative reliefs.[28]

In this case, respondents did not appeal from the decision of the Labor Arbiter who ruled that the dismissal of petitioner Cruz was illegal. Respondents only filed an *Opposition to Appeal*, which prayed for the reversal of the Labor Arbiter's orders declaring as illegal the dismissal of Cruz and directing payment of her separation pay. The NLRC stated that the registry return receipt showed that respondents' counsel received a copy of the Labor Arbiter's decision on August 28, 2003, and had ten days or up to September 8, 2003 within which to file an appeal. However, instead of filing an appeal, respondent filed an Opposition to complainants'/petitioners' appeal. The NLRC stated that respondents' opposition could have been treated as an appeal, but it was filed only in October, way

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[27] G.R. Nos. 96952-56, September 12, 1992, 213 SCRA 444, 449.

[28] Emphasis supplied.

beyond the ten-day reglementary period within which an appeal may be filed. Although the NLRC found that Cruz was legally dismissed, it stated that it was constrained to affirm the findings and award of separation pay granted to Cruz by the Labor Arbiter, since respondents failed to interpose a timely appeal. Hence, the NLRC affirmed the decision of the Labor Arbiter *in toto*.

In view of the foregoing, the Court holds that the Court of Appeals exceeded its jurisdiction when it adjudged that petitioner Cruz was legally dismissed, as respondents did not appeal from the decision of the Labor Arbiter who ruled that Cruz was illegally dismissed. Respondents' failure to appeal from the decision of the Labor Arbiter renders the decision on the illegal dismissal of Cruz final and executory.

Moreover, petitioners, particularly Manese and Peñano, contend that the Court of Appeals erred in its appreciation of facts when it affirmed their legal dismissal, albeit on the ground of loss of trust and confidence, being managerial employees, when the records show that they were dismissed based on the allegation of causing product contamination that would endanger public health and based on alleged gross negligence, as petitioners allegedly incurred excessive Chickenjoy rejects and failed to dispose of the same. They assert that the favorable finding of the area manager in the store audit, conducted on February 13, 2001, where the result in all departments, including food stock and food safety, was fair and satisfactory negated the charge of loss of trust and confidence.

The contention is unmeritorious.

The respective memorandum with a notice of termination given by respondent company to each of the petitioners clearly expressed that their respective acts and omissions enumerated in the said memoranda made respondent company lose its trust and confidence in petitioners, who were managerial employees; hence, they were terminated from employment.

The mere existence of a basis for the loss of trust and confidence justifies the dismissal of the managerial employee

because when an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence, such employee gives up some of the rigid guaranties available to ordinary workers.[29] Infractions, which if committed by others would be overlooked or condoned or penalties mitigated, may be visited with more severe disciplinary action.[30] Proof beyond reasonable doubt is not required provided there is a valid reason for the loss of trust and confidence, such as when the employer has a reasonable ground to believe that the managerial employee concerned is responsible for the purported misconduct and the nature of his participation renders him unworthy of the trust and confidence demanded by his position.[31]

However, the right of the management to dismiss must be balanced against the managerial employee's right to security of tenure which is *not* one of the guaranties he gives up.[32] This Court has consistently ruled that managerial employees enjoy security of tenure and, although the standards for their dismissal are less stringent, the loss of trust and confidence must be substantial and founded on clearly established facts sufficient to warrant the managerial employee's separation from the company.[33] Substantial evidence is of critical importance and the burden rests on the employer to prove it.[34]

In this case, the acts and omissions enumerated in the respective memorandum with notice of termination of petitioners Cruz and Peñano were valid bases for their termination, which was grounded on gross negligence and/or loss of trust and confidence. The Labor Arbiter, the NLRC and the Court of Appeals all found that the dismissal of petitioners Manese and Peñano from

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[29] *Philippine Long Distance Telephone Company v. Tolentino*, G.R. No. 143171, September 21, 2004, 438 SCRA 555, 560; 482 Phil. 34, 40 (2004).

[30] *Id.*; *id.* at 41.

[31] *Id.*; *id.*

[32] *Id.*; *id.*

[33] *Id.* at 560-561; *id.*

[34] *Id.* at 561; *id.*

employment was justified. The findings of fact of the Court of Appeals, where there is absolute agreement with those of the NLRC, are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence.[35] The Court has carefully reviewed the records of this case and finds no reason to disturb the findings of the Court of Appeals that the dismissal of petitioners Manese and Peñano from employment due to loss of trust and confidence is valid.

Lastly, petitioners contend that the Court of Appeals erred in finding that they served the Chickenjoy beyond the three-day serving period, thus, exposing the public health to jeopardy.

The last issue raised by petitioners questions a factual finding of the Court of Appeals. Under Section 1, Rule 45, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth.[36] The Court may resolve questions of fact only in exceptional cases,[37] which do not apply to this case.

In regard to petitioner Cruz, the Court upholds the decision of the Labor Arbiter in ordering the payment of separation pay to Cruz due to the strained relationship between the parties.

As regards the monetary claims of petitioner Manese, the Court of Appeals found that petitioner Manese had already earned the same, except for the maternity leave. The Position Paper of respondents even stated Manese's unpaid salary for the period of June 1-15, 2001, sick leave from May 16-31, 2001 and her cooperative savings. As the said monetary claims, except the maternity leave, have been earned by Manese, the Court agrees with the Court of Appeals that respondent Jollibee should pay her the said monetary claims.

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[35] *Procter and Gamble Philippines v. Bondesto,* G.R. No. 139847, March 5, 2004, 425 SCRA 1, 8; 468 Phil. 932, 941 (2004).

[36] *Tayco v. Heirs of Concepcion Tayco-Flores*, G.R. No. 168692, December 13, 2010, 637 SCRA 742.

[37] *Id.*

Moreover, the Court upholds the ruling of the Court of Appeals that petitioner Manese's unpaid balance on her car loan cannot be set off against the monetary benefits due her. The Court has held in ***Nestlé Philippines, Inc. v. NLRC***[38] that the employer's demand for payment of the employees' amortization on their car loans, or, in the alternative, the return of the cars to the employer, is not a labor, but a civil, dispute. It involves debtor-creditor relations, rather than employee-employer relations.[39]

In this case, petitioner Manese has an obligation to pay the balance on the car loan to respondent Jollibee. If she cannot afford to pay the balance, she can return the car to Jollibee. Otherwise, Jollibee can file a civil case for the payment of the balance on the car loan or for the return of the car. The legal remedy of respondent company is civil in nature, arising from a contractual obligation.[40]

WHEREFORE, the Decision of the Court of Appeals, dated August 30, 2005, in CA-G.R. SP No. 88223, and its Resolution dated November 16, 2005 are ***AFFIRMED*** with ***MODIFICATION*** as follows:

1. Paragraph (1) of the dispositive portion of the Decision of the Court of Appeals is **DELETED,** as the Decision of the Labor Arbiter holding petitioner Julietes E. Cruz illegally dismissed is final and executory;

2. Petitioners Cecilia T. Manese and Eufemio M. Peñano II are declared legally dismissed for loss of trust and confidence under Article 282, paragraph (c) of the Labor Code;

3. Respondent Jollibee Foods Corporation is **ORDERED** to pay petitioner Julietes E. Cruz separation pay at the rate of one (1) month pay for every year of service, or the amount of Fifty-Nine Thousand Five Hundred Thirty Pesos (₱59,530.00).

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[38] G.R. No. 85197, March 18, 1991, 195 SCRA 340, 342.

[39] *Id.*

[40] See *Nestlé Philippines, Inc. v. NLRC*, *supra* note 38.

4. Respondent Jollibee Foods Corporation is **ORDERED** to pay the monetary claims of petitioner Cecilia T. Manese, particularly her unpaid salary for the period of June 1-15, 2001; sick leave for the period of May 16-31, 2001 and other leave credits due her, if any; and her cooperative savings. The Labor Arbiter is hereby **DIRECTED** to compute the monetary claims of Cecilia T. Manese.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170732. October 11, 2012]

ATLANTIC ERECTORS, INC., *petitioner, vs.* **COURT OF APPEALS and HERBAL COVE REALTY CORPORATION,** *respondents*.

SYLLABUS

1. CIVIL LAW; DAMAGES; LIQUIDATED DAMAGES; AWARD THEREOF REQUIRES PROOF OF THE FACT OF DELAY IN THE PERFORMANCE OF THE OBLIGATION.— The liability for liquidated damages is governed by Articles 2226-2228 of the Civil Code x x x. [T]he parties to a contract are allowed to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to ensure performance and has a double function: (1) to provide

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

for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. The amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. As a pre-condition to such award, however, there must be proof of the fact of delay in the performance of the obligation.

2. ID.; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF AUTONOMY OF CONTRACTS; THE CONTRACTING PARTIES MAY ESTABLISH SUCH STIPULATIONS AS THEY MAY DEEM CONVENIENT FOR AS LONG AS THEY ARE NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER, OR PUBLIC POLICY; CASE AT BAR.— As a general rule, contracts constitute the law between the parties, and they are bound by its stipulations. For as long as they are not contrary to law, morals, good customs, public order, or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient. x x x As no extension was validly agreed upon and in view of the established fact that petitioner failed to complete the works and deliver the housing units within the stipulated period, petitioner's liability for liquidated damages arose, which is 1/10 of 1% of the contract price per calendar day of delay to a maximum amount of 10% of the contract price. Petitioner failed to meet its new deadline which was April 7, 1997. It even proposed that it be allowed to complete the works until November 15, 1997, way beyond the original as well as the extended contract period. Undoubtedly, petitioner may be held to answer for liquidated damages in its maximum amount which is 10% of the contract price. While we have reduced the amount of liquidated damages in some cases because of partial fulfillment of the contract and/or the amount is unconscionable, we do not find the same to be applicable in this case. Per the CIAC findings, as of the last certified billing, petitioner's percentage accomplishment was only 62.57%. Hence, we apply the general rule not to ignore the freedom of the parties to agree on such terms and conditions as they see fit as long as they are not contrary to law, morals, good customs, public order or public policy.

3. ID.; DAMAGES; LIQUIDATED DAMAGES; ENTITLEMENT THERETO ARISES AS A CONSEQUENCE OF DEFAULT; CASE AT BAR.— [R]espondent's entitlement to liquidated

damages is distinct from its right to terminate the contract. Petitioner's liability for liquidated damages is not inconsistent with respondent's takeover of the project, or termination of the contract or even the eventual completion of the project. What is decisive of such entitlement is the fact of delay in the completion of the works. Stated in simple terms, as long as the contractor fails to finish the works within the period agreed upon by the parties without justifiable reason and after the owner makes a demand, then liability for damages as a consequence of such default arises.

APPEARANCES OF COUNSEL

Dumlao Moraleda Antonano Verzosa & Associates for petitioner.

Angara Abello Concepcion Regala & Cruz for private respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[1] dated February 28, 2005 and Resolutions dated September 7, 2005[2] and December 5, 2005[3] in CA-G.R. SP No. 52070. The assailed decision affirmed with modification the Decision[4] of the Construction Industry Arbitration Commission (CIAC), dated March 11, 1999, in CIAC Case No. 13-98; while the assailed resolutions denied petitioner Atlantic Erectors, Inc.'s Motion for Partial Reconsideration.

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[1] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 28-42.

[2] *Rollo*, pp. 43-44.

[3] *Id.* at 45-46.

[4] CA *rollo*, pp. 56-76.

The facts of the case, as culled from the records, are as follows:

Respondent Herbal Cove Realty Corporation (*respondent*) engaged DP Architects Philippines to prepare architectural designs and RA&A Associates to provide engineering designs for its subdivision project known as "The Herbal Cove" located at Iruhin West, Tagaytay City. It likewise hired Building Energy Systems, Inc. (BESI) to provide management services for the construction and development of the project. On June 20, 1996, respondent and Atlantic Erectors, Inc. (*petitioner*) entered into a Construction Contract[5] whereby the latter agreed to undertake, accomplish and complete the entire works for the implementation of Construction Package A consisting of four (4) units of Townhouse B and 1 unit of Single Detached A1 of the project[6] for a total contract price of ₱15,726,745.19[7] which was later adjusted to ₱16,726,745.19 as a result of additional works.[8] Petitioner further agreed to finish and complete the works and deliver the same to respondent within a period of one hundred eighty (180) consecutive calendar days reckoned from the date indicated in the Notice to Proceed[9] to be issued to petitioner.[10] To secure the completion of the works within the time stipulated, petitioner agreed to pay respondent liquidated damages equivalent to one-tenth of one percent (1/10 of 1%) of the contract price per calendar day of delay until completion, delivery and acceptance of the said works by respondent to a maximum amount not to exceed ten percent (10%).[11]

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[5] *Id.* at 136-145.

[6] *Id.* at 136.

[7] *Id.* at 138.

[8] *Atlantic Erectors, Inc. v. Herbal Cove Realty Corporation*, G.R. No. 148568, March 20, 2003, 399 SCRA 409, 411; 447 Phil. 531, 536 (2003).

[9] Exhibit "H"; Expanding Envelope No. 1.

[10] CA *rollo*, p. 139.

[11] *Id.* at 142.

Petitioner was instructed to commence construction on July 8, 1996.[12] In a letter[13] dated January 6, 1997, petitioner requested for extension of time equivalent to the number of days of delay in the start of the works brought about by the belated turnover of the sites of the building. Additional extension was requested due to bad weather condition that prevailed during the implementation of the projects, again causing excusable delay. In a letter[14] dated January 11, 1997, respondent allowed the requested schedule adjustments with a reminder that liquidated damages shall be applied beyond the extended periods. Petitioner was allowed to complete and deliver the housing units until the following dates:

SDA-15 15 March 1997 or an extension of 67 calendar days
TH 16-A and TH 16-B 7 March 1997 or an extension of 59 calendar days
TH 17-A and TH 17-B 7 April 1997 or an extension of 90 calendar days[15]

Petitioner, however, still failed to complete and deliver the units within the extended period.

On September 22, 1997, respondent required petitioner to submit a formal written commitment to finish and complete the contracted works, otherwise, the contract would be deemed terminated and respondent would take over the project on October 1, 1997 with the corresponding charges for the excess cost occasioned thereby, plus liquidated damages.[16] On October 3, 1997, respondent informed petitioner that the former's management had unanimously agreed to terminate the subject construction contract for the following reasons:

1. After a review and evaluation by the management group of the works done in the Project, we found blatant defects in the workmanship of the houses;

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[12] *Rollo*, p. 31.

[13] Exhibit "J"; Expanding Envelope No. 1.

[14] Exhibit "K"; Expanding Envelope No. 1.

[15] CA *rollo*, p. 59.

[16] Exhibit "T"; Expanding Envelope No. 1.

2. Delayed completion of the project; and

3. Lack of interest to make a firm commitment to finish the project.[17]

Respondent, thereafter, entered into a Construction Administration Agreement[18] with Benedict O. Manalo and Associates, Engineers and Construction Managers to finish, complete and deliver the housing units started by petitioner.

On June 3, 1998, respondent filed with the CIAC a Request for Arbitration[19] against petitioner praying for the payment of liquidated damages, cost to remedy defective workmanship, excess costs incurred to complete the work, attorney's fees and litigation expenses. The case was docketed as CIAC Case No. 13-98.

Prior thereto, or on November 21, 1997, petitioner instituted with the Regional Trial Court (RTC) a civil case against respondent where it sought to recover the sum representing unpaid construction service already rendered, unpaid construction materials, equipment and tools, and cost of income by way of rental from equipment of petitioner held by respondent.[20] The case was, however, dismissed on motion of respondent invoking the arbitration clause, which dismissal was affirmed by the Court.[21]

In answer to respondent's request for arbitration, petitioner alleged that the delay was attributable to: (1) delayed turnover of the site; (2) cause of two typhoons; 3) change orders and additional works; (4) late approval of shop drawings; (5) non-arrival of chimney expert; (6) delayed payments; and (7) non-payment of the last two billings.[22] It also argued that respondent suspended the construction works depriving it of the opportunity

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[17] Exhibit "U"; Expanding Envelope No. 1.

[18] Exhibit "V"; Expanding Envelope No. 1.

[19] Expanding Envelope No. 1.

[20] *Rollo*, p. 33.

[21] *Id.* at 34.

[22] CA *rollo*, p. 66.

to complete the works on or before November 15, 1997.[23] It also insisted that there was unlawful termination of the construction contract.

After the reception of the parties' evidence and the submission of their respective memoranda, the CIAC ordered respondent to pay petitioner ₱1,087,187.80, with 6% interest per annum from the time the award becomes executory.[24] The CIAC summarized the awards as follows:

A. FOR THE CLAIMANT [Respondent herein]

	Claim	**Award**
Liquidated Damages	₱ 1,572,674.51	₱ 0.00
Cost to Remedy Defective Workmanship	1,600,000.00	0.00
Excess Cost to Complete	2,592,806.00	506,069.94
Attorney's Fees and Cost of Litigation Excluding Arbitration Fees	2,000,000.00	0.00
Total Claims	**₱7,765,480.51**	**₱ 506,069.94**

B. RESPONDENT'S [PETITIONER'S] CLAIM

	Claim	**Award**
Retention Amount	₱ 899,718.50	1,012,139.89
Work Accomplishment Collectible	4,854,229.94	821,556.09
Deduct Unliquidated Downpayment (₱3,145,349.04 - ₱1,968,044.89)		1,177,304.15
Materials, tools and equipment left at jobsite	1,595,551.00	936,866.00

[23] *Id*. at 71.

[24] *Id*. at 75.

Rental cost of tools and equipment left at jobsite	800,000.00	0.00
Attorney's Fees and Cost of Litigation excluding Arbitration Fees	1,000,000.00	0.00
Total Counterclaim	**₱ 8,149,499.95**	**₱ 1,593,257.74**

C. NET AWARD FOR [PETITIONER]

Net Award **₱1,087,187.80**[25]

The CIAC found that petitioner incurred delay in the completion of the project. While it did file a request for extension which was granted until April 7, 1997, the project remained incomplete and no further extension was asked.[26] Notwithstanding the delay, the CIAC found the termination of the contract illegal for respondent's failure to comply with the requirements of termination, as the contract specifically provides that petitioner be given 15-day notice prior to such termination.[27] It added that petitioner's delay was overridden by the unlawful termination of the contract.[28] Consequently, respondent was not awarded liquidated damages.[29] For failure to submit sufficient evidence, the CIAC also found respondent not entitled to the additional cost to complete the project.[30] As to the cost of correcting the defects, it concluded that although respondent failed to prove

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[25] *Id*.

[26] *Id*. at 67.

[27] *Id*. at 71.

[28] *Id*. at 73.

[29] *Id*.

[30] *Id*.

the cost of correcting the defects, reasonable cost should be awarded in view of the admitted and proven defects.[31] Finally, the CIAC found petitioner entitled to the 10% retention which is ₱1,012,139.89 from which respondent's claims should be deducted.[32] In effect, both petitioner's and respondent's claims and counterclaims were partly granted.

Petitioner elevated the matter to the CA docketed as CA-G.R. SP No. 52200, but the same was denied due course in a Resolution dated July 26, 1999. When the resolution was assailed before the Court in a petition for review on *certiorari* in G.R. No. 141697, the petition was denied for petitioner's failure to submit a valid affidavit of service of copies of the petition to respondent.[33] Petitioner's motion for reconsideration was likewise denied in a Resolution dated June 26, 2000, which became final and executory on August 31, 2000 and, accordingly, recorded in the Book of Entries of Judgment.

Respondent interposed a separate appeal assailing the same CIAC decision, docketed as CA-G.R. SP No. 52070. Respondent questioned the CIAC's failure to dismiss petitioner's counterclaims on the ground of forum shopping. More importantly, respondent insisted that the CIAC erred in concluding: that the termination of the construction contract was illegal; that it is not entitled to liquidated damages and the excess cost to complete the project; that it is entitled to a reduced amount for the correction of petitioner's defective work; and, that petitioner is entitled to the value of the materials, equipment and tools left at the jobsite.[34]

On February 28, 2005, the CA rendered the assailed decision affirming with modification the CIAC decision by awarding respondent liquidated damages of ₱1,572,674.51. The CA agreed with the CIAC that petitioner's counterclaims could not be

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[31] *Id*. at 74.

[32] *Id*.

[33] The decision was embodied in a Minute Resolution dated March 6, 2000.

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

dismissed on the ground of forum shopping, because the civil case before the RTC was dismissed for lack of jurisdiction. Thus, petitioner aptly set up its counterclaims before the CIAC.[35] The CA also sustained the CIAC's conclusion on the illegality of the termination of the construction contract for failure of respondent to comply with the 15-day notice.[36] It, however, could not agree with the CIAC as to respondent's claim for liquidated damages. Notwithstanding the declaration of the illegality of the termination of the contract, petitioner could still be charged with liquidated damages by reason of the delay in the completion of the project. The CA explained that the right to liquidated damages is available to respondent whether or not it terminated the contract because delay alone is decisive.[37]

Aggrieved, petitioner moved for reconsideration of the decision. On September 7, 2005, the CA issued a Resolution denying the motion, followed by another Resolution dated December 5, 2005 correcting the earlier resolution, which inadvertently referred to respondent as the party who filed the motion where in fact it was filed by petitioner.

Petitioner now comes before the Court in this petition for review on *certiorari* with this sole issue:

WHETHER OR NOT THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE OR HAS DECIDED IT IN A WAY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THE SUPREME COURT WHEN IT RULED AND MODIFIED THE DECISION OF THE CIAC FINDING PETITIONER LIABLE TO PAY RESPONDENT LIQUIDATED DAMAGES.[38]

The petition is without merit.

At the outset, the Court notes that the case involved various claims and counterclaims separately set up by petitioner and respondent. The CIAC thus awarded petitioner the retention

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[35] *Rollo*, pp. 36-37.

[36] *Id*. at 38-39.

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

[38] *Id*. at 17.

pay; the unpaid value of its work accomplishment; and the value of the materials, tools and equipment left at jobsite. On the other hand, it awarded respondent only with the excess cost to complete the unfinished project. Petitioner elevated the matter to the CA, but the same was dismissed, which dismissal was affirmed by the Court. In the separate appeal filed by respondent, the CA modified the CIAC decision by making petitioner liable for liquidated damages. It is on this issue that petitioner comes before the Court raising in particular the propriety of making it liable for liquidated damages.

The resolution of the issue of respondent's entitlement to liquidated damages hinges on whether petitioner was in default in the performance of its obligation.[39]

The liability for liquidated damages is governed by Articles 2226-2228 of the Civil Code which provide:

Article 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

Article 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

Article 2228. When the breach of the contract committed by the defendant is not the one contemplated by the parties in agreeing upon the liquidated damages, the law shall determine the measure of damages, and not the stipulation.

Based on the above provisions of law, the parties to a contract are allowed to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to ensure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach.[40] The amount agreed upon answers for damages

[39] *Empire East Land Holdings, Inc. v. Capitol Industrial Construction Groups, Inc.*, G.R. No. 168074, September 26, 2008, 566 SCRA 473. 489.

[40] *Philippine Charter Insurance Corporation v. Petroleum Distributors & Service Corporation*, G.R. No. 180898, April 18, 2012; *Filinvest Land, Inc. v. Court of Appeals*, G.R. No. 138980, September 20, 2005, 470 SCRA 260, 269.

suffered by the owner due to delays in the completion of the project.[41] As a pre-condition to such award, however, there must be proof of the fact of delay in the performance of the obligation.[42]

To resolve the question of default by the parties, we must re-examine the terms of the Construction Contract and the relevant documents which form part of the parties' agreement. As a general rule, contracts constitute the law between the parties, and they are bound by its stipulations. For as long as they are not contrary to law, morals, good customs, public order, or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient.[43]

The pertinent provisions of the Construction Contract which lay down the rules in case of failure to complete the works read:

ARTICLE IX

FAILURE TO COMPLETE WORK

Section 1: The CONTRACTOR acknowledges that the OWNER shall not suffer [loss] by the delay or failure of the CONTRACTOR to finish and complete the works called for under this Contract within the time stipulated in Section 6, Article IV. The CONTRACTOR hereby expresses covenants and agrees to pay to the Owner **liquidated damages equivalent to the One-Tenth of One Percent (1/10 of 1%) of the Contract Price per calendar day of delay until completion, delivery and acceptance of the said Works by the OWNER to a maximum amount not to exceed 10%.**

Section 2: Any sum which may be payable to the OWNER for such liquidated damages may be deducted from the amounts retained

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[41] *H.L. Carlos Construction, Inc. v. Marina Properties Corporation*, G.R. No. 147614, January 29, 2004, 421 SCRA 428, 445; 466 Phil. 182, 205 (2004).

[42] *Empire East Land Holdings, Inc. v. Capitol Industrial Construction Groups, Inc., supra* note 39, at 489.

[43] *Philippine Charter Insurance Corporation v. Petroleum Distributors & Service Corporation, supra* note 40.

under Article V, or retained by the OWNER from any balance of whatever nature which may be due or become due the CONTRACTOR when any particular works called for under this Contract shall have been finished or completed.

Section 3: The lawful occupation by the OWNER of any completed portion of the PROJECT subject of this Contract shall not be deemed as a waiver of whatsoever rights and/or remedies the OWNER may have or is entitled to under the law and/or under the terms and conditions of this Contract, nor shall it diminish whatever liability the CONTRACTOR may incur for the liquidated damages provided herein with respect to the delays in the installation of the other portions of the Works in the PROJECT.

Section 4: The obligation of the CONTRACTOR to pay damages due to unexcused delays shall not relieve it from the obligation to complete and finish the performance of the Works, and to secure the final certificate of inspection from the proper government authorities.

Section 5: The provision on liquidated damages [notwithstanding], the OWNER, upon certification of the PROJECT MANAGER that sufficient cause exists to justify its action, may without prejudice to any other right or remedy and after giving the CONTRACTOR and its sureties proper notice in writing, terminate this Contract and take over the performance of the Works either by administration or otherwise, and to charge against the CONTRACTOR and its sureties the excess cost occasioned thereby.

Section 6: If the Works are suspended for an unreasonable length of time, without any justifiable cause by the CONTRACTOR, such suspension shall be taken as abandonment of the Works, and the OWNER shall have the right to declare the CONTRACTOR in default; and the former shall be entitled to charge against the CONTRACTOR'S Performance Bond all forms of damages it may suffer and to hire another CONTRACTOR to finish the Works. Suspension of the Works for at least fifteen days shall be deemed unreasonable.[44] (Emphasis supplied)

Notwithstanding its categorical conclusion that petitioner was in default, the CIAC refused to award respondent the stipulated liquidated damages in view of the latter's unlawful termination

[44] CA *rollo*, p. 142.

of the Construction Contract for want of a valid notice to petitioner. Petitioner insists that the award of liquidated damages made by the CA be deleted, because it was not given the chance to finish the works within the period of commitment to do so on or before November 15, 1997.

A perusal of the significant provisions of the Construction Contract as quoted above and the relevant construction documents would show that the CA did not err in concluding that the rights to liquidated damages and to terminate the contract are distinct remedies that are available to respondent. Section 4, Article IX of the Construction Contract states:

> Section 4: The obligation of the CONTRACTOR to pay damages due to unexcused delays shall not relieve it from the obligation to complete and finish the performance of the Works, and to secure the final certificate of inspection from the proper government authorities.

Moreover, Article 21.05 of the General Conditions amplifies petitioner's liability for damages, to wit:

> 21.05. ***LIQUIDATED DAMAGES*:** It is understood that time is an essential feature of this Contract, and that upon failure to complete the said Contract within the contract time, the Contractor shall be required to pay the Owner the liquidated damages in the amount stipulated in the Contract Agreement, the said payment to be made as liquidated damages, and not by way of penalty. The Owner may deduct from any sum due or to become due the Contractor any sums accruing for liquidated damages as herein stated. For purposes of calculating, the actual completion date shall be the date certified by the Architect under Article 20.11 hereof.[45]

Also significant is Article 29.04 thereof which explains the owner's right to recover liquidated damages:

> 29.04. ***OWNER'S RIGHT TO RECOVER LIQUIDATED DAMAGES:*** Neither the taking over by the Owner of the work for completion by administration nor the re-letting of the same to another Contractor shall be construed as a waiver of the Owner's rights to recover

[45] Exhibit "A"; Expanding Envelope No. 1.

damages against the original Contractor and/or his sureties for the failure to complete the work as stipulated.

In such case, the full extent of the damages for which the Contractor and/or his sureties liable shall be:

a. The total daily liquidated damages up to and including the day immediately before the date the Owner effectively takes over the work.

b. The excess cost incurred by the Owner in the completion of the project over the Contract Price. This excess cost includes cost of architectural managerial and administrative services, supervision and inspection from the time the Owner effectively took over the work by administration or by re-letting the same.[46]

Clearly, respondent's entitlement to liquidated damages is distinct from its right to terminate the contract. Petitioner's liability for liquidated damages is not inconsistent with respondent's takeover of the project, or termination of the contract or even the eventual completion of the project. What is decisive of such entitlement is the fact of delay in the completion of the works. Stated in simple terms, as long as the contractor fails to finish the works within the period agreed upon by the parties without justifiable reason and after the owner makes a demand, then liability for damages as a consequence of such default arises.

It is undisputed that petitioner failed to perform the contracted works within the period as originally agreed upon. It is likewise settled that an extension was requested by petitioner and granted by respondent. With the modification of the contract period, petitioner was obliged to perform the works and deliver the units only until April 7, 1997. Yet it still reneged on its obligation. However, as aptly found by the CIAC, petitioner did not seek additional time within which to complete the project. We quote with approval the CA observations in this wise:

It is the Tribunal's finding that the Respondent-Contractor is delayed in the completion of the project. Except for the delay in the turnover

[46] Exhibit "A"; Expanding Envelope No. 1.

of the sites extensions which were granted, Respondent did not file for and did not obtain formal extension of its time of completion beyond April 7, 1997. The Tribunal notes the Respondent-Contractor did not document at the time the reasons now being claimed as causing the delay. The Tribunal finds it unusual that for a project with a Project Construction Manager, there were also no proper reports showing and reporting the changes, additions and deviations to approved schedules. x x x[47]

In other words, petitioner never sent notice to respondent regarding a request for extension of time to finish the work despite its claim of the existence of circumstances fairly entitling it to an extension of the contract period. Assuming that the reasons for valid extension indeed exist, still, petitioner should bear the consequences for the delay as it deprived respondent of its right to determine the length of extension to be given to it and, consequently, to adjust the period to finish the extra work.[48]

Besides, the General Conditions specifically lay down the requirements for a valid extension of the contract period, to wit:

Article 21.04. ***EXTENSION OF TIME:*** The Contractor will be allowed an extension of time based on the following conditions:

a. Should the contractor be obstructed or delayed in the prosecution or completion of the work x x x then the contractor shall within fifteen (15) days from the occurrence of such delay file the necessary request for extension. The Architect may grant the request for extension for such period of time as he considers reasonable.

x x x x x x x x x

c. x x x However, if in the opinion of the Architect, the nature of the increased work is such that the new Contract Time as computed above is unreasonably short, ***the time***

[47] CA *rollo*, p. 67.

[48] *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures, Inc.*, G.R. No. 143154, June 21, 2006, 491 SCRA 557, 579-580.

> ***allowance for any extension and increases shall be as agreed upon in writing.***[49] (Emphasis supplied)

Also, Section 3, Article V of the Construction Contract emphasizes that any extension in the contract period must be in writing, to wit:

> Section 3: The OWNER may, at any time during the progress of the performance of the Works in the PROJECT, order a change or changes in the plans and specifications; provided, that in such cases, any increase or decrease in the Contract Price above stipulated shall be subject to proportionate adjustment mutually agreed upon. ***Nevertheless, in the event that the alterations and the changes mentioned herein shall affect the Contract period, an extension thereof shall also be subject to proportionate adjustment in writing.*** x x x[50] (Emphasis supplied.)

Without doubt, no further extension was sought after the expiration of the first extension given by respondent. Any and all claims of its entitlement to period adjustment should not be granted to petitioner as would excuse it from liability for delay.

While in its letter dated September 22, 1997 respondent indeed required petitioner to submit a formal written commitment to finish and complete the project by a certain date, the same should not be deemed a waiver of its right to collect liquidated damages. The request made by respondent was only necessary in the determination of whether petitioner could still complete the works or there is already a need for respondent to take over the project or engage the services of another contractor. Such is only relevant in the exercise of respondent's right to terminate the contract but not in the entitlement to liquidated damages.

In answer to petitioner's request for schedule adjustments, respondent, in its letter dated January 11, 1997, allowed such extension and fixed the new date of completion, the latest of which was April 7, 1997. It is noteworthy that at the time such adjustment was given, respondent specified that liquidated

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[49] Exhibit "A"; Expanding Envelope No. 1.

[50] CA *rollo*, p. 140.

damages shall be applied beyond the extended period given as provided for in their Construction Contract.[51] Clearly, respondent had also made a demand for the payment of said damages should delay be incurred by petitioner beyond the new agreed dates.

As no extension was validly agreed upon and in view of the established fact that petitioner failed to complete the works and deliver the housing units within the stipulated period, petitioner's liability for liquidated damages arose, which is 1/10 of 1% of the contract price per calendar day of delay to a maximum amount of 10% of the contract price. Petitioner failed to meet its new deadline which was April 7, 1997. It even proposed that it be allowed to complete the works until November 15, 1997, way beyond the original as well as the extended contract period. Undoubtedly, petitioner may be held to answer for liquidated damages in its maximum amount which is 10% of the contract price. While we have reduced the amount of liquidated damages in some cases because of partial fulfillment of the contract and/or the amount is unconscionable, we do not find the same to be applicable in this case.[52] Per the CIAC findings, as of the last certified billing, petitioner's percentage accomplishment was only 62.57%. Hence, we apply the general rule not to ignore the freedom of the parties to agree on such terms and conditions as they see fit as long as they are not contrary to law, morals, good customs, public order or public policy.[53] Thus, we find no reason to disturb the CA conclusion.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.

SO ORDERED.

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

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[51] Exhibit "K"; Expanding Envelope No. 1.

[52] *R.S. Tomas, Inc. v. Rizal Cement Company, Inc.*, G.R. No. 173155, March 21, 2012.

[53] *Id*.

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

THIRD DIVISION

[G.R. No. 172825. October 11, 2012]

SPOUSES MINIANO B. DELA CRUZ and LETA L. DELA CRUZ, *petitioners, vs.* **ANA MARIE CONCEPCION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; AMENDED AND SUPPLEMENTAL PLEADINGS; AMENDMENT TO CONFORM TO OR AUTHORIZE PRESENTATION OF EVIDENCE; EXPLAINED.—** Section 1, Rule 9 of the Rules of Court states that "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived." x x x However, Section 5, Rule 10 of the Rules of Court allows the amendment to conform to or authorize presentation of evidence x x x. The x x x provision envisions two scenarios, namely, when evidence is introduced in an issue not alleged in the pleadings and no objection was interjected; and when evidence is offered on an issue not alleged in the pleadings but this time an objection was raised. When the issue is tried without the objection of the parties, it should be treated in all respects as if it had been raised in the pleadings. On the other hand, when there is an objection, the evidence may be admitted where its admission will not prejudice him.

2. **ID.; ID.; ID.; ID.; APPLIED IN CASE AT BAR.—** [W]hile respondent judicially admitted in her Answer that she only paid ₱2 million and that she still owed petitioners ₱200,000.00, respondent claimed later and, in fact, submitted an evidence to show that she already paid the whole amount of her unpaid obligation. It is noteworthy that when respondent presented the evidence of payment, petitioners did not object thereto. When the receipt was formally offered as evidence, petitioners did not manifest their objection to the admissibility of said document on the ground that payment was not an issue. Apparently, petitioners only denied receipt of said payment and assailed the authority of Losloso to receive payment. Since there was an implied consent on the part of petitioners to try the issue of payment, even if no motion was filed and

no amendment of the pleading has been ordered, the RTC cannot be faulted for admitting respondent's testimonial and documentary evidence to prove payment.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT; SHOULD BE MADE TO THE PROPER PERSON IN ORDER TO BE EFFECTIVE TO DISCHARGE AN OBLIGATION; CASE AT BAR.— Respondent's obligation consists of payment of a sum of money. In order to extinguish said obligation, payment should be made to the proper person as set forth in Article 1240 of the Civil Code x x x. Admittedly, payment of the remaining balance of ₱200,000.00 was not made to the creditors themselves. Rather, it was allegedly made to a certain Losloso. x x x Losloso's authority to receive payment was embodied in petitioners' letter addressed to respondent, dated August 7, 1997, where they informed respondent of the amounts they advanced for the payment of the 1997 real estate taxes. In said letter, petitioners reminded respondent of her remaining balance, together with the amount of taxes paid. Taking into consideration the busy schedule of respondent, petitioners advised the latter to leave the payment to a certain "Dori" who admittedly is Losloso, or to her trusted helper. This is an express authority given to Losloso to receive payment. x x x Thus, as shown in the receipt signed by petitioners' agent and pursuant to the authority granted by petitioners to Losloso, payment made to the latter is deemed payment to petitioners.

APPEARANCES OF COUNSEL

M.P. Ramos & Associates Law Offices for petitioners.

Benitez Legaspi Barcelo Rafael & Salamera Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioners spouses Miniano B. Dela Cruz and Leta L. Dela Cruz against respondent Ana

Marie Concepcion are the Court of Appeals (CA) Decision[1] dated March 31, 2005 and Resolution[2] dated May 24, 2006 in CA-G.R. CV No. 83030.

The facts of the case are as follows:

On March 25, 1996, petitioners (as vendors) entered into a Contract to Sell[3] with respondent (as vendee) involving a house and lot in Cypress St., Phase I, Town and Country Executive Village, Antipolo City for a consideration of ₱2,000,000.00 subject to the following terms and conditions:

a) That an earnest money of ₱100,000.00 shall be paid immediately;

b) That a full down payment of Four Hundred Thousand Pesos (₱400,000.00) shall be paid on February 29, 1996;

c) That Five Hundred Thousand Pesos (₱500,000.00) shall be paid on or before May 5, 1996; and

d) That the balance of One Million Pesos (₱1,000,000.00) shall be paid on installment with interest of Eighteen Percent (18%) per annum or One and a half percent (1-1/2 %) interest per month, based on the diminishing balance, compounded monthly, effective May 6, 1996. The interest shall continue to run until the whole obligation shall have been fully paid. The whole One Million Pesos shall be paid within three years from May 6, 1996;

e) That the agreed monthly amortization of Fifty Thousand Pesos (₱50,000.00), principal and interest included, must be paid to the Vendors, without need of prior demand, on or before May 6, 1996, and every month thereafter. Failure to pay the monthly amortization on time, a penalty equal to Five Percent (5%) of the amount due shall be imposed, until the account is updated. In addition, a penalty of One Hundred Pesos per day shall be imposed until the account is updated;

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[1] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), with Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 44-52.

[2] *Id.* at 53-55.

[3] Records, pp. 6-8.

f) That after receipt of the full payment, the Vendors shall execute the necessary Absolute Deed of Sale covering the house and lot mentioned above x x x[4]

Respondent made the following payments, to wit: (1) ₱500,000.00 by way of downpayment; (2) ₱500,000.00 on May 30, 1996; (3) ₱500,000.00 paid on January 22, 1997; and (4) ₱500,000.00 bounced check dated June 30, 1997 which was subsequently replaced by another check of the same amount, dated July 7, 1997. Respondent was, therefore, able to pay a total of ₱2,000,000.00.[5]

Before respondent issued the ₱500,000.00 replacement check, she told petitioners that based on the computation of her accountant as of July 6, 1997, her unpaid obligation which includes interests and penalties was only ₱200,000.00.[6] Petitioners agreed with respondent and said "if ₱200,000.00 is the correct balance, it is okay with us."[7]

Meanwhile, the title to the property was transferred to respondent. Petitioners later reminded respondent to pay ₱209,000.00 within three months.[8] They claimed that the said amount remained unpaid, despite the transfer of the title to the property to respondent. Several months later, petitioners made further demands stating the supposed correct computation of respondent's liabilities.[9] Despite repeated demands, petitioners failed to collect the amounts they claimed from respondent. Hence, the *Complaint for Sum of Money With Damages*[10] filed with the Regional Trial Court (RTC)[11] of Antipolo, Rizal. The case was docketed as Civil Case No. 98-4716.

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[4] *Id.* at 7.

[5] *Rollo*, p. 45.

[6] Records, p. 2.

[7] *Id.*

[8] *Id.* at 3.

[9] *Rollo*, p. 46.

[10] Records, pp. 1-5.

[11] Branch 73.

In her Answer with Compulsory Counterclaim,[12] respondent claimed that her unpaid obligation to petitioners is only ₱200,000.00 as earlier confirmed by petitioners and not ₱487,384.15 as later alleged in the complaint. Respondent thus prayed for the dismissal of the complaint. By way of counterclaim, respondent prayed for the payment of moral damages and attorney's fees. During the presentation of the parties' evidence, in addition to documents showing the statement of her paid obligations, respondent presented a receipt purportedly indicating payment of the remaining balance of ₱200,000.00 to Adoracion Losloso (Losloso) who allegedly received the same on behalf of petitioners.[13]

On March 8, 2004, the RTC rendered a Decision[14] in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, this case is hereby DISMISSED. The plaintiff is hereby ordered to pay the defendant's counterclaim, amounting to wit:
>
> a) ₱300,000 as moral damages; and
>
> b) ₱100,000 plus ₱2,000 per court appearance as attorney's fees.
>
> SO ORDERED.[15]

The RTC noted that the evidence formally offered by petitioners have not actually been marked as none of the markings were recorded. Thus, it found no basis to grant their claims, especially since the amount claimed in the complaint is different from that testified to. The court, on the other hand, granted respondent's counterclaim.[16]

On appeal, the CA affirmed the decision with modification by deleting the award of moral damages and attorney's fees in favor of respondent.[17] It agreed with the RTC that the evidence

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[12] Records, pp. 18-21.

[13] *Id.* at 129.

[14] Penned by Executive Judge Mauricio M. Rivera; *id.* at 269-273.

[15] Records p. 273.

[16] *Id*.

[17] *Rollo*, p. 51.

presented by petitioners cannot be given credence in determining the correct liability of respondent.[18] Considering that the purchase price had been fully paid by respondent ahead of the scheduled date agreed upon by the parties, petitioners were not awarded the excessive penalties and interests.[19] The CA thus maintained that respondent's liability is limited to ₱200,000.00 as claimed by respondent and originally admitted by petitioners.[20] This amount, however, had already been paid by respondent and received by petitioners' representative.[21] Finally, the CA pointed out that the RTC did not explain in its decision why moral damages and attorney's fees were awarded. Considering also that bad faith cannot be attributed to petitioners when they instituted the collection suit, the CA deleted the grant of their counterclaims.[22]

Aggrieved, petitioners come before the Court in this petition for review on *certiorari* under Rule 45 of the Rules of Court raising the following errors:

I.

"THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT ON THE GROUND THAT PLAINTIFF FAILED TO FORMALLY OFFER THEIR EVIDENCE AS DEFENDANT JUDICIALLY ADMITTED IN HER ANSWER WITH COMPULS[O]RY COUNTERCLAIM HER OUTSTANDING OBLIGATION STILL DUE TO PLAINTIFFS AND NEED NO PROOF.

II.

THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT FOR ALLEGED FAILURE OF PLAINTIFFS TO PRESENT COMPUTATION OF THE AMOUNT BEING CLAIMED AS DEFENDANT JUDICIALLY ADMITTED HAVING RECEIVED THE DEMAND LETTER DATED OCTOBER 22, 1997 WITH COMPUTATION OF THE BALANCE DUE.

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[18] *Id.* at 49.

[19] *Id.* at 49-50.

[20] *Id.* at 50.

[21] *Id*.

[22] *Id*. at 51.

III.

THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT ON THE GROUND THAT THE DEFENDANT FULLY PAID THE CLAIMS OF PLAINTIFFS BASED ON THE ALLEGED RECEIPT OF PAYMENT BY ADORACION LOSLOSO FROM ANA MARIE CONCEPCION MAGLASANG WHICH HAS NOTHING TO DO WITH THE JUDICIALLY ADMITTED OBLIGATION OF APPELLEE."[23]

Invoking the rule on judicial admission, petitioners insist that respondent admitted in her Answer with Compulsory Counterclaim that she had paid only a total amount of ₱2 million and that her unpaid obligation amounts to ₱200,000.00.[24] They thus maintain that the RTC and the CA erred in concluding that said amount had already been paid by respondent. Petitioners add that respondent's total liability as shown in the latter's statement of account was erroneously computed for failure to compound the monthly interest agreed upon.[25] Petitioners also claim that the RTC and the CA erred in giving credence to the receipt presented by respondent to show that her unpaid obligation had already been paid having been allegedly given to a person who was not armed with authority to receive payment.[26]

The petition is without merit.

It is undisputed that the parties entered into a contract to sell a house and lot for a total consideration of ₱2 million. Considering that the property was payable in installment, they likewise agreed on the payment of interest as well as penalty in case of default. It is likewise settled that respondent was able to pay the total purchase price of ₱2 million ahead of the agreed term. Afterwhich, they agreed on the remaining balance by way of interest and penalties which is ₱200,000.00. Considering that the term of payment was not strictly followed and the purchase price had already been fully paid by respondent,

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[23] Petition, p. 4.

[24] *Rollo*, pp. 20-23.

[25] *Id.* at 25.

[26] *Id.* at 28-31.

the latter presented to petitioners her computation of her liabilities for interests and penalties which was agreed to by petitioners. Petitioners also manifested their conformity to the statement of account prepared by respondent.

In paragraph (9) of petitioners' Complaint, they stated that:

> 9) That the Plaintiffs answered the Defendant as follows: "if ₱200,000 is the correct balance, it is okay with us." x x x.[27]

But in paragraph (17) thereof, petitioners claimed that defendant's outstanding liability as of November 6, 1997 was ₱487,384.15.[28] Different amounts, however, were claimed in their demand letter and in their testimony in court.

With the foregoing factual antecedents, petitioners cannot be permitted to assert a different computation of the correct amount of respondent's liability.

It is noteworthy that in answer to petitioners' claim of her purported unpaid obligation, respondent admitted in her Answer with Compulsory Counterclaim that she paid a total amount of ₱2 million representing the purchase price of the subject house and lot. She then manifested to petitioners and conformed to by respondent that her only balance was ₱200,000.00. Nowhere in her Answer did she allege the defense of payment. However, during the presentation of her evidence, respondent submitted a receipt to prove that she had already paid the remaining balance. Both the RTC and the CA concluded that respondent had already paid the remaining balance of ₱200,000.00. Petitioners now assail this, insisting that the court should have maintained the judicial admissions of respondent in her Answer with Compulsory Counterclaim, especially as to their agreed stipulations on interests and penalties as well as the existence of outstanding obligations.

It is, thus, necessary to discuss the effect of failure of respondent to plead payment of its obligations.

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[27] Records, p. 2.

[28] *Id.* at 3.

Section 1, Rule 9 of the Rules of Court states that "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived." Hence, respondent should have been barred from raising the defense of payment of the unpaid ₱200,000.00. However, Section 5, Rule 10 of the Rules of Court allows the amendment to conform to or authorize presentation of evidence, to wit:

> Section 5. *Amendment to conform to or authorize presentation of evidence.* – 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. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

The foregoing provision envisions two scenarios, namely, when evidence is introduced in an issue not alleged in the pleadings and no objection was interjected; and when evidence is offered on an issue not alleged in the pleadings but this time an objection was raised.[29] When the issue is tried without the objection of the parties, it should be treated in all respects as if it had been raised in the pleadings.[30] On the other hand, when there is an objection, the evidence may be admitted where its admission will not prejudice him.[31]

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[29] *Azolla Farms v. Court of Appeals*, G.R. No. 138085, November 11, 2004, 442 SCRA 133, 141; 484 Phil. 745, 752 (2004), citing *Mercader v. Development Bank of the Phils. (Cebu Branch)*, G.R. No. 130699, May 12, 2000, 332 SCRA 82, 97.

[30] *Sy v. Court of Appeals*, G.R. No. 124518, December 27, 2007, 541 SCRA 371, 386-387.

[31] *Azolla Farms v. Court of Appeals*, *supra* note 20.

Thus, while respondent judicially admitted in her Answer that she only paid ₱2 million and that she still owed petitioners ₱200,000.00, respondent claimed later and, in fact, submitted an evidence to show that she already paid the whole amount of her unpaid obligation. It is noteworthy that when respondent presented the evidence of payment, petitioners did not object thereto. When the receipt was formally offered as evidence, petitioners did not manifest their objection to the admissibility of said document on the ground that payment was not an issue. Apparently, petitioners only denied receipt of said payment and assailed the authority of Losloso to receive payment. Since there was an implied consent on the part of petitioners to try the issue of payment, even if no motion was filed and no amendment of the pleading has been ordered,[32] the RTC cannot be faulted for admitting respondent's testimonial and documentary evidence to prove payment.[33]

As stressed by the Court in *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*,[34]

> The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings. x x x Although, the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the issues discussed and the assertions of fact proved in the course of the trial. **The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually amended.** x x x Clearly, a court may rule and render judgment on the basis of the evidence before it even

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[32] *Sy v. Court of Appeals*, *supra* note 30, at 387.

[33] *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*, G.R. No. 158621, December 10, 2008, 573 SCRA 414.

[34] *Id.* at 426, citing *Bank of America, NT & SA v. American Realty Corporation*, G.R. No. 133876, December 29, 1999, 321 SCRA 659, 680-681; *Talisay-Silay Milling Co., Inc. v. Asociacion de Agricultores de Talisay-Silay, Inc.*, G.R. No. 91852, August 15, 1995, 247 SCRA 361, 377-378; and *Mercader v. Development Bank of the Philippines (Cebu Branch)*, *supra* note 29.

though the relevant pleading had not been previously amended, **so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, so long as the basic requirements of fair play had been met, as where the litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it**. (Emphasis supplied)[35]

To be sure, petitioners were given ample opportunity to refute the fact of and present evidence to prove payment.

With the evidence presented by the contending parties, the more important question to resolve is whether or not respondent's obligation had already been extinguished by payment.

We rule in the affirmative as aptly held by the RTC and the CA.

Respondent's obligation consists of payment of a sum of money. In order to extinguish said obligation, payment should be made to the proper person as set forth in Article 1240 of the Civil Code, to wit:

> Article 1240. Payment shall be made to the person in whose favor the obligation has been constituted, ***or his successor in interest, or any person authorized to receive it***. (Emphasis supplied)

The Court explained in *Cambroon v. City of Butuan*,[36] cited in *Republic v. De Guzman*,[37] to whom payment should be made in order to extinguish an obligation:

> Payment made by the debtor to the person of the creditor or to one authorized by him or by the law to receive it extinguishes the obligation. When payment is made to the wrong party, however, the obligation is not extinguished as to the creditor who is without fault

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[35] *Id.* at 426-427.

[36] G.R. No. 163605, September 20, 2006, 502 SCRA 494; 533 Phil. 773 (2006).

[37] G.R. No. 175021, June 15, 2011, 652 SCRA 101, 119.

or negligence even if the debtor acted in utmost good faith and by mistake as to the person of the creditor or through error induced by fraud of a third person.

In general, a payment in order to be effective to discharge an obligation, must be made to the proper person. Thus, payment must be made to the obligee himself or to an agent having authority, express or implied, to receive the particular payment. Payment made to one having apparent authority to receive the money will, as a rule, be treated as though actual authority had been given for its receipt. Likewise, if payment is made to one who by law is authorized to act for the creditor, it will work a discharge. The receipt of money due on a judgment by an officer authorized by law to accept it will, therefore, satisfy the debt.[38]

Admittedly, payment of the remaining balance of ₱200,000.00 was not made to the creditors themselves. Rather, it was allegedly made to a certain Losloso. Respondent claims that Losloso was the authorized agent of petitioners, but the latter dispute it.

Losloso's authority to receive payment was embodied in petitioners' letter[39] addressed to respondent, dated August 7, 1997, where they informed respondent of the amounts they advanced for the payment of the 1997 real estate taxes. In said letter, petitioners reminded respondent of her remaining balance, together with the amount of taxes paid. Taking into consideration the busy schedule of respondent, petitioners advised the latter to leave the payment to a certain "Dori" who admittedly is Losloso, or to her trusted helper. This is an express authority given to Losloso to receive payment. Moreover, as correctly held by the CA:

Furthermore, that Adoracion Losloso was indeed an agent of the appellant spouses is borne out by the following admissions of plaintiff-appellant Atty. Miniano dela Cruz, to wit:

Q: You would agree with me that you have authorized this Doiry Losloso to receive payment of whatever balance is due you

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[38] *Cembrano v. City of Butuan*, *supra* note 36, at 511-512; at 790-791. (Citations omitted)

[39] Records, p. 120.

coming from Ana Marie Concepcion, that is correct?

A: In one or two times but not total authority, sir.

Q: Yes, but you have authorized her to receive payment?

A: One or two times, yes x x x. (*TSN, June 28, 1999, pp. 16-17*)[40]

Thus, as shown in the receipt signed by petitioners' agent and pursuant to the authority granted by petitioners to Losloso, payment made to the latter is deemed payment to petitioners. We find no reason to depart from the RTC and the CA conclusion that payment had already been made and that it extinguished respondent's obligations.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The Court of Appeals Decision dated March 31, 2005 and Resolution dated May 24, 2006 in CA-G.R. CV No. 83030, are **AFFIRMED.**

SO ORDERED.

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

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[40] *Rollo,* pp. 50-51.

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

THIRD DIVISION

[G.R. No. 173211. October 11, 2012]

HEIRS OF DR. MARIO S. INTAC and ANGELINA MENDOZA-INTAC, *petitioners, vs.* **COURT OF APPEALS and SPOUSES MARCELO ROY, JR. and JOSEFINA MENDOZA-ROY and SPOUSES DOMINADOR LOZADA and MARTINA MENDOZA-LOZADA,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; ESSENTIAL ELEMENTS.— [F]or a contract to be valid, it must have three essential elements: (1) **consent** of the contracting parties; (2) **object** certain which is the subject matter of the contract; and (3) **cause** of the obligation which is established. All these elements must be present to constitute a valid contract.

2. ID.; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE; PERFECTED AT THE MOMENT THERE IS A MEETING OF THE MINDS UPON THE THING THAT IS THE OBJECT OF THE CONTRACT AND UPON THE PRICE.— Consent is essential to the existence of a contract; and where it is wanting, the contract is non-existent. In a contract of sale, its perfection is consummated at the moment there is a meeting of the minds upon the thing that is the object of the contract and upon the price. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract.

3. ID.; CONTRACTS; RELATIVE SIMULATION AND ABSOLUTE SIMULATION, DISTINGUISHED.— If the parties state a false cause in the contract to conceal their real agreement, the contract is only relatively simulated and the parties are still bound by their real agreement. Hence, where the essential requisites of a contract are present and the simulation refers only to the content or terms of the contract, the agreement is absolutely binding and enforceable between the parties and their successors in interest. In absolute simulation, there is a colorable contract but it has no substance as the parties have

no intention to be bound by it. "The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties." "As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract."

4. ID.; ID.; INTERPRETATION OF CONTRACTS; IN DETERMINING THE TRUE NATURE OF A CONTRACT, THE PRIMARY CONSIDERATION IS THE INTENTION OF THE PARTIES; CASE AT BAR.— The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties. As heretofore shown, the contemporaneous and subsequent acts of both parties in this case, point to the fact that the intention of Ireneo was just to lend the title to the Spouses Intac to enable them to borrow money and put up a hospital in Sta. Cruz, Laguna. Clearly, the subject contract was absolutely simulated and, therefore, void.

5. ID.; PRESCRIPTION OF ACTIONS; ACTION FOR RECONVEYANCE; THE RIGHT TO SEEK RECONVEYANCE DOES NOT PRESCRIBE WHERE THE PERSON CLAIMING TO BE OWNER OF THE PROPERTY IS IN ACTUAL POSSESSION THEREOF.— The Court does not find acceptable either the argument of the Spouses Intac that respondents' action for cancellation of TCT No. 242655 and the reconveyance of the subject property is already barred by the Statute of Limitations. The reason is that the respondents are still in actual possession of the subject property. It is a well-settled doctrine that "if the person claiming to be the owner of the property is in actual possession thereof, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe."

APPEARANCES OF COUNSEL

Janet O. Gudez for petitioners.
Pajares Asual Adaci for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 assailing the February 16, 2006 Decision[1] of the Court of Appeals *(CA)*, in CA G.R. CV No. 75982, which modified the April 30, 2002 Decision[2] of the Regional Trial Court, Branch 220, Quezon City *(RTC)*, in Civil Case No. Q-94-19452, an action for cancellation of transfer certificate of title and reconveyance of property.

The Facts

From the records, it appears that Ireneo Mendoza *(Ireneo)*, married to Salvacion Fermin *(Salvacion)*, was the owner of the subject property, presently covered by TCT No. 242655 of the Registry of Deeds of Quezon City and situated at No. 36, Road 8, Bagong Pag-asa, Quezon City, which he purchased in 1954. Ireneo had two children: respondents Josefina and Martina *(respondents)*, Salvacion being their stepmother. When he was still alive, Ireneo, also took care of his niece, Angelina, since she was three years old until she got married. The property was then covered by TCT No. 106530 of the Registry of Deeds of Quezon City. On October 25, 1977, Ireneo, with the consent of Salvacion, executed a deed of absolute sale of the property in favor of Angelina and her husband, Mario *(Spouses Intac)*. Despite the sale, Ireneo and his family, including the respondents, continued staying in the premises and paying the realty taxes. After Ireneo died intestate in 1982, his widow and the respondents remained in the premises.[3] After Salvacion died, respondents

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[1] *Rollo*, pp. 40-48 (Penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justice Jose C. Reyes, Jr. and Associate Justice Arturo G. Tayag).

[2] *Id.* at 130-137.

[3] As manifested by both parties (*id*. at 160 to 165 and 204), despite the fact that the MeTC, Quezon City, had ordered the ejectment of the respondents in its Decision, dated November 17, 1994, (*id*. at 49-53) which was affirmed by the RTC, Quezon City on July 21, 1995 *(id*. at 54-56).

still maintained their residence there. Up to the present, they are in the premises, paying the real estate taxes thereon, leasing out portions of the property, and collecting the rentals.[4]

The Dispute

The controversy arose when respondents sought the cancellation of TCT No. 242655, claiming that the sale was only simulated and, therefore, void. Spouses Intac resisted, claiming that it was a valid sale for a consideration.

On February 22, 1994, respondents filed the Complaint for Cancellation of Transfer Certificate of Title *(TCT)* No. 242655[5] against Spouses Intac before the RTC. The complaint prayed not only for the cancellation of the title, but also for its reconveyance to them. Pending litigation, Mario died on May 20, 1995 and was substituted by his heirs, his surviving spouse, Angelina, and their children, namely, Rafael, Kristina, Ma. Tricia Margarita, Mario, and Pocholo, all surnamed Intac *(petitioners)*.

Averments of the Parties

In their **Complaint**, respondents alleged, among others, that when Ireneo was still alive, Spouses Intac borrowed the title of the property (TCT No. 106530) from him to be used as collateral for a loan from a financing institution; that when Ireneo informed respondents about the request of Spouses Intac, they objected because the title would be placed in the names of said spouses and it would then appear that the couple owned the property; that Ireneo, however, tried to appease them, telling them not to worry because Angelina would not take advantage of the situation considering that he took care of her for a very long time; that during his lifetime, he informed them that the subject property would be equally divided among them after his death; and that respondents were the ones paying the real estate taxes over said property.

It was further alleged that after the death of Ireneo in 1982, a conference among relatives was held wherein both parties

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

[5] Annex "E" of Petition; *id*. at 57-63.

were present including the widow of Ireneo, Salvacion; his nephew, Marietto Mendoza *(Marietto)*; and his brother, Aurelio Mendoza *(Aurelio)*. In the said conference, it was said that Aurelio informed all of them that it was Ireneo's wish to have the property divided among his heirs; that Spouses Intac never raised any objection; and that neither did they inform all those present on that occasion that the property was already sold to them in 1977.[6]

Respondents further alleged that sometime in 1993, after the death of Salvacion, rumors spread in the neighborhood that the subject property had been registered in the names of Spouses Intac; that upon verification with the Office of the Register of Deeds of Quezon City, respondents were surprised to find out that TCT No. 106530 had indeed been cancelled by virtue of the deed of absolute sale executed by Ireneo in favor of Spouses Intac, and as a result, TCT No. 242655 was issued in their names; that the cancellation of TCT No. 106530 and the subsequent issuance of TCT No. 242655 were null and void and had no legal effect whatsoever because the deed of absolute sale was a fictitious or simulated document; that the Spouses Intac were guilty of fraud and bad faith when said document was executed; that Spouses Intac never informed respondents that they were already the registered owners of the subject property although they had never taken possession thereof; and that the respondents had been in possession of the subject property in the concept of an owner during Ireneo's lifetime up to the present.

In their **Answer**,[7] Spouses Intac countered, among others, that the subject property had been transferred to them based on a valid deed of absolute sale and for a valuable consideration; that the action to annul the deed of absolute sale had already prescribed; that the stay of respondents in the subject premises was only by tolerance during Ireneo's lifetime because they were not yet in need of it at that time; and that despite respondents'

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[6] *Id.* at 59.

[7] Annex "F"; *id.* at 64-70.

knowledge about the sale that took place on October 25, 1977, respondents still filed an action against them.

Ruling of the RTC

On April 30, 2002, the RTC rendered judgment in favor of respondents and against Spouses Intac. The dispositive portion of its Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> (1) Declaring the Deed of Absolute Sale executed by Ireneo Mendoza in favor of Mario and Angelina Intac dated October 25, 1977 as an equitable mortgage;
>
> (2) Ordering the Register of Deeds of Quezon City to cancel Transfer Certificate Title No. 242655 and, in lieu thereof, issue a new Transfer Certificate of Title in the name of Ireneo Mendoza; and
>
> (3) Ordering defendants to pay plaintiffs the amount of Thirty Thousand Pesos (Php30,000.00) as and for attorney's fees.
>
> The other claims for damages are hereby denied for lack of merit.
>
> SO ORDERED.[8]

The RTC ruled, among others, that the sale between Ireneo and Salvacion, on one hand, and Spouses Intac was null and void for being a simulated one considering that the said parties had no intention of binding themselves at all. It explained that the questioned deed did not reflect the true intention of the parties and construed the said document to be an equitable mortgage on the following grounds: [1] the signed document did not express the real intention of the contracting parties because Ireneo signed the said document only because he was in urgent need of funds; [2] the amount of ₱60,000.00 in 1977 was too inadequate for a purchase price of a 240-square meter lot located in Quezon City; [3] Josefina and Martina continued to be in possession of the subject property from 1954 and even after the alleged sale took place in 1977 until this case was filed in 1994; and [4] the Spouses Intac started paying real

[8] *Id.* at 137.

estate taxes only in 1999. The RTC added that the Spouses Intac were guilty of fraud because they effected the registration of the subject property even though the execution of the deed was not really intended to transfer the ownership of the subject property.

Ruling of the CA

On appeal, the CA modified the decision of the RTC. The CA ruled that the RTC erred in first declaring the deed of absolute sale as null and void and then interpreting it to be an equitable mortgage. The CA believed that Ireneo agreed to have the title transferred in the name of the Spouses Intac to enable them to facilitate the processing of the mortgage and to obtain a loan. This was the exact reason why the deed of absolute sale was executed. Marietto testified that Ireneo never intended to sell the subject property to the Spouses Intac and that the deed of sale was executed to enable them to borrow from a bank. This fact was confirmed by Angelina herself when she testified that she and her husband mortgaged the subject property sometime in July 1978 to finance the construction of a small hospital in Sta. Cruz, Laguna.

The CA further observed that the conduct of Spouses Intac belied their claim of ownership. When the deed of absolute sale was executed, Spouses Intac never asserted their ownership over the subject property, either by collecting rents, by informing respondents of their ownership or by demanding possession of the land from its occupants. It was not disputed that it was respondents who were in possession of the subject property, leasing the same and collecting rentals. Spouses Intac waited until Ireneo and Salvacion passed away before they disclosed the transfer of the title to respondents. Hence, the CA was of the view that the veracity of their claim of ownership was suspicious.

Moreover, wrote the CA, although Spouses Intac claimed that the purchase of the subject property was for a valuable consideration (₱60,000.00), they admitted that they did not have any proof of payment. Marietto, whose testimony was assessed by the RTC to be credible, testified that there was no such

payment because Ireneo never sold the subject property as he had no intention of conveying its ownership and that his only purpose in lending the title was to help Spouses Intac secure a loan. Thus, the CA concluded that the deed of absolute sale was a simulated document and had no legal effect.

Finally, the CA stated that even assuming that there was consent, the sale was still null and void because of lack of consideration. The decretal portion of the CA Decision reads:

> WHEREFORE, in view of the foregoing premises, the decision of the Regional Trial Court of Quezon City, Branch 220, is AFFIRMED with modifications, as follows:
>
> 1. The Deed of Absolute Sale dated October 25, 1977 executed by Ireneo Mendoza and Salvacion Fermen in favor of Spouses Mario and Angelina Intac is hereby declared NULL AND VOID;
> 2. the Register of Deed[s] of Quezon City is ordered to cancel TCT No. 242655 and, in lieu thereof, issue a new one and reinstate Ireneo Mendoza as the registered owner;
> 3. The defendant appellants are hereby ordered to pay the plaintiff appellees the amount of thirty thousand pesos (Php30,000.00) as and for attorney's fees; and
> 4. The other claims for damages are denied for lack of merit.
>
> SO ORDERED.[9]

Not in conformity, petitioners filed this petition for review anchored on the following

ASSIGNMENT OF ERRORS

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT AFFIRMED THE DECISION OF THE REGIONAL TRIAL COURT DATED FEBRUARY 16, 2006 WHICH WAS CONTRARY TO THE APPLICABLE LAWS AND EXISTING JURISPRUDENCE.

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

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT CLEARLY OVERLOOKED, MISUNDERSTOOD AND/OR MISAPPLIED THE EVIDENCE PRESENTED IN THE COURT *A QUO*.[10]

Petitioners' position

Petitioners primarily argue that the subject deed of sale was a valid and binding contract between the parties. They claim that all the elements of a valid contract of sale were present, to wit: [a] consent or meeting of the minds, that is, consent to transfer ownership in exchange of price; [b] determinate subject matter; and [c] price certain in money or its equivalent.

Petitioners claim that respondents have validly gave their consent to the questioned sale of the subject property. In fact, it was Ireneo and Salvacion who approached them regarding their intention to sell the subject property. Ireneo and Salvacion affixed their signatures on the questioned deed and never brought any action to invalidate it during their lifetime. They had all the right to sell the subject property without having to inform their children of their intention to sell the same. Ordinary human experience dictates that a party would not affix his or her signature on any written instrument which would result in deprivation of one's property right if there was really no intention to be bound by it. A party would not keep silent for several years regarding the validity and due execution of a document if there was an issue on the real intention of the vendors. The signatures of Ireneo and Salvacion meant that they had knowingly and willfully entered into such agreement and that they were prepared for the consequences of their act.

Respondents' Position

Respondents are of the position that the RTC and the CA were correct in ruling that the questioned deed of absolute sale was a simulated one considering that Ireneo and Salvacion had no intention of selling the subject property. The true intention

[10] *Id.* at 17.

rather was that Spouses Intac would just borrow the title of the subject property and offer it as a collateral to secure a loan. No money actually changed hands.

According to respondents, there were several circumstances which put in doubt the validity of the deed of absolute sale. *First*, the parties were not on equal footing because Angelina was a doctor by profession while Ireneo and Salvacion were less educated people who were just motivated by their trust, love and affection for her whom they considered as their own child. *Second*, if there was really a valid sale, it was just and proper for Spouses Intac to divulge the conveyance to respondents, being compulsory heirs, but they did not. *Third*, Ireneo and Salvacion did nothing to protect their interest because they banked on the representation of Spouses Intac that the title would only be used to facilitate a loan with a bank. *Fourth*, Ireneo and Salvacion remained in possession of the subject property without being disturbed by Spouses Intac. *Fifth*, the price of the sale was inadequate and inequitable for a prime property located in Pag-asa, Quezon City. *Sixth*, Ireneo and Salvacion had no intention of selling the subject property because they had heirs who would inherit the same. *Seventh*, the Spouses Intac abused the trust and affection of Ireneo and Salvacion by arrogating unto themselves the ownership of the subject property to the prejudice of his own children, Josefina and Martina.

Finally, petitioners could not present a witness to rebut Marietto's testimony which was straightforward and truthful.

The Court's Ruling

Basically, the Court is being asked to resolve the issue of whether the Deed of Absolute Sale,[11] dated October 25, 1977, executed by and between Ireneo Mendoza and Salvacion Fermin, as vendors, and Mario Intac and Angelina Intac, as vendees, involving the subject real property in Pagasa, Quezon City, was a simulated contract or a valid agreement.

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[11] *Id.* at 279-280.

The Court finds no merit in the petition.

A contract, as defined in the Civil Code, is a meeting of minds, with respect to the other, to give something or to render some service. Article 1318 provides:

> Art. 1318. There is no contract unless the following requisites concur:
>
> (1) Consent of the contracting parties;
>
> (2) Object certain which is the subject matter of the contract;
>
> (3) Cause of the obligation which is established.

Accordingly, for a contract to be valid, it must have three essential elements: (1) **consent** of the contracting parties; (2) **object** certain which is the subject matter of the contract; and (3) **cause** of the obligation which is established.[12]

All these elements must be present to constitute a valid contract. Consent is essential to the existence of a contract; and where it is wanting, the contract is non-existent. In a contract of sale, its perfection is consummated at the moment there is a meeting of the minds upon the thing that is the object of the contract and upon the price. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract.

In this case, the CA ruled that the deed of sale executed by Ireneo and Salvacion was absolutely simulated for lack of consideration and cause and, therefore, void. Articles 1345 and 1346 of the Civil Code provide:

> Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.

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[12] *Sps. Ramon Lequin and Virginia Lequin v. Sps. Raymundo Vizconde and Salome Requin Vizconde,* G.R. No. 177710, October 12, 2009, 603 SCRA 407, 417.

Art. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

If the parties state a false cause in the contract to conceal their real agreement, the contract is only relatively simulated and the parties are still bound by their real agreement. Hence, where the essential requisites of a contract are present and the simulation refers only to the content or terms of the contract, the agreement is absolutely binding and enforceable between the parties and their successors in interest.[13]

In absolute simulation, there is a colorable contract but it has no substance as the parties have no intention to be bound by it. "The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties."[14] "As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract."[15]

In the case at bench, the Court is one with the courts below that no valid sale of the subject property actually took place between the alleged vendors, Ireneo and Salvacion; and the alleged vendees, Spouses Intac. There was simply no consideration and no intent to sell it.

Critical is the testimony of Marietto, a witness to the execution of the subject absolute deed of sale. He testified that Ireneo personally told him that he was going to execute a document of sale because Spouses Intac needed to borrow the title to the property and use it as collateral for their loan application. Ireneo and Salvacion never intended to sell or permanently transfer the full ownership of the subject property to Spouses

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[13] *Spouses Villaceran v. De Guzman*, G.R. No. 169055, February 22, 2012.

[14] *Id.,* citing *Loyola v. Court of Appeals*, G.R. No. 115734, February 23, 2000, 326 SCRA 285, 293.

[15] *Id.*

Intac. Marietto was characterized by the RTC as a credible witness.

Aside from their plain denial, petitioners failed to present any concrete evidence to disprove Marietto's testimony. They claimed that they actually paid ₱150,000.00 for the subject property. They, however, failed to adduce proof, even by circumstantial evidence, that they did, in fact, pay it. Even for the consideration of ₱60,000.00 as stated in the contract, petitioners could not show any tangible evidence of any payment therefor. Their failure to prove their payment only strengthened Marietto's story that there was no payment made because Ireneo had no intention to sell the subject property.

Angelina's story, except on the consideration, was consistent with that of Marietto. Angelina testified that she and her husband mortgaged the subject property sometime in July 1978 to finance the construction of a small hospital in Sta. Cruz, Laguna. Angelina claimed that Ireneo offered the property as he was in deep financial need.

Granting that Ireneo was in financial straits, it does not prove that he intended to sell the property to Angelina. Petitioners could not adduce any proof that they lent money to Ireneo or that he shared in the proceeds of the loan they had obtained. And, if their intention was to build a hospital, could they still afford to lend money to Ireneo? And if Ireneo needed money, why would he lend the title to Spouses Intac when he himself could use it to borrow money for his needs? If Spouses Intac took care of him when he was terminally ill, it was not surprising for Angelina to reciprocate as he took care of her since she was three (3) years old until she got married. Their caring acts for him, while they are deemed services of value, cannot be considered as consideration for the subject property for lack of quantification and the Filipino culture of taking care of their elders.

Thus, the Court agrees with the courts below that the questioned contract of sale was only for the purpose of lending the title of the property to Spouses Intac to enable them to secure a loan. Their arrangement was only temporary and could not give

rise to a valid sale. Where there is no consideration, the sale is null and void *ab initio*. In the case of *Lequin v. Vizconde*,[16] the Court wrote:

> There can be no doubt that the contract of sale or Kasulatan lacked the essential element of consideration. It is a well-entrenched rule that **where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void ab initio for lack of consideration**. Moreover, Art. 1471 of the Civil Code, which provides that "if the price is simulated, the sale is void," also applies to the instant case, since the price purportedly paid as indicated in the contract of sale was simulated for no payment was actually made.
>
> Consideration and consent are essential elements in a contract of sale. Where a party's consent to a contract of sale is vitiated or **where there is lack of consideration due to a simulated price, the contract is null and void ab initio**. [Emphases supplied]

More importantly, Ireneo and his family continued to be in physical possession of the subject property after the sale in 1977 and up to the present. They even went as far as leasing the same and collecting rentals. If Spouses Intac really purchased the subject property and claimed to be its true owners, why did they not assert their ownership immediately after the alleged sale took place? Why did they have to assert their ownership of it only after the death of Ireneo and Salvacion? One of the most striking badges of absolute simulation is the complete absence of any attempt on the part of a vendee to assert his right of dominion over the property.[17]

On another aspect, Spouses Intac failed to show that they had been paying the real estate taxes of the subject property. They admitted that they started paying the real estate taxes on the property for the years 1996 and 1997 only in 1999. They could only show two (2) tax receipts (Real Property Tax Receipt No. 361105, dated April 21, 1999, and Real Property Tax Receipt

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[16] G.R. No. 177710, October 12, 2009, 603 SCRA 407, 422.

[17] *Gaudencio Valerio v. Vicenta Refresca,* G.R. No. 163687, March 28, 2006, 485 SCRA 494, 501-502.

No. 361101, dated April 21, 1999).[18] Noticeably, petitioners' tax payment was just an afterthought. The non-payment of taxes was also taken against the alleged vendees in the case of *Lucia Carlos Aliño v. Heirs of Angelica A. Lorenzo*.[19] Thus,

> Furthermore, Lucia **religiously** paid the realty taxes on the subject lot from 1980 to 1987. While tax receipts and declarations of ownership for taxation purposes are not, in themselves, incontrovertible evidence of ownership, they constitute at least proof that the holder has a claim of title over the property, particularly when accompanied by proof of actual possession. They are good indicia of the possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. **Such an act strengthens one's bona fide claim of acquisition of ownership**.
>
> On the other hand, respondent heirs failed to present evidence that Angelica, during her lifetime, paid the realty taxes on the subject lot. They presented **only two tax receipts** showing that Servillano, Sr. belatedly paid taxes due on the subject lot for the years 1980-1981 and part of year 1982 on September 8, 1989, or about a month after the institution of the complaint on August 3, 1989, **a clear indication that payment was made as an afterthought to give the semblance of truth to their claim**.
>
> **Thus, the subsequent acts of the parties belie the intent to be bound by the deed of sale.** [Emphases supplied]

The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the

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[18] *Rollo*, p. 132.

[19] G.R. No. 159550, June 27, 2008, 556 SCRA 139, 150-151.

contemporaneous and subsequent acts of the parties.[20] As heretofore shown, the contemporaneous and subsequent acts of both parties in this case, point to the fact that the intention of Ireneo was just to lend the title to the Spouses Intac to enable them to borrow money and put up a hospital in Sta. Cruz, Laguna. Clearly, the subject contract was absolutely simulated and, therefore, void.

In view of the foregoing, the Court finds it hard to believe the claim of the Spouses Intac that the stay of Ireneo and his family in the subject premises was by their mere tolerance as they were not yet in need of it. As earlier pointed out, no convincing evidence, written or testimonial, was ever presented by petitioners regarding this matter. It is also of no moment that TCT No. 106530 covering the subject property was cancelled and a new TCT (TCT No. 242655)[21] was issued in their names. The Spouses Intac never became the owners of the property despite its registration in their names. After all, registration does not vest title.

As a logical consequence, petitioners did not become the owners of the subject property even after a TCT had been issued in their names. After all, registration does not vest title. Certificates of title merely confirm or record title already existing and vested. They cannot be used to protect a usurper from the true owner, nor can they be used as a shield for the commission of fraud, or to permit one to enrich oneself at the expense of others. Hence, reconveyance of the subject property is warranted.[22]

The Court does not find acceptable either the argument of the Spouses Intac that respondents' action for cancellation of TCT No. 242655 and the reconveyance of the subject property

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[20] *Spouses Villaceran v. De Guzman, supra* note 13, citing *Ramos v. Heirs of Honorio Ramos, Sr.*, G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601.

[21] *Rollo*, pp. 281-282.

[22] *Sps. Exequiel Lopez and Eusebia Lopez v. Sps. Eduardo Lopez and Marcelina R. Lopez*, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 365.

is already barred by the Statute of Limitations. The reason is that the respondents are still in actual possession of the subject property. It is a well-settled doctrine that "if the person claiming to be the owner of the property is in actual possession thereof, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe."[23] In *Lucia Carlos Aliño*, it was also written:

> The lower courts fault Lucia for allegedly not taking concrete steps to recover the subject lot, demanding its return only after 10 years from the registration of the title. They, however, failed to consider that Lucia was in **actual possession** of the property.
>
> It is well-settled that an action for reconveyance prescribes in 10 years, the reckoning point of which is the date of registration of the deed or the date of issuance of the certificate of title over the property. In an action for reconveyance, the decree of registration is highly regarded as incontrovertible. What is sought instead is the transfer of the property or its title, which has been erroneously or wrongfully registered in another person's name, to its rightful or legal owner or to one who has a better right.
>
> However, in a number of cases in the past, the Court has consistently ruled that **if the person claiming to be the owner of the property is in actual possession thereof, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe**. **The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. The reason being, that his undisturbed possession gives him the continuing right to seek the aid of a court of equity to ascertain the nature of the adverse claim of a third party and its effect on his title, which right can be claimed only by one who is in possession. Thus, considering that Lucia continuously possessed the subject lot, her right to institute a suit to clear the cloud over her title cannot be barred by the statute of limitations.**[24] [Emphases supplied]

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[23] *Lucia Carlos Alino v. Heirs of Angelica A. Lorenzo*, G.R. No. 159550, June 27, 2008, 556 SCRA 139, 151-153.

[24] *Id.*

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174582. October 11, 2012]

THE HEIRS OF THE LATE SPOUSES LAURA YADNO and PUGSONG MAT-AN, namely, LAURO MAT-AN, FE MAT-AN LAOYAN, JULIA MAT-AN KITANI, ANA MAT-AN MALANI, DARIO MAT-AN and VICTOR MAT-AN, who are represented by their co-petitioner NENA MAT-AN CLEMENT, *petitioners, vs.* **THE HEIRS OF THE LATE SPOUSES MAURO and ELISA ANCHALES, namely, JOHNNY S. ANCHALES, BELMORE S. ANCHALES, BENSON S. ANCHALES, BRIGETTE S. HARASYMUK, RITA A. KAWA, and NENITA S. ANCHALES,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; PRINCIPLE OF JUDICIAL STABILITY; THE JUDGMENT OR ORDER OF A COURT OF COMPETENT JURISDICTION MAY NOT BE INTERFERED WITH BY ANY COURT OF CONCURRENT JURISDICTION; CASE AT BAR.— We find that the Baguio RTC correctly dismissed the case for injunction with damages filed with it, since it had no jurisdiction over the

[*] Designated additional member, per Special Order No. 1299, dated August 28, 2012.

nature of the action. Petitioners' predecessors could not in an action for injunction with damages filed with the Baguio RTC sought the nullification of a final and executory decision rendered by the Urdaneta RTC and its subsequent orders issued pursuant thereto for the satisfaction of the said judgment. This would go against the principle of judicial stability where the judgment or order of a court of competent jurisdiction, the Urdaneta RTC, may not be interfered with by any court of *concurrent* jurisdiction (*i.e.*, another RTC), for the simple reason that the power to open, modify or vacate the said judgment or order is not only possessed by but is restricted to the court in which the judgment or order is rendered or issued. The long standing doctrine is that no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction. The various trial courts of a province or city, having the same or equal authority, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments. A contrary rule would obviously lead to confusion and seriously hamper the administration of justice.

APPEARANCES OF COUNSEL

Leoncio L. Alangdeo for petitioners.
Marciano T. Inso for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated January 12, 2006 and the Resolution[2] dated June 28, 2006 issued by the Court of Appeals in CA-G.R. CV No. 77427.

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[1] Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Remedios A. Salazar-Fernando and Estela M. Perlas-Bernabe (now a member of this Court.), concurring, *rollo,* pp. 155-163.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Justices Mario L. Guariña III and Estela M. Perlas-Bernabe (now a member of this Court.), concurring, *id.* at 207-208.

The antecedent facts are as follows:

On December 1, 1982, the Spouses Mauro and Elisa Anchales (Spouses Anchales), respondents' predecessors, filed with the then Court of First Instance, Branch 9, now Regional Trial Court, Branch 46, of Urdaneta, Pangasinan (Urdaneta RTC), a Complaint[3] for ownership, delivery of possession, damages with preliminary injunction and attachment against the spouses Augusto and Rosalia Yadno (Spouses Yadno), Orani Tacay (Orani), and the spouses Laura Yadno and Pugsong Mat-an (Spouses Mat-an), petitioners' predecessors, docketed as Civil Case No. U- 3882. The Spouses Mat-an and Orani did not file their Answer, thus, they were declared in default. The Spouses Yadno were also declared in default so the Spouses Anchales were allowed to present their evidence *ex-parte*. The Spouses Yadno filed a motion for reconsideration of the Order declaring them in default, but the RTC denied the motion and submitted the case for decision. On September 14, 1987, the Urdaneta RTC rendered its Decision,[4] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Declaring the plaintiffs as the absolute owners of the land in question;
>
> 2. Ordering the defendants Augusto Yadno and Rosalia Yadno to vacate the premises of the land in question and restore the possession thereof to the plaintiffs;
>
> 3. Ordering the said defendants to remove their house constructed which is still standing on the premises in question;
>
> 4. Ordering the defendants Augusto Yadno, Rosalia Yadno, Orani Tacay, Laura Yadno and Pugsong Mat-an to pay jointly and severally the plaintiffs the amount of 400 cavans of palay representing the harvest for the last six (6) years up to and including the years 1982 and 1983 until they actually vacate and deliver the premises to the plaintiffs; and

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[3] *Rollo,* pp. 114-121.

[4] *Id.* at 122-127.

5. That the said defendants are hereby ordered to pay jointly and severally the plaintiffs the sum of ₱10,000.00 as attorney's fees.

Other claims of plaintiffs for damages are hereby denied for lack of evidence.

With costs against all the defendants solidarily.

SO ORDERED.[5]

The decision became final and executory. A Writ of Execution was issued on September 20, 1988.[6] The sheriff of the Urdaneta RTC issued a Notice of Levy dated October 10, 1988 on the property registered under the name of Orani, one of the defendants, covered by TCT No.T-13845 of the Register of Deeds of Baguio City. The notice of levy was annotated at the back of the title on November 7, 1988.[7] A public auction was held on November 14, 1988 and Mauro Anchales emerged as the highest bidder.[8] A Certificate of Sale[9] dated December 20, 1988 was issued to Mauro Anchales which was registered with the Register of Deeds of Baguio City on August 7, 1989. The Sheriff's Final Certificate of Sale[10] was issued on March 7, 1991 and was annotated at the back of TCT No. 13845 on April 3, 1991.

Earlier, on February 10, 1989, petitioners' predecessors, the Spouses Mat-an, filed with the RTC of Baguio City (Baguio RTC), Branch 7, an Action[11] for injunction and damages with prayer for writ of preliminary injunction against respondents' predecessors, the Spouses Anchales, Spouses Yadno, and the Provincial Sheriff of the RTC Branch 46, Urdaneta, Pangasinan,

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[5] *Id*. at 127.

[6] Records, p. 185.

[7] *Id.* at 168.

[8] *Id*.

[9] *Id*. at 185-186.

[10] *Id*. at 168.

[11] *Rollo*, pp. 92-97.

docketed as Civil Case No. 1651-R, the subject of the instant petition. In their Complaint, the Spouses Mat-an claimed that on December 16, 1988, the Provincial Sheriff of Urdaneta, without any authority from the trial court, indiscriminately levied and conducted a public auction sale of the property registered under the name of Orani Tacay covered by TCT No. 13845, thus, saving the real property of the Spouses Yadno covered by TCT No. T-88740 situated at Dungon, Sison, Pangasinan. The Spouses Mat-an further argued that Orani died on December 28, 1986, which was before the Urdaneta RTC had rendered its decision on September 14, 1987, thus Orani's property covered by TCT No. 13845 became the estate of her legal heirs and had since been with a distinct personality which cannot be subjected to levy.

On April 13, 1990, both counsels in the Baguio RTC case moved[12] that the injunction case filed therewith be archived in view of the pending case for partition involving the Yadno and Mat-an Spouses.

On April 30, 1991, the Spouses Anchales filed a motion with the Urdaneta RTC for the issuance of title in their favor. The RTC issued its Order[13] dated July 2, 1991 directing the Spouses Yadno, Orani and the Spouses Mat-an to produce and surrender the duplicate owner's copy of TCT No. T- 13845 within 15 days from receipt of the Order. The Spouses Mat-an assailed this Order with us which we dismissed in a Resolution dated December 12, 1991. Subsequently, in an Order[14] dated May 20, 1994, the RTC authorized the Register of Deeds of Baguio City to cancel TCT No. T-13845 and correspondingly issue a new owner's duplicate copy of the same in the name of Mauro Anchales. Later, the RTC issued another Order[15] dated June 14, 1994 directing the Register of Deeds of Baguio City to annul the title of Orani and to issue another title in lieu thereof

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[12] *Id*. at 30.

[13] Records, p. 188.

[14] *Id*. at 168 and 204.

[15] *Id*.

to Mauro Anchales immediately upon receipt of the Order. Consequently, TCT No. 60513 was issued to Mauro Anchales on July 6, 1994.[16]

On September 16, 1997, petitioners' predecessors, the Spouses Mat-an, filed with Baguio RTC an *Ex-Parte* Motion[17] for the revival of their injunction case filed therewith, a motion for admission of supplemental complaint and a motion for substitution[18] of defendants Mauro and Eliza Anchales who had already died. In their Supplemental Complaint,[19] the Spouses Mat-an assailed the levy and sale of the Orani property as illegal and the Orders dated July 2, 1991, May 20, 1994 and June 14, 1994 for being void and of no legal effect. They claimed that the decision rendered by the Urdaneta RTC in Civil Case No. U-3882 was null and void in so far as Orani was concerned, since she had died before the decision was rendered and her intestate estate was not impleaded to substitute her before the rendition of the judgment.

In an Order[20] dated October 22, 1997, the Baguio RTC granted the Motion to Revive the Case, and on February 9, 1998, admitted the Supplemental Complaint. The RTC subsequently ordered the defendants to file their answer to the complaint. Accordingly, defendants filed their Answer with Counterclaim.[21]

The Spouses Mat-an moved[22] to drop the Spouses Yadno as defendants in the case, which the RTC granted in an Order dated January 3, 2002.

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[16] *Id*. at 169.

[17] *Id*. at 37.

[18] *Id*. at 53; Substituted by Johnny Anchales, Belmore Anchales, Benson Anchales, Brigette Anchales Harasymiuk, Rita A. Kawa and Nenita Anchales.

[19] *Id.* at 99-107.

[20] *Id*. at 56.

[21] *Id.* at 134-142.

[22] *Id.* at 132-139.

Subsequently, defendants filed a Motion to Dismiss[23] on the ground that the Baguio RTC had no jurisdiction to enjoin the Urdaneta RTC, since that latter court is a court of coordinate jurisdiction. The Spouses Mat-an filed their Opposition.

On August 21, 2002, the Baguio RTC issued its Order[24] granting the Motion to Dismiss.

In so ruling, the RTC said:

> There is no doubt Orani Tacay was defendant in Civil Case No.-3882. And so, the decision rendered in said case, dated September 14, 1987, is binding and effective on said Orani Tacay and her co-defendants (Augusto Yadno, Rosalia Yadno, Laura Yadno and Pugsong Mat-an). And so to enforce said judgment by way of writ of execution, the property/properties of said defendants can be levied upon to satisfy the judgment.
>
> The property (covered by TCT T-13845) levied upon belongs to the intestate estate of Orani Tacay. And the only legal heirs of the deceased Orani Tacay are Lauro Yadno and [Augusto Yadno], who are all defendants in said Civil Case U-3882.
>
> There were no intestate proceedings instituted in the proper court with respect to the properties left by Orani Tacay. And so, her (Orani Tacay's) properties are not in *custodia legis*.
>
> Since the land covered by TCT T-13845 belongs to the defendants, then the Deputy Sheriff who levied on said property to satisfy the judgment in Civil Case U-3882 just acted within his authority and in accordance with the rules. As correctly pointed by the defendants-movants, the proper remedy is to file the appropriate motion/pleading to this effect with the RTC, Branch 46, Urdaneta, which rendered the judgment. This is so because this court (RTC, Branch 46, Urdaneta) has exclusive jurisdiction over the execution proceedings.[25]

The Spouses Mat-an appealed the decision to the CA, which rendered its Decision dated January 12, 2006 dismissing the appeal.

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

[24] *Rollo*, pp. 147-149; Per Judge Clarence J. Villanueva.

[25] *Id*. at 148.

The CA found that the issue involving Civil Case No. U-3882, which was decided by the Urdaneta RTC, must be resolved by that court and the Baguio RTC had no authority to interfere with the processes of the Urdaneta RTC which is a coordinate court; that the Spouses Mat-an would like the Baguio RTC to enjoin the sheriff from auctioning the subject property which cannot be done as it had been levied pursuant to a lawful order of the Urdaneta RTC which placed the property under *custodia legis*, hence, beyond the authority of a co-equal court.

The Motion for Reconsideration filed by petitioners' predecessors was denied in a Resolution dated June 28, 2006.

Petitioners, as heirs of the Spouses Mat-an, filed the instant petition claiming that the CA committed a reversible error in affirming the Baguio RTC's order dismissing the complaint for the following reasons:

(1) The Supplemental Complaint of the late PLAINTIFFS Laura Yadno and Pugsong Mat-an in Civil Case No. 1651-R before the court *a quo* explicitly alleges that the property in litigation was not in *custodia legis* but already sold at public auction and Transfer Certificate of Title No. T-13845- in the name of the late Orani Tacay had already been cancelled and Transfer Certificate of Title No. 60513 was already issued to the late DEFENDANT Mauro Anchales on July 6, 1994;

(2) The main action in Civil Case No. 1651-R before the court *a quo* is for quieting of title, recovery of ownership and reconveyance of the property in litigation, in which case the policy of judicial stability is inapplicable thereto;

(3) The prayer of the late PLAINTIFFS Laura Yadno and Pugsong Mat-an in their Supplemental Complaint for the court *a quo* to declare "as null and void *ab initio* Transfer Certificate of Title No. T-60513 issued to the (late) defendant Mauro Anchales" is only incidental to the main action to quiet title, recovery of ownership, and reconveyance of the property in litigation "by directing the Register of Deeds for Baguio City to restore Transfer Certificate of Title No. T-13845" and, therefore, the policy of judicial stability is inapplicable to Civil Case No. 1651-R before the court *a quo*; and

(4) The late DEFENDANTS Mauro Anchales and Eliza Anchales flagrantly violated the policy of judicial stability and the prohibition against forum shopping in securing, and the Regional Trial Court of Urdaneta, Pangasinan, committed grave abuse of discretion, as it was utterly devoid of jurisdiction in issuing the July 2, 1991, May 20, 1994 and June 14, 1994 Orders in Civil Case No. U-3882 during the pendency of Civil Case No. 2175 before the Regional Trial Court of Baguio City. Hence, the said July 2, 1991, May 20, 1994 and June 14, 1994 Orders are null and void *ab initio* and the court *a quo* will not violate the policy of judicial stability if it resolved these issues in Civil Case No. 1651-R before it.[26]

The main issue for resolution is whether the CA committed a reversible error when it affirmed the Baguio RTC's dismissal for lack of jurisdiction the complaint filed with it by petitioners' predecessors, the Spouses Mat-an.

We rule in the negative.

In their Complaint for injunction and damages and issuance of a writ of preliminary injunction filed before the Baguio RTC, which was docketed as Civil Case No. 1651-R, petitioners' predecessors assailed the validity of the judgment issued by Branch 46 of the Urdaneta RTC in Civil Case No. U-3882 for being null and void. They claimed that Orani Tacay, one of the party defendants in Civil Case No. U-3882, had already died before the judgment was rendered but was not duly substituted by either her heirs or the administrator of her estate. Thus, the judgment was never binding and had never attained finality as against Orani or her intestate estate; that the levy and execution, as well as the subsequent sale at public auction of Orani's property to satisfy the judgment in Civil Case No. U-3882 were all null and void, because of the total nullity of the judgment sought to be enforced. In their Supplemental Complaint, petitioners' predecessors argued that the Orders dated July 2, 1991, May 20, 1994, and June 14, 1994 issued by the Urdaneta RTC were also all null and void.

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

Notably, the Decision dated September 14, 1987 of the Urdaneta RTC, issued in Civil Case No. U-3882 which petitioners sought to assail in their complaint filed in the Baguio RTC had long become final and executory. In the said Decision, the Urdaneta RTC ordered, among others, that: "defendants Augusto Yadno, Rosalia Yadno, Orani Tacay, Laura Yadno and Pugsong Mat-an to pay jointly and severally the plaintiffs the amount of 400 cavans of palay representing the harvest for the last six years up to and including the years 1982 and 1983 until they actually vacate and deliver the premises to the plaintiffs." Since Orani was one of the defendants adjudged to be jointly and severally liable to respondents' predecessors, the Spouses Anchales, her property was levied on October 10, 1988 by virtue of a Writ of Execution dated September 20, 1988 issued in the said case. The notice of levy was annotated at the back of Orani's TCT No. 13845 on November 7, 1988 and the property was sold to Mauro Anchales who emerged as the highest bidder. A certificate of sale was issued to Mauro Anchales on December 20, 1988 and was registered and annotated on TCT No. 13845 on August 7, 1989. As no redemption was made within the one-year period for doing so, the sheriff's sale became absolute. Subsequently, the Urdaneta RTC issued an Order dated July 2, 1991 which directed the defendants in said case to produce and surrender to the court their duplicate owner's copy of TCT No. T-13845. And on the May 20, 1994 and June 14, 1994 Orders of the Urdaneta RTC, the Register of Deeds of Baguio City was authorized to cancel TCT No. 13845 in Orani's name and to correspondingly issue a new owner's duplicate copy in the name of Mauro Anchales and to annul Orani's title and to issue another title to Mauro Anchales, respectively. Notably, the last three Orders which petitioners claimed to be void were merely the consequence of the execution of judgment dated September 14, 1987 in Civil Case No. U-3382 which had already been enforced when Orani's property was levied upon and sold at public auction with Mauro Anchales as the highest bidder.

We find that the Baguio RTC correctly dismissed the case for injunction with damages filed with it, since it had no jurisdiction over the nature of the action. Petitioners' predecessors could

not in an action for injunction with damages filed with the Baguio RTC sought the nullification of a final and executory decision rendered by the Urdaneta RTC and its subsequent orders issued pursuant thereto for the satisfaction of the said judgment. This would go against the principle of judicial stability where the judgment or order of a court of competent jurisdiction, the Urdaneta RTC, may not be interfered with by any court of *concurrent* jurisdiction (*i.e.,* another RTC), for the simple reason that the power to open, modify or vacate the said judgment or order is not only possessed by but is restricted to the court in which the judgment or order is rendered or issued.[27]

The long standing doctrine is that no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction. The various trial courts of a province or city, having the same or equal authority, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments.[28] A contrary rule would obviously lead to confusion and seriously hamper the administration of justice.[29]

Petitioners argue that the decision of the Urdaneta RTC had never attained finality as against defendant Orani because it was rendered after Orani's death and without her having been substituted by her intestate estate; that her intestate estate cannot be held liable to the satisfaction of the judgment debt because in legal contemplation, no judgment was ever rendered either against her or her intestate estate.

This argument should have been presented before the Urdaneta RTC as it was the court which rendered the decision and ordered the execution sale of the Orani property and thus should settle

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[27] *Tiu v. First Plywood Corporation*, G.R. Nos. 176123 and 185264, March 10, 2010, 615 SCRA 117, 129, citing *Philippine Commercial International Bank v. Court of Appeals*, G.R. No. 114951, July 17, 2003, 406 SCRA 575, 602.

[28] *Ching v. Court of Appeals*, G.R. No. 118830, February 24, 2003, 398 SCRA 88, 93; 446 Phil. 121, 129 (2003).

[29] *Id.*

the whole controversy.[30] Moreover, it appears that the Urdaneta RTC was not apprised at all of Orani's death, since there was no notice of her death filed with it. In fact, in their Comment filed with us, respondents allege that:

> The defendants spouses Mauro Anchales and Elisa Anchales pointed out in paragraph 4 of their Answer to the original Complaint and in paragraph 11 of their Answer to the supplemental complaint that the plaintiff spouses Laura Yadno Mat-an and Pugsong Mat-an never informed the trial court (RTC, Branch 46, Urdaneta, Pangasinan) about such alleged death of Orani Tacay.
>
> These contentions of spouses Mauro Anchales and Elisa Anchales that the trial court (RTC 46, Urdaneta Pangasinan) was never informed of the alleged death of Orani Tacay was never rebutted by Lauro Yadno Mat-An and Pugsong Mat-an in Civil Case No. 1651-R (RTC, Branch 7, Baguio City).
>
> In fine, it is the fault of spouses Laura Yadno Mat-an and Pugsong Mat-an (now substituted by petitioners) in not informing the trial court (RTC 46, Urdaneta, Pangasinan) about the alleged death of Orani Tacay.

Petitioners never rebutted these allegations in their Rejoinder. The Baguio RTC had no jurisdiction to nullify the final and executory decision of the Urdaneta RTC. To allow it would open the floodgates to protracted and endless litigations, since the counsel or the parties, in an action for recovery of money, in case said defendant dies before final judgment in a regional trial court, is to conceal such death from the court and thereafter pretend to go through the motions of trial, and after judgment is rendered against his client, to question such judgment by raising the matter that the defendant was not substituted by her intestate heirs.[31]

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[30] *Tiu v. First Plywood Corporation, supra*, citing *Crystal v. Court of Appeals*, No. L- 35767, April 15, 1988, 160 SCRA 79, 84; 243 Phil. 244 (1988).

[31] *Heirs of Elias Lorilla v. Court of Appeals*, G.R. No. 118655, April 12, 2000, 330 SCRA 429, 438; 386 Phil. 638, 647 (2000).

Moreover, it also appears that petitioners' predecessors admitted that Orani's only legal heirs were Laura Yadno, petitioner's predecessor, and Augusto Yadno, who both became the absolute owners of the property from the moment of Orani's death. Notably, Laura and Augusto, together with Orani, were the original defendants in the case of recovery of sum of money filed with the Urdaneta RTC and who were adjudged jointly and severally liable to the Spouses Anchales. Thus, they cannot claim that they were deprived of such property, since the sale was done in accordance with the rules on the execution of judgment rendered against them.

Petitioners contend that the CA erred in its factual finding that the subject property was in *custodia legis* of the Urdaneta RTC when it is established that a new TCT No. 60513 had already been issued to Mauro Anchales; that such finding led to a wrong legal conclusion that the Baguio RTC is devoid of jurisdiction over the complaint on the policy of judicial stability.

We are not impressed.

There is no dispute that the Orani property had been in *custodia legis* of the Urdaneta RTC when it was levied on October 10, 1988 and sold under a writ of execution for the satisfaction of the judgment rendered by the said court. The subsequent issuance of a new title of the Orani property in the name of Mauro Anchales was by virtue of a levy and an execution sale of the said property which was not redeemed within the one-year period. Thus, the Baguio RTC correctly ruled that it cannot, in an injunction case with damages filed with it, interfere with the judgment of the Urdaneta RTC and the subsequent orders issued pursuant thereto since it is beyond the former's authority as a co-equal court. It is the Urdaneta RTC which has a general supervisory control over its processes in the execution of its judgment with a right to determine every question of fact and law which may be involved in the execution.[32]

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[32] See *Paper Industries Corp. of the Philippines v. Intermediate Appellate Court*, G.R. No. 71365, June 18, 1987, 151 SCRA 161, 167; 235 Phil. 162 (1987).

Finally, petitioners' claim that the cause of action filed with the Baguio RTC is in reality an action to quiet title as well as for recovery of ownership and reconveyance is belied by the allegations stated in their complaint, which basically sought to nullify the final and executory judgment of the Urdaneta RTC, the levy and sale of the property, and the issuance of a new title in the name of Mauro Anchales.

WHEREFORE, the petition is **DENIED.** The Decision dated January 12, 2006 and the Resolution dated June 28, 2006 of the Court of Appeals in CA-G.R. CV No. 77427 are hereby **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174715. October 11, 2012]

FILINVEST LAND, INC., EFREN C. GUTIERREZ and LINA DE GUZMAN-FERRER, *petitioners, vs.* **ABDUL BACKY, ABEHERA, BAIYA, EDRIS, HADJI GULAM, JAMELLA, KIRAM, LUCAYA, MONER, OMAR, RAMIR, ROBAYCA, SATAR, TAYBA ALL SURNAMED NGILAY, EDMER ANDONG, UNOS BANTANGAN and NADJER ESQUIVEL,** *respondents.*

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

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC LAND ACT; FIVE-YEAR PROHIBITORY PERIOD OF CONVEYANCE; DISCUSSED.— The five-year prohibitory period following the issuance of the homestead patent is provided under Section 118 of Commonwealth Act No. 141, as amended by Commonwealth Act No. 456, otherwise known as the Public Land Act. It bears stressing that the law was enacted to give the homesteader or patentee every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labour in cleaning and cultivating it. Its basic objective, as the Court had occasion to stress, is to promote public policy that is to provide home and decent living for destitute, aimed at providing a class of independent small landholders which is the bulwark of peace and order. Hence, any act which would have the effect of removing the property subject of the patent from the hands of a grantee will be struck down for being violative of the law.

2. ID.; ID.; ID.; ID.; INCLUDES CONDITIONAL SALE.— In the present case, the negotiations for the purchase of the properties covered by the patents issued in 1991 were made in 1995 and, eventually, an undated Deed of Conditional Sale was executed. x x x The prohibition does not distinguish between consummated and executory sale. The conditional sale entered into by the parties is still a conveyance of the homestead patent x x x before the expiration of the five-year prohibitory period.

3. ID.; ID.; ID.; ID.; ID.; RETURN OF DOWN PAYMENT AS A CONSEQUENCE OF THE CONDITIONAL SALE HAVING BEEN DECLARED VOID, PROPER.— The rule is settled that the declaration of nullity of a contract which is void *ab initio* operates to restore things to the state and condition in which they were found before the execution thereof. x x x Thus, the sale which created the obligation of petitioner to pay the agreed amount having been declared void, respondents have the duty to return the down payment as they no longer have the right to keep it. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it.

APPEARANCES OF COUNSEL

Perez Gener & Partners for petitioners.
Lacas Villanueva & Associates and *Ernesto L. Pineda & Associates* for respondents.

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the Petition for Review on *Certiorari* under Rule 45, dated November 9, 2006, of petitioner Filinvest Land, Inc., which seeks to set aside the Decision[1] dated March 30, 2006 and Resolution[2] dated September 18, 2006 of the Court of Appeals (CA) partially reversing the Decision[3] dated October 1, 2003 of the Regional Trial Court, Las Piñas, Branch 253 (RTC).

The factual antecedents, as found in the records follow.

Respondents were grantees of agricultural public lands located in Tambler, General Santos City through Homestead and Fee patents sometime in 1986 and 1991 which are covered by and specifically described in the following Original Certificates of Title issued by the Register of Deeds of General Santos City:

OCT No.	Area (sq. m.)	Grantee	Date Granted
P-5204	38,328	Abdul Backy Ngilay	November 11, 1986
P-5205	49,996	Hadji Gulam Ngilay	November 11, 1986
P-5206	49,875	Edris A. Ngilay	November 11, 1986
P-5207	44,797	Robayca A. Ngilay	November 11, 1986
P-5209	20,000	Omar Ngilay	November 11, 1986
P-5211	29,990	Tayba Ngilay	November 11, 1986

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring; *rollo*. pp. 40-57.

[2] *Id.* at 60-62.

[3] Penned by Presiding Judge Jose F. Caoibe, Jr., *id*. at 335-343.

P-5212	48,055	Kiram Ngilay	November 11, 1986
P-5578	20,408	Nadjer Esquevel	November 24, 1991
P-5579	35,093	Unos Bantangan	November 24, 1991
P-5580	39,507	Moner Ngilay	November 24, 1991
P-5582	44,809	Baiya Ngilay	November 24, 1991
P-5583	10,050	Jamela Ngilay	November 24, 1991
P-5584	49,993	Ramir Ngilay	November 24, 1991
P-5586	40,703	Satar Ngilay	November 24, 1991
P-5590	20,000	Abehara Ngilay	November 24, 1991
P-5592	41,645	Lucaya Ngilay	November 24, 1991
P-5595	13,168	Edmer Andong	November 24, 1991

Negotiations were made by petitioner, represented by Lina de Guzman-Ferrer with the patriarch of the Ngilays, Hadji Gulam Ngilay sometime in 1995. Eventually, a Deed of Conditional Sale of the above- enumerated properties in favor of petitioner Filinvest Land, Inc. was executed. Upon its execution, respondents were asked to deliver to petitioner the original owner's duplicate copy of the certificates of title of their respective properties. Respondents received the downpayment for the properties on October 28, 1995.

A few days after the execution of the aforestated deeds and the delivery of the corresponding documents to petitioner, respondents came to know that the sale of their properties was null and void, because it was done within the period that they were not allowed to do so and that the sale did not have the approval of the Secretary of the Department of Environment and Natural Resources (DENR) prompting them to file a case for the declaration of nullity of the deeds of conditional and absolute sale of the questioned properties and the grant of right of way with the RTC, Las Piñas, Branch 253.

On the other hand, petitioner claims that sometime in 1995, the representative of Hadji Ngilay approached petitioner to propose the sale of a portion of his properties. Thereafter, representatives of petitioner flew to General Santos City from Manila to conduct an ocular inspection of the subject properties. Petitioner was willing to purchase the properties but seeing

that some of the properties were registered as land grants through homestead patents, representatives of petitioner informed Ngilay that they would return to General Santos City in a few months to finalize the sale as ten (10) certificates of title were issued on November 24, 1991.

According to petitioner, Ngilay and his children prevailed upon the representatives of petitioner to make an advance payment. To accommodate the Ngilays, petitioner acceded to making an advance with the understanding that petitioner could demand anytime the return of the advance payment should Ngilay not be able to comply with the conditions of the sale. The Ngilays likewise undertook to secure the necessary approvals of the DENR before the consummation of the sale.

The RTC ruled in favor of Filinvest Land, Inc. and upheld the sale of all the properties in litigation. It found that the sale of those properties whose original certificates of title were issued by virtue of the 1986 Patents was valid, considering that the prohibitory period ended in 1991, or way before the transaction took place. As to those patents awarded in 1991, the same court opined that since those properties were the subject of a deed of conditional sale, compliance with those conditions is necessary for there to be a perfected contract between the parties. The RTC also upheld the grant of right of way as it adjudged that the right of way agreement showed that the right of way was granted to provide access from the highway to the properties to be purchased. The dispositive portion of the Decision dated October 1, 2003 reads:

> WHEREFORE, premises considered, the Court upholds the sale of all the properties in litigation. It likewise upholds the grant of right of way in favor of the respondent. Consequently, the petition is DISMISSED.
>
> No pronouncement as to damages for failure to prove the same.
>
> Costs against the petitioners.
>
> SO ORDERED.[4]

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[4] *Rollo*, pp. 342-343.

Respondents elevated the case to the CA in which the latter modified the judgment of the RTC. While the CA upheld the validity of the sale of the properties the patents of which were awarded in 1986, including the corresponding grant of right of way for the same lots, it nullified the disposition of those properties granted through patents in 1991 and the right of way on the same properties. As to the "1991 Patents," the CA ruled that the contract of sale between the parties was a perfected contract, hence, the parties entered into a prohibited conveyance of a homestead within the prohibitive period of five years from the issuance of the patent. The CA Decision dated March 30, 2006 disposed the case as follows:

> WHEREFORE, the assailed Decision dated October 1, 2003 is MODIFIED:
>
> a) The Deed of Conditional Sale and Deed of Absolute Sale for the properties covered by the **"1991 Patents,"** as well as the Right of Way Agreement thereto, are declared null and void. The Register of Deeds of General Santos City is consequently directed to cancel the certificates of title covered by the "1991 Patents" issued in favor of appellee Filinvest and to issue new titles in favor of herein appellants.
>
> b) The sale of the properties covered by the **"1986 Patents,"** including the corresponding grant of way for said lots, are declared **valid**.
>
> SO ORDERED.[5]

Petitioners filed a Motion for Partial Reconsideration, but it was denied by the CA.

Hence, the present petition.

The grounds relied upon are:

1.

A CONDITIONAL SALE INVOLVING THE 1991 PATENTS DID NOT VIOLATE THE PROHIBITION AGAINST ALIENATION OF HOMESTEADS UNDER THE PUBLIC LAND ACT SINCE NO ACTUAL

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[5] *Id.* at 56-57. (Emphasis supplied)

TRANSFER OR DISPOSITION WAS PERFECTED UNTIL ALL THE CONDITIONS OF THE DEED ARE FULFILLED.

2.

REGISTRATION IS THE OPERATIVE ACT THAT CONVEYS OR DISPOSES RIGHTS IN REAL PROPERTY. BEING UNREGISTERED, THE DEED OF CONDITIONAL SALE DID NOT CONVEY OR DISPOSE OF THE 1991 HOMESTEADS OR ANY RIGHTS THEREIN IN VIOLATION OF THE PUBLIC LAND ACT.

3.

ASSUMING THE NULLITY OF THE SALE OF THE 1991 PATENTS, THE HONORABLE COURT OF APPEALS SHOULD HAVE ORDERED RESPONDENTS AS A MATTER OF LAW TO RETURN TO PETITIONERS WHAT THEY HAVE RECEIVED.[6]

In their Comment[7] dated March 5, 2007, respondents stated the following counter-arguments:

> (1) The Honorable Court of Appeals did not err in holding that the Deed of Conditional Sale and Deed of Absolute Sale for the properties covered by the 1991 Patents, as well as the Right of Way Agreement thereto is null and void for the simplest reason that the said transactions were volatile of the Public Land Act.
>
> (2) The questions raised by the Petitioner, Filinvest Land Inc. (FLI) are unsubstantial to require consideration.[8]

In its Reply[9] dated July 30, 2007, petitioner insists that the prohibition against alienation and disposition of land covered by Homestead Patents is a prohibition against the actual loss of the homestead within the five-year prohibitory period, not against all contracts including those that do not result in such an actual loss of ownership or possession. It also points out that respondents themselves admit that the transfer certificates of title covering the ten parcels of land are all dated 1998,

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

[7] *Id*. at 428-437.

[8] *Id*. at 428.

[9] *Id*. at 445-455.

which confirms its declaration that the lands covered by 1991 Homestead Patents were not conveyed to Filinvest until after the five-year prohibitory period.

The petition is unmeritorious.

The five-year prohibitory period following the issuance of the homestead patent is provided under Section 118 of Commonwealth Act No. 141, as amended by Commonwealth Act No. 456, otherwise known as the Public Land Act.[10] It bears stressing that the law was enacted to give the homesteader or patentee every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labour in cleaning and cultivating it.[11] Its basic objective, as the Court had occasion to stress, is to promote public policy that is to provide home and decent living for destitute, aimed at providing a class of independent small landholders which is the bulwark of peace and order.[12] Hence, any act which would have the effect of removing the property subject of the patent from the hands of a grantee will be struck down for being violative of the law.[13]

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[10] Sec. 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds. (Emphasis supplied)

[11] *Flore v. Marciano Bagaoisan*, G.R. No. 173365, April 15, 2010, 618 SCRA 323, 330, citing *Heirs of Venancio Bajenting v. Bañez*, G.R. No. 166190, September 20, 2006, 502 SCRA 531, 553.

[12] *Id.*

[13] *Id.*

In the present case, the negotiations for the purchase of the properties covered by the patents issued in 1991 were made in 1995 and, eventually, an undated Deed of Conditional Sale was executed. On October 28, 1995, respondents received the downpayment of ₱14,000.000.00 for the properties covered by the patents issued in 1991. Applying the five-year prohibition, the properties covered by the patent issued on November 24, 1991 could only be alienated after November 24, 1996. Therefore, the sale, having been consummated on October 28, 1995, or within the five-year prohibition, is as ruled by the CA, void.

Petitioner argues that the correct formulation of the issue is not whether there was a perfected contract between the parties during the period of prohibition, but whether by such deed of conditional sale there was "alienation or encumbrance" within the contemplation of the law. This is wrong. The prohibition does not distinguish between consummated and executory sale. The conditional sale entered into by the parties is still a conveyance of the homestead patent. As correctly ruled by the CA, citing *Ortega v. Tan*:[14]

> And, even assuming that the disputed sale was not yet perfected or consummated, still, the transaction cannot be validated. The prohibition of the law on the sale or encumbrance of the homestead within five years after the grant is MANDATORY. The purpose of the law is to promote a definite policy, *i.e.*, "to preserve and keep in the family of the homesteader that portion of the public land which the State has gratuitously given to him." Thus, **the law does not distinguish between executory and consummated sales. Where the sale of a homestead was perfected within the prohibitory period of five years, the fact that the formal deed of sale was executed after the expiration of the staid period DID NOT and COULD NOT legalize a contract that was void from its inception.** To hold valid such arrangement would be to throw the door open to all possible fraudulent subterfuges and schemes which persons interested in the land given to a homesteader may devise in circumventing and defeating the legal provisions prohibiting their alienation within five years from the issuance of the patent.[15]

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[14] G.R. No. L-44617, January 23, 1990, 181 SCRA 350; 260 Phil. 371 (1990).

[15] *Rollo*, pp. 53-54. (Emphasis supplied)

To repeat, the conveyance of a homestead before the expiration of the five-year prohibitory period following the issuance of the homestead patent is null and void and cannot be enforced, for it is not within the competence of any citizen to barter away what public policy by law seeks to preserve.[16]

Nevertheless, petitioner does not err in seeking the return of the down payment as a consequence of the sale having been declared void. The rule is settled that the declaration of nullity of a contract which is void *ab initio* operates to restore things to the state and condition in which they were found before the execution thereof.[17] Petitioner is correct in its argument that allowing respondents to keep the amount received from petitioner is tantamount to judicial acquiescence to unjust enrichment. Unjust enrichment exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience."[18] There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another.[19] Thus, the sale which created the obligation of petitioner to pay the agreed amount having been declared void, respondents have the duty to return the down payment as they no longer have the right to keep it. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no

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[16] *Saltiga de Romero v. Court of Appeals*, G.R. No. 109307, November 25, 1999, 319 SCRA 180, 192; 377 Phil. 189, 201.

[17] *Development Bank of the Philippines v. CA, et al.*, G.R. No. 110053, October 16, 1995, 249 SCRA 331, 337; 319 Phil. 447, 454-455 (1995).

[18] *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, January 23, 2006, 479 SCRA 404, 412; 515 Phil. 376, 384 (2006).

[19] *H.L. Carlos Corporation, Inc. v. Marina Properties Corporation*, G.R. No. 147614, January 29, 2004, 421 SCRA 428, 437, citing *MC Engineering, Inc. v. Court of Appeals*, G.R. No. 104047, April 3, 2002, 380 SCRA 116, 138; 466 Phil. 182, 197 (2004).

right to receive it.[20] As found by the CA and undisputed by the parties, the amount of the down payment made is ₱14,000,000.00 which shall also be the amount to be returned by respondents.

WHEREFORE, the Petition for Review on *Certiorari* dated November 9, 2006 of petitioner Filinvest Land, Inc. is hereby **DENIED.** Consequently, the Decision dated March 30, 2006 and Resolution dated September 18, 2006 of the Court of Appeals are hereby **AFFIRMED** with the **MODIFICATION** that respondents return the amount of ₱14,000,000.00 given by petitioner as down payment for the sale which is ruled to be void *ab initio.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175990. October 11, 2012]

HEIRS OF ALBINA G. AMPIL, namely PRECIOUS A. ZAVALLA, EDUARDO AMPIL, PEÑAFRANCIA A. OLAÑO, VICENTE G. AMPIL, JR., FROILAN G. AMPIL and EXEQUIEL G. AMPIL, represented by EXEQUIEL G. AMPIL, *petitioners, vs.* **TERESA MANAHAN and MARIO MANAHAN,** *respondents.*

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[20] *Gil Miguel T. Puyat v. Ron Zabarte*, G.R. No. 141536, February 26, 2001, 352 SCRA 738, 750; 405 Phil. 413, 431 (2001).

[*] Designated acting member, per Special Order No. 1229, dated August 28, 2012.

SYLLABUS

1. CIVIL LAW; PROPERTY; CO-OWNERSHIP; ANY OF THE CO-OWNERS MAY BRING AN ACTION FOR EJECTMENT.— Article 487 of the Civil Code provides that anyone of the co-owners may bring an action for ejectment without joining the others. The action is not limited to ejectment cases but includes all kinds of suits for recovery of possession because the suit is presumed to have been instituted for the benefit of all. x x x [I]n the case of *Carandang v. Heirs of De Guzman*, this Court ruled that a co-owner was not even a necessary party to an action for ejectment, for complete relief could be afforded even in his absence. x x x In the case at bench, the complaint clearly stated that the disputed property was held in common by the petitioners; and that the action was brought to recover possession of the lots from respondents for the benefit of all the heirs of Albina. Hence, Exequiel, a co-owner, may bring the action for unlawful detainer even without the special power of attorney of his co-heirs.

2. REMEDIAL LAW; PROVISIONAL REMEDIES; UNLAWFUL DETAINER; ANY ADJUDICATION AS TO OWNERSHIP IS MERELY PROVISIONAL.— In an unlawful detainer case, the physical or material possession of the property involved, independent of any claim of ownership by any of the parties, is the sole issue for resolution. But where the issue of ownership is raised, the courts may pass upon said issue in order to determine who has the right to possess the property. This adjudication, however, is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto. As such, the lower court's adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property.

3. ID.; ID.; ID.; BARE ALLEGATION OF PEACEFUL AND CONTINUOUS POSSESSION AS OWNER SINCE TIME IMMEMORIAL CANNOT PREVAIL OVER DOCUMENTARY EVIDENCE OF RIGHT TO PROPERTY; CASE AT BAR.— The bare allegation of respondents, that they had been in peaceful and continuous possession of the lot in question because their predecessor-in-interest had been in possession thereof in the

concept of an owner from time immemorial, cannot prevail over the tax declarations and other documentary evidence presented by petitioners. In the absence of any supporting evidence, that of the petitioners deserves more probative value. A perusal of the records shows that respondents' occupation of the lot in question was by mere tolerance. To prove ownership over the property, the petitioners presented the tax declarations and x x x a survey plan, in support of Albina's application for land registration over the disputed lots. In fact, on December 14, 2006, the Registry of Deeds of Bulacan issued *Katibayan ng Orihinal na Titulo Blg. P-13627*, conferring title over Lot 742 in the names of the heirs of Albina.

APPEARANCES OF COUNSEL

Fajardo Law Office for petitioners.
Punzalan & Punongbayan Law Offices for respondents.

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 questioning the July 11, 2006 Decision[1] and the December 13, 2006 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 91568, which reversed and set aside the October 14, 2004 Decision[3] of the Regional Trial Court, Malolos, Bulacan, Branch 16 *(RTC)* in Civil Case No. 165-M-04, entitled *"Exequiel G. Ampil v. Teresita Manahan"* for Unlawful Detainer.

The Facts:

On February 14, 2003, Exequiel G. Ampil *(Exequiel)*, as representative of the heirs of the late Albina G. Ampil *(Albina)*,

[1] *Rollo*, pp. 20-26. Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justice Mariano C. Del Castillo (now member of this Court) and Associate Justice Enrico A. Lanzanas.

[2] *Id.* at 20.

[3] *Id.* at 28.

filed a complaint[4] for ejectment, which was amended on July 11, 2003,[5] against spouses Perfecto Manahan *(Perfecto)* and Virginia Manahan, Teresita Manahan,[6] Almario Manahan,[7] Irene Manahan and all persons claiming rights under them. In the complaint, it was alleged that Albina was the owner of two *(2)* adjoining residential lots, situated in Sto. Niño, Paombong, Bulacan, and identified as Lot No. 1186,[8] with an area of sixteen (16) square meters,[9] as evidenced by Tax Declaration No. 020-17-013-0007-00001-L;[10] and Lot 742[11] with an area of three hundred eighty-two (382) square meters, as evidenced by Tax Declaration No. 020-17-013-0007-00002-L.[12] They asserted that during her lifetime, Albina allowed Perfecto and his family to occupy a portion of the said properties on the condition that they would vacate the same should the need to use it arise.

After the death of Albina in 1986, her heirs, represented by Exequiel, requested Perfecto and family to vacate the property in question but the latter refused. The matter was then brought before the Lupong Tagapamayapa in Barangay Sto. Niño, Paombong, Bulacan, which issued a Certification to File an Action for failure of the parties to amicably settle their dispute.[13]

On December 12, 2002, petitioners, through counsel, sent a demand letter[14] to the respondents to surrender possession of

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[4] Records, pp. 3-4; 60-63.

[5] Amended Complaint, *id*. at 60-63.

[6] Referred to as Teresita Manahan in the Complaint, *id*. at 3-4.

[7] *Id.*

[8] Referred to as Lot 186 in the Tax Declaration, *id*. at 65 & 130.

[9] Originally, the area of the lot is seventy five (75) square meters but it was reduced to sixteen due to road widening, Amended Complaint, *id*. at 61 & Cadastral Survey, p. 164.

[10] *Id.* at 64.

[11] Covered by Original Certificate of Title No. P-13627, issued on December 14, 2006, Annex "D" of the Petition, *rollo*, p. 31.

[12] Records, p. 65.

[13] *Id.* at 8.

[14] *Id.* at 9.

the lands in question but to no avail. Consequently, petitioners filed a complaint for ejectment before the Municipal Trial Court, Paombong, Bulacan *(MTC)*.

On February 28, 2003, the respondents filed their answer with counterclaim[15] averring that the lots they had been occupying belonged to them, their predecessor-in-interest having been in peaceful and continuous possession thereof in the concept of an owner since time immemorial and that Albina was never the owner of the property. Accordingly, they prayed for the payment of attorney's fees by way of counterclaim.

On February 23, 2004, the MTC rendered judgment[16] in favor of the petitioners. The MTC relied on the two (2) tax declarations and the certification from the Municipal Treasurer showing that Albina had been paying the real property taxes on the lands in question. It stressed that the issue in ejectment cases is not the ownership of the property, but the material possession thereof. The dispositive portion reads:

> WHEREFORE, judgment is hereby rendered declaring the Plaintiff to be entitled to the physical or material possession of Lot No. 186 located at Sto. Niño, Paombong, Bulacan covered by Tax Declaration No. (Property Index) 020-17-013-0007-00001-L consisting of more or less seventy-five (75) square meters and Lot 742 also at Sto. Niño, Paombong, Bulacan covered by Tax Declaration No. (Property Index) 020-17-013-0007-00002-L consisting of more or less three hundred eighty-two (382) square meters and this Court orders:
>
> (1) The Defendants, their heirs, assigns or any other persons claiming any right or interest over the subject premises under or in their names to surrender peaceful possession thereof to the Plaintiff;
>
> (2) The Defendants to pay the Plaintiff the amount of Two Thousand Pesos (₱2,000.00) a month from the date of the filing of this amended complaint (July 11, 2003) until they finally vacate the premises; as fair rental value for the use and occupation thereof; and

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[15] *Id.* at 15-17.

[16] *Id.* at 165-169.

(3) The award of Twenty Thousand Pesos (₱20,000.00) as attorney's fees in favor of the Plaintiff and against the Defendants.

No pronouncement as to costs.

SO ORDERED.[17]

The respondents appealed the MTC decision to the RTC, which affirmed it *in toto* in its October 14, 2004 Decision.[18]

Aggrieved, respondents Teresa Manahan and Mario Manahan *(respondents)* appealed their case before the CA. In a Decision, dated July 11, 2006, the CA *reversed* and *set aside* the RTC Decision and dismissed the case for unlawful detainer. It ruled that tax declarations and receipts are not conclusive proof of ownership or right of possession over a piece of land and it only becomes strong evidence of ownership when accompanied by proof of actual possession.

Petitioners filed a motion for reconsideration but it was denied by the CA in its December 13, 2006 Resolution.[19]

Consequently, on January 16, 2007, petitioners filed this petition for review anchored on the following assignment of errors:

1. The court *a quo* gravely erred in not dismissing the petition despite its apparent lack of legal leg to stand on.

2. The court *a quo* gravely erred in finding that petitioners solely anchored their claim of ownership over the contested properties on mere tax declarations.

3. The court *a quo* gravely erred in finding that petitioners failed to establish tolerance.

4. The court *a quo* gravely erred in giving more weight to bare assertions of the respondents.

5. The court *a quo* gravely erred in not finding against the respondents despite their failure to prove their affirmative allegations.

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

[18] *Id.* at 229-232.

[19] *Rollo*, p. 28.

6. The court *a quo* gravely erred in finding for the respondents despite petitioners' preponderance of evidence.[20]

Petitioners aver that their claim of ownership over the disputed lots was not solely based on tax declarations but also anchored on the *Sinumpaang Salaysay*,[21] dated May 25, 1983, executed by Perfecto, in connection with a criminal case filed against him for violation of Presidential Decree *(P.D.)* No. 772 (Anti-Squatting Law). In the said document, Perfecto categorically admitted that the said lots were owned by Albina Ampil; and that on December 14, 2006, the Registry of Deeds of the Province of Bulacan issued Original Certificate of Title No. 13627 covering Lot 742, in the names of the Heirs of Albina.[22]

Respondents, on the other hand, move for the dismissal of the petition for being defective in form. They question the special power of attorney submitted by Exequiel because it neither shows that the persons who executed the said affidavit were the real heirs of Albina nor does it authorize him to institute the petition. The document does not clearly state either whether the real properties mentioned therein are the same properties subject of the petition.

Respondents also contend that the petition raises factual issues which are not allowed in a petition for review under the Rules of Court. According to respondents, under Rule 45, only questions of law may be raised as issues and, thereafter, resolved by the Court.

As to the merit of the case, respondents echoed the position of the CA that tax declarations are not conclusive proof of ownership.

The lone issue to be resolved here is who, between petitioners and respondents, have the better right to the physical possession of the disputed property. But before delving into the issue, the Court shall first discuss the question raised by respondents

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[20] *Id.* at 6.

[21] Records, p. 133.

[22] Annex "D" of the Petition, *rollo*, p. 31.

regarding the authority of Exequiel to file the complaint on behalf of his co-heirs.

Article 487 of the Civil Code provides that anyone of the co-owners may bring an action for ejectment without joining the others. The action is not limited to ejectment cases but includes all kinds of suits for recovery of possession because the suit is presumed to have been instituted for the benefit of all.[23] In the case of *Celino v. Heirs of Alejo and Teresa Santiago*,[24] the Court held that:

> Respondents herein are co-owners of two parcels of land owned by their deceased mother. The properties were allegedly encroached upon by the petitioner. As co-owner of the properties, each of the heirs may properly bring an action for ejectment, forcible entry, or any kind of action for the recovery of possession of the subject properties. Thus, a co-owner may bring such an action, even without joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all. However, if the action is for the benefit of the plaintiff alone, such that he claims the possession for himself and not for the co-ownership, the action will not prosper.

Also, in the case of *Carandang v. Heirs of De Guzman*,[25] this Court ruled that a co-owner was not even a necessary party to an action for ejectment, for complete relief could be afforded even in his absence, thus:

> In sum, in suits to recover properties, all co-owners are real parties in interest. However, pursuant to Article 487 of the Civil Code and the relevant jurisprudence, any one of them may bring an action, any kind of action for the recovery of co-owned properties. Therefore, only one of the co-owners, namely the co-owner who filed the suit for the recovery of the co-owned property, is an indispensable party thereto. The other co-owners are not indispensable parties. They are not even necessary parties, for a complete relief can be afforded in the suit even without their participation, since the suit is presumed to have been filed for the benefit of all co-owners.

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[23] *Adlawan v. Adlawan*, 515 Phil. 255, 262 (2006).

[24] 479 Phil. 617, 624 (2004).

[25] 538 Phil. 319, 338 (2006).

In the case at bench, the complaint clearly stated that the disputed property was held in common by the petitioners; and that the action was brought to recover possession of the lots from respondents for the benefit of all the heirs of Albina. Hence, Exequiel, a co-owner, may bring the action for unlawful detainer even without the special power of attorney of his co-heirs,[26] for a complete relief can be accorded in the suit even without their participation because the suit is deemed to be instituted for the benefit of all the co-owners.

With respect to the main issue, the Court finds merit in the petition.

Indeed, as a rule, petitions for review on *certiorari* under Rule 45 of the Rules Court are limited only to questions of law and not of fact.[27] The rule, however, admits of several exceptions, to wit: "(1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of

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[26] *Wee v. De Castro*, G.R. No. 176405, August 20, 2008, 562 SCRA 695, 712.

[27] *New Rural Bank of Guimba (N.E.), Inc. v. Abad*, G.R. No. 161818, August 20, 2008, 562 SCRA 503, 509.

the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record."[28]

In this case, the factual findings of the CA are contrary to those of the MTC and the RTC. Hence, a review of the case is imperative.

In an unlawful detainer case, the physical or material possession of the property involved, independent of any claim of ownership by any of the parties, is the sole issue for resolution. But where the issue of ownership is raised, the courts may pass upon said issue in order to determine who has the right to possess the property. This adjudication, however, is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto. As such, the lower court's adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property.[29]

In the case at bench, the Court sustains the findings of both the MTC and the RTC. The bare allegation of respondents, that they had been in peaceful and continuous possession of the lot in question because their predecessor-in-interest had been in possession thereof in the concept of an owner from time immemorial, cannot prevail over the tax declarations and other documentary evidence presented by petitioners. In the absence of any supporting evidence, that of the petitioners deserves more probative value.

A perusal of the records shows that respondents' occupation of the lot in question was by mere tolerance. To prove ownership over the property, the petitioners presented the tax declarations covering the properties and a certification issued by the Municipality of Paombong, Bulacan, showing that their mother, Albina, had been paying the corresponding real property taxes

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[28] *Land Bank of the Philippines v. Monet's Export & Manufacturing Corporation*, 493 Phil. 327, 338 (2005).

[29] *Pascual v. Coronel*, G.R. No. 159292, July 12, 2007, 527 SCRA 474, 482.

thereon. Petitioners also submitted a survey plan,[30] dated August 5, 1968, prepared by Geodetic Engineer Roberto H. Dimailig, in support of Albina's application for land registration over the disputed lots. In fact, on December 14, 2006, the Registry of Deeds of Bulacan issued *Katibayan ng Orihinal na Titulo Blg. P-13627*,[31] conferring title over Lot 742 in the names of the heirs of Albina.

Also, in 1982, one of the petitioners verbally demanded that the respondents vacate the property and when the latter refused, they filed a complaint before the Barangay Lupon. From the minutes of the meeting in the Barangay Lupon,[32] Perfecto admitted that in 1952, Albina allowed them temporary use of the lots and that they could not leave the premises because they had nowhere else to go. When the parties failed to reach a settlement, petitioners, in order to protect their rights to the lot in question, filed a case for violation of P.D. No. 772, an Act Penalizing Squatting and other Similar Acts against Perfecto, docketed as Criminal Case No. 6448-M, before the Regional Trial Court, Branch XII, Malolos, Bulacan. In the said case, Perfecto executed a *Sinumpaang Salaysay*, wherein he admitted that Albina was the owner of the lots in question and that he was merely allowed by her to use the property on condition that they would vacate it on demand. As a result, the court dismissed the complaint because it found out that Perfecto and his family's stay in the questioned lots was lawful because Albina permitted them to use the lots on the condition that they would vacate the same should Albina need it.

On the other hand, respondents could not present proof that they and their predecessors-in-interest had openly and continuously possessed the subject land since time immemorial. Granting that respondents or their predecessors-in-interests had been in possession in the concept of an owner since time immemorial, none of them declared the disputed lots

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[30] Records, p. 164.

[31] Annex "D" of the Petition, *rollo*, p. 31.

[32] Records, pp. 131-132.

for taxation purposes and, thus, never paid taxes thereon. Respondents' allegation that they were in peaceful, continuous and adverse possession of the lots in question, unsupported by any evidence, is not substantial to establish their interest over the property.

Well established is the rule that ownership over the land cannot be acquired by mere occupation.[33] While it is true that tax declarations are not conclusive evidence of ownership, they, nevertheless, constitute at least proof that the holder has a claim of title over the property. It strengthens one's *bona fide* claim of acquisition of ownership.[34]

WHEREFORE, the petition is **GRANTED.** The July 11, 2006 Decision and the December 13, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 91568, are **REVERSED** and **SET ASIDE.** The February 23, 2004 Decision of the Municipal Trial Court, affirmed *in toto* by the Regional Trial Court, is ordered **REINSTATED.**

SO ORDERED.

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

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[33] *Cequeña v. Bolante*, 386 Phil. 419, 430 (2000).

[34] *Republic v. Court of Appeals*, 328 Phil. 239, 248 (1996).

[*] Designated additional member, per Special Order No. 1229, dated August 28, 2012.

THIRD DIVISION

[G.R. No. 177232. October 11, 2012]

RCJ BUS LINES, INCORPORATED, *petitioner, vs.* **MASTER TOURS AND TRAVEL CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; ELUCIDATED.— Article 1292 of the Civil Code provides that in novation, "it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other." And the obligations are incompatible if they cannot stand together. In such a case, the subsequent obligation supersedes or novates the first.

2. ID.; ID.; ID.; ID.; THAT CONTRACT OF LEASE NOVATED TO CONTRACT OF DEPOSIT, NOT ESTABLISHED.— [T]he cause in a contract of lease is the enjoyment of the thing; in a contract of deposit, it is the safekeeping of the thing. They thus create essentially distinct obligations that would result in a novation only if the parties entered into one after the other concerning the same subject matter. The turning point in this case, therefore, is whether or not the parties subsequently entered into an agreement for the storage of the buses that superseded their prior lease agreement involving the same buses. x x x [Here,] RCJ failed to present any clear proof that it agreed with Master Tours to abandon the lease of the buses and in its place constitute RCJ as depositary of the same, providing storage service to Master Tours for a fee.

3. ID.; ID.; KINDS OF OBLIGATIONS; OBLIGATIONS WITH A PERIOD; NO DEFAULT WHERE COMPLIANCE THEREFOR DEMANDED PRIOR TO DATE SET.— [S]ince Master Tours demanded the return of the buses before the expiration of the contract, RCJ was not yet in default for the payment of ₱200,000.00. There was time left to complete or undertake the rehabilitation of the buses since the lease was still operative at that time Master Tours opted to pre-terminate the contract.

It is only equitable to release RCJ from the liability to pay ₱200,000.00 since it was not afforded the balance of the period to perform its obligation to repair. No one should be unduly enriched at the expense of another.

4. ID.; DAMAGES; ATTORNEY'S FEES REQUIRES JUSTIFICATION.— The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification. The court must state the reason for the award of attorney's fees and its failure to do so makes the award utterly baseless. As regards the cost of suit, costs ordinarily follow the results of the suit and shall be allowed to the prevailing party as a matter of course.

APPEARANCES OF COUNSEL

Benedicto L. Nanca for petitioner.
Valdez & Valdez Law Office for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about a prior agreement for the lease of four buses, claimed to have been novated by a subsequent agreement for their storage in the former lessee's garage for a fee.

The Facts and the Case

On February 9, 1993 respondent Master Tours and Travel Corporation (Master Tours) entered into a five-year lease agreement from February 15, 1993 to February 15, 1998 with petitioner RCJ Bus Lines, Incorporated (RCJ) covering four Daewoo air-conditioned buses, described as "presently junked and not operational" for the lease amount of ₱600,000.00, with ₱400,000.00 payable upon the signing of the agreement and ₱200,000.00 "payable upon completion of rehabilitation of the four buses by the lessee."[1] The agreement was signed by Marciano T. Tan as Master Tours' Executive Vice-President and Rolando Abadilla as RCJ's President and Chairman.

[1] *Rollo*, p. 57.

More than four years into the lease or on June 16, 1997 Master Tours wrote RCJ a letter, demanding the return of the four buses "brought to your garage at E. Rodriguez Avenue for safekeeping"[2] so Master Tours could settle its obligation with creditors who wanted to foreclose on the buses. RCJ did not, however, heed the demand.

On January 16, 1998 Master Tours wrote RCJ a letter, demanding the return of the buses to it and the payment of the lease fee of ₱600,000.00 that had remained unpaid since 1993. On February 2, 1998 RCJ wrote back through counsel that it had no obligation to pay the lease fee and that it would return the buses only after Master Tours shall have paid RCJ the storage fees due on them. This prompted Master Tours to file a collection suit against RCJ before the Regional Trial Court (RTC) of Manila, Branch 49.

For its defense, RCJ alleged that it had no use for the buses, they being non-operational, and that the lease agreement had been modified into a contract of deposit of the buses for which Master Tours agreed to pay RCJ storage fees of ₱4,000.00 a month. To prove the new agreement, RCJ cited Master Tours' letter of June 16, 1997 which acknowledged that the buses were brought to RCJ's garage for "safekeeping."

On November 5, 2001 the RTC rendered judgment, ordering RCJ to pay Master Tours ₱600,000.00 as lease fee with 6% interest *per annum* from the date of the filing of the suit and attorney's fees of ₱50,000.00 plus costs. The lower court rejected RCJ's defense of novation from a contract of lease to a contract of deposit, given the absence of proof that Master Tours gave its consent to such a novation.

On appeal, the Court of Appeals (CA) rendered judgment dated October 26, 2006,[3] entirely affirming the RTC Decision. The CA also denied petitioner's motion for reconsideration in

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[2] *Id.* at 59.

[3] Penned by Justice Normandie B. Pizarro with the concurrence of Justices Amelita G. Tolentino and Aurora Santiago-Lagman, *id*. at 43-49.

a Resolution dated March 27, 2007, hence, the present petition for review.

The Issues Presented

The case presents the following issues:

1. Whether or not the CA erred in holding that there had been no novation in the agreement of the parties from one of lease of the buses to one of deposit of the same;

2. Assuming absence of novation, whether or not the CA erred in ruling that RCJ can be held liable for rental fee notwithstanding that the buses never became operational; and

3. Whether or not the CA erred in affirming the RTC's award of ₱50,000.00 in attorney's fees plus cost of suit against RCJ.

The Court's Rulings

One. Article 1292 of the Civil Code provides that in novation, "it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other." And the obligations are incompatible if they cannot stand together. In such a case, the subsequent obligation supersedes or novates the first.[4]

To begin with, the cause in a contract of lease is the enjoyment of the thing;[5] in a contract of deposit, it is the safekeeping of the thing.[6] They thus create essentially distinct obligations that would result in a novation only if the parties entered into one after the other concerning the same subject matter. The turning point in this case, therefore, is whether or not the parties subsequently entered into an agreement for the storage of the buses that superseded their prior lease agreement involving the same buses.

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[4] *Fortune Motors (Phils.) Corp. v. Court of Appeals*, 335 Phil. 315, 329 (1997).

[5] CIVIL CODE, Article 1643.

[6] *Id.* at Article 1962.

Although the buses were described in the lease agreement as "junked and not operational," it is clear from the prescribed manner of payment of the rental fee (₱400,000.00 down and ₱200,000.00 upon completion of their rehabilitation) that RCJ would rehabilitate such buses and use them for its transport business. Now, RCJ's theory is that the parties subsequently changed their minds and terminated the lease but, rather than have Master Tours get back its junked buses, RCJ agreed to store them in its garage as a service to Master Tours subject to payment of storage fees.

Two things militate against RCJ's theory.

First, RCJ failed to present any clear proof that it agreed with Master Tours to abandon the lease of the buses and in its place constitute RCJ as depositary of the same, providing storage service to Master Tours for a fee. The only evidence RCJ relied on is Master Tours' letter of June 16, 1997 in which it demanded the return of the four buses which were placed in RCJ's garage for "safekeeping." The pertinent portion of the letter reads:

> This is to follow up our previous discussion with you with regards to the Five (5) units of Daewoo Airconditioned Motorcoaches, which we brought to your garage at E. Rodriguez Avenue for safekeeping. Since we have outstanding loan with BancAsia Finance & Investment Corporation and BancAsia Capital Corporation that we are unable to service payment, they have made final demand to us and are in the process of foreclosing these units. We urgently request from you a meeting to thresh out matters concerning the pulling of these units by the financing firms.[7]

For one thing, the letter does not on its face constitute an agreement. It contains no contractual stipulations respecting some warehousing arrangement between the parties concerning the buses. At best, the letter acknowledges that five Master Tours' buses were "brought to your [RCJ's] garage…for safekeeping." But the idea of RCJ safekeeping the buses for

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[7] The letter mentions five buses but the contract refers only to four buses; *rollo*, p. 59.

Master Tours is consistent with their lease agreement. The lessee of a movable property has an obligation to "return the thing leased, upon the termination of the lease, just as he received it."[8] This means that RCJ must, as an incident of the lease, keep the buses safe from injury or harm while these were in its possession.

For another, it is evident from the tenor of Master Tours' letter that RCJ's "safekeeping" was to begin from the time the buses were delivered at its garage. There is no allegation or evidence that Master Tours pulled out the buses at some point, signifying the pre-termination of the lease agreement, then brought them back to RCJ's garage, this time for safekeeping. This circumstance rules out any notion that an agreement for RCJ to hold the buses for safekeeping had overtaken the lease agreement.

Second, it did not make sense for Master Tours to pre-terminate its lease of the junked buses to RCJ, which would earn Master Tours ₱600,000.00, in exchange for having to pay RCJ storage fees for keeping those buses just the same. As pointed out above, the lease already implied an obligation on RCJ's part to safekeep the buses while they were being rented.

Two. RCJ claims that it cannot be held liable to Master Tours for rental fee on the buses considering that these never became operational. The pertinent portions of the lease agreement provide:

> Section 1. Lease of AIRCON BUSES – The LESSOR hereby agrees and shall deliver unto the LESSEE the AIRCON BUSES by way of a long term lease of said buses.
>
> Section 2. Term of Lease – The lease of the AIRCON BUSES shall be for a period of FIVE (5) years to commence on 15 February 1993 and to end automatically on 15 February 1998. x x x
>
> Section 3. Lease Fee – For and in consideration of the lease of the AIRCON BUSES subject hereof, the lease fee for five years for the Four (4) units shall be in the amount of PESOS: SIX HUNDRED

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[8] CIVIL CODE, Article 1665.

THOUSAND (₱600,000.00). The LESSEE agrees to advance the amount of PESOS: FOUR HUNDRED THOUSAND (₱400,000.00) payable upon the signing of the Agreement. The remaining balance of PESOS: TWO HUNDRED THOUSAND (₱200,000.00) will be payable upon completion of rehabilitation of the 4 buses by the lessee.[9]

The Court finds no basis in the above for holding that RCJ's obligation to pay the rents of ₱600,000.00 on the buses depended on the buses being rehabilitated. Apart from delivering the buses to RCJ, the agreement did not require any further act from Master Tours as a condition to the exercise of its right to collect the lease fee.

Of course, the lease agreement provided for two payments: ₱400,000.00 upon the signing of the agreement and ₱200,000.00 upon completion of rehabilitation of the buses. But this provision is more about the mode of payment rather than about the extinguishment of the obligation to pay the amounts due. The phrase "upon completion of rehabilitation" implies an obligation to complete the rehabilitation which, in this case, wholly depended on work to be done "by the lessee."

That the buses may have turned out to be unsuitable for use despite repair cannot prejudice Master Tours. The latter did not hide the condition of the buses from RCJ. Indeed, the lease agreement described them as "presently junked and not operational." RCJ knew what it was getting into and calculated some profit after it shall have rehabilitated the buses and placed them on the road. That it may have made a miscalculation cannot exempt it from its obligation to pay the rents.

But since Master Tours demanded the return of the buses before the expiration of the contract, RCJ was not yet in default for the payment of ₱200,000.00. There was time left to complete or undertake the rehabilitation of the buses since the lease was still operative at that time Master Tours opted to pre-terminate the contract.[10] It is only equitable to release RCJ from the

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[9] *Supra* note 1.

[10] CIVIL CODE, Article 1193. Obligations for whose fulfilment a day certain has been fixed shall be demandable only when that day comes. x x x

liability to pay ₱200,000.00 since it was not afforded the balance of the period to perform its obligation to repair.[11] No one should be unduly enriched at the expense of another.[12]

Three. RCJ claims that the award of attorney's fees plus cost against it was unjustified.

Notably, RCJ did not question such award in the appellant's brief that it filed with the CA. RCJ brought it up only through a supplemental appellant's brief that it filed without leave of court three years after the case was submitted for decision and a month before the CA rendered its judgment in the case.[13]

Nonetheless, the Court notes that the RTC Decision awarded attorney's fees without stating its basis for making such award. The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification. The court must state the reason for the award of attorney's fees and its failure to do so makes the award utterly baseless.

As regards the cost of suit, costs ordinarily follow the results of the suit and shall be allowed to the prevailing party as a matter of course.[14]

WHEREFORE, the Court **MODIFIES** the Court of Appeals Decision dated October 26, 2006. RCJ Bus Lines, Incorporated is **ORDERED** to pay ₱400,000.00 to Master Tours and Travel Corporation with interest of 6% *per annum* from the filing of the complaint. The Regional Trial Court's award of attorney's fees is **DELETED** for lack of legal basis.

Costs against the petitioner.

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[11] *Id.* at Article 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by courts. x x x

[12] *Id.* at Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[13] CA *rollo*, p. 58.

[14] RULES OF COURT, Rule 142, Sec. 1.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184950. October 11, 2012]

NGEI MULTI-PURPOSE COOPERATIVE, INC. and HERNANCITO RONQUILLO, *petitioners, vs.* **FILIPINAS PALMOIL PLANTATION, INC. and DENNIS VILLAREAL,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ALLOWED.— [T]he issues raised in this petition are mainly factual in nature. Factual issues are not proper subjects of the Court's power of judicial review. Well-settled is the rule that only questions of law can be raised in a petition for review under Rule 45 of the Rules of Civil Procedure. It is, thus, beyond the Court's jurisdiction to review the factual findings of the Regional Adjudicator, the DARAB and the CA as regards the validity and the binding effect of the Addendum.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; A CONTRACT IS THE LAW BETWEEN THE PARTIES AND BINDS BOTH CONTRACTING PARTIES; CASE AT BAR.— The Court understands the predicament of these farmer-beneficiaries of NGEI Coop. Under the prevailing circumstances, however, it cannot save them from the consequences of the binding lease agreement, the *Addendum*. The petitioners, having freely and

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[*] Designated Acting Member, per Special Order 1299 dated August 28, 2012.

willingly entered into the *Addendum* with FPPI, cannot and should not now be permitted to renege on their compliance under it, based on the supposition that its terms are unconscionable. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them. It is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding as between the parties. x x x It must be stressed that the *Addendum* was found to be a valid and binding contract. The petitioners failed to show that the Addendum's stipulated rental rates and economic benefits violated any law or public policy. The Addendum should, therefore, be given full force and effect, without prejudice to a renegotiation of the terms of the leasehold agreement in accordance with the provisions of Administrative Order No. 5, Series of 1997, governing their *Addendum*, as regards the contracting procedures and fixing of lease rental in lands planted to palm oil trees.

3. POLITICAL LAW; ADMINISTRATIVE LAW; THE AGRICULTURAL LAND REFORM CODE; STATUTE OF LIMITATIONS.— Anent the issue of prescription, Section 38 of R.A. No. 3844 (The Agricultural Land Reform Code), the applicable law to agricultural leasehold relations, provides: **Section 38.** *Statute of Limitations* — An action to enforce any cause of action under this Code shall be barred if not commenced within *three years* after such cause of action accrued.

APPEARANCES OF COUNSEL

Ibarra A. Malonzo and Carl Marx L. Carumba for petitioners.

Sycip Salazar Hernandez & Gatmaitan 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 May 9, 2008 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. SP No. 99552 and its October 3, 2008 Resolution[2] denying the motion for reconsideration thereof.

The Facts

On December 2, 1988, the petitioner NGEI Multi-Purpose Cooperative Inc. (*NGEI Coop*), a duly-registered agrarian reform workers' cooperative, was awarded by the Department of Agrarian Reform (*DAR*) 3,996.6940 hectares of agricultural land for palm oil plantations located in Rosario and San Francisco, Agusan del Sur.

On March 7, 1990, NGEI Coop entered into a lease agreement with respondent Filipinas Palmoil Plantation, Inc. (*FPPI*), formerly known as NDC Gutrie Plantation, Inc., over the subject property commencing on September 27, 1988 and ending on December 31, 2007. Under the lease agreement, FPPI (as lessee) shall pay NGEI Coop (as lessor) a yearly fixed rental of ₱635.00 per hectare plus a variable component equivalent to 1% of net sales from 1988 to 1996, and ½% from 1997 to 2007.[3]

On January 29, 1998, the parties executed an Addendum to the Lease Agreement (*Addendum*) which provided for the extension of the lease contract for another 25 years from January 1, 2008 to December 2032. The *Addendum* was signed by Antonio Dayday, Chairman of the NGEI Coop, and respondent Dennis Villareal (*Villareal*), the President of FPPI, and witnessed by DAR Undersecretary Artemio Adasa. The annual lease rental remained at ₱635.00 per hectare, but the package of

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[1] Annex "D" of Petition, *rollo*, pp. 50-59. Penned by Associate Justice Magdangal M. De Leon with Associate Justice Josefina Guevara-Salonga and Associate Justice Normandie B. Pizarro, concurring.

[2] Annex "E" of Petition, *id.* at 60-61.

[3] *Id.* at 51.

economic benefits for the *bona fide* members of NGEI Coop was amended and increased, as follows:

Years Covered	Amount (Per Hectare)
1998 – 2002	₱1,865.00
2003 – 2006	₱2,365.00
2007 – 2011	₱2,865.00
2012 – 2016	₱3,365.00
2017 – 2021	₱3,865.00
2022 – 2026	₱4,365.00
2027 – 2031	₱4,865.00
2032	₱5,365.00[4]

On June 20, 2002, NGEI Coop and petitioner Hernancito Ronquillo (*Ronquillo*) filed a complaint for the Nullification of the Lease Agreement and the Addendum to the Lease Agreement before the Department of Agrarian Reform Adjudication Board (*DARAB*) Regional Adjudicator of San Francisco, Agusan del Sur (*Regional Adjudicator*). The case was docketed as DARAB Case No. XIII (03)–176. The petitioners alleged, among others, that the *Addendum* was null and void because Antonio Dayday had no authority to enter into the agreement; that said *Addendum* was approved neither by the farm worker-beneficiaries nor by the Presidential Agrarian Reform Council (*PARC*) Executive Committee, as required by DAR Administrative Order (*A.O.*) No. 5, Series of 1997; that the annual rental and the package of economic benefits were onerous and unjust to them; and that the lease agreement and the *Addendum* unjustly deprived them of their right to till their own land for an exceedingly long period of time, contrary to the intent of Republic Act (*R.A.*) No. 6657, as amended by R.A. No. 7905.

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[4] *Id.* at 52.

In its Decision,[5] dated February 3, 2004, the Regional Adjudicator declared the *Addendum* as null and void for having been entered into by Antonio Dayday without the express authority of NGEI Coop, and for having been executed in violation of the Rules under A.O. No. 5, Series of 1997.

FPPI filed a motion for reconsideration. The Regional Adjudicator, finding merit in the said motion, reversed his earlier decision in an Order, dated March 22, 2004. He dismissed the complaint for the nullification of the *Addendum* on the grounds of prescription and lack of cause of action. The Regional Adjudicator further opined that the *Addendum* was valid and binding on both the NGEI Coop and FPPI and, the petitioners having enjoyed the benefits under the *Addendum* for more than four (4) years before filing the complaint, were considered to have waived their rights to assail the agreement.

The petitioners moved for a reconsideration of the said order but the Regional Adjudicator denied it in the Order dated April 28, 2004.

On appeal, the DARAB Central Office rendered the October 9, 2006 Decision.[6] It found no reversible error on the findings of fact and law by the Regional Adjudicator and disposed the case as follows:

> WHEREFORE, premises considered, the instant Appeal is DENIED for lack of merit and the assailed Order dated March 22, 2004 is hereby affirmed.
>
> SO ORDERED.[7]

After their motion for reconsideration was denied, the petitioners appealed to the CA via a petition for review under Rule 43 of the Rules of Court.

On May 9, 2008, the CA rendered the assailed decision upholding the validity and binding effect of the *Addendum* as it was freely and voluntarily executed between the parties, devoid

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[5] Annex "K" of Petition, *id*. at 100-106.

[6] Annex "M" of Petition, *id*. at 111.

[7] *Id.* at 117.

of any vices of consent. The CA sustained its validity on the basis of the civil law principle of mutuality of contracts that the parties were bound by the terms and conditions unequivocally expressed in the addendum which was the law between them.

In dismissing the petition, the CA ratiocinated that the findings of fact of the Regional Adjudicator and the DARAB were supported by substantial evidence. Citing the case of *Sps. Joson v. Mendoza*,[8] the CA held that such findings of the agrarian court being supported by substantial evidence were conclusive and binding on it.

The petitioners filed a motion for reconsideration of the said decision on the grounds, among others, that the findings of fact of the Regional Adjudicator were in conflict with those of the DARAB and were not supported by the evidence on record; and that the conclusions of law were not in accordance with applicable law and existing jurisprudence. The motion, however, was denied for lack of merit by the CA in its Resolution, dated October 3, 2008.

Hence, NGEI Coop and Ronquillo interpose the present petition before this Court anchored on the following

GROUNDS

(I)

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE ASSAILED ADDENDUM IS VOID *AB-INITIO*, THE SAME HAVING BEEN EXECUTED WITHOUT THE CONSENT OF ONE OF THE PARTIES THERETO (Petitioner NGEI-MPC), BY REASON OF THE ABSENCE OF AUTHORITY TO EXECUTE THE SAME GIVEN BY SAID PARTY TO THE SUBSCRIBING INDIVIDUAL (Dayday) AND THE FACT THAT THE ADDENDUM WAS NEVER RATIFIED BY THE GENERAL MEMBERSHIP OF NGEI-MPC.

(II)

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE ADDENDUM TO LEASE AGREEMENT IS

[8] 505 Phil. 208 (2005).

NULL AND VOID FOR BEING CONTRARY TO LAW, MORALS, GOOD CUSTOMS, AND PUBLIC POLICY.

(III)

THE HONORABLE COURT OF APPEALS, WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, SERIOUSLY ERRED IN HOLDING THAT THE DECISION OF THE DARAB IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

(IV)

WHETHER OR NOT PETITIONERS' CAUSE OF ACTION HAS PRESCRIBED.[9]

The sole issue for the Court's resolution is whether the CA committed reversible error of law when it affirmed the decision of the DARAB which upheld the order of the Regional Adjudicator dismissing the petitioners' complaint for the nullification of the *Addendum*.

The Court finds the petition bereft of merit.

The petitioners contend that the CA gravely erred in upholding the validity of the *Addendum*. They allege that the yearly lease rental of ₱635.00 per hectare stipulated in the *Addendum* was unconscionable because it violated the prescribed minimum rental rates under DAR A.O. No. 5, Series of 1997 and R.A. No. 3844 which mandate that the lease rental should not be less than the yearly amortization and taxes. They also argue that it constitutes an infringement on the policy of the State to promote social justice for the welfare and dignity of farmers and farm workers.

Relying on the same A.O. No. 5, the petitioners further argue that the *Addendum* with another 25 years of extension period was invalid for lack of approval by the PARC Executive Committee; that Antonio Dayday had no authority to enter into the *Addendum* on behalf of NGEI Coop; that the authority given, if any, was merely for a review of the lease agreement and to negotiate with FPPI on the specific issue of land lease

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[9] *Rollo*, pp. 14-15.

rental through a negotiating panel or committee, to which Dayday was a member; that Dayday's act of signing for, and in behalf of, NGEI Coop being *ultra vires* was null and void; that it was Vicente Flora who was authorized to sign the *Addendum* as shown in Resolution No. 1, Series of 1998; that the *Addendum* was not ratified through the use of attendance sheets for meal and transportation allowance; that neither did NGEI Coop and its members ratify the *Addendum* by their receipt of its so-called economic benefits; and that their acceptance of the benefits under the agreement was not an indication of waiver of their right to pursue their claims against FPPI considering their consistent actions to contest the subject *Addendum*.

The respondents, on the other hand, posit in their Comment[10] and reiterated in their Memorandum[11] that by raising factual issues, the petitioners were seeking a review of the factual findings of the Regional Adjudicator and the DARAB which is proscribed in a petition for review under Rule 45 of the Rules of Court. They add that the findings of the said administrative agencies, having been sustained by the CA in the assailed decision and supported by substantial evidence, should be respected.

The respondents further state that the CA correctly ruled that the *Addendum* was a valid and binding contract. They claim that the package of economic benefits under the *Addendum* was not unconscionable or contrary to public policy.

Indeed, the issues raised in this petition are mainly factual in nature. Factual issues are not proper subjects of the Court's power of judicial review. Well-settled is the rule that only questions of law can be raised in a petition for review under Rule 45 of the Rules of Civil Procedure.[12] It is, thus, beyond the Court's jurisdiction to review the factual findings of the

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[10] Dated March 6, 2009, *id*. at 131-153.

[11] Dated October 2, 2009, *id*. at 322-352.

[12] *Mago v. Barbin*, G.R. No. 173923, October 12, 2009, 603 SCRA 383, 392, citing Section 1, Rule 45 which states that the petition shall raise only questions of law which must be distinctly set forth. *Ortega v. People*, G.R. No. 177944, December 24, 2008, 575 SCRA 519.

Regional Adjudicator, the DARAB and the CA as regards the validity and the binding effect of the *Addendum*. Whether or not the person who signed the *Addendum* on behalf of the NGEI Coop was authorized to do so; whether or not the NGEI Coop members ratified the *Addendum*; whether or not the rental rates prescribed in the Addendum were unconscionably low so as to be illegal, and whether or not the NGEI Coop had consistently assailed the validity of the *Addendum* even prior to the filing of the complaint with the Regional Adjudicator, are issues of fact which cannot be passed upon by the Court for the simple reason that the Court is not a trier of facts.

As held in the recent case of *Carpio v. Sebastian*,[13] thus:

> x x x It bears stressing that in a petition for review on *certiorari*, the scope of this Court's judicial review of decisions of the Court of Appeals is generally confined only to errors of law, and questions of fact are not entertained. We elucidated on our fidelity to this rule, and we said:
>
> Thus, **only questions of law may be brought by the parties and passed upon by this Court in the exercise of its power to review. Also, judicial review by this Court does not extend to a reevaluation of the sufficiency of the evidence** upon which the proper x x x tribunal has based its determination.
>
> It is aphoristic that **a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court** because as earlier stated, this Court is not a trier of facts; it reviews only questions of law. The **Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below**.[14]

In the present case, the Court finds no cogent reason to depart from the aforementioned settled rule. The DARAB made the following findings, *viz*:

> This Board finds that the said "Addendum to the Lease Agreement" is valid and binding to both parties. While the complainant impugn[s]

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[13] G.R. No. 166108, June 16, 2010, 621 SCRA 1.

[14] *Id.* at 8, citing *Diokno v. Cacdac*, G.R. No. 168475, July 4, 2007, 526 SCRA 440, 460-461.

the validity of the "Addendum" based on the ground that Chairman Dayday was not authorized by the Cooperative to enter into the Agreement, based on the records, a series of Resolution was made authorizing the Chairman to enter into the said "Addendum." Granting en arguendo that Chairman Dayday was not authorized to enter into the said Agreement, the fact remains that the terms and stipulations in the Addendum had been observed and enforced by the parties for several years. Both parties have benefited from the said contract. If indeed Chairman Dayday was not authorized to enter into said Agreement, why does the Cooperative have to wait for four (4) years to impugn the validity of the Contract. Thus, the Adjudicator *a quo* is correct in his findings that:

> As already discussed in the assailed Order, whatever procedural defects that may have attended the final execution of the addendum, these are considered waived and/or impliedly accepted or consented to by Complainants when its General assembly ratified its execution and lived with for the next four (4) years.

Further the Adjudicator *a quo* is correct in his findings that:

> It has to be impressed once more, that the Complaint is really one for the cancellation of the Addendum to the original lease agreement. The negotiations that [led] to its execution is in fact a re-negotiation of the old lease contract, and not a negotiated original lease requiring the approval of the PARC Executive Committee. The re-negotiation that culminated in the execution of the addendum requires only the recommendation of the PARCCOM and the DAR, (AO No. 5, S-1997). It cannot be gainsaid, therefore, that both PARCCOM and the DAR after a long and tedious re-negotiation had no knowledge of such re-negotiation, but for reasons unknown, both have kept their peace, thus, allowing the addendum to be ratified, enforced and implemented. On the other hand, the arguments, that said addendum being void *ab initio* may be assailed at anytime cannot be conceded. First, because said addendum has not been officially or legally declared as a nullity. It is not nullified just because a subsequent resolution of the Coop Board abrogated the Addendum. To annul a Contract cannot be done unilaterally, in fact the reason why this case was filed. On the contrary, having been forged in 1998, complainants waited until 2002 to assail its validity, and in the meantime, their action to do so

> had prescribed pursuant to Section 28 of RA 3844, the law governing leasehold. The other assigned alleged errors having been fully discussed in the assailed Order of [M]arch 22, 2004, the same need no longer be traversed.
>
> Finding no reversible error on the finding of facts and law made by the Adjudicator *a quo* this Board hereby affirms the Order dated March 22, 2004.[15]

It is well to emphasize that the above-quoted factual findings and conclusions of the DARAB affirming those of the Regional Adjudicator were sustained by the CA in the assailed decision. The Court is in accord with the CA when it wrote:

> In appeals in agrarian cases, the only function of this Court is to determine whether the findings of fact of the Department of Agrarian Reform Adjudication Board (DARAB) are supported by substantial evidence – it cannot make its own findings of fact and substitute the same for the findings of the DARAB. And substantial evidence has been defined to be such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and its absence is not shown by stressing that there is contrary evidence on record, direct or circumstantial; and where the findings of the agrarian court are supported by substantial evidence, such findings are conclusive and binding on the appellate court.[16]

Considering that the findings of the Regional Adjudicator and the DARAB are uniform in all material respects, these findings should not be disturbed. More so in this case where such findings were sustained by the CA for being supported by substantial evidence and in accord with law and jurisprudence.

Verily, the factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence.[17]

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[15] Annex "M" of Petition, *rollo*, pp. 116-117.

[16] Annex "D" of Petition, *id*. at 55-56.

[17] *Republic v. Salvador N. Lopez Agri-Business Corp.*, G.R. Nos. 178895 and 179071, January 10, 2011, 639 SCRA 49, 60, citing *Taguinod v. Court of Appeals*, G.R. No. 154654, September 14, 2007, 533 SCRA 403, 416.

The factual findings of these quasi-judicial agencies, especially when affirmed by the CA, are binding on the Court. The recognized exceptions to this rule are: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculation; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the facts set forth by the petitioner are not disputed by the respondent; and (9) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[18] None of these circumstances is obtaining in this case.

The Court understands the predicament of these farmer-beneficiaries of NGEI Coop. Under the prevailing circumstances, however, it cannot save them from the consequences of the binding lease agreement, the *Addendum*. The petitioners, having freely and willingly entered into the *Addendum* with FPPI, cannot and should not now be permitted to renege on their compliance under it, based on the supposition that its terms are unconscionable. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.[19]

It is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same

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[18] *Heirs of Felicidad Vda. de Dela Cruz v. Heirs of Pedro T. Fajardo*, G.R. No. 184966, May 30, 2011, 649 SCRA 463, 471, citing *Pagsibigan v. People*, G.R. No. 163868, 4 June 2009, 588 SCRA 249, 257.

[19] Article 1308 of the Civil Code, cited in *Morla v. Belmonte*, G.R. No. 171146, December 7, 2011.

are binding as between the parties.[20] The Court quotes with approval the ruling of the CA on this matter, to wit:

> Indeed, the terms and conditions between the parties unequivocally expressed in the *Addendum* must govern their contractual relations for these serve as the terms of the agreement, which are binding and conclusive on them.
>
> Consequently, petitioners cannot unilaterally change the tenor of the terms and conditions of the *Addendum* or cancel it altogether after having gone through the solemnities and formalities for its perfection. In fact, the *Addendum* had been consummated upon performance by the parties of the prestations and after they had already reaped the mutual benefits arising from the contract. Mutuality is one of the characteristics of a contract, and its validity or performance or compliance cannot be left to the will of only one of the parties. It is a long established doctrine that the law does not relieve a party from the effects of an unwise, foolish, or disastrous contract, entered into with all the required formalities and with full awareness of what he was doing.[21] (Underscoring supplied)

It must be stressed that the *Addendum* was found to be a valid and binding contract. The petitioners failed to show that the Addendum's stipulated rental rates and economic benefits violated any law or public policy. The Addendum should, therefore, be given full force and effect, without prejudice to a renegotiation of the terms of the leasehold agreement in accordance with the provisions of Administrative Order No. 5, Series of 1997, governing their *Addendum*, as regards the contracting procedures and fixing of lease rental in lands planted to palm oil trees, specifically:

> IV. POLICIES AND GOVERNING PRINCIPLES
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> x x x x x x x x x
>
> D. Renegotiation of the amount of lease rental shall be undertaken by the parties every five (5) years, subject to the recommendation of the PARCCOM and review by the DAR.

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[20] *Morla v. Belmonte*, G.R. No. 171146, December 7, 2011, citing *Roxas v. De Zuzuarregui, Jr.*, 516 Phil. 605, 622-623, (2006).

[21] Annex "D" of Petition, *rollo*, pp. 57-58.

> Lease rental on the leased lands may be renegotiated by the contracting parties even prior to the termination of the contract on the following grounds: (a) domestic inflation rate of seven percent (7%) or more; (b) drop in the world prices of the commodity by at least twenty percent (20%); and (c) other valid reasons.
>
> E. Any conflict that may arise from the implementation of the lease contract shall be referred to the PARCCOM by any of the contracting parties for mediation and resolution. In the event of failure to resolve the issue, any of the parties may file an action with the Department of Agrarian Reform Adjudication Board (DARAB) for adjudication pursuant to Section 50 of R.A. No. 6657.

Anent the issue of prescription, Section 38 of R.A. No. 3844 (The Agricultural Land Reform Code), the applicable law to agricultural leasehold relations, provides:

> **Section 38.** *Statute of Limitations* - An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued. (Underscoring supplied)

On the basis of the aforequoted provision, the petitioners' cause of action to have the *Addendum*, an agricultural leasehold arrangement between NGEI Coop and FPPI, declared null and void has already prescribed. To recall, the *Addendum* was executed on January 29, 1998 and the petitioners filed their complaint with the Regional Adjudicator on June 20, 2002, or more than four years after the cause of action accrued. Evidently, prescription has already set in.

Inasmuch as the validity of the *Addendum* was sustained by the CA as devoid of any vice or defect, Article 1410 of the Civil Code on imprescriptibility of actions for declaration of inexistence of contracts, relied upon by the petitioners, is not applicable.

On a final note, the petitioners faulted the CA for failure to re-assess the facts of the case despite the conflicting findings of the Regional Adjudicator and the DARAB. Such imputation

of error deserves no merit because, in truth and in fact, no such conflict exists. Contrary to the petitioners' claim, both tribunals declared the validity of the *Addendum* being in existence for several years and on the basis that the petitioners had enjoyed the benefits accorded under it, and both raised the ground of prescription of the petitioners' cause of action pursuant to Section 38, R.A. No. 3844.

All told, the Court, after a careful review of the records, finds no reversible error in the assailed decision of the CA.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185368. October 11, 2012]

ARTHUR F. MENCHAVEZ, *petitioner, vs.* **MARLYN M. BERMUDEZ,** *respondent*.

SYLLABUS

1. CIVIL LAW; HUMAN RELATIONS; UNJUST ENRICHMENT; PRESENT WHEN COMPROMISE AGREEMENT MADE IN LIEU OF LOAN OBLIGATION WERE BOTH SOUGHT TO BE ENFORCED.— Petitioner argues that the compromise agreement created an obligation separate and distinct from the original loan, for which respondent is now liable. It is undeniable that the compromise agreement is wholly intertwined with the

[*] Designated additional member, per Special Order No. 1299, dated August 28, 2012.

original loan agreement, to the extent that this compromise agreement was entered into to fulfill respondent's payment on the original obligation, without which the compromise agreement would not have existed. x x x Petitioner may not seek the enforcement of both the compromise agreement and payment of the loan, even in the event that the compromise agreement remains unfulfilled. It is beyond cavil that if a party fails or refuses to abide by a compromise agreement, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand. x x x To allow petitioner to recover under the terms of the compromise agreement and to further seek enforcement of the original loan transaction would constitute unjust enrichment. x x x There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited; and (2) such benefit is derived at the expense of or with damages to another.

2. ID.; OBLIGATIONS AND CONTRACTS; INTEREST OF FIVE PERCENT (5%) A MONTH IS INIQUITOUS AND VOID, AND MAY BE REDUCED TO A REASONABLE RATE.— Parties may be free to contract and stipulate as they see fit, but that is not an absolute freedom. Art. 1306 of the Civil Code provides, "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." While petitioner harps on the voluntariness with which the parties agreed upon the 5% per month interest rate, voluntariness does not make the stipulation on interest valid. The 5% per month, or 60% per annum, rate of interest is, indeed, iniquitous, and must be struck down. Petitioner has been sufficiently compensated for the loan and the interest earned, and cannot be allowed to further recover on an interest rate which is unconscionable. Since the stipulation on the interest rate is void, it is as if there was no express contract on said interest rate. Hence, courts may reduce the interest rate as reason and equity demand.

APPEARANCES OF COUNSEL

Escudero Marasigan Vallente & E.H. Villareal for petitioner.

Benedictine Law Center for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This is a Petition for Review on *Certiorari* under Rule 45, questioning the Decision[1] of the Court of Appeals (CA) dated May 30, 2008 in CA-G.R. SP No. 99143, and the CA Resolution dated November 7, 2008, denying petitioner's Motion for Reconsideration of the Decision.

The facts of the case are as follows:

Petitioner Arthur F. Menchavez and respondent Marlyn M. Bermudez entered on November 17, 1993 into a loan agreement, covering the amount of PhP 500,000, with interest fixed at 5% per month.[2] Respondent executed a promissory note, which reads as follows:

17 November 1993

₱500000. –

For value received I promise to pay ARTHUR F. MENCHAVEZ or order the sum of pesos five hundred thousand on or before Dec. 17, 1993 with interest of 5% per month.

I acknowledge receipt of BPI Check 60965.

MARLYN M. BERMUDEZ[3]

She then issued Prudential Bank Check No. 031994, to mature on December 17, 1993, in favor of petitioner, but with a request that petitioner not present the check for payment on its maturity date.[4] Respondent replaced Check No. 031994 with five postdated Prudential Bank checks totaling PhP 565,000, as follows: (1) Check No. 039198 dated April 17, 1994 for PhP 125,000; (2)

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[1] Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Portia Aliño-Hormachuelos and Pampio A. Abarintos.

[2] *Rollo*, p. 62.

[3] *Id.* at 121.

[4] *Id.*

Check No. 039199 dated May 17, 1994 for PhP 120,000; (3) Check No. 039200 dated June 17, 1994 for PhP 115,000; (4) Check No. 039201 dated July 17, 1994 for PhP 110,000; and (5) Check No. 039202 dated August 17, 1994 for PhP 105,000.[5] Four of the checks were cleared and fully encashed when presented for payment, covering the sum of PhP 465,000. The July 17, 1994 check, while dishonored, was partially paid by respondent with a replacement check for PhP 110,000 issued on June 12, 1995.[6]

Petitioner alleged entering into a verbal compromise agreement with respondent regarding the delay in payment and the accumulated interest. Under the agreement, respondent would deliver 11 postdated Prudential Bank checks as payment. When presented for payment, eight (8) of these checks were dishonored for the reason, "Drawn against Insufficient Funds."[7]

Nine criminal informations were filed against respondent Marlyn M. Bermudez before the Metropolitan Trial Court (MeTC) in Makati City, each charging her with violations of *Batas Pambansa Blg*. 22, or the *Bouncing Checks Law*, raffled off to the MeTC, Branch 64 as Criminal Case Nos. 306361 to 306369.[8] Eight counts covered the dishonored checks issued pursuant to the compromise agreement, while the ninth covered the adverted check issued on July 17, 1994. The checks involved in the charges were:

(a) Check No. 0000029595 dated March 31, 1997 for PhP 20,000;

(b) Check No. 0000029594 dated March 4, 1997 for PhP 20,000;

(c) Check No. 0000029592 dated December 17, 1996 for PhP 50,000;

(d) Check No. 0000029598 dated June 30, 1997 for PhP 20,000;

(e) Check No. 0000029597 dated June 3, 1997 for PhP 20,000.00;

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[5] *Id.* at 62-63.

[6] *Id.* at 63.

[7] *Id.*

[8] *Id.* at 61.

(f) Check No. 0000029596 dated April 30, 1997 for PhP 20,000.00;

(g) Check No. 0000029602 dated November 4, 1997 for PhP 20,000;

(h) Check No. 0000029601 dated September 30, 1997 for PhP 20,000; and

(i) Check No. 039201 dated July 17, 1994 for PhP 110,000;

which were issued and drawn by respondent against the account of FLB Construction Corporation at Prudential Bank, Makati Branch, payable to petitioner, covering the total sum of PhP 300,000. These checks were dishonored by the drawee bank upon presentment for payment on their respective maturity dates for the reason, "Drawn Against Insufficient Funds."[9]

The Ruling of the MeTC

Respondent raised the defense of payment, and proved paying petitioner the sum of PhP 925,000, or PhP 425,000 over the PhP 500,000 loan. The amount of PhP 925,000.00 was acknowledged by petitioner in the statement of account which he prepared, wherein PhP 624,344 was credited to payment of interest, and PhP 300,656 was credited to payment of the principal.[10]

The MeTC acquitted respondent of the charges against her, the dispositive portion of the decision reading as follows:

> WHEREFORE, in view of the foregoing premises, for failure to prove the guilt of the accused beyond reasonable doubt, MARILYN BERMUDEZ *y* MELY is hereby ACQUITTED in all nine (9) counts on charge of Violation of Batas Pambansa Blg. 22.
>
> No costs.
>
> SO ORDERED.[11]

Petitioner then brought the matter on appeal to the Regional Trial Court (RTC), Branch 143 in Makati City, appealing the

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[9] *Id.* at 50.

[10] *Id.* at 130.

[11] *Id.* at 64. Penned by Judge Dina Pestaño Teves.

civil aspect of the cases. The cases were docketed as Crim. Case Nos. 06-966 to 06-974.

The Ruling of the RTC

In a Decision dated November 5, 2006, the RTC held that the PhP 425,000 excess payment had not fully settled the respondent's obligations to the petitioner. It found that no evidence was presented as to the payment on the eight checks covering the amount of PhP 190,000 in the compromise agreement, less partial payment of PhP 25,000. In fine, a total of PhP 165,000 remains unpaid.[12] However, the 5% monthly interest stipulated in the loan agreement could not be applied, as, according to the RTC, there was no written agreement; thus, the rate of 12% per annum would be used.[13]

The dispositive portion of the RTC Decision reads as follows:

> WHEREFORE PREMISES CONSIDERED, the Appeal filed by complainant-appellant is partially granted. The Decision appealed from is modified, ordering accused-appellee Marilyn M. Bermudez to pay complainant-appellant the amount of ₱165,000.00 as civil liability with legal interest at the rate of 12% per annum to be reckoned from October 6, 2000.
>
> SO ORDERED.[14]

The Ruling of the CA

Respondent then raised the matter to the CA, on the issue of whether petitioner Menchavez could still demand payment on the original loan of PhP 500,000 despite the payment by respondent of the total amount of PhP 925,000.

The CA found that petitioner had expressly admitted in a Statement of Account, prepared under his supervision, that respondent's payments had already covered the principal loan

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[12] *Id.* at 54.

[13] *Id.* at 55.

[14] *Id.* Penned by Judge Zenaida T. Galapate-Laguilles (now a member of the CA).

of PhP 500,000, and that he had also received excess payment in the amount of PhP 425,000, before the criminal charges were filed.[15]

The CA did not agree with the RTC that the issuance of the subject checks resulted from the compromise agreement, and not from the loan transaction between petitioner and respondent. It held that the compromise agreement could not be detached from and taken independently of the principal loan. It further held that the compromise agreement bound respondent to pay an exorbitant and unconscionable amount in interest and charges, and that further, the principal loan had already been paid, with the sum of PhP 425,000 added by way of interest at the rate of 5% per month or 60% per annum, and that courts could reduce liquidated damages, if these are iniquitous or unconscionable, and thus contrary to morals.[16]

The *fallo* of the CA Decision reads:

> WHEREFORE, premises considered, the Petition for Review is GRANTED, and accordingly, the assailed November 5, 2006 Decision and April 7, 2007 Order of the RTC are hereby REVERSED and SET ASIDE.
>
> SO ORDERED.[17]

Thus, petitioner brought the matter to this Court.

Grounds in Support of Petition

I

RESPONDENT'S OBLIGATION BASED ON THE COMPROMISE AGREEMENT IS SEPARATE AND INDEPENDENT FROM HER ORIGINAL LOAN OBLIGATION.

II

THE CA'S RULINGS WERE BASED ON MISAPPREHENSION OF FACTS – ALTHOUGH PAYMENT WAS MADE, RESPONDENT WAS

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[15] *Id.* at 66.

[16] *Id.* at 68.

[17] *Id.* at 69.

FAR FROM COMPLETELY SATISFYING HER OBLIGATION TO PETITIONER.

III

RESPONDENT VOLUNTARILY SIGNED A PROMISSORY NOTE AND VOLUNTARILY AGREED TO PAY 5% INTEREST PER MONTH.[18]

The Ruling of this Court

The petition is without merit.

Petitioner argues that the compromise agreement created an obligation separate and distinct from the original loan, for which respondent is now liable. It is undeniable that the compromise agreement is wholly intertwined with the original loan agreement, to the extent that this compromise agreement was entered into to fulfill respondent's payment on the original obligation, without which the compromise agreement would not have existed.

By stating that the compromise agreement and the original loan transaction are separate and distinct, petitioner would now attempt to exact payment on both. This goes against the very purpose of the parties entering into a compromise agreement, which was to extinguish the obligation under the loan. Petitioner may not seek the enforcement of both the compromise agreement and payment of the loan, even in the event that the compromise agreement remains unfulfilled. It is beyond cavil that if a party fails or refuses to abide by a compromise agreement, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand.[19] It cannot, thus, be argued that there are two separate validly subsisting obligations to be fulfilled by respondent under both the compromise agreement and the original loan transaction.

To allow petitioner to recover under the terms of the compromise agreement and to further seek enforcement of

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

[19] *Diamond Builders Conglomeration v. Country Bankers Insurance Corporation*, G.R. No. 171820, December 13, 2007, 540 SCRA 194, 207.

the original loan transaction would constitute unjust enrichment. The compromise agreement was entered into precisely to extinguish the obligation under the loan transaction, not to create two sources of obligation for respondent. There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited; and (2) such benefit is derived at the expense of or with damages to another.[20] Since respondent only entered into the compromise agreement to commit to payment of the original loan, petitioner cannot separate the two and seek payment of both, especially as he has already recovered the amount of the original loan.

The second and third issues raised by petitioner are interrelated and shall be discussed jointly.

Petitioner's claim that the payment made by respondent did not extinguish the obligation is based on his assessment that it is the rate of 5% per month which should be the basis of computation. Furthermore, petitioner argues that respondent voluntarily agreed to the interest rate of 5% per month.

These arguments fail to convince this Court.

Petitioner seeks to benefit from a 60% per annum rate of interest. This cannot be countenanced.

Castro v. Tan[21] is instructive. Petitioners in that case also argued that lender and borrower could validly agree on any interest rate for loans, and that the parties had voluntarily agreed upon the stipulated rate of interest. The Court held in *Castro*:

> While we agree with petitioners that parties to a loan agreement have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983, it is also worth stressing that interest rates whenever unconscionable may still be declared illegal. There is certainly nothing in said circular which grants lenders *carte blanche* authority to raise interest rates to levels

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[20] *H.L. Carlos Construction, Inc. v. Marina Properties Corporation*, G.R. No. 147614, January 29, 2004, 421 SCRA 428, 437.

[21] G.R. No. 168940, November 24, 2009, 605 SCRA 231.

which either enslave their borrowers or lead to a hemorrhaging of their assets.[22]

The Court, in said case, tagged the 5% monthly interest rate agreed upon as "excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law."[23] And instead of allowing recovery at the stipulated rate, the Court, in *Castro*, imposed the legal interest of 12% per annum. We need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable, and exorbitant.[24]

In the present case, the CA scrutinized the Statement of Account[25] prepared by petitioner, wherein it showed that respondent had already paid PhP 925,000, or PhP 425,000 over the PhP 500,000 loan, and treated it as an admission by petitioner. The original obligation of PhP 500,000 had already been satisfied, and the PhP 425,000 would be treated as interest paid, even at the iniquitous rate of 60% per annum.

We agree with the CA that petitioner has been fully paid.

In the Statement of Account prepared by petitioner, which he said covered the period from November 17, 1993 to January 17, 2001, respondent made the following payments:

(a) PhP 25,000 on February 1, 1994;

(b) PhP 25,000 on February 23, 1994;

(c) PhP 25,000 on March 28, 1994;

(d) PhP 125,000 on April 17, 1994;

(e) PhP 120,000 on June 3, 1994;

(f) PhP 115,000 on August 1, 1994;

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[22] *Id.* at 237-238.

[23] *Id.* at 238.

[24] *Macalinao v. Bank of the Philippine Islands*, G.R. No. 175490, September 17, 2009, 600 SCRA 67, 77.

[25] *Rollo*, pp. 128-130.

(g) PhP 105,000 on October 23, 1994;

(h) PhP 110,000 on June 15, 1995;

(i) PhP 25,000 on March 5, 1997;

(j) PhP 20,000 on May 5, 1997;

(k) PhP 20,000 on August 2, 1997;

(l) PhP 20,000 on October 22, 1997;

(m) PhP 20,000 on December 19, 1997;

(n) PhP 50,000 on January 31, 2000;

(o) PhP 30,000 on March 29, 2000;

(p) PhP 30,000 on May 3, 2000;

(q) PhP 30,000 on July 5, 2000;

(r) PhP 30,000 on July 31, 2000.[26]

Totaling the amounts in the Statement of Account results in the sum of PhP 925,000, which petitioner admits that respondent has already paid. But for him, it is still a contentious matter as he seeks to enforce the 5% per month interest rate, and would, thus, claim that he has not been fully paid. As it has been ruled that the 5% per month interest rate is null and void, petitioner cannot recover the grossly inflated amounts listed in the Statement of Account he prepared. Petitioner does not contest the amounts in the Statement of Account he prepared, only the import, as in his Statement of Account he computes for interest based on the 5% per month interest rate. The Statement of Account is evidence that he has already been paid the PhP 500,000 subject of the original loan agreement, and has benefited further in the amount of PhP 425,000, and, thus, must not be allowed to recover further.

Parties may be free to contract and stipulate as they see fit, but that is not an absolute freedom. Art. 1306 of the Civil Code provides, "The contracting parties may establish such stipulations,

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[26] *Id.*

clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." While petitioner harps on the voluntariness with which the parties agreed upon the 5% per month interest rate, voluntariness does not make the stipulation on interest valid. The 5% per month, or 60% per annum, rate of interest is, indeed, iniquitous, and must be struck down. Petitioner has been sufficiently compensated for the loan and the interest earned, and cannot be allowed to further recover on an interest rate which is unconscionable. Since the stipulation on the interest rate is void, it is as if there was no express contract on said interest rate. Hence, courts may reduce the interest rate as reason and equity demand.[27]

WHEREFORE, the petition is **DENIED.** The CA's Decision dated May 30, 2008 and Resolution dated November 7, 2008 in CA-G.R. SP No. 99143 are hereby **AFFIRMED.**

Costs against petitioner.

SO ORDERED.

Peralta, Abad, Perez,[*] and *Mendoza, JJ.*, concur.

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[27] *Macalinao v. Bank of the Philippine Islands, supra* note 24.

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

THIRD DIVISION

[G.R. No. 194122. October 11, 2012]

HECTOR HERNANDEZ, *petitioner, vs.* **SUSAN SAN PEDRO AGONCILLO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; ANSWER; DISCRETIONARY TO TRIAL COURT TO PERMIT FILING OF ANSWER EVEN BEYOND REGLEMENTARY PERIOD.— It is true that this Court held in *Sablas [v. Sablas]* that where the Answer is filed beyond the reglementary period but before the defendant is declared in default and there is no showing that defendant intends to delay the case and no prejudice is caused to the plaintiff, the Answer should be admitted. It must be emphasized, however, that it is not mandatory on the part of the trial court to admit an Answer which is belatedly filed where the defendant is not yet declared in default. Settled is the rule that it is within the discretion of the trial court to permit the filing of an answer even beyond the reglementary period, **provided that there is justification for the belated action and there is no showing that the defendant intended to delay the case**. x x x [W]hile the Court frowns upon default judgments, it does not condone gross transgressions of the rules. The Court is duty-bound to observe its rules and procedures and uphold the noble purpose behind their issuance. Rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding.

2. LEGAL ETHICS; LAWYERS; DUTY TO FILE PLEADINGS BEFORE THE LAPSE OF PERIOD; FAILURE TO DO SO BINDS THE CLIENT.— It bears stressing that a lawyer has the responsibility of monitoring and keeping track of the period of time left to file pleadings, and to see to it that said pleadings are filed before the lapse of the period. If he fails to do so, his client is bound by his conduct, negligence and mistakes. In the present case, petitioner and his counsel knew and should have known of the periods within which they are to file their pleadings. In fact, with respect to their Answer, they should be aware that they had only until July 21, 2007 to file the same

because they were the ones who requested for an extension of time to file the said Answer. It was incumbent on petitioners' counsel to arrange his workload and attend to important and pressing matters such that pleadings are filed within the prescribed period therefor. If the failure of the petitioners' counsel to cope with his heavy workload should be considered a valid justification to sidestep the reglementary period, there would be no end to litigations so long as counsel had not been sufficiently diligent or experienced.

APPEARANCES OF COUNSEL

Usita & Pua Law Offices for petitioner.
Benedicto & Benedicto Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court are the April 29, 2010 Decision[1] and October 12, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 108801.

The instant petition arose from a Complaint for Damages filed with the Metropolitan Trial Court (MeTC) of Parañaque City against herein petitioner and one Freddie Apawan Verwin by herein respondent, alleging as follows:

x x x x x x x x x

2. x x x Defendant Hector Hernandez is x x x the owner of the delivery van which is the subject matter of the above-entitled case. He is doing business under the name of Cargo Solution Innovation and is the employer of Defendant Fredie Apawan Verwin;

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[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 22-33.

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

3. That on October 5, 2006 at around 12:15 in the afternoon, Defendant Fredie Apawan Verwin was driving a delivery van belonging to a certain Hector Hernandez, bearing plate number RBB-510, along Buendia Avenue Flyover, South Super-Highway (Osmeña Avenue), and negligently backed against a Honda City model with plate number XMF-496, owned and driven by the Plaintiff at the time of the incident;

4. That at the time of the incident, the traffic condition at the Buendia Avenue Flyover was bumper-to-bumper and that Plaintiff's and Defendant's vehicles were in an ascending position;

5. That Defendant driver alighted from his van and so did the Plaintiff to assess the damage done. Plaintiff observed that the pedestal of the van totally engaged and hooked the front bumper of her Honda car;

6. That after a brief discussion of the incident, Defendant driver went back to his van and stepped on the gas which caused the van to move abruptly forward and resulted to the disengagement of the bumper of Plaintiff's car and damage to the car radiator, and as a consequence, the Plaintiff's car was towed. Plaintiff paid ₱1,700 as towing fee. x x x

7. Right after the incident, Plaintiff made various demands from Defendants, thru the secretary of the Cargo Solution Innovation or C.S.I., the company which the driver of the van was working for, to pay the actual damages sustained, but to Plaintiff's dismay her demands were unheeded;

8. That defendant Hector Hernandez never talked [n]or appeared to the Plaintiff despite several requests made by the latter. Instead, he made a person appear having the name of Mr. De Ocampo before the Plaintiff in her clinic at Medical Center Manila, sometime on October 11, 2006 and acted in representation of Hector Hernandez and made a number of inquiries regarding the accident that transpired;

9. That sometime after, Plaintiff contacted Mr. De Ocampo for feedback regarding Defendant's position about the incident, and Mr. De Ocampo spoke that the Defendants are still waiting for the police report and ever since that conversation, no communication transpired between the parties regarding any agreement or settlement about the accident;

10. That as a direct consequence of the foregoing, Plaintiff's vehicle sustained heavy damage and the repair of which amounted to ₱130,602.53. A copy of the official receipt given by Honda Makati is hereby attached as Annex "D";

11. Plaintiff was unable to use her vehicle in going to work for five (5) weeks and led her to commute by means of a taxi every time her duty called her in Medical Center Manila in United Nations Avenue, Manila costing her ₱500-1000/day;

12. Considering the character of Defendant driver's negligence, together with the malicious refusal to pay actual damages of both Defendants and Plaintiff's experience of sleepless nights and anxiety because of the incident, Defendants should be held liable for moral damages in an amount of not less than ₱50,000.00;

13. Forced to litigate, Plaintiff engaged the services of a lawyer and have agreed to pay attorney's fees in the amount of ₱30,000.00 plus ₱2,500.00 per appearance.[3]

On May 31, 2007, the MeTC issued a Summons Under Summary Procedure[4] which was served upon and received by petitioner on June 18, 2007. However, the summons was not served on the other defendant. The case then proceeded only against petitioner.

On July 6, 2007, petitioner filed an *Ex Parte* Motion for Extension of Time to File His Answer claiming that he just engaged the services of his counsel. He prayed that he be granted an additional period of fifteen (15) days or until July 21, 2007 within which to file his responsive pleading.[5]

On July 18, 2007, the MeTC issued an Order[6] denying petitioner's *Ex Parte* Motion for Extension of Time holding that the said Motion was filed beyond the reglementary period

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[3] Annex "C" to Petition, *rollo*, pp. 37-38.

[4] Annex "D" to Petition, *id*. at 47.

[5] Annex "E" to Petition, *id*. at 48-49.

[6] Annex "G" to Petition, *id*. at 54.

provided for by the Revised Rules on Summary Procedure and that it is likewise a prohibited pleading under the said Rule.

Petitioner filed a Motion for Reconsideration[7] on August 17, 2007. Meanwhile, petitioner, nonetheless, filed his Answer with Affirmative and Negative Defenses and Compulsory Counterclaims[8] on July 26, 2007.

Respondent opposed petitioner's Motion for Reconsideration.[9] In the meantime, she filed a Motion to Render Judgment[10] on August 24, 2007, on the ground that petitioner failed to file his answer within the time prescribed by the Revised Rules on Summary Procedure.

On September 7, 2007, the MeTC issued an Order[11] ruling that in view of the fact that the amount being claimed by respondent exceeds ₱200,000.00, the case shall be governed by the "Rules on Regular Procedure." In the same Order, the MeTC denied petitioner's Motion for Reconsideration and directed him to file his Comment/Opposition to respondent's Motion to Render Judgment.

Petitioner filed his Opposition[12] on September 14, 2007.

On October 23, 2007, the MeTC issued an Order[13] denying respondent's Motion to Render Judgment reiterating its ruling that the case does not fall under the Revised Rules on Summary Procedure.

On November 14, 2007, respondent filed a Motion to Declare Defendant (herein petitioner) Hector Hernandez in Default and to Render Judgment.[14]

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[7] Annex "I" to Petition, *id*. at 56-59.

[8] Annex "F" to Petition, *id*. at 50-53.

[9] Annex "J" to Petition, *id*. at 60-61.

[10] Annex "K" to Petition, *id*. at 62-63.

[11] Annex "S" to Petition, *id*. at 79.

[12] Annex "M" to Petition, *id*. at 65-67.

[13] Annex "N" to Petition, *id*. at 68.

[14] Annex "O" to Petition, *id*. at 69-71.

Petitioner opposed contending that he has already filed his Answer prior to respondent's Motion to declare him in default and that he had actively participated in the case by filing various pleadings.[15]

On December 4, 2007, the MeTC issued an Order[16] declaring petitioner in default and directing respondent to present evidence *ex parte*.

Petitioner filed a Motion to Set Aside Order of Default,[17] but the MeTC denied it in its Order[18] dated February 8, 2008.

After respondent's evidence *ex parte* was presented, the MeTC rendered its Decision[19] dated August 6, 2008, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff Susan San Pedro Agoncillo and against the defendant Hector Hernandez, ordering him,
>
> a) To pay the plaintiff the amount of One Hundred Thirty-Two Thousand Three Hundred Two Pesos and 53/100 (Php 132,302.53) for the actual damages for the repair of the car and the towing fee;
>
> b) Attorney's fees in the amount of Ten Thousand Pesos (Php 10,000.00)
>
> c) And costs.
>
> The case as against defendant Fredie Apawan Verwin is dismissed without prejudice as summons was not validly served upon him.
>
> SO ORDERED.[20]

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[15] Annex "P" to Petition, *id*. at 72-74.

[16] Annex "Q" to Petition, *id*. at 75.

[17] Annex "R" to Petition, *id*. at 76-78.

[18] Annex "L" to Petition, *id*. at 64.

[19] Annex "T" to Petition, *id*. at 80-83.

[20] *Id*. at 83.

The MeTC held that respondent was able to sufficiently establish her cause of action against petitioner in accordance with the provisions of Article 2180 of the Civil Code.

Petitioner appealed to the RTC which, however, denied the same in its Decision dated February 18, 2009. The RTC affirmed the findings and conclusions of the MeTC. As to the procedural aspect, the RTC ruled that the MeTC correctly denied due course to petitioner's Answer as the Motion for Extension to file the same was filed out of time and that the said Answer was, in fact, filed beyond the extended period requested in the Motion for Extension.

Petitioner then filed a petition for review with the CA. On April 29, 2010, the CA rendered its assailed Decision denying the petition for lack of merit. Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution dated October 12, 2010.

Hence, the instant petition for review on *certiorari* raising a sole issue, to wit:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS DECISION IS IN ACCORD WITH APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT, SPECIFICALLY THE HONORABLE SUPREME COURT'S RULING IN *SABLAS vs. SABLAS* (526 SCRA 292 [2007]).[21]

Petitioner's basic contention is that, pursuant to this Court's ruling in *Sablas v. Sablas*,[22] the MeTC should have admitted his Answer as his pleading was filed before he was declared in default.

The petition is without merit.

It is true that this Court held in *Sablas* that where the Answer is filed beyond the reglementary period but before the defendant is declared in default and there is no showing that defendant

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[21] *Rollo*, p. 13.

[22] G.R. No. 144568, July 3, 2007, 526 SCRA 292.

intends to delay the case and no prejudice is caused to the plaintiff, the Answer should be admitted.[23]

It must be emphasized, however, that it is not mandatory on the part of the trial court to admit an Answer which is belatedly filed where the defendant is not yet declared in default. Settled is the rule that it is within the discretion of the trial court to permit the filing of an answer even beyond the reglementary period, **provided that there is justification for the belated action and there is no showing that the defendant intended to delay the case.**[24]

In the instant case, the MeTC found it proper not to admit petitioner's Answer and to subsequently declare him in default, because petitioner's *Ex Parte* Motion for Extension of Time to File His Answer was filed out of time; that petitioner filed his Answer beyond the period requested in the Motion for Extension; and that petitioner failed to appear during the scheduled hearing on respondent's Motion to declare him in default.

The Court finds no cogent reason to depart from the above ruling of the MeTC, as affirmed by the RTC and the CA.

Sablas differs from the instant case on two aspects, to wit: *first*, in *Sablas*, the petitioners' motion for extension to file their answer was seasonably filed while in the present case, petitioner's Motion for Extension to File His Answer was filed beyond the 15-day period allowed by the Rules of Court; *second*, in *Sablas*, since the trial court admitted the petitioners' Answer, this Court held that the trial court was correct in denying the subsequent motion of the respondent to declare the petitioners in default while, in the instant case, the MeTC denied due course to petitioner's Answer on the ground that the Motion for Extension was not seasonably filed and that the Answer was filed beyond the period requested in the Motion for Extension, thus, justifying

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[23] *Id*. at 298.

[24] *Philippine National Bank v. Deang Marketing Corporation*, G.R. No. 177931, December 8, 2008, 573 SCRA 312, 319, citing *Spouses Ampeloquio, Sr. v. Court of Appeals*, G.R. No. 124243, June 15, 2000, 333 SCRA 465, 470.

the order of default. Thus, the principle enunciated in *Sablas* is not applicable in the present case.

In this respect, the Court agrees with the CA in its ruling that procedural rules are not to be ignored or disdained at will to suit the convenience of a party.

Procedural rules are designed to facilitate the adjudication of cases.[25] Courts and litigants alike are enjoined to abide strictly by the rules.[26] While in certain instances, the Court allows a relaxation in the application of the rules, there is no intention to forge a weapon for erring litigants to violate the rules with impunity.[27] The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances.[28] While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[29] Party litigants and their counsel are well advised to abide by – rather than flaunt – procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice.[30]

Moreover, while the Court frowns upon default judgments, it does not condone gross transgressions of the rules.[31] The

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[25] *MCA-MBF Countdown Cards Philippines, Inc., et al. v. MBF Card International Limited, et al.*, G.R. No. 173586, March 14, 2012; *Spouses David Bergonia and Luzviminda Castillo v. Court of Appeals and Amado Bravo, Jr.*, G.R. No. 189151, January 25, 2012; *Alamayri v. Pabale*, G.R. No. 151243, April 30, 2008, 553 SCRA 146, 166; *Hun Hyung Park v. Eung Won Choi*, G.R. No. 165496, February 12, 2007, 515 SCRA 502, 510-511.

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] *Tagabi v. Tanque*, G.R. No. 144024, July 27, 2006, 496 SCRA 622, 631-632.

[31] *Philippine National Bank v. Deang Marketing Corporation, supra* note 24, at 322.

Court is duty-bound to observe its rules and procedures and uphold the noble purpose behind their issuance. Rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding.[32]

Petitioner's negligence in the present case is inexcusable, because aside from the belated filing of his Motion for Extension to File His Answer, he also failed to file his Answer within the period requested in his Motion without offering any justifiable excuse. Moreover, as observed by the MeTC in its Order dated February 8, 2008, petitioner also failed to appear during the scheduled hearing on respondent's Motion to Declare Him in Default. Furthermore, petitioner did not deny respondent's allegation that he also failed to appear during his requested date of hearing of his Motion to Set Aside the Order of Default. From these circumstances, the Court finds no compelling ground to depart from the findings of the CA that petitioner is guilty of deliberately employing delay in the prosecution of the civil case against him.

Aside from petitioner's abovementioned breach of procedural rules, the Court notes that petitioner and his counsel once again committed another violation when they failed to comply with this Court's Resolution dated March 16, 2011 requiring petitioner to file his Reply to respondent's Comment-Opposition to the present petition. It is true that this Court set aside its Resolution dated July 27, 2011 which dismissed the instant petition on the basis of this infraction committed by petitioner. However, it cannot be denied that this infringement affirms petitioner's propensity to ignore at will not only the rules of procedure but also the lawful order of the Court.

The Court agrees with respondent's observation that in his Memorandum filed with the RTC, petitioner reasoned out that his failure to seasonably file his Answer was due to the inadvertence and pressure of work on the part of his counsel.

In their Motion for Reconsideration of this Court's July 27, 2011 Resolution, petitioner, through his counsel, again used as

[32] *Id*. at 323.

excuse for their failure to file the required pleading the allegation that the counsel had voluminous workload. However, petitioner's counsel cannot hide from this pretense as he himself claimed that they, in fact, had no intention to file a Reply. Instead, they intended to simply file a Manifestation indicating their desire to waive their right to reply and that they are adopting the arguments in their Petition as their Reply to respondent's Comment. If that, indeed, was the case, then the preparation of the intended manifestation could have taken just a few minutes. In fact, a perusal of petitioner's Motion for Reconsideration with Manifestation shows that it is a mere recapitulation of his arguments raised in his petition.[33] Yet, petitioner failed to file his Manifestation on time, which is within a period of ten (10) days from his receipt of the Resolution requiring his reply. Indeed, petitioner's counsel admitted that they received the Resolution requiring petitioner to file his Reply on April 26, 2011. However, petitioner ignored this Resolution and it was only on September 16, 2011, or almost five months after, that petitioner filed his Motion for Reconsideration with Manifestation. Notably, the said Motion for Reconsideration with Manifestation was filed only when this Court issued another Resolution dismissing the instant petition for petitioner's failure to comply with the order of this Court directing him to file his reply. This only indicates that were it not for the dismissal of his petition, petitioner and his counsel would have continued to ignore this Court's lawful order.

Truly, the conduct of petitioner and his counsel can never be a case of excusable neglect. On the contrary, it smacks of a blatant disregard of the rules and lawful directives of the court. Thus, giving in to petitioner's maneuvering is tantamount to putting premium on a litigant's naked indolence and sanctioning a scheme of prolonging litigation.

It bears stressing that a lawyer has the responsibility of monitoring and keeping track of the period of time left to file pleadings, and to see to it that said pleadings are filed before

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[33] *Rollo*, pp. 145-151.

the lapse of the period.[34] If he fails to do so, his client is bound by his conduct, negligence and mistakes.[35] In the present case, petitioner and his counsel knew and should have known of the periods within which they are to file their pleadings. In fact, with respect to their Answer, they should be aware that they had only until July 21, 2007 to file the same because they were the ones who requested for an extension of time to file the said Answer. It was incumbent on petitioners' counsel to arrange his workload and attend to important and pressing matters such that pleadings are filed within the prescribed period therefor.[36] If the failure of the petitioners' counsel to cope with his heavy workload should be considered a valid justification to sidestep the reglementary period, there would be no end to litigations so long as counsel had not been sufficiently diligent or experienced.[37]

Time and again, this Court has cautioned lawyers to handle only as many cases as they can efficiently handle.[38] The zeal and fidelity demanded of a lawyer to his client's cause require that not only should he be qualified to handle a legal matter, he must also prepare adequately and give appropriate attention to his legal work.[39] Since a client is, as a rule, bound by the acts of his counsel, a lawyer, once he agrees to take a case, should undertake the task with dedication and care.[40] This Court frowns upon a lawyer's practice of repeatedly seeking extensions of time to file pleadings and thereafter simply letting the period lapse without submitting any pleading or even any explanation

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[34] *LTS Philippines Corporation v. Maliwat*, G.R. No. 159024, January 14, 2005, 448 SCRA 254, 259; 489 Phil. 230, 235 (2005).

[35] *Id*.

[36] *Id*.

[37] *Id*. at 259-260.

[38] *Salcedo v. Marino*, G.R. No. 170102, July 27, 2007, 528 SCRA 420, 425-426; *Bacarra v. National Labor Relations Commission*, G.R. No. 162445, October 20, 2005, 473 SCRA 581, 587; 510 Phil. 353, 359 (2005).

[39] *Id*.

[40] *Salcedo v. Marino, supra* note 38, at 426.

or manifestation for his omission.[41] Failure of a lawyer to seasonably file a pleading constitutes inexcusable negligence on his part.

On the other hand, it would not also be amiss to remind petitioner of the settled rule that litigants, represented by counsel, should not expect that all they need to do is sit back, relax and await the outcome of their case.[42] Instead, they should give the necessary assistance to their counsel and exercise due diligence to monitor the status of the case for what is at stake is their interest in the case.[43] This petitioner failed to do.

In any case, respondent was granted favorable relief only after the MeTC has ascertained that such relief is warranted by the evidence presented and the facts proven by the respondent. The Court agrees with the CA in holding that even if he was declared in default, petitioner was not deprived of his right to appeal. In fact, he appealed his case to the RTC, which ruled squarely on the merits of respondent's complaint and found sufficient evidence to sustain the ruling of the MeTC in respondent's favor.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** The April 29, 2010 Decision and the October 12, 2010 Resolution of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

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

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[41] *Id*.

[42] *Lao v. Special Plans, Inc*., G.R. No. 164791, June 29, 2010, 622 SCRA 27, 42.

[43] *Id*.

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

THIRD DIVISION

[G.R. No. 171855. October 15, 2012]

FE V. RAPSING, TITA C. VILLANUEVA and ANNIE F. APAREJADO, represented by EDGAR APAREJADO, *petitioners, vs.* **HON. JUDGE MAXIMINO R. ABLES, of RTC-Branch 47, Masbate City; SSGT. EDISON RURAL, CAA JOSE MATU, CAA MORIE FLORES, CAA GUILLIEN TOPAS, CAA DANDY FLORES, CAA LEONARDO CALIMUTAN and CAA RENE ROM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; DETERMINED BY THE NATURE OF THE ACTION ACCORDING TO THE ALLEGATIONS IN THE COMPLAINT.— It is an elementary rule of procedural law that jurisdiction over the subject matter of the case is conferred by law and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to recover upon all or some of the claims asserted therein. As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for otherwise, the question of jurisdiction would almost entirely depend upon the defendant. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments in the complaint and the character of the relief sought are the matters to be consulted.

2. ID.; ID.; RETURNING TO THE CIVIL COURTS CERTAIN OFFENSES INVOLVING MEMBERS OF THE ARMED FORCES OF THE PHILIPPINES (RA 7055); MURDER COMMITTED BY MEMBERS OF THE AFP IS WITHIN THE JURISDICTION OF THE REGIONAL TRIAL COURT. — In the case at bar, the information states that respondents, "conspiring together and mutually helping with one another, taking advantage of their superior strength, as elements of the Philippine Army, armed with their government-issued firearms with intent to kill, by means of treachery and evident

premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot the [victims], hitting them on different parts of their bodies, thereby inflicting upon them multiple gunshot wounds which caused their deaths." Murder is a crime punishable under Article 248 of the Revised Penal Code (RPC), as amended, and is within the jurisdiction of the RTC. Hence, irrespective of whether the killing was actually justified or not, jurisdiction to try the crime charged against the respondents has been vested upon the RTC by law.

APPEARANCES OF COUNSEL

Alexis C. Albao for petitioners.
The Solicitor General for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for *Certiorari* and *Prohibition* under Rule 65 of the Rules of Court, filed by petitioners Fe Rapsing, Tita C. Villanueva and Annie Aparejado, as represented by Edgar Aparejado, seeking to set aside the Orders dated December 6, 2005[1] and January 11, 2006,[2] respectively, of the Regional Trial Court (RTC) of Masbate City, Branch 47, in Criminal Case No. 11846.

The antecedents are as follows:

Respondents SSgt. Edison Rural, CAA Jose Matu, CAA Morie Flores, CAA Guillien Topas, CAA Dandy Flores, CAA Leonardo Calimutan and CAA Rene Rom are members of the Alpha Company, 22nd Infantry Battalion, 9th Division of the Philippine Army based at Cabangcalan Detachment, Aroroy, Masbate.

Petitioners, on the other hand, are the widows of Teogenes Rapsing, Teofilo Villanueva and Edwin Aparejado, who were allegedly killed in cold blood by the respondents.

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[1] *Rollo*, pp. 81-82.

[2] *Id.* at 91.

Respondents alleged that on May 9, 2004, around 1 o'clock in the afternoon, they received information about the presence of armed elements reputed to be New People's Army (NPA) partisans in Sitio Gaway-gaway, Barangay Lagta, Baleno, Masbate. Acting on the information, they coordinated with the Philippine National Police and proceeded to the place. Thereat, they encountered armed elements which resulted in an intense firefight. When the battle ceased, seven (7) persons, namely: Teogenes Rapsing *y* Manlapaz, Teofilo Villanueva *y* Prisado, Marianito Villanueva *y* Oliva, Edwin Aparejado *y* Valdemoro, Isidro Espino *y* Arevalo, Roque Tome *y* Morgado and Norberto Aranilla *y* Cordova were found sprawled on the ground lifeless. The post-incident report of the Philippine Army states that a legitimate military operation was conducted and in the course of which, the victims, armed with high-powered firearms, engaged in a shoot-out with the military.

On the other hand, petitioners complained that there was no encounter that ensued and that the victims were summarily executed in cold blood by respondents. Hence, they requested the National Bureau of Investigation (NBI) to investigate the case. After investigation, the NBI recommended to the Provincial Prosecutor of Masbate City that a preliminary investigation be conducted against respondents for the crime of multiple murder. In reaching its recommendation, the NBI relied on the statements of witnesses who claim that the military massacred helpless and unarmed civilians.

On February 9, 2005, the provincial prosecutor issued a Resolution[3] recommending the filing of an Information for Multiple Murder. Consequently, respondents were charged with multiple murder in an Information[4] dated February 15, 2005, which reads:

The undersigned 2nd Assistant Provincial Prosecutor accuses SSGT Edison Rural, CAA Jose Matu. CAA Morie Flores, CAA Guillen Topas, CAA Dandy Flores, CAA Leonardo Calimutan and CAA Rene Rom, stationed at Alpha Company, 22nd Infantry Battalion, 9th Division,

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

[4] *Id.* at 42.

Philippine Army, Cabangcalan Detachment, Aroroy, Masbate, committed as follows:

> That on May 9, 2004, at around 1:00 o'clock in the afternoon thereof, at Barangay Lagta, Municipality of Baleno, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with one another, taking advantage of their superior strength as elements of the Philippine Army, armed with their government issued firearms, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot Teogenes Rapsing *y* Manlapaz, Teofilo Villanueva *y* Prisado, Marianito Villanueva *y* Oliva, Edwin Aparejado *y* Valdemoro, Isidro Espino *y* Arevalo, Roque Tome *y* Morgado and Norberto Aranilla *y* Cordova, hitting them on different parts of their bodies, thereby inflicting upon them multiple gunshot wounds which caused their deaths.
>
> CONTRARY TO LAW.
>
> Masbate City, February 15, 2005.

On July 28, 2005, a warrant[5] for the arrest of respondents was issued by the RTC of Masbate City, Branch 47, but before respondents could be arrested, the Judge Advocate General's Office (JAGO) of the Armed Forces of the Philippines (AFP) filed an Omnibus Motion[6] with the trial court seeking the cases against respondents be transferred to the jurisdiction of the military tribunal.[7] Initially, the trial court denied the motion filed by the JAGO on the ground that respondents have not been arrested. The JAGO filed a Motion for Reconsideration,[8] and in an Order[9] dated December 6, 2005, the trial court granted the Omnibus Motion and the entire records of the case were

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[5] *Id.* at 43.

[6] *Id.* at 45-56.

[7] *Id.*

[8] *Id.* at 64-70.

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

turned over to the Commanding General of the 9th Infantry Division, Philippine Army, for appropriate action.

Petitioners sought reconsideration[10] of the Order, but was denied by the trial court in an Order[11] dated January 11, 2006.

Hence, the present petition with the following arguments:

I

HON. JUDGE MAXIMINO ABLES GRAVELY ABUSED HIS DISCRETION AMOUNTING TO EXCESS OF JURISDICTION IN GRANTING THE MOTION TO TRANSFER THE INSTANT CRIMINAL CASE OF MULTIPLE MURDER TO THE JURISDICTION OF THE MILITARY COURT MARTIAL, AS THE SAID TRIBUNAL, BASED ON FACTS AND IN LAW, HAS NO JURISDICTION OVER THE INSTANT MURDER CASE.

II

IT IS GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS IN JURISDICTION IF NOT GROSS IGNORANCE OF THE LAW ON THE PART OF HONORABLE JUDGE MAXIMINO ABLES TO HOLD THAT HIS ORDER DATED DECEMBER 6, 2005 COULD ONLY BE REVIEWED THROUGH AN APPEAL, AS THERE IS NO TRIAL ON THE MERIT YET ON THE INSTANT CRIMINAL CASE.[12]

Petitioners alleged that the trial court gravely abused its discretion amounting to excess of jurisdiction when it transferred the criminal case filed against the respondents to the jurisdiction of the military tribunal, as jurisdiction over the same is conferred upon the civil courts by Republic Act No. 7055 (RA 7055).[13] On the other hand, the respondents and the Office of the Solicitor

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[10] *Id.* at 83-87.

[11] *Id.* at 91.

[12] *Id.* at 12.

[13] An Act to Strengthen Civilian Supremacy Over the Military by Returning to the Civil Courts the Jurisdiction Over Certain Offense Involving Members of the Armed Forces of the Philippines, Other Persons Subject to Military Law, and the Members of the Philippine National Police, Repealing for the Purpose Certain Presidential Decrees.

General (OSG) alleged that the acts complained of are service connected and falls within the jurisdiction of the military court.

The petition is meritorious. The trial court gravely abused its discretion in not taking cognizance of the case, which actually falls within its jurisdiction.

It is an elementary rule of procedural law that jurisdiction over the subject matter of the case is conferred by law and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to recover upon all or some of the claims asserted therein.[14] As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for otherwise, the question of jurisdiction would almost entirely depend upon the defendant. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments in the complaint and the character of the relief sought are the matters to be consulted.[15]

In the case at bar, the information states that respondents, "conspiring together and mutually helping with one another, taking advantage of their superior strength, as elements of the Philippine Army, armed with their government-issued firearms with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot the [victims], hitting them on different parts of their bodies, thereby inflicting upon them multiple gunshot wounds which caused their deaths."[16] Murder is a crime punishable under Article 248 of the Revised Penal Code (RPC), as amended, and is within the jurisdiction of the RTC.[17] Hence, irrespective of whether the killing was actually

[14] *Reyes v. Regional Trial Court of Makati, Branch 142,* G.R. No. 165744, August 11, 2008, 561 SCRA 593, 604.

[15] *Cadimas v. Carrion,* G.R. No. 180394, September 29, 2008, 567 SCRA 101, 116.

[16] *Rollo,* p. 42.

[17] Batas Pambansa Blg. 129, as amended. Section 20. *Jurisdiction in criminal cases.* – Regional Trial Courts shall exercise exclusive original

justified or not, jurisdiction to try the crime charged against the respondents has been vested upon the RTC by law.

Respondents, however, contend that the military tribunal has jurisdiction over the case at bar because the crime charged was a service-connected offense allegedly committed by members of the AFP. To support their position, respondents cite the senate deliberations on R.A. 7055. Respondents stress in particular the proposal made by Senator Leticia Ramos Shahani to define a service-connected offense as those committed by military personnel pursuant to the lawful order of their superior officer or within the context of a valid military exercise or mission.[18] Respondents maintain that the foregoing definition is deemed part of the statute.

However, a careful reading of R.A. 7055 indicates that the proposed definition was not included as part of the statute. The proposed definition made by Senator Shahani was not adopted due to the amendment made by Senator Wigberto E. Tañada, *to wit:*

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jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.

[18] Senator Shahani. I would like to propose an addition to Section 1, but this will have to be on page 2. This will be in line 5, which should be another paragraph, but still within Section 1. This is to propose a definition of what "service-connected" means, because this appears on line 8. My proposal is the following:

"SERVICE-CONNECTED OFFENSES SHALL MEAN THOSE COMMITTED BY MILITARY PERSONNEL PURSUANT TO THE LAWFUL ORDER OF THEIR SUPERIOR OFFICER OR WITHIN THE CONTEXT OF A VALID MILITARY EXERCISE OR MISSION."

I believe this amendment seeks to avoid any confusion as to what "service-connected offense" means. Please note that "service-connected offense," under this bill, remains within the jurisdiction of military tribunals.

So, I think that is an important distinction, Mr. President. (Record of the Senate, Vol. IV, No. 122, May 21, 1990, p. 837, cited in *Navales v. Abaya*, G.R. Nos. 162318 and 162341, October 25, 2004, 441 SCRA 393, 415; 484 Phil. 367, 389-390 (2004).

Senator Tañada. Yes, Mr. President. ***I would just want to propose to the Sponsor of this amendment to consider, perhaps, defining what this service-related offenses would be under the Articles of War. And so, I would submit for her consideration the following amendment to her amendment which would read as follows: AS USED IN THIS SECTION, SERVICE-CONNECTED CRIMES OR OFFENSES SHALL BE LIMITED TO THOSE DEFINED IN ARTICLES 54 TO 70, ARTICLES 72 TO 75, ARTICLES 76 TO 83 AND ARTICLES 84 TO 92, AND ARTICLES 95 TO 97, COMMONWEALTH ACT NO. 408 AS AMENDED.***

This would identify, I mean, specifically, what these service-related or connected offenses or crimes would be. (Emphasis supplied.)

The President. What will happen to the definition of "service-connected offense" already put forward by Senator Shahani?

Senator Tañada. I believe that would be incorporated in the specification of the Article I have mentioned in the Articles of War.

SUSPENSION OF THE SESSION

The President. Will the Gentleman kindly try to work it out between the two of you? I will suspend the session for a minute, if there is no objection. [*There was none*.]

It was 5:02 p.m.

RESUMPTION OF THE SESSION

At 5:06 p.m., the session was resumed.

The President. The session is resumed.

Senator Tañada. Mr. President, Senator Shahani has graciously accepted my amendment to her amendment, subject to refinement and style.

The President. Is there any objection? [*Silence*] There being none, the amendment is approved.[19]

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[19] Record of the Senate, Vol. IV, No. 122, May 21, 1990, p. 837, cited in *Navales v. Abaya*, G.R. Nos. 162318 and 162341, October 25, 2004, 441 SCRA 393, 415-416; 484 Phil. 367, 390 (2007).

In the same session, Senator Tañada emphasized:

Senator Tañada. ***Section 1, already provides that crimes of offenses committed by persons subject to military law ... will be tried by the civil courts, except, those which are service-related or connected. And we specified which would be considered service-related or connected under the Articles of War, Commonwealth Act No. 408***.[20] (Emphasis supplied.)

The said amendment was later on reflected in the final version of the statute as Paragraph 2 of Section 1. Section 1 of R.A. 7055 reads in full:

Section 1. Members of the Armed Forces of the Philippines and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances, regardless of whether or not civilians are co-accused, victims, or offended parties which may be natural or juridical persons, shall be tried by the proper civil court, except when the offense, as determined before arraignment by the civil court, is service-connected, in which case the offense shall be tried by court-martial: Provided, That the President of the Philippines may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.

As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended. (Emphasis supplied)

The second paragraph of Section 1 of R.A. 7055 explicitly specifies what are considered "service-connected crimes or offenses" under Commonwealth Act No. 408 (CA 408), as amended,[21] to wit:

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[20] Record of the Senate, Vol. IV, No. 122, May 21, 1990, p. 839, cited in *Navales v. Abaya*, G.R. Nos. 162318 and 162341, October 25, 2004, 441 SCRA 393, 416; 484 Phil. 367, 391 (2004).

[21] Articles of War.

Articles 54 to 70:

Art. 54. *Fraudulent Enlistment.*

Art. 55. *Officer Making Unlawful Enlistment.*

Art. 56. *False Muster.*

Art. 57. *False Returns.*

Art. 58. *Certain Acts to Constitute Desertion.*

Art. 59. *Desertion.*

Art. 60. *Advising or Aiding Another to Desert.*

Art. 61. *Entertaining a Deserter.*

Art. 62. *Absence Without Leave.*

Art. 63. *Disrespect Toward the President, Vice-President, Congress of the Philippines, or Secretary of National Defense.*

Art. 64. *Disrespect Toward Superior Officer.*

Art. 65. *Assaulting or Willfully Disobeying Superior Officer.*

Art. 66. *Insubordinate Conduct Toward Non-Commissioned Officer.*

Art. 67. *Mutiny or Sedition.*

Art. 68. *Failure to Suppress Mutiny or Sedition.*

Art. 69. *Quarrels; Frays; Disorders.*

Art. 70. *Arrest or Confinement.*

Articles 72 to 92

Art. 72. *Refusal to Receive and Keep Prisoners.*

Art. 73. *Report of Prisoners Received.*

Art. 74. *Releasing Prisoner Without Authority.*

Art. 75. *Delivery of Offenders to Civil Authorities.*

Art. 76. *Misbehavior Before the Enemy.*

Art. 77. *Subordinates Compelling Commander to Surrender.*

Art. 78. *Improper Use of Countersign.*

Art. 79. *Forcing a Safeguard.*

Art. 80. *Captured Property to be Secured for Public Service.*

Art. 81. *Dealing in Captured or Abandoned Property.*

Art. 82. *Relieving, Corresponding With, or Aiding the Enemy.*

Art. 83. *Spies.*

Art. 84. *Military Property. – Willful or Negligent Loss, Damage or Wrongful Disposition.*

Art. 85. *Waste or Unlawful Disposition of Military Property Issued to Soldiers.*

Art. 86. *Drunk on Duty.*

Art. 87. *Misbehavior of Sentinel.*

Art. 88. *Personal Interest in Sale of Provisions.*

Art. 88-*A. Unlawfully Influencing Action of Court.*

Art. 89. *Intimidation of Persons Bringing Provisions.*

Art. 90. *Good Order to be Maintained and Wrongs Redressed.*

Art. 91. *Provoking Speeches or Gestures.*

Art. 92. *Dueling.*

Articles 95 to 97:

Art. 95. *Frauds Against the Government.*

Art. 96. *Conduct Unbecoming an Officer and Gentleman.*

Art. 97 *General Article.*

In view of the provisions of R.A. 7055, the military tribunals cannot exercise jurisdiction over respondents' case since the offense for which they were charged is not included in the enumeration of "service-connected offenses or crimes" as provided for under Section 1 thereof. The said law is very clear that the jurisdiction to try members of the AFP who commit crimes or offenses covered by the RPC, and which are not service-connected, lies with the civil courts. Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed. There is no room for interpretation, but only application.[22] Hence, the RTC cannot divest itself of its jurisdiction over the alleged crime of multiple murder.

WHEREFORE, the assailed Orders of the Regional Trial Court of Masbate City, Branch 47, dated December 6, 2005

[22] *Manlangit v. Sandiganbayan,* G.R. No. 158014, August 28, 2007, 531 SCRA 420, 428.

and January 11, 2006, respectively, in Criminal Case No. 11846 are **REVERSED** and **SET ASIDE.** The Regional Trial Court, Branch 47, Masbate City, is **DIRECTED** to reinstate Criminal Case No. 11846 to its docket and conduct further proceedings thereon with utmost dispatch in light of the foregoing disquisition.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 196383. October 15, 2012]

ROBERT PASCUA, doing business under the name and style TRI-WEB CONSTRUCTION, *petitioner, vs.* **G & G REALTY CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE TRIAL COURT, RESPECTED.—** Time and again, this Court has also ruled that factual findings of trial courts are entitled to great weight and respect on appeal, especially when established by unrebutted testimonial and documentary evidence, as in this case.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONSTRUCTION CONTRACT AS A RECIPROCAL OBLIGATION IN CASE AT BAR, DISCUSSED.—** *Dieparine, Jr. v. Court of Appeals* states that "a construction contract necessarily involves reciprocal obligations as it imposes upon the contractor the obligation to build the structure

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[*] Designated Acting Member, per Special Order No. 1343 dated October 9, 2012.

> subject of the contract, and upon the owner the obligation to pay for the project upon its completion. Pursuant to the contractual obligations [at bar], petitioner completed the construction of the four-storey commercial building and two-storey kitchen with dining hall. Thus, this Court finds no legal basis for respondent to not comply with its obligation to pay the balance of the contract price due the petitioner. What's more, in *Heirs of Ramon Gaite v. The Plaza, Inc.*, this Court held that "under the principle of *quantum meruit*, a contractor is allowed to recover the reasonable value of the thing or service rendered in order to avoid unjust enrichment. *Quantum meruit* means that in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves. To deny payment for a building almost completed and already occupied would be to permit unjust enrichment at the expense of the contractor."

APPEARANCES OF COUNSEL

Rhoderick D.M. De La Paz for petitioner.
Capulong & Landrido Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* filed by petitioner under Rule 45 of the Rules of Court which assails the Amended Decision[1] dated March 15, 2010 of the Court of Appeals in CA-G.R. CV No. 89480.

The factual antecedents follow:

On October 15, 1999, an Agreement was entered into between petitioner and respondent for the construction of a four-storey commercial building and two-storey kitchen with dining hall. Under said Agreement, petitioner undertook to provide all materials

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario, concurring; *rollo*, pp. 39-50.

and adequate labor, technical expertise and supervision for the said construction, while respondent obligated itself to pay the amount of Eleven Million One Hundred Thousand Pesos (₱11,100,000.00).

During the course of the construction project, respondent required petitioner to undertake several additional works and change order works which were not covered by the original agreement. Since respondent required petitioner to prioritize the change order and additional works, the construction of the four-storey building had to be temporarily halted.

Sometime in 2000, petitioner was able to finish the construction of the four-storey building and two-storey kitchen with dining hall, albeit behind the scheduled turnover date.

The parties then proceeded to punch list the minor repair works on the project. However, after completing all punch listing requirements, respondent refused to settle its outstanding obligation to petitioner. Hence, petitioner filed a Complaint for Sum of Money with Damages before the Regional Trial Court of Pasig City.

After trial on the merits, the trial court ruled in favor of petitioner, *viz.*:

> Based on the evidence presented by plaintiff, this Court is convinced that the delay incurred by the plaintiff in the completion of the construction project was reasonable, and does not merit the defendant's claim for payment of Php5,000.00 penalty per day of delay. **Although plaintiff does not dispute that the work was completed beyond the given deadline, he has sufficiently explained that the cause of delay were the additional works and change order works undertaken by the construction corporation in accordance with the instructions of defendant**. Defendant did not deny the existence of the said additional works. Plaintiff cannot be faulted in any shortage in the supply of labor, since the additional works are not contemplated in the original agreement of the parties.
>
> That the punch listed repairs have been completed by the plaintiff is likewise sufficiently proved by the plaintiff through testimonial and documentary evidence. If there were remaining defects and

uncompleted works, defendant should have pointed out the same when it received the list of the accomplished repairs.

x x x x x x x x x

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff ROBERT PASCUA, doing business under the name and style of TRI-WEB CONSTRUCTION, and against defendant G & G REALTY CORPORATION, ordering the latter to pay plaintiff the following:

1.) The remaining balance of the contract price, less the cost of government permits and taxes which may have been shouldered by defendant, subject to documentary proof;

2.) Php50,000.00 by way of attorney's fees; and

3.) Cost of suit.

SO ORDERED.[2] (Emphasis supplied)

On appeal, the Court of Appeals (*appellate court*) affirmed the trial court's ruling in a Decision[3] dated May 11, 2009. The *fallo* of said decision states:

WHEREFORE, the instant appeal is **AFFIRMED WITH MODIFICATION** in that defendant-appellant G & G Realty Corporation is ordered to pay plaintiff-appellee Robert Pascua: (1) the remaining balance of the contract price, less the **penalty and other incidental expenses spent *vis-à-vis* the violations cited by BFP and Maynilad**, as well as the cost of government permits and taxes which may have been shouldered by defendant-appellant G & G in relation to said violations; and (2) costs of suit. The award of attorney's fees is **DELETED** for lack of basis.

SO ORDERED.[4]

Upon respondent's motion for reconsideration, the appellate court reconsidered and vacated its original decision.

In its Amended Decision, the appellate court ruled in favor of respondent. It held that petitioner is not entitled to the unpaid

[2] RTC Decision dated January 31, 2007, *rollo*, pp. 69-71.

[3] *Id.* at 52-65.

[4] *Id.* at 64-65. (Emphasis in the original)

balance of the contract price, since the cause of delay in the construction of the four-storey commercial building and two-storey kitchen with dining hall was due to petitioner's acceptance of two new other contracts for repair works. The dispositive portion of said decision states:

> **WHEREFORE, Our May 11, 2009 Decision** is **RECONSIDERED** and **VACATED**. Setting aside the assailed Decision of the RTC of Pasig City, Branch 67 dated January 31, 2007, judgment is hereby rendered directing plaintiff-appellee Robert Pascua to pay defendant-appellant G & G Realty Corporation:
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> 1. the amount of ₱160,107.07 as penalty and other incidental expenses *vis-à-vis* the violations cited by the BFP and Maynilad;
> 2. the amount of ₱177,360.10 as total refundable balance due G & G; and
> 3. Costs of suit.
>
> SO ORDERED.[5]

Not satisfied with the appellate court's Amended Decision, petitioner appealed to this Court raising the following issues:

I. THE COURT OF APPEALS COMMITTED A SERIOUS ERROR WHEN IT OVERTURNED AND REVERSED ITS ORIGINAL DECISION DATED 11 MAY 2009 AND, INSTEAD, DECLARED PETITIONER LIABLE TO RESPONDENT DESPITE THE EXISTENCE OF OVERWHELMING PROOF SUPPORTING PETITIONER'S CLAIM FOR THE UNPAID BALANCE OF THE CONTRACT PRICE.

II. THE COURT OF APPEALS GROSSLY MISCONSTRUED AND MISINTERPRETED THE FACTS OF THE CASE, WHILE COMMITTING A SERIOUS MISAPPRECIATION OF THE EVIDENCE AS BORNE BY THE RECORDS, WHEN IT RENDERED JUDGMENT INCONSISTENT WITH, IF NOT CONTRADICTORY TO, THE APPLICABLE RULINGS OF THE SUPREME COURT.

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[5] *Id*. at 49. (Emphasis in the original)

III. THE AMENDED DECISION IS UNJUST, ERRONEOUS, OPPRESSIVE AND CONTRARY TO LAW, JURISPRUDENCE, AND THE FACTS OF THE CASE INSOFAR AS IT FOUND THAT THE DELAYS ON THE COMPLETION OF THE CONSTRUCTION PROJECT WERE CAUSED BY THE PETITIONER.

IV. THE COURT OF APPEALS VIOLATED THE RULES OF EVIDENCE WHEN IT ADMITTED HEARSAY TESTIMONY IN ARRIVING AT A FINDING THAT PETITIONER IS NOT ENTITLED TO THE PAYMENT OF THE UNPAID BALANCE OF THE CONTRACT PRICE.

V. THE COURT OF APPEALS COMMITTED A PALPABLE ERROR WHEN IT GRANTED RESPONDENT'S APPEAL NOTWITHSTANDING THE LACK OF AUTHORITY ON THE PART OF RESPONDENT CORPORATION TO INTERPOSE THE SAME.

VI. THE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR WHEN IT MADE A JUDGMENT AWARD FOR THE BFP AND MAYNILAD PENALTIES DESPITE THE FACT OF NON-PAYMENT OF THE REQUIRED FILING FEES COVERING RESPONDENT'S PERMISSIVE COUNTERCLAIMS.[6]

In the main, the issue to be resolved is whether or not petitioner is entitled to the payment of the outstanding balance of the contract price.

Petitioner insists that respondent should pay the remaining balance on the contract price. It asserts that the testimonies and documentary evidence presented before the trial court sufficiently prove that it was respondent's additional works and change orders which caused the delay in the completion of the proposed project.

For its part, respondent anchors its non-payment of the remaining balance primarily on the defects and delays incurred by petitioner in the completion of the construction project. It argues that it was petitioner's undertaking of two new other

[6] *Id.* at 8-9. (Emphasis in the original)

contracts for repair works that caused the delay in the completion of the subject project.

We find merit in the present petition.

A close perusal of the records would show that there is no reason for this Court to deviate from the factual findings of the trial court. It was unnecessary for the appellate court to depart from the factual findings of the trial court as the same is supported by the evidence on record.

Here, the trial court correctly found that respondent's additional works and change order works caused the delay in the construction of the subject project. Based on testimonial and documentary evidence gathered by the trial court, it found that –

> During the course of the construction project, defendant required plaintiff to undertake several additional works and change order works. Defendant, through Dra. Germar, ordered the construction of a roof deck, installation of aluminum windows, insulation, narra parquet, additional lights, doors, confort (sic) rooms and air conditioning unit, *etc*., all of which were not covered by the original agreement (Exhs. "J" to "Q"). **Said works were done in the same area covered by the Agreement. Because defendant told plaintiff to prioritize the change order and additional works, plaintiff had to stop the construction of the four-storey building.** The access to the roof deck was only 1.5 meters, hence, plaintiff had to stop the construction of the building in order to allow the materials to pass through.[7]

Time and again, this Court has also ruled that factual findings of trial courts are entitled to great weight and respect on appeal, especially when established by unrebutted testimonial and documentary evidence,[8] as in this case.

Withal, there is no more need for the appellate court to deviate from its original decision as its factual findings were already

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[7] RTC Decision dated January 31, 2007, *rollo*, p. 21. (Emphasis supplied)

[8] *Liberty Construction & Development Corporation v. Court of Appeals*, G.R. No. 106601, June 28, 1996, 257 SCRA 696, 701; 327 Phil. 490, 495 (1996).

supported by testimonies and evidence on record. As stated in its original decision, it held that the evidence on record categorically showed that the alluded delay in the completion of the subject project were traceable to the series of additional works and change order works required by respondent which were not part of the original agreement. Hence, in reversing its own decision, the appellate court completely disregarded the testimonial and documentary evidence adduced below, and engaged in piecemeal evaluation of the case by arriving at a decision which is supported by hearsay evidence.

All told, we are not persuaded with respondent's bare claim that petitioner caused the delay in the completion of the project. On the contrary, testimonial and documentary proof strongly show that the delay was caused by the additional works and change order works required by respondent which were not part of the original Agreement.

Apropos, *Dieparine, Jr. v. Court of Appeals*[9] states that "a construction contract necessarily involves reciprocal obligations, as it imposes upon the contractor the obligation to build the structure subject of the contract, and upon the owner the obligation to pay for the project upon its completion.

Pursuant to the aforementioned contractual obligations, petitioner completed the construction of the four-storey commercial building and two-storey kitchen with dining hall. Thus, this Court finds no legal basis for respondent to not comply with its obligation to pay the balance of the contract price due the petitioner.

What's more, in *Heirs of Ramon Gaite v. The Plaza, Inc.*,[10] this Court held that "under the principle of *quantum meruit*, a contractor is allowed to recover the reasonable value of the thing or service rendered in order to avoid unjust enrichment. *Quantum meruit* means that in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably

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[9] G.R. No. 96643, April 23, 1993, 221 SCRA 503, 512-513.

[10] G.R. No. 177685, January 26, 2011, 640 SCRA 576, 594.

deserves. To deny payment for a building almost completed and already occupied would be to permit unjust enrichment at the expense of the contractor."

As in this case, petitioner already completed the construction of the project. Hence, it would be the height of injustice to allow respondent to enjoy the fruits of petitioner's labor without paying the contract price.

WHEREFORE, the instant petition is **GRANTED.** The Amended Decision dated March 15, 2010 of the Court of Appeals is hereby **REVERSED** and **SET ASIDE.**

SO ORDERED.

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

EN BANC

[G.R. Nos. 130714 & 139634. October 16, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VAL DE LOS REYES and DONEL GO,** *accused-appellants.*

[G.R. Nos. 139331 & 140845-46. October 16, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VAL DE LOS REYES,** *accused-appellant.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; APPELLANT WHO IS CONSIDERED A FUGITIVE FROM JUSTICE HAS NO

[*] Designated Acting Member, per Special Order No. 1343 dated October 9, 2012.

RIGHT TO SEEK RELIEF.— Records reveal that the appellant jumped bail during the proceedings before the RTC and was, in fact, tried and convicted *in absentia*. There is dearth of evidence showing that he has since surrendered to the court's jurisdiction. Thus, he has no right to pray for affirmative relief before the courts. Once an accused escapes from prison or confinement, jumps bail as in appellant's case, or flees to a foreign country, he loses his standing in court, and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief therefrom. Thus, even if the Court were to remand these cases to the CA for intermediate review, the CA would only be constrained to dismiss appellant's appeal, as he is considered a fugitive from justice.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for Donel G.
Levi M. Ramirez for Val De Los Reyes.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This refers to the June 25, 1997 Decision[1] of the Regional Trial Court (RTC) of Tabaco, Albay, Branch 16, convicting appellant Donel Go (appellant) of two (2) counts of rape and sentencing him to suffer the death penalty for each count and to pay moral damages and attorney's fees. By reason of the penalty imposed, these cases were elevated to the Court for automatic review.

The Factual Antecedents

On December 22, 1994, at around 4:00 o'clock in the afternoon, complainant Imelda B. Brutas (Imelda), upon the request of her sister Clara, went to the house of appellant at San Roque, Tabaco, Albay to bring some pictures. Upon arrival thereat,

[1] *Rollo* (G.R. Nos. 130714 & 139634), pp. 21-44.

Imelda saw appellant by the road outside his house talking to another man, whom appellant introduced to her as Val De Los Reyes (Val). However, because it suddenly rained, the three of them took shelter inside appellant's house, where appellant and Val forced Imelda to drink two bottles of beer, causing her to feel dizzy. It was under this condition that Val succeeded in having sexual intercourse with her against her will. Thereafter, appellant took his turn with Imelda, aided by Val who covered her mouth and held her hands.

Apparently not satisfied, Val once again ravished Imelda, with the assistance of appellant who likewise covered her mouth and held her hands.

Thus, Imelda filed criminal complaints for rape against appellant and Val, who were jointly charged in two (2) Informations, as follows:

Criminal Case No. T-2640[2]

That on or about the 22nd day of December, 1994 at more or less between the hours of 4:00 o'clock in the afternoon and 10:00 o'clock in the evening at Barangay San Roque, Tabaco, Albay, [Philippines, and within the jurisdiction of this Honorable Court,] DONEL GO, with the indispensable cooperation and help of VAL DE LOS REYES, by means of force and intimidation and rendering IMELDA B. BRUTAS almost unconscious by forcing private complainant to drink two bottles of beer, DONEL GO, wilfully, unlawfully and feloniously did lie and succeeded in having carnal knowledge of IMELDA B. BRUTAS, against her will, to her damage and prejudice.

Criminal Case No. T-2641[3]

That on or about the 22nd day of December, 1994 at more or less between the hours of 4:00 o'clock in the afternoon and 10:00 o'clock in the evening at Barangay San Roque, Tabaco, Albay, Philippines, and within the jurisdiction of this Honorable Court, VAL DE LOS REYES, with the indispensable cooperation and help of DONEL GO, by means of force and intimidation and rendering IMELDA B. BRUTAS almost unconscious by forcing private complainant to drink

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[2] *Id.* at 4.

[3] *Id.* at 6.

two bottles of beer, VAL DE LOS REYES, wilfully, unlawfully and feloniously did lie and succeeded in having carnal knowledge of IMELDA B. BRUTAS, against her will, to her damage and prejudice.

Unfortunately, the authorities were able to arrest only appellant while Val remained at large. Thus, appellant was arraigned and pleaded *not guilty* to the crime charged, but before the prosecution could conclude the presentation of its evidence, he jumped bail. Consequently, he was tried *in absentia*.

On June 25, 1997, the RTC convicted[4] appellant of two (2) counts of rape and sentenced him to suffer the death penalty for each count and to pay moral damages and attorney's fees. In view of the penalty of death imposed upon him, the case was elevated to the Court on automatic review, herein docketed as G.R. Nos. 130714 and 139634. Meanwhile, the cases against Val were sent to the archives pending his arrest.

On August 19, 1997, the RTC revived[5] the criminal cases against Val, who, after trial, was likewise found guilty beyond reasonable doubt of the three (3) charges of rape filed against him.[6] Through counsel, Val appealed his conviction before the Court, docketed as G.R. Nos. 139331 and 140845-46.

On August 14, 2000, the Court ordered[7] the consolidation of the five (5) cases.

On December 27, 2002, the Court *En Banc* rendered a Decision[8] vacating the judgment of conviction against Val, upon a finding that the RTC violated Sections 1 and 2, Rule 132 and Section 1, Rule 133 of the then Revised Rules of Court which required that the testimonies of the witnesses be given orally. It would appear from the records that during Val's trial, the prosecution merely adopted the transcript of the stenographic notes during the trial against appellant and asked the prosecution

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[4] *Supra* note 1.

[5] *Rollo* (G.R. Nos. 139331 & 140845-46), p. 47.

[6] *Id.* at 27-44.

[7] *Id.* at 140.

[8] *Rollo*, (G.R. Nos. 130714 & 139634), pp. 285-305.

witnesses to affirm their previous testimonies. Thus, finding that the proceedings against Val were abbreviated and irregular, the Court **remanded** G.R. Nos. 139331 and 140845-46 to the RTC for rehearing. Meanwhile, the automatic review of the cases against appellant in G.R. Nos. 130714 and 139634 was held in abeyance.

Val was tried anew before the RTC, which, in its Joint Decision[9] dated June 28, 2005, eventually convicted him for three (3) counts of rape and sentenced him to suffer the death penalty as well as to pay private complainant ₱50,000.00 as damages for each count. He appealed his conviction to the Court of Appeals (CA), docketed as CA-G.R. CR-H.C. No. 01642 which in its December 19, 2006 Decision,[10] affirmed his conviction, with the modification reducing the penalty of death to *reclusion perpetua* for each count, and ordering the payment of the amount of ₱50,000.00 by way of moral damages to the victim. Val's motion for reconsideration was likewise denied,[11] hence, his separate appeal before the Court, docketed as G.R. No. 177357, pending before the Court's Third Division. With the foregoing factual backdrop, only appellant's appeal is left before the Court *En Banc* for resolution.

The Court's Ruling

At the outset, the Court notes that these cases were elevated to Us on automatic review in view of the RTC's imposition of the death penalty upon appellant in its June 25, 1997 Decision. However, with the Court's pronouncement in the 2004 case of *People v. Mateo*[12] providing for and making mandatory the intermediate review by the CA of cases involving the death penalty, *reclusion perpetua* or life imprisonment, the proper course of action would be to remand these cases to the appellate court for the conduct of an intermediate review.

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[9] CA *rollo*, pp. 97-126.

[10] *Id.* at 177-196.

[11] *Id.* at 218.

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

After a judicious review of the records, however, the Court no longer sees the necessity of transferring these cases to the CA for intermediate review and instead, deems it more appropriate to dismiss the instant appeal.

Records reveal that the appellant jumped bail during the proceedings before the RTC and was, in fact, tried and convicted *in absentia*. There is dearth of evidence showing that he has since surrendered to the court's jurisdiction. Thus, he has no right to pray for affirmative relief before the courts. Once an accused escapes from prison or confinement, jumps bail as in appellant's case, or flees to a foreign country, he loses his standing in court, and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief therefrom.[13]

Thus, even if the Court were to remand these cases to the CA for intermediate review, the CA would only be constrained to dismiss appellant's appeal, as he is considered a fugitive from justice. On this score, Section 8, Rule 124 of the Rules of Court is relevant, which provides:

> SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute.* – The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de officio*.
>
> **The Court of Appeals may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal.**[14] (Emphasis supplied)

It bears to stress that the right to appeal is merely a statutory privilege, and, as such, may be exercised only in the manner and in accordance with the provisions of the law. The party

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[13] *Villena v. People*, G.R. No. 184091, January 31, 2011, 641 SCRA 127, 136.

[14] *Id.*

who seeks to avail of the same must comply with the requirements of the Rules, failing which, the right to appeal is lost.[15]

WHEREFORE, the appeal is **DISMISSED.**

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Abad, Villarama, Jr., and *Mendoza, JJ.,* concur.

Carpio and *Perez, JJ.,* on official leave.

Brion and *del Castillo, JJ.,* on leave.

Reyes, J., on official business.

THIRD DIVISION

[G.R. No. 168987. October 17, 2012]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **FRANCISCO LAO LIM, THE HEIRS OF HENRY GO, MANUEL LIMTONG and RAINBOW TOURS AND TRAVEL, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; COMMON CARRIERS; BREACH OF CONTRACT NEED ONLY PROVE THE EXISTENCE OF CONTRACT AND NON-PERFORMANCE BY THE CARRIER.— Going into the merits of the case, it is best to set it against the backdrop of the basic tenet that "in an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the fact of its non-performance by the carrier."

[15] *Id.* at 137.

2. REMEDIAL LAW; APPEALS; FINDINGS OF TRIAL COURT, AFFIRMED BY THE APPELLATE COURT, RESPECTED.— The Court again emphasizes that "findings of the trial court on the matter of credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal," because said lower court had the opportunity to observe, firsthand, how the witnesses testified. x x x [F]indings of fact of the trial court, when affirmed by the CA, are binding and conclusive on this Court, as it is not a trier of facts.

3. CIVIL LAW; DAMAGES; MORAL DAMAGES; NOT APPRECIATED FOR LACK OF FACTUAL BASIS.— [T]he Court finds the [award of moral damages] improper as it lacks the required factual basis. [S]ince respondent Henry Go was not able to testify, there is then no evidence on record to prove that he suffered mental anguish, besmirched reputation, sleepless nights, wounded feelings or similar injury by reason of petitioner's conduct.

4. ID.; ID.; TEMPERATE DAMAGES; PROPER AS THERE WAS PECUNIARY LOSS WHEN RESPONDENTS WERE NOT ABLE TO BOARD THEIR FLIGHT AND MISS BUSINESS OPPORTUNITIES.— [T]he award of temperate or moderate damages of ₱100,000.00 to respondents Lao Lim and Go [was proper]. x x x [T]he purpose for respondents trip to Hongkong was to conduct business negotiations, but respondents Lao Lim and Henry Go were not able to meet their counterparts as they were not allowed to board the PR300 flight on February 26, 1991. x x x [They] suffered some pecuniary loss [and] understandably, it is difficult, if not impossible, to adduce solid proof of the losses suffered by respondents. Certainly, respondents' time and effort were wasted x x x [and] business opportunities were lost.

5. ID.; ID.; EXEMPLARY DAMAGES; PROPER IN THE PRESENCE OF BAD FAITH; CASE AT BAR.— Since respondent Go is entitled to temperate damages, then the court may also award exemplary damages in his favor. Indeed, exemplary damages are in order because petitioner and Rainbow Tours, through their respective employees, acted in bad faith by not informing respondents Lao Lim and Go of the erroneous cancellation of their bookings on the PR300 flight on February 26, 1991. x x x However, the Court agrees with petitioner that respondent Manuel Limtong is not entitled to any award for

damages because, as to said respondent, petitioner faithfully complied with their contract of carriage. Respondent Limtong was able to board PR300 on February 26, 1991, as stated in his confirmed plane ticket. The contract of carriage does not carry with it an assurance that he will be travelling on the same flight with his chosen companions.

6. ID.; ID.; ATTORNEY'S FEES; PROPER AS RESPONDENTS FORCED TO OBTAIN THE SERVICES OF COUNSEL TO ENFORCE A JUST CLAIM.— Petitioner is also liable for attorney's fees, because records show that respondents demanded payment for damages from petitioner but it was only after respondents filed a case in court that petitioner offered some form of restitution to respondents, which the latter found insufficient. [R]espondents were forced to obtain services of counsel to enforce a just claim.

7. ID.; ID.; JOINT TORTFEASORS WHO ACTED TOGETHER ARE SOLIDARILY LIABLE.— Rainbow Tours and Travel, Inc., [and petitioner PAL] have acted together in creating the confusion leading to the erroneous cancellation of aforementioned respondents' confirmed bookings and the failure to inform respondents of such fact. As such, they have become joint tortfeasors. x x x [They] are jointly and solidarily liable for damages awarded to respondents Lao Lim and Go.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.

Almase Suarez and Almase-Martinez for Francisco Lao Lim, Heirs of Henry Go and Manuel Limtong.

Fernando D. Yu for Rainbow Tours & Travel, Inc.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of

[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Mercedes Gozo-Dadole and Ramon M. Bato, Jr., concurring; *rollo*, pp. 69-80.

the Court of Appeals (CA), dated March 22, 2005, and its Resolution[2] dated July 15, 2005, denying herein petitioner's Motion for Reconsideration of the aforementioned Decision, be reversed and set aside.

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

> Plaintiffs are Cebu-based businessmen, that is, plaintiff Francisco Lao Lim is engaged in real estate and trading, Mr. Henry Go in export and distribution of weighing scales and Mr. Manuel Limtong in the printing press business. All three plaintiffs decided to venture into business transactions involving the purchase of weighing scales from one Mrs. Ng Yuen Ming of Hongkong and printing press equipments from Mrs. Myrna Irsch of Germany. In line with these ventures, they scheduled important appointments with the said dealers in Hongkong on 26 February 1991 in order to conclude their agreements and thereafter sign the necessary contracts.
>
> On 22 February 1991, plaintiff Francisco Lao Lim went to the office of third-party defendant Rainbow Tours and Travel, Inc. ("Rainbow Tours") and purchased three (3) confirmed PAL roundtrip tickets. They were booked on a Link-Flight PR842 Cebu-Manila on February 25, 1991 (Monday) at 12:05 P.M. and Flight PR300 Manila-Hongkong on February 26, 199[1] (Tuesday) at 8:00 A.M. The return trip was on March 1, 199[1] at 11:05 A.M. Hongkong-Manila (Flight PR301) and Manila-Cebu (Link-Flight PR512) at 2:50 P.M. of the same day.
>
> On February 23, 1991, plaintiff Francisco Lao Lim returned to the office of Rainbow Tours to inquire on the availability of seats for the PAL Manila-Hongkong flight on February 26, 1992 at 5:00 p.m. so that they could reset their Hongkong meetings scheduled on 26 February 1991 to a later time. Francisco Lao Lim was referred to Rainbow Tours travel agent, Gemma Dingal, who called up PAL Reservations. Upon being informed of the unavailability of seats for the 5:00 p.m. flight, Francisco Lao Lim left Rainbow Tours without making any cancellations of their confirmed bookings that were stated in their respective tickets.
>
> As scheduled, plaintiffs took the Cebu-Manila Flight No. PR842 on February 25, 1991. The next day, February 26, 1991, at the check-in counter at the Ninoy Aquino International Airport (NAIA), plaintiffs

[2] *Id*.

Francisco Lao Lim and Henry Go were informed by PAL's check-in clerk that their bookings on Flight PR300 Manila-Hongkong (8:00 a.m.) had been cancelled and that their names were not on the computer's passenger list for the said flight. Plaintiff Manuel Limtong, however, was able to board the flight. Francisco Lao Lim and Henry Go explained to the check-in clerk that they were holding confirmed bookings and that they did not have the same cancelled. They likewise begged and pleaded that they be allowed to board the said flight but their pleas fell on deaf ears. At 5:00 p.m. of the same day, plaintiffs Francisco Lao Lim and Henry Go took Flight No. PR301 leaving Manila to Hongkong.

Plaintiffs brought this suit for breach of contract of carriage and damages against PAL alleging that the PAL personnel at the check-in clerk at NAIA arrogantly shouted at them and humiliated them in front of the other passengers by labeling their tickets "cheap tickets" thus entitling them to moral damages in the amount of ₱350,000.00 each as such abusive and injurious language had humiliated them, wounded their feelings and besmirched their reputations. Plaintiffs further claimed that because of their failure to reach Hongkong in time for the scheduled business conferences, their contacts did not anymore wait for them. They claimed that the 26 February 1991 business meeting with Mrs. Ng involving the purchase of weighing scales at discounted rates should have pushed through since this was the last day given to the plaintiffs to close the deal otherwise Mrs. Ng is selling the stocks to other interested buyers. Even though Manuel Limtong was able to meet with Mrs. Ng, the deal was not finalized since it was only plaintiff Henry Go who could properly negotiate with Mrs. Ng as to what kind of scales they should purchase. Plaintiffs likewise claim that the transaction on the purchase of several German printing press equipments on consignment was not consummated because their German contact, Mrs. Irche, insisted on meeting all three plaintiffs considering that the proposed transaction involved a huge amount. According to the plaintiffs, Mrs. Ng disposed the stocks of weighing scales to another buyer whereas Mrs. Irche left Hongkong without meeting with them despite their efforts to schedule another meeting with her. Since the business deals that could have earned them a profit of ₱3,567,000.00 were not consummated, they should then be entitled to the said amount. Plaintiffs also seek the payment of exemplary damages and attorney's fees.

In its defense, PAL contended that plaintiffs were revenue passengers who made their travel arrangements with Rainbow Tours. [PAL then impleaded Rainbow Tours and Travel, Inc. as third-party defendants, ascribing liability on the latter for whatever damages were suffered by plaintiffs Lao Lim and Go.] Based on the Post Date Investigation Print-out and the testimonies of PAL witnesses Racil Corcuera (PAL Passenger load analyst at Cebu Mactan Office) and Rosy Mancao (Sales Representative), PAL contended that the cancellation of plaintiffs Mr. Lao Lim and Mr. Go's confirmed bookings for the 8:00 a.m. Manila-Hongkong flight on 26 February 1991 was upon request of Gemma Dingal ("Gemma") of Rainbow Tours. PAL alleges that Gemma called Racil Corcuera ("Racil") at 10:46 a.m. of 23 February 1991 and instructed Racil to cancel the original confirmed bookings of plaintiffs Mr. Lao Lim and Mr. Go. While in the process of encoding the new itinerary, Racil found out that PR310 Manila-Hongkong (5:00 p.m. flight) on 26 February 1991 was already fully booked. Racil asked Gemma if she was definite about the new itinerary even if there was no confirmation of the PR310 flight and that plaintiffs will be put on the waitlist, to which, Gemma replied that plaintiffs clearly instructed her that they did not want to stay overnight in Manila and that it was alright to cancel their original confirmed reservations, put the plaintiffs on waitlist status for PR310 February 26, 1991 and then book them for the PR511 (Cebu-Manila) flight at 12:10 p.m. on 26 February 1991 to be connected to PR310 (Manila-Hongkong) flight at 5:00 p.m. on 26 February 1991. As for the Hongkong-Manila trip, Gemma instructed that plaintiffs be booked on PR301 at 11:05 a.m. on 3 March 1991 with connecting flight to Cebu at 2:50 p.m. of the same day. After giving all the foregoing instructions, Gemma then requested Racil to retain plaintiffs' confirmed booking PR300 (8:00 a.m.) Manila-Hongkong on 26 February 1991). Records show, however, that Racil erroneously requested for the reinstatement for the PR300 flight on February 25, 1991 instead of February 26, 1991. Three hours later, Racil made the proper correction by requesting for the reinstatement of plaintiffs' booking for PR300 on 26 February 1991. Several requests for reinstatement were subsequently made but there was no respond from the flight controller. Eventually, Racil learned from Violy of the Manila Office that the request was on critical status because of the overflow of passengers since the PR300 (Manila-Hongkong) flight on 25 February 1991 had been cancelled. Despite several efforts by PAL employees, *viz*, Rosy Mancao, Lyndon Maceren (Senior Passenger Loan Analyst)

and Lito Camboanga (Shift Supervisor), plaintiffs' bookings for the PR300 flight could not be confirmed.

A perusal of the records show that PAL witness Rosy Mancao testified that PAL and Rainbow Tours agreed not to tell the plaintiffs that their confirmed bookings for PR300 on 26 February 1991 had been erroneously cancelled and that the said flight was on critical status due to an overbooking of passengers because if they inform the plaintiffs "it would just create further problems."

PAL witness Mariano Aldee III who was assigned at the Check-In Counter disputed plaintiffs' claims that they were rudely treated by PAL employees, giving five reasons why passengers must be handled politely and courteously, to wit: (1) PAL employees underwent 5-week trainings on proper handling and courteous treatment; (2) airline employees' uniform practice of treating passengers politely; (3) PAL's corporate policy is "Total Passenger Care"; (4) PAL subjects employees to administrative sanctions when employees are impolite and discourteous, and (5) their superiors would make them explain if employees exhibit any rudeness or discourtesy to passengers. Mr. Aldee further testified that Flight PR300 on February 26, 1991 was an Airbus 300 with a capacity of 344 passengers, 24 of these on the business class while 220 seats for the economy class. Two jump seats were occupied by non-revenue passengers who were PAL employees but not on duty on that particular flight. For that said flight, PAL overbooked for 44 more passengers, that is, 28 for the business class and 260 for the economy class. Since there were only 22 business class passengers who showed up, two passengers from the economy class were "upgraded" to business class. Witness further testified that no waitlisted passenger was accepted for boarding on that flight.

Rainbow Tours presented Gemma Dingal and Ruby Lim (one of the owners of Rainbow Tours) as its witnesses, whose testimonies mainly attributed the erroneous cancellation of Mr. Lao Lim and Mr. Go's confirmed bookings for the PR300 Manila-Hongkong flight at 8:00 a.m. to Racil Corcuera. According to Gemma, she called up PAL merely to inquiry (sic) as to the availability of seats for the 5:00 p.m. Manila-Hongkong flight on 26 February 1991. She was taken by surprise when Racil immediately cancelled the confirmed bookings even if there was no instruction on her part to do so. Gemma immediately informed Ruby Lim of the erroneous cancellation and despite all their efforts to reinstate the original confirmed bookings, the same could not be done.

On 18 June 1996, the court *a quo* [RTC] rendered a Decision with the following dispositive portion:

> *WHEREFORE, judgment is hereby rendered sentencing the defendant Philippine Airlines and third-party defendant Rainbow Tours and Travel, Inc. to jointly and severally pay unto the plaintiff Francis Lao Lim the sum of SEVENTY-FIVE THOUSAND PESOS (₱75,000.00), in concept of reasonable temperate or moderate damages, and a like or similar sum to the substituted plaintiff-heirs of the late Henry Go, likewise by way of reasonable temperate or moderate damages plus the aggregate sum of TWENTY-FIVE THOUSAND PESOS (₱25,000.00) as and for attorney's fees.*
>
> *Costs against defendant Philippine Airlines and third-party defendant Rainbow Tours and Travel Incorporated.*
>
> *SO ORDERED.*

Aggrieved by the court *a quo's* ruling, plaintiffs and PAL interposed their respective appeals.[3]

On March 22, 2005, the CA promulgated its Decision, holding that petitioner clearly breached its contract of carriage with Mr. Lao Lim and Mr. Go. The CA disposed as follows:

> **WHEREFORE,** based on the foregoing premises, the 18 June 1996 Decision of the court *a quo* is **MODIFIED**, to wit:
>
> 1. Defendant-appellant and third-party plaintiff-appellee Philippine Airlines and third-party defendant-appellee Rainbow Tours and Travel, Inc. are jointly and severally liable to pay plaintiffs-appellants Francisco Lao Lim the sum of PESOS: Fifty Thousand (₱50,000.00) in concept of moral damages and PESOS: Fifty Thousand (₱50,000.00) by way of exemplary damages for breach of contract of carriage;
>
> 2. Defendant-appellant and third-party plaintiff-appellee Philippine Airlines and third-party defendant-appellee Rainbow Tours and Travel Inc. are jointly and severally liable to pay the substituted heirs of plaintiff-appellant of the late Henry Go (sic) the sum of PESOS: Fifty Thousand (₱50,000.00) in concept of moral damages and PESOS: Fifty Thousand

[3] *Rollo,* pp. 70-74.

(₱50,000.00) by way of exemplary damages for breach of contract of carriage;

3. Defendant-appellant and third-party plaintiff-appellee Philippine Airlines and third-party defendant-appellee Rainbow Tours and Travel Inc. are jointly and severally liable to pay each of the plaintiffs-appellants the sum of PESOS: One Hundred Thousand (₱100,000.00) by way of temperate or moderate damages;

4. Defendant-appellant and third-party plaintiff-appellee Philippine Airlines and third-party defendant-appellee Rainbow Tours and Travel Inc. are jointly and severally liable to pay the aggregate sum of PESOS: Sixty Thousand (₱60,000.00) as and for attorney's fees;

5. Defendant-appellant and third-party plaintiff-appellee Philippine Airlines' claim for contribution, indemnity, subrogation and other reliefs from third-party defendant-appellee Rainbow Tours and Travel Inc. is DENIED for lack of merit;

6. Costs against defendant-appellant and third-party plaintiff-appellee Philippine Airlines and third-party defendant-appellee Rainbow Tours and Travel Incorporated.

SO ORDERED.[4]

Petitioner's motion for reconsideration of the CA Decision was denied *per* Resolution dated July 15, 2005.

Hence, this petition before the Court, with petitioner alleging that:

I

THE MARCH 22, 2005 DECISION AND JULY 15, 2005 RESOLUTION OF THE COURT OF APPEALS DID NOT RESOLVE THE PETITIONER'S NOVEMBER 3, 1998 MOTION TO SUSPEND PROCEEDINGS ON THE GROUND OF THE LATTER'S REHABILITATION RECEIVERSHIP.

II

RESPONDENTS FRANCISCO LAO LIM AND THE LATE HENRY GO WERE NOT HOLDING CONFIRMED BOOKINGS OR RESERVATION

[4] *Id.* at 78-79.

ON PAL'S PR300 (MANILA-HONGKONG) ON FEBRUARY 26, 1991 SINCE THE SAME WAS CANCELLED PURSUANT TO THE CATEGORICAL INSTRUCTION OF [GEMMA] DINGAL OF RESPONDENT RAINBOW TOURS.

III

THE LATE RESPONDENT HENRY GO OR HIS HEIRS DID NOT TESTIFY IN COURT. HENCE, HE IS NOT ENTITLED TO THE AWARDS OF ₱50,000 AS MORAL DAMAGES AND ₱50,000 AS EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

IV

RESPONDENT MANUEL LIMTONG IS NOT ENTITLED TO ₱100,000 AS TEMPERATE OR MODERATE DAMAGES AND ATTORNEY'S FEES BECAUSE HE BOARDED, SANS ANY PROBLEM, PR 300/MANILA-HONG-KONG/FEBRUARY 26, 1991 WHICH WAS THE FLIGHT AND DATE ON WHICH HE HELD A CONFIRMED BOOKING.

V

THE AWARD OF TEMPERATE OR MODERATE DAMAGES OF ₱100,000 TO EACH OF THE OTHER INDIVIDUALS IS BEREFT OF FACTUAL AND LEGAL SUPPORT.

VI

RESPONDENT RAINBOW TOURS AND TRAVEL, INC. SHOULD BE MADE LIABLE TO THE INDIVIDUAL RESPONDENTS AND PETITIONER SHOULD BE ABSOLVED OF ANY LIABILITY.[5]

The petition deserves some consideration.

First, the issue of whether proceedings should be suspended on the ground that petitioner is under rehabilitation receivership, is now moot and academic. Petitioner is no longer under such status effective September 28, 2007, pursuant to the Order dated September 28, 2007 issued by the Securities and Exchange Commission.[6] Therefore, this can no longer be an obstacle to legal proceedings against petitioner.

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

[6] See petitioner's *Manifestation* dated November 7, 2007 with copy of SEC Order dated September 28, 2007 attached thereto; *id.* at 158-166.

Going into the merits of the case, it is best to set it against the backdrop of the basic tenet that "in an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the fact of its non-performance by the carrier."[7]

Petitioner then questions first, whether respondents Francisco Lao Lim and the late Henry Go had confirmed bookings on petitioner's flight PR300 (Manila-Hongkong) on February 26, 1991. Petitioner insists that respondents Lao Lim's and Go's bookings were cancelled because of the instructions of Ms. Dingal of the travel agency Rainbow Tours, with whom respondents were transacting. Petitioner points out supposed inconsistencies in the testimony, affidavits and other documents of Ms. Dingal, arguing that her testimony, *i.e.*, that the erroneous cancellation of respondents Lao Lim's and Go's bookings were done by PAL's employee, Racil, without any instruction from her or respondent Lao Lim, should not be given credence as she appears to be a "coached" witness.

A close examination of the supposed inconsistencies, however, reveals that the same are too inconsequential to give any serious consideration. Moreover, petitioner presented this matter regarding the alleged inconsistencies in the statements of witnesses before the trial court, and yet said court still found the witness and her testimony - that there was no instruction given to cancel respondents' bookings for the PR300 flight on February 26, 1991 - to be worthy of belief. The Court again emphasizes that "findings of the trial court on the matter of credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal,"[8] because said lower court had the opportunity to observe, firsthand, how the witnesses testified.[9]

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[7] *Spouses Fernando and Lourdes Viloria vs. Continental Airlines, Inc.*, G.R. No. 188288, January 16, 2012.

[8] *Gaje vs. Vda. de Dalisay*, G.R. No. 158762, April 3, 2007, 520 SCRA 272, 285.

[9] *Japan Airlines vs. Simangan*, G.R. No. 170141, April 22, 2008, 552 SCRA 341, 357.

The trial court ruled that respondents Lao Lim and Henry Go were indeed holding confirmed tickets for PR300 on February 26, 1991, as they did not have their bookings cancelled. Such factual finding was upheld by the appellate court. Petitioner should bear in mind that findings of fact of the trial court, when affirmed by the CA, are binding and conclusive on this Court, as it is not a trier of facts.[10] Although there are accepted exceptions to this general rule, this case does not fall under any such exceptions. Thus, the findings of the lower courts that respondents Francisco Lao Lim and Henry Go were holding confirmed plane tickets and yet were not transported by petitioner, are binding on this Court. Having proven the existence of a contract of carriage between respondents Lao Lim and Go, and the fact of non-performance by petitioner of its obligation as a common carrier, it is clear that petitioner breached its contract of carriage with respondents Lao Lim and Go.

The next question posed by petitioner is, are the appellate court's awards for damages in favor of respondents proper? The Court finds some of petitioner's arguments meritorious.

Petitioner assails the award of ₱50,000.00 as moral damages granted to the heirs of Henry Go despite the fact that neither Henry Go nor any of his heirs testified on matters that could be the basis for such monetary award. In *Philippine Savings Bank vs. Manalac, Jr.*,[11] the Court ruled, thus:

> x x x [T]he award of moral damages must be anchored on a clear showing that [the complainant] actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings or similar injury. There was no better witness to this experience than [complainant] himself. **Since [complainant] failed to testify on the witness stand, the trial court did not have any factual basis to award**

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[10] *Givero vs. Givero*, G.R. No. 157476, March 16, 2011, 645 SCRA 479, 487-488; *Heirs of Jose Marcial K. Ochoa vs. G & S Transport Corporation*, G.R. Nos. 170071 & 170125, March 9, 2011, 645 SCRA 93, 109-110; *Francisco vs. Court of Appeals*, G.R. No. 118749, April 25, 2003, 401 SCRA 594, 606; 449 Phil. 632, 647 (2003).

[11] G.R. No. 145441, April 26, 2005, 457 SCRA 203; 496 Phil. 671 (2005).

moral damages to him. x x x Mere allegations do not suffice; they must be substantiated by clear and convincing proof.[12] (Emphasis supplied)

Indeed, in this case, since respondent Henry Go was not able to testify, there is then no evidence on record to prove that he suffered mental anguish, besmirched reputation, sleepless nights, wounded feelings or similar injury by reason of petitioner's conduct. Thus, on the award of moral damages in favor of deceased respondent Go, substituted by his heirs, the Court finds the same improper as it lacks the required factual basis.

However, there was no error committed by the lower courts with regard to the award of temperate or moderate damages of ₱100,000.00 to respondents Lao Lim and Go. The New Civil Code provides:

> Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved, with certainty.

Here, the trial and appellate courts also made the factual findings that the purpose for respondents Lao Lim's, Henry Go's, and Manuel Limtong's trip to Hongkong was to conduct business negotiations, but respondents Lao Lim and Henry Go were not able to meet their counterparts as they were not allowed to board the PR300 flight on February 26, 1991. As discussed earlier, said factual finding is deemed conclusive and the circumstances appearing on record convinced this Court that respondents Lao Lim and Henry Go suffered some pecuniary loss due to their failure to meet with their business associates. Understandably, it is difficult, if not impossible, to adduce solid proof of the losses suffered by respondents due to their failure to make it to their business meetings. Certainly, respondents' time and effort were wasted when they left their businesses in Cebu, all for naught, as the business negotiations they were supposed to conduct in Hongkong did not push through. One

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[12] *Id*. at 222; *id*. at 691-692.

cannot discount the fact that business opportunities were lost. Thus, it is only just that respondents Lao Lim and Henry Go be awarded temperate or moderate damages.

As to the award of exemplary damages in favor of respondent Go, *Gatmaitan vs. Gonzales*,[13] is instructive, to wit:

> x x x Article 2229 of the Civil Code provides that exemplary or corrective damages are **imposed in addition to** the moral, **temperate**, liquidated or compensatory **damages**. Exemplary damages are not recoverable as a matter of right. The requirements of an award of exemplary damages are: (1) they may be imposed by way of example in addition to compensatory damages, and only after the claimant's right to them has been established; (2) that they cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner. x x x[14] (Emphasis supplied)

Since respondent Go is entitled to temperate damages, then the court may also award exemplary damages in his favor.[15] Indeed, exemplary damages are in order because petitioner and Rainbow Tours, through their respective employees, acted in bad faith by not informing respondents Lao Lim and Go of the erroneous cancellation of their bookings on the PR300 flight on February 26, 1991. Both the trial and appellate courts are correct in their interpretation that Ms. Mancao, petitioner's employee, and Rainbow Tours' Ms. Dingal acted in concert in not telling respondents Lao Lim and Go of the problems regarding their bookings. Ms. Mancao in effect reinforced and agreed to Ms. Dingal's decision not to tell respondents Lao Lim and Go, by telling Ms. Dingal that "if you tell the passengers, it might just create further problems."[16]

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[13] G.R. No. 149226, June 26, 2006, 492 SCRA 591.

[14] *Id.* at 605.

[15] *Newsounds Broadcasting Network, Inc. vs. Dy*, G.R. Nos. 170270 & 179411, 583 SCRA 333, 375.

[16] TSN, December 5, 1995, p. 9.

However, the Court agrees with petitioner that respondent Manuel Limtong is not entitled to any award for damages because, as to said respondent, petitioner faithfully complied with their contract of carriage. Respondent Limtong was able to board PR300 on February 26, 1991, as stated in his confirmed plane ticket. The contract of carriage does not carry with it an assurance that he will be travelling on the same flight with his chosen companions. Even if petitioner failed to transport respondents Lao Lim and Go on the same flight as respondent Limtong, there is absolutely no breach of the contract of carriage between the latter and petitioner. Hence, petitioner should not be made liable for any damages in favor of respondent Limtong.

Petitioner is also liable for attorney's fees, because records show that respondents demanded payment for damages from petitioner but it was only after respondents filed a case in court that petitioner offered some form of restitution to respondents, which the latter found insufficient. Clearly, respondents were forced to obtain services of counsel to enforce a just claim, for which they should be awarded attorney's fees.

Lastly, the Court finds petitioner's claim that only herein respondent, (third-party defendant before the trial court) Rainbow Tours and Travel, Inc., should be made liable to respondents Lao Lim and Go, to be untenable. They have acted together in creating the confusion leading to the erroneous cancellation of aforementioned respondents' confirmed bookings and the failure to inform respondents of such fact. As such, they have become joint tortfeasors, and in *Loadmasters Customs Services, Inc. vs. Glodel Brokerage Corporation*,[17] the Court elucidated thus:

> x x x Where there are several causes for the resulting damages, a party is not relieved from liability, even partially. It is sufficient that the negligence of a party is an efficient cause without which the damage would not have resulted. It is no defense to one of the concurrent tortfeasors that the damage would not have resulted from his negligence alone, without the negligence or wrongful acts of the

[17] G.R. No. 179446, January 10, 2011, 639 SCRA 69.

other concurrent tortfeasor. As stated in the case of *Far Eastern Shipping v. Court of Appeals,*

> x x x. Where several causes producing an injury are concurrent and each is an efficient cause without which the injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all of the responsible persons although under the circumstances of the case, it may appear that one of them was more culpable, and that the duty owed by them to the injured person was not the same. No actor's negligence ceases to be a proximate cause merely because it does not exceed the negligence of other actors. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury.
>
> There is no contribution between joint tortfeasors whose liability is solidary since both of them are liable for the total damage. Where the concurrent or successive negligent acts or omissions of two or more persons, although acting independently, are in combination the direct and proximate cause of a single injury to a third person, it is impossible to determine in what proportion each contributed to the injury and **either of them is responsible for the whole injury.** Where their concurring negligence resulted in injury or damage to a third party, they become joint tortfeasors and are solidarily liable for the resulting damage under Article 2194 of the Civil Code. [Emphasis supplied][18]

Thus, petitioner and Rainbow Tours and Travel, Inc. are jointly and solidarily liable for damages awarded to respondents Lao Lim and Go.

IN VIEW OF THE FOREGOING, the Decision of the Court of Appeals, dated March 22, 2005, is hereby **MODIFIED** by **DELETING** the award for moral damages in favor of the substituted heirs of the late Henry Go, and **DELETING** the award of temperate or moderate damages in favor of respondent Manuel Limtong.

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[18] *Loadmasters Customs Services, Inc. vs. Glodel Brokerage Corporation, supra,* at 85-86.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 177140. October 17, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEJANDRO VIOJELA *y* ASARTIN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE UNDER ART. 335 OF THE REVISED PENAL CODE; ELEMENTS; STATUTORY RAPE.—** Considering that the incident of rape at issue happened prior to the enactment of Republic Act No. 8353, the applicable law is Article 335 of the Revised Penal Code. x x x [Accordingly thereto,] the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age. Sexual intercourse with a girl below 12 years old is referred to as statutory rape. x x x In this type of rape, force and intimidation are immaterial since the only subject of inquiry is (1) the age of the woman, and (2) whether carnal knowledge took place.

2. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF RAPE VICTIM AS BASIS OF CONVICTION UPHELD AS AGAINST CONTENTION OF ACCUSED THAT PENETRATION WAS NOT ESTABLISHED.—** It is settled in jurisprudence that in a prosecution for rape, the accused may be convicted solely

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[*] Designated Acting Member, per Special Order No. 1343 dated October 9, 2012.

on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things. x x x Appellant is grossly mistaken in his contention that no rape occurred because the prosecution did not prove that his penis penetrated the vagina of the victim. Such an argument is of little consequence in light of jurisprudence declaring that penetration of the penis, however slight, of the *labia minora* constitutes consummated rape.

3. CRIMINAL LAW; RAPE; BARE TESTIMONY THAT VICTIM WAS BELOW 12 YEARS OLD INSUFFICIENT TO QUALIFY RAPE IN CASE AT BAR.— [T]he prosecution failed to present VEA's birth certificate or to otherwise unequivocally prove that VEA was indeed below 12 years of age at the time of the incident in question. In view of this paucity in the prosecution's evidence on the matter of the victim's age, jurisprudence compels us to reclassify appellant's offense as simple rape. In *People v. Rullepa*, we reiterated a set of guidelines in appreciating age as an element of the crime or as a qualifying circumstance. x x x Measured against the jurisprudential guidelines that this Court has set forth, VEA and her mother's testimonies cannot be given sufficient weight to establish her age with moral certainty, for in the absence of relevant documentary evidence or an express admission from the accused, the bare testimony of the victim's mother or a member of the family would suffice only if the victim is alleged to be below seven years of age and what is sought to be proved is that she is less than 12 years old. In the present case, VEA was supposedly 10 years of age on the material date stated in the Information.

4. ID.; ID.; VIOLENCE OR INTIMIDATION; NOT NECESSARY WHERE ACCUSED EXERCISED MORAL ASCENDANCY OVER THE VICTIM.— In a recent case, we reiterated that the moral ascendancy of an accused over the victim renders it unnecessary to show physical force and intimidation. Indeed, in rape committed by a close kin, such as the victim's father, stepfather, uncle, **or the common-law spouse of her mother**, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.

5. ID.; QUALIFIED RAPE; NOT APPRECIATED AS COMMON-LAW RELATIONSHIP OF THE VICTIM'S MOTHER AND ACCUSED WAS NOT ALLEGED IN THE INFORMATION, AND THEY WERE

NOT MARRIED TO SUPPORT THE ALLEGED STEPFATHER-STEPDAUGHTER RELATIONSHIP.— [A]ppellant's offense could not be deemed qualified rape, despite the proviso in Article 335 (as amended by Republic Act No. 7659), imposing the death penalty on rape committed when the victim is **under eighteen (18) years of age** and the **offender** is a x x x stepparent, x x x or the **common-law spouse** of the parent of the victim. This is due to the fact that the "live-in" or common-law relationship between appellant and VEA's mother was not alleged in the Information despite being proven in the trial court. What was alleged in the Information is that VEA was the stepdaughter of the appellant but we have held that a stepfather-stepdaughter relationship as a qualifying circumstance presupposes that the victim's mother and the accused contracted marriage. However, it was shown during trial that no marriage was ever contracted between appellant and the victim's mother.

6. **REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; WEAK DEFENSES THAT CANNOT PREVAIL AS IDENTITY OF ACCUSED WAS ESTABLISHED BY THE VICTIM WHO HAS NO ILL MOTIVE.—** Anent appellant's defenses of denial and alibi, this Court is not persuaded by such invocations since we have consistently regarded them as inherently weak defenses and must be rejected when the identity of the accused is satisfactorily and categorically established by the eyewitnesses to the offense, especially when such eyewitnesses have no ill motive to testify falsely. In the instant case, appellant failed to show that VEA, the victim and sole eyewitness to the crime of rape, was motivated by ill will in accusing him of such a grave offense.

7. **CRIMINAL LAW; RAPE; PENALTY.—** [A]ppellant x x x committed [the offense of] simple rape. x x x [H]e is to suffer the penalty previously imposed which is *reclusion perpetua*. The Court of Appeals was correct in reducing the amount of actual damages to ₱50,000.00 and in awarding moral damages in the amount of ₱50,000.00. However, the award of exemplary damages should be increased x x x to ₱30,000.00 in accordance with prevailing jurisprudence.

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.*:

The present case is an appeal from the Decision[1] dated November 29, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01085, entitled *People of the Philippines v. Alejandro Viojela y Asartin*, which affirmed with modification the Decision[2] dated September 1, 2003 of the Regional Trial Court (RTC) of Cavite, Branch 18 in Criminal Case No. TG-3256-99. The trial court found appellant Alejandro Viojela *y* Asartin guilty beyond reasonable doubt of the crime of statutory rape as defined and penalized under Article 335 of the Revised Penal Code, in relation to Republic Act No. 7610 or the "Special Protection of Children Against Abuse, Exploitation, and Discrimination Act." The incident of rape involved in this case was committed before the amendment of Article 335 of the Revised Penal Code by Republic Act No. 8353 or the "Anti-Rape Law of 1997" that reclassified and expanded the definition of rape, the provisions of which are now found in Articles 266-A to 266-D under Crimes Against Persons in the Revised Penal Code. These changes in our rape law came into effect only on October 22, 1997.

The facts of this case, as narrated in the assailed November 29, 2006 Decision of the Court of Appeals, are as follows:

Accused-appellant was charged in an Information dated November 26, 1999, which reads, as follows:

> The undersigned 1st Assistant Provincial Prosecutor accuses ALEJANDRO VIOJELA *Y* ASARTIN of the crime of RAPE IN

[1] *Rollo*, pp. 3-17; penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Andres B. Reyes, Jr. and Mariflor P. Punzalan Castillo, concurring.

[2] CA *rollo*, pp. 11-17.

RELATION TO REPUBLIC ACT 7610, committed as follows:

> That on or about the period or sometime in June 1997, at x x x, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force, violence and intimidation and taking advantage of his superior strength over the person of his ten (10)[-]year[-]old stepdaughter, did, then and there, willfully (sic), unlawfully and feloniously, have carnal knowledge of one VEA, against her will and consent, to her damage and prejudice.
>
> CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded not guilty to the crime charged, and thereafter, trial on the merits ensued.

The evidence for the prosecution shows that private complainant VEA was only 10 years old when the incident complained of took place, she having been born on September 13, 1986. Accused-appellant is the common-law husband of VEL, VEA's mother, with whom accused-appellant has three children. VEA started living with them when she was four years old, after her mother VEL took her from Cagayan Valley to live with her and accused-appellant in x x x. VEA is VEL's daughter from her deceased husband.

Sometime in June 1997, when VEL was not at home and VEA was left alone with accused-appellant, the latter ordered VEA to undress and told her that he would look at her private parts so that when she grows up and gets married, she would know what will be done to her. VEA did as she was told and took off her pair of shorts. Accused-appellant instructed her not to make any noise, and then forced his penis into her vagina. According to VEA, accused-appellant was not able to insert his organ into her genitalia, but accused-appellant's act of forcing his penis into her vagina was painful.

VEA recounted another incident prior to the one described above when they were still residing in a room situated inside a bakery where accused-appellant worked. Accused-appellant entered the room and instructed VEA to suck his penis, and afterwards, asked her if she enjoyed it. The victim, likewise, recalled that every morning afterwards, when her mother had left the house to go to the town proper, accused-appellant would enter her room, wake her up and take her to the kitchen. Accused-appellant would sit on a chair naked, order her to remove her shorts and sit on his lap facing him, and forcibly insert his penis into her vagina.

VEL testified that when she arrived home one afternoon in June, 1997, accused-appellant was already waiting for her outside their house, and told her that he had something to tell her. When VEL asked him what it was, accused-appellant said that something happened to VEA. He initially refused to explain to VEL what he meant, but when VEL insisted that he tell her, accused-appellant finally admitted that he did something to VEA. He told VEL that he molested VEA. The victim had already run away from home at that time and sought refuge in a neighbor's house.

Upon being informed by accused-appellant that he molested VEA, VEL asked accused-appellant not to leave the house. VEL fetched VEA from their neighbor. VEA told her mother that she was molested again so she decided to run away from home. The two of them proceeded to the *barangay* hall in Biga to report the matter to the *barangay* authorities.

After VEL and VEA lodged a complaint with the *barangay* and police authorities, VEA was brought to the Silang Municipal Health Center in Silang, Cavite, where she was examined by Dr. Luz Jaurigue-Pang, a municipal health officer of the Rural Health Office of Silang, Cavite. Dr. Pang testified, based on the medical certificate she issued, that the victim's vagina does not admit her smallest finger. The examination, however, revealed the presence of fresh lacerations at the 3:00 and 9:00 o'clock positions at the *labia minora* of the victim's vagina. Dr. Pang further testified that the lacerations could have been caused by any forcible entry upon the victim's vagina, and could have been inflicted within more or less a week from the time of the victim's medical examination.

Accused-appellant invoked *alibi* in his defense. He testified that he is a farmer working in a corn plantation from 8:00 o'clock in the morning until 1:00 o'clock in the afternoon. On June 19, 1997, he went home after pasturing the cow, and saw inside their bedroom a man on top of VEL. He ran back to the farm and resumed cutting grasses for four hours as if nothing happened. He also alleged that at the time he saw his wife inside their bedroom with another man, he saw VEA playing outside their house with his kids, and that near VEA was a naked man lying face down. When he went home after cutting grasses that same afternoon, he was arrested by *barangay* officials who mauled him, causing him to lose consciousness. Accused-appellant claimed that it was only

in the municipal jail that he regained consciousness.[3] (Citations omitted.)

After a full-blown trial, the trial court did not give credit to appellant's professed innocence and convicted him. However, he was not convicted of the crime that he was originally charged in the Information, which was rape in relation to Republic Act No. 7610, but with the offense of statutory rape. The dispositive portion of the assailed September 1, 2003 Decision is quoted here:

> WHEREFORE, finding the guilt of the accused ALEJANDRO VIOJELA *y* ASARTIN for the crime of "STATUTORY RAPE" to be beyond reasonable doubt, the Court hereby sentences him to suffer imprisonment of RECLUSION PERPETUA; to indemnify the victim [VEA] as actual and compensatory damages the sum of Php100,000.00, and to pay the costs.[4]

Hoping for a reversal, appellant elevated his case to the Court of Appeals but the trial court's ruling was merely affirmed with modifications by the appellate court in its assailed November 29, 2006 Decision. The appellate court reduced the trial court's award of actual damages and added the award of moral and exemplary damages. The dispositive portion of the aforesaid ruling reads:

> WHEREFORE, the decision dated September 1, 2003 of the RTC, Branch 18, Tagaytay City, in Criminal Case No. TG-3256-99, finding accused-appellant Alejandro Viojela *y* Asartin guilty of statutory rape and sentencing him to suffer the penalty of *reclusion perpetua* is AFFIRMED with MODIFICATION that accused-appellant is ordered to pay private complainant VEA the reduced amount of ₱50,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages. Costs against accused-appellant.[5]

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[3] *Rollo*, pp. 3-7.

[4] CA *rollo*, p. 17.

[5] *Rollo*, p. 16.

Hence, appellant appealed before this Court where he adopted his Accused-Appellant's Brief[6] filed with the Court of Appeals which he augmented with a Supplemental Brief.[7] Accused-Appellant's Brief submits the following assignment of errors:

I

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE ACCUSED-APPELLANT'S DEFENSE OF *ALIBI*.

II

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCREDIBLE TESTIMONIES OF THE PROSECUTION'S WITNESSES.

III

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[8]

While in his Supplemental Brief, he added a lone assignment of error, to wit:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S JUDGMENT CONVICTING THE ACCUSED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT WITH MORAL CERTAINTY.[9]

In his appeal, appellant maintains that his *alibi* should be given more weight and credence over the testimonies of the prosecution witnesses which he claims to contain certain irreconcilable inconsistencies and inherent improbabilities. Furthermore, appellant argues that the testimony of the prosecution's own witness, Dr. Luz Jaurigue-Pang (Dr. Pang), belies the charge of rape because said witness testified that,

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[6] CA *rollo*, pp. 43-54.

[7] *Rollo*, pp. 29-34.

[8] CA *rollo*, p. 45.

[9] *Rollo*, p. 29.

during her medical examination of VEA,[10] VEA's vagina could not accommodate entry of even her smallest finger. On the basis of this fact, appellant asserts that no consummated rape could have occurred because if VEA's vagina could not admit Dr. Pang's smallest finger then it would be improbable for said sexual organ to have had admitted the appellant's penis or be lacerated by it. Moreover, appellant insists that the lacerations on VEA's vagina could have been caused by an object other than appellant's penis.

We are not persuaded.

Considering that the incident of rape at issue happened prior to the enactment of Republic Act No. 8353, the applicable law is Article 335 of the Revised Penal Code which provides:

> Art. 335. *When and how rape is committed*. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. When the woman is under twelve years of age or is demented.

According to the foregoing provision, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.[11]

Sexual intercourse with a girl below 12 years old is referred to as statutory rape which, as stated earlier, is penalized under

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[10] The Court withholds the real name of the victim-survivor and uses fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed. (*See People v. Cabalquinto*, 533 Phil. 703 [2006].)

[11] *People v. Manjares*, G.R. No. 185844, November 23, 2011, 661 SCRA 227, 242.

Article 335 of the Revised Penal Code. In this type of rape, force and intimidation are immaterial since the only subject of inquiry is (1) the age of the woman, and (2) whether carnal knowledge took place.[12]

The accused is charged under the said Article 335 in relation to Republic Act No. 7610, Section 5 of which states:

> 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:
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; ***Provided,*** **That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be:** *Provided,* That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x. (Emphasis supplied.)

After a careful review of the records of this case, we find the appellant guilty of simple rape, not statutory rape.

It is settled in jurisprudence that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.[13]

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[12] *People v. Espina*, G.R. No. 183564, June 29, 2011, 653 SCRA 36, 39.

[13] *People v. Felan*, G.R. No. 176631, February 2, 2011, 641 SCRA 449, 452.

We affirm the lower courts in ruling that all the elements of rape are present in the case at bar. The victim's clear and credible testimony coupled with the corroboration made by the medical findings of Dr. Pang points positively to the conclusion that appellant indeed committed the crime of rape attributed to him.

In her testimony, VEA was clear and straightforward, not to mention consistent, in her recollection of the details of her sexual abuse in the hands of appellant, to wit:

(Fiscal Velasco)

Q: When Alejandro told you to undress, did you undress?
A: Yes, sir, my shorts only, sir.

Q: What else happened after you removed your shorts?
A: He placed his penis into my organ, sir.

Q: By the way, when you were told to undress by Alejandro, was he wearing anything?
A: There was, sir.

Q: What happened to the clothes he was wearing?
A: He did not remove anything, I was told to remove, sir.

Q: To whom did you undress?
A: I was the one, sir.

Q: How about the accused?
A: He just put out his organ and he did not remove his clothing, sir.

Q: What was he wearing at that time?
A: Shorts, sir.

Q: Was he able to insert his organ into your organ?
A: No, sir. But he was forcing it, sir.

Q: How did you feel?
A: Painful, sir.[14]

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[14] TSN, August 8, 2000, pp. 9-10.

Contrary to appellant's assertions, Dr. Pang's medical findings support, rather than negate, VEA's accusation of rape. We quote hereunder the pertinent portions of Dr. Pang's testimony:

(Fiscal Velasco)

Q: Now, there is an entry there about your findings, will you tell before this Honorable Court what do you mean by that?

A: It says here, vagina doesn't admit smallest finger, however, there was a fresh laceration at the *labia minora* at 3:00 o'clock and 9:00 o'clock.

Q: You mean fresh laceration, can you determine or still recall at that time of your examination, how old can that injury be i[nf]licted?

A: More or less, within a week.

x x x x x x x x x

Q: Now, that fresh laceration on the *labia minora*, can you explain further what part of the body is that?

A: In the vagina, the vagina normally have two (2) lips, the outer cover is the labia majora and the inner part is the *labia minora*, sir.

Q: That is the inner part of the *labia minora*?

A: Yes, sir.

Q: What would have caused that injury?

A: Any forcible entry into the vagina.[15]

Appellant is grossly mistaken in his contention that no rape occurred because the prosecution did not prove that his penis penetrated the vagina of the victim. Such an argument is of little consequence in light of jurisprudence declaring that penetration of the penis, however slight, of the *labia minora* constitutes consummated rape.[16]

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[15] TSN, January 15, 2002, pp. 9-11.

[16] *People v. Codilan*, G.R. No. 177144, July 23, 2008, 559 SCRA 623, 634.

In *People v. Gragasin*,[17] we elaborated on this legal principle in this manner:

> Following a long line of jurisprudence, full penetration of the female genital organ is not indispensable. It suffices that there is proof of the entrance of the male organ into the labia of the *pudendum* of the female organ. Any penetration of the female organ by the male organ, however slight, is sufficient. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify conviction for rape.[18] (Citations omitted.)

However, although the Court is convinced that indeed rape had been committed by appellant, we find that the prosecution failed to present VEA's birth certificate or to otherwise unequivocally prove that VEA was indeed below 12 years of age at the time of the incident in question. In view of this paucity in the prosecution's evidence on the matter of the victim's age, jurisprudence compels us to reclassify appellant's offense as simple rape.[19]

In *People v. Rullepa*,[20] we reiterated a set of guidelines in appreciating age as an element of the crime or as a qualifying circumstance. The following guidelines were formulated in response to the seemingly conflicting decisions regarding the sufficiency of evidence of the victim's age in rape cases:

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.

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[17] G.R. No. 186496, August 25, 2009, 597 SCRA 214.

[18] *Id.* at 231-232.

[19] *People v. Otos*, G.R. No. 189821, March 23, 2011, 646 SCRA 380, 384.

[20] 446 Phil. 745 (2003).

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:

    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.[21]

The trial court relied on the testimonies of VEA and her mother who attested to the effect that she was only 10 years old at the time of the rape. The pertinent parts of the testimonies of VEA and her mother are as follows:

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[21] *Id*. at 765-766, citing *People v. Pruna*, 439 Phil. 440, 470-471 (2002).

[VEA]

(Fiscal Velasco)

Q: Now, (VEA) you gave your age as twelve (12) years old?
A: Yes, sir.

Q: Can you tell this Honorable Court, what is the date of your birthday?
A: September 13, 1986, sir.[22]

[VEL]

(Fiscal Velasco)

Q: Now, (VEL), do you know (VEA)?
A: My daughter, sir.

Q: How old is she now?
A: Going thirteen (13) on September 1, sir.

Q: In 1997, what was her age?
A: Ten (10) years old, sir.

Q: Will you be able to tell the Honorable Court when was she born?
A: September 13, 1986, sir.[23]

Measured against the jurisprudential guidelines that this Court has set forth, VEA and her mother's testimonies cannot be given sufficient weight to establish her age with moral certainty, for in the absence of relevant documentary evidence or an express admission from the accused, the bare testimony of the victim's mother or a member of the family would suffice only if the victim is alleged to be below seven years of age and what is sought to be proved is that she is less than 12 years old. In the present case, VEA was supposedly 10 years of age on the material date stated in the Information.

Nevertheless, simple rape was proven to have been committed by appellant since he is the common-law spouse of VEA's

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[22] TSN, August 8, 2000, p. 4.

[23] TSN, May 22, 2000, p. 4.

mother and, thus, exercises moral ascendancy over VEA. In a recent case, we reiterated that the moral ascendancy of an accused over the victim renders it unnecessary to show physical force and intimidation.[24] Indeed, in rape committed by a close kin, such as the victim's father, stepfather, uncle, **or the common-law spouse of her mother**, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[25]

It is apropos to mention here that appellant's offense could not be deemed qualified rape, despite the proviso in Article 335 (as amended by Republic Act No. 7659), imposing the death penalty on rape committed when the victim is **under eighteen (18) years of age** and the **offender** is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the **common-law spouse** of the parent of the victim. This is due to the fact that the "live-in" or common-law relationship between appellant and VEA's mother was not alleged in the Information[26] despite being proven in the trial court. What was alleged in the Information is that VEA was the stepdaughter of the appellant but we have held that a stepfather-stepdaughter relationship as a qualifying circumstance presupposes that the victim's mother and the accused contracted marriage.[27] However, it was shown during trial that no marriage was ever contracted between appellant and the victim's mother.

Anent appellant's defenses of denial and alibi, this Court is not persuaded by such invocations since we have consistently regarded them as inherently weak defenses and must be rejected when the identity of the accused is satisfactorily and categorically established by the eyewitnesses to the offense, especially when

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[24] *People v. Ortega*, G.R. No. 186235, January 25, 2012, 664 SCRA 273, 285.

[25] *People v. Corpuz*, G.R. No. 175836, January 30, 2009, 577 SCRA 465, 473.

[26] Records, p. 1.

[27] *People v. Corpuz, supra* note 25 at 474.

such eyewitnesses have no ill motive to testify falsely.[28] In the instant case, appellant failed to show that VEA, the victim and sole eyewitness to the crime of rape, was motivated by ill will in accusing him of such a grave offense.

Moreover, as correctly pointed out by the assailed November 29, 2006 Decision of the Court of Appeals, appellant's alibi cannot be counted in his favor. For the defense of alibi to prosper, the 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 delicti* or within its immediate vicinity.[29] Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired, but more importantly, the facility of access between the two places.[30] In the present case, appellant failed to establish the distance between the corn plantation where he claimed to have been working and the house where the rape occurred. Failing in this regard, doubt is cast on appellant's defense of alibi because this leads to the conclusion that it was not physically impossible for appellant to be at the place of the crime at the time when the victim was raped.

In view of the foregoing, we therefore affirm the conviction of appellant with the modification that the offense he committed is not statutory rape but simple rape. This notwithstanding, he is to suffer the penalty previously imposed which is *reclusion perpetua*.

The Court of Appeals was correct in reducing the amount of actual damages to ₱50,000.00 and in awarding moral damages in the amount of ₱50,000.00. However, the award of exemplary

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[28] *People v. Manjares*, *supra* note 11 at 244.

[29] *People v. Alfredo*, G.R. No. 188560, December 15, 2010, 638 SCRA 749, 760.

[30] *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 345-346.

damages should be increased from ₱25,000.00 to ₱30,000.00 in accordance with prevailing jurisprudence.[31]

WHEREFORE, premises considered, the Decision dated November 29, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01085 is hereby **AFFIRMED** with **MODIFICATIONS,** to wit:

(1) Appellant Alejandro Viojela is found **GUILTY** beyond reasonable doubt of simple rape;

(2) Appellant Alejandro Viojela is ordered to pay Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and

(3) Appellant Alejandro Viojela is further ordered to pay the private offended party interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[31] *People v. Ortega, supra* note 24 at 292.

[*] Per Special Order No. 1337 dated October 9, 2012.

THIRD DIVISION

[G.R. No. 177357. October 17, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VAL DELOS REYES,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S OBSERVATIONS AND CONCLUSIONS DESERVE GREAT RESPECT AND ARE ACCORDED FINALITY; EXCEPTIONS; NOT PRESENT.— The rule is well-settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. The Court finds no reason to deviate from the general rule under the proven circumstances of this case.

2. ID.; ID.; ID.; A CANDID NARRATION BY A RAPE VICTIM DESERVES CREDENCE PARTICULARLY WHERE NO ILL MOTIVE IS ATTRIBUTED TO THE RAPE VICTIM THAT WOULD MAKE HER TESTIFY FALSELY AGAINST THE ACCUSED.— The testimony of AAA on the elements constituting the crime of rape, as committed on three separate occasions through force and intimidation after she was rendered almost unconscious after being forced to drink two (2) bottles of beer, was clear, categorical and positive. In the absence of corroboration, the insinuation of Delos Reyes that he was only included in the complaint because he refused to marry her deserves scant consideration. A candid narration by a rape victim deserves credence particularly where no ill motive is attributed to the rape victim that would make her testify falsely against the accused. For no woman in her right mind will admit to having been raped, allow an examination of her most private parts and subject herself as well as her family to the humiliation and shame concomitant with a rape prosecution, unless the

charges are true. Where an alleged rape victim says she was sexually abused, she says almost all that is necessary to show that rape had been inflicted on her person, provided her testimony meets the test of credibility.

3. **ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONY OF WITNESSES WHEN REFERRING ONLY TO MINOR DETAILS AND COLLATERAL MATTERS, DO NOT AFFECT THE SUBSTANCE OF THEIR DECLARATION, THEIR VERACITY OR THE WEIGHT OF THEIR TESTIMONY.—** On the inconsistencies between her oral testimony and her sworn statement, raised by the accused, the Court sees them as minor and cannot be categorized as prevarication, sufficient to render the case doubtful. On the contrary, these alleged inconsistencies are signs that AAA was not rehearsed and that she was telling the truth. Inconsistencies in the testimony of witnesses, when referring only to minor details and collateral matters, do not affect the substance of their declaration, their veracity or the weight of their testimony. They do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailants. Such inconsistency is insignificant and cannot have any bearing on the essential fact testified to.

4. **ID.; ID.; ID.; AN *EX-PARTE* AFFIDAVIT IS ALMOST ALWAYS INCOMPLETE AND OFTEN INACCURATE AND IS GENERALLY CONSIDERED TO BE INFERIOR TO A TESTIMONY GIVEN IN OPEN COURT AS THE LATTER IS SUBJECT TO THE TEST OF CROSS-EXAMINATION.—** [I]t should be borne in mind that more than ten (10) years had elapsed from the time of the incident to the time AAA gave her last testimony. Surely, one cannot expect that she could vividly remember every minor detail that transpired on that fateful day of December 22, 1994. At any rate, these alleged inconsistencies do not militate against her credibility as the Court has repeatedly held that sworn statements are almost always incomplete and inaccurate and do not disclose the complete facts for want of inquiries or suggestions. It is a matter of judicial experience that an affidavit, being taken *ex parte*, is almost always incomplete and often inaccurate and is generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross-examination.

5. ID.; ID.; ID.; WHEN THE TESTIMONY OF THE RAPE VICTIM CORRESPONDS WITH MEDICAL FINDINGS, THERE IS SUFFICIENT BASIS TO CONCLUDE THAT THE ESSENTIAL REQUISITES OF CARNAL KNOWLEDGE HAVE BEEN ESTABLISHED.— The forensic evidence showing old lacerations of AAA's hymen corroborates her claim that she had been sexually assaulted. When a woman states that she had been raped, she says in effect all that is necessary to show that rape was committed. When such testimony corresponds with medical findings, there is sufficient basis to conclude that the essential requisites of carnal knowledge have been established. Contrary to what Delos Reyes would like the Court to believe, the bite marks on her neck, breasts and thighs are not indicative of sexual foreplay. Rather, these marks are badges of bestiality which are a testament to his depravity.

6. CRIMINAL LAW; RAPE; THOUGH A MAN LAYS NO HAND ON A WOMAN, YET IF BY AN ARRAY OF PHYSICAL FORCES, HE SO OVERPOWERS HER MIND THAT SHE DOES NOT RESIST, OR SHE CEASES RESISTANCE THROUGH FEAR OF GREATER HARM, THE CONSUMMATION OF THE SEXUAL ACT IS RECOGNIZED IN JURISPRUDENCE AS RAPE.— The Court also looks into the so-called improbabilities claimed by the accused and finds them as not totally contrary to human experience. Rape is not commonly experienced by a woman. Thus, there is no common reaction to it. The failure of AAA to run away when Delos Reyes was taking his pants off using both his hands can be explained by the fear already instilled in her as well as the effect of having been forced to imbibe two (2) bottles of beer, a beverage she was not used to drink. The same can be said of the failure of AAA to shout for help, kick the accused or bite their penises during the assault. It has been said that though a man lays no hand on a woman, yet if by an array of physical forces, he so overpowers her mind that she does not resist, or she ceases resistance through fear of greater harm, the consummation of the sexual act is recognized in jurisprudence as rape. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's embrace because of fear for life and personal safety. Threats, intimidation, violence, fear, and terror all combined to suppress the will to resist, kick, shout, or struggle against the rapist. AAA added

that she could not shout because Delos Reyes was squeezing her neck.

7. ID.; ID.; LUST IS NOT A RESPECTER OF TIME AND PLACE.— The close physical proximity of other residents and passersby at the construction site or the neighbors of Go does not render impossible the commission of the crime. It has been repeatedly emphasized that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. Lust is not a respecter of time and place. The fact that it could have been more convenient for Delos Reyes to rape AAA in the house of Go instead of bringing her to the construction site and back again does not affect her credibility. The choice was that of her ravisher, not hers.

8. ID.; ID.; DELAY IN REPORTING RAPE INCIDENTS, IN THE FACE OF PHYSICAL VIOLENCE, CANNOT BE TAKEN AGAINST THE VICTIM.— The failure to immediately report the dastardly acts to her family or to the authorities at the soonest possible time or her failure to immediately change her clothes is not enough reason to cast reasonable doubt on the guilt of Delos Reyes. This Court has repeatedly held that delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim. Further, it has been written that a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness.

9. REMEDIAL LAW; EVIDENCE; OCULAR INSPECTION MAY BE GRANTED ONLY WHERE IT IS REASONABLY CERTAIN THAT IT WILL BE OF SUBSTANTIAL AID TO THE COURT IN REACHING A CORRECT VERDICT.— The contention of Delos Reyes that the RTC erred in denying his motion to have an ocular inspection of the construction site also deserves scant consideration. It has been said that ocular inspection rests within the sound discretion of the court. Inspection may be granted only where it is reasonably certain that it will be of substantial aid to the court in reaching a correct verdict. The trial court in this case correctly refused to make the inspection

where testimonial evidence adequately pictured the condition of the place. Thus, a view of the place would serve no useful purpose. As correctly noted by the CA, considering the long lapse of time since the rape, the construction site would have been finished and many houses erected within the vicinity.

10. CRIMINAL LAW; RAPE; PROPER PENALTY.— The CA, however, in reducing the penalty from death to *reclusion perpetua*, failed to state in the dispositive portion that the reduction should be without eligibility for parole as held in the case of *People v. Antonio Ortiz*. This should be rectified.

11. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The CA also limited the amount of civil indemnity to ₱50,000.00. On this score, the discussion of the Court in *People of the Philippines v. Rodolfo Lopez* is worth noting. Thus: *People v. Salome* explained the basis for increasing the amount of said civil damages as follows: x x x. As to damages, we have held that **if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty**, **the civil indemnity for the victim shall be Php75,000.00** . . . Also, in rape cases, moral damages are [a]warded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, **the trial court's award of Php50,000.00 as moral damages should also be increased to Php75,000.00 pursuant to current jurisprudence on qualified rape.**" x x x. Finally, an award of exemplary damages of ₱30,000.00 for each count of rape is also warranted. In *People v. Rayos*, it was said that "Article 2229 of the Civil Code sanctions the grant of exemplary or correction damages in order to deter the commission of similar acts in the future and to allow the courts to mould behaviour that can have grave and deleterious consequences to society." It goes without saying that the civil liabilities imposed and modified herein should bear interest at the legal rate of 6% reckoned from the filing of the complaint up to the finality of this judgment, after which the rate should be 12% per annum.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Lagman Lagman & Mones Law Firm for accused-appellant.

D E C I S I O N

MENDOZA, *J.*:

For final review is the December 19, 2006 Decision[1] of the Court of Appeals and its February 22, 2007 Resolution,[2] in CA-G.R. CR H.C. No. 01642, affirming with modification the June 28, 2005 Joint Decision[3] of the Regional Trial Court *(RTC)*, Branch 15, Tabaco City, Albay, which convicted accused Val Delos Reyes *(Delos Reyes)* of three (3) counts of rape against AAA.[4] The case bears intimate relation with the proceedings in G.R. Nos. 139331, 140845-46, 130714, and 139634, as will be shown hereunder.

The Facts:

On March 30, 1995, Delos Reyes and Donel Go *(Go)* were charged with three (3) counts and two (2) counts of rape, respectively, in three (3) separate Informations. The accusatory portions of the Informations read:

Crim. Case No. T-2639

That on or about the 22nd day of December, 1994 at more or less between the hours of 4:00 o'clock in the afternoon and 10:00 o'clock in the evening at Barangay San Roque, Tabaco, Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation and rendering AAA almost

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[1] *Rollo*, pp. 2-22. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Noel G. Tijam and Associate Justice Arturo G. Tayag, concurring.

[2] CA *rollo*, pp. 218-219.

[3] *Id.* at 97-126.

[4] The Court shall use fictitious initials in lieu of the real names and circumstances of the victim and the latter's immediate family members other than accused-appellant. See *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742; citing Sec. 29 of Republic Act (R.A.) No. 7610, Sec. 44 of R.A. No. 9262, and Sec. 40 of the Rule on Violence Against Women and Their Children; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

unconscious by forcing private complainant to drink two (2) bottles of beer, willfully, unlawfully and feloniously did lie and succeeded in having carnal knowledge of AAA, against her will, to her damage and prejudice.

ACTS CONTRARY TO LAW.[5]

Crim. Case No. T-2640

That on or about the 22nd day of December, 1994 at more or less between the hours of 4:00 o'clock in the afternoon and 10:00 o'clock in the evening at Barangay San Roque, Tabaco, Albay, DONEL GO, with the indispensable cooperation and help of VAL DE LOS REYES, by means of force and intimidation and rendering AAA almost unconscious by forcing private complainant to drink two (2) bottles of beer, willfully, unlawfully and feloniously did lie and succeeded in having carnal knowledge of AAA, against her will, to her damage and prejudice.

ACTS CONTRARY TO LAW.[6]

Crim Case No. T-2641

That on or about the 22nd day of December, 1994 at more or less between the hours of 4:00 o'clock in the afternoon and 10:00 o'clock in the evening at Barangay San Roque, Tabaco, Albay, Philippines, and within the jurisdiction of this Honorable Court, VAL DE LOS REYES, with the indispensable cooperation and help of DONEL GO, by means of force and intimidation and rendering AAA almost unconscious by forcing private complainant to drink two (2) bottles of beer, VAL DE LOS REYES, willfully, unlawfully and feloniously did lie and succeeded in having carnal knowledge of AAA, against her will, to her damage and prejudice.

ACTS CONTRARY TO LAW.[7]

Criminal Case No. T-2640 was raffled to Branch 15, RTC, Albay *(RTC-Br. 15)* while Criminal Case Nos. T-2639 and T-2641 were raffled to Branch 16 of the same court *(RTC-Br.*

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[5] Records, p. 50.

[6] *Rollo* (G.R. Nos. 130714 and 139634), p. 5.

[7] *Rollo* (G.R. Nos. 130714 and 139634), p. 7.

16). On motion of the prosecution,[8] T-2640 was consolidated with the two other cases in RTC-Br. 16.

Considering that Delos Reyes was at large at that time, only Go was arraigned. Before the prosecution could finish presenting evidence, Go jumped bail and was tried *in absentia*.

In its June 25, 1997 Decision,[9] RTC-Br. 16 found Go guilty beyond reasonable doubt of two (2) counts of rape in Criminal Case Nos. T-2640 and T-2641, sentencing him to suffer the death penalty for each count. An *alias* warrant of arrest against Delos Reyes was issued and the cases against him were ordered archived. The cases against Go were brought to the Court on automatic review and were docketed as G.R. Nos. 130714 and 139634.

After Delos Reyes was finally apprehended by the police, on August 17, 1997, RTC-Br. 16 ordered the revival of the cases against him. During his arraignment on August 26, 1997, Delos Reyes pleaded "Not Guilty" to all three charges of rape.[10] On December 3, 1997, the cases against him were transferred to RTC-Br. 15, which was designated by this Court as a special court to try cases involving heinous crimes.

The prosecution then adopted and marked in evidence the testimonies of the prosecution witnesses given in Criminal Case Nos. T-2640 and T-2641, particularly, those of the victim, AAA; her mother, BBB; her sister, CCC; and Dr. Marissa S. Saguinsin *(Dr. Saguinsin)*, the City Health Physician of Tabaco City. Also presented in evidence were the panty worn by AAA on that fateful day, her broken wristwatch, the Certificate of Entry in the Police Blotter, the Medico-Legal Certificate issued by Dr. Marissa S. Saguinsin, the Referral Form of ABS-CBN, and the Decision rendered in Criminal Case Nos. T-2640 and T-2641.

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[8] Records (Volume 1), pp. 55-56.

[9] *Id.* at 300-323.

[10] *Id.* at 79.

In its February 22, 1999 Joint Judgment,[11] the RTC-Br. 15 found Delos Reyes guilty beyond reasonable doubt of three counts of rape and sentenced him to suffer the penalty of *reclusion perpetua* in each case. He sought reconsideration[12] of his conviction but his motion was denied by the RTC-Br. 15 in its March 29, 1999 Resolution. His appeal, elevated to the CA, was accepted by the Court in its Resolution, dated January 17, 2000.[13] His appeal, docketed as G.R. Nos. 139331 and 140845-46, and that of Go as G.R. Nos. 130714 and 139634, were consolidated.[14]

Considering that the prosecution witnesses in the trial of Delos Reyes merely affirmed their testimonies given on direct examination in the trial of Go, the Court found that there was a violation of his constitutional right to confront and cross-examine the witnesses against him. Thus, in its Resolution,[15] dated December 27, 2002, the Court resolved:

> WHEREFORE, the Court Resolved to *VACATE* the judgment of Branch 15 of the Regional Trial Court of Tabaco, Albay in Criminal Case Nos. T-2639-41, "*People v. Val de los Reyes*," and to *SET ASIDE* Exhibits "A", "B", "C", "D", "E-2", "E-2-A" to "E-2-I", "F", "G" and "H". Said criminal cases are *REMANDED* to Branch 15 of the Regional Trial Court of Tabaco, Albay for the immediate rehearing of the testimonies of witnesses BBB, AAA, CCC and Dr. Marissa Saguinsin, in accordance with this Court's above disquisition. The trial court is further directed to conduct said proceedings and render a decision thereon within 90 days from receipt of this Resolution. Following Section 6 (a), Rule 121 of the Revised Rules of Court, the trial court may, in the interest of justice, allow the introduction of additional evidence.
>
> Pending these rehearing proceedings in the trial court, the automatic review of the cases against Donel Go in G. R. Nos. 130714 and 139634 is held in abeyance.

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[11] *Id.* at 358-374.

[12] *Id.* at 375-382.

[13] *Rollo* (G.R. Nos. 130714 and 139634), p. 48.

[14] *Id.* at 140.

[15] Records (Volume 1), pp. 398-418.

In the rehearing of the case, the evidence of the prosecution established that on December 22, 1994, at around 4:00 o'clock in the afternoon, AAA was requested by CCC to deliver the pictures taken during the christening of her niece to Go, one of the godfathers. AAA and CCC then left the house on board a tricycle. AAA dropped off CCC at the Philtranco bus terminal and proceeded to the house of Go in San Roque, Tabaco City, to deliver the pictures.

Arriving at the place, AAA saw Go standing by the roadside talking to a man, who was later introduced to her as Delos Reyes. According to AAA, there was a sudden downpour before she could leave. Upon invitation of Go, she took shelter in his house. She noticed that there was nobody in the house. Alarmed and fearful, she tried to leave despite the pouring rain but Go stopped her by forcibly pulling her.

Delos Reyes then joined the two, bringing with him two (2) bottles of beer. He proceeded to the kitchen, took two (2) drinking glasses and poured the beer. He and Go urged AAA to drink. Not being used to drinking beer, she refused. Delos Reyes then forced her to drink by pinching her nose while Go was forcibly opening her mouth. Despite her resistance, the two succeeded in pouring beer into her mouth. Shortly, thereafter, she felt weak, dizzy and her stomach began aching. She suspected that the beer was laced with some substance.

Delos Reyes then brought AAA to a construction site near Go's house. He made her lie down on some lumber and removed her pants and underwear. He then undressed himself. She shouted for help but he started squeezing her neck. He then raised her blouse, bit her breast, neck and other parts of her body, and then forcefully inserted his penis into her vagina. Still not satisfied, he forced his organ into her mouth. She almost vomitted because of its bad smell.

Go arrived and helped Delos Reyes in dressing up AAA. They then returned to Go's house and she was brought inside the bedroom. While Delos Reyes restrained her hands, Go started taking off her clothes. She again tried to shout for help but

Delos Reyes pressed her neck. Go seized the moment to raise her blouse and bite her breasts, neck and other parts of her body. He then forced his organ into her vagina and, thereafter, into her mouth, making it difficult for her to breathe.

After Go was done with her, Delos Reyes again satisfied his lust for the second time. While Delos Reyes was doing it, Go was holding her hands and neck. Delos Reyes inserted his penis inside her vagina and then into her mouth. Delos Reyes again bit her breasts, neck and other parts of her body. Feeling tired and weak, she fell unconscious.

When she regained consciousness, AAA noticed that she was already dressed up. Delos Reyes and Go then accompanied her in going home on board a tricycle, but warned her not to tell anyone what happened, otherwise, they would kill her. After dropping her off at her house, the two hurriedly left. Scared and confused, she did not inform her mother about what befell her. Instead, she went straight to her bedroom. Feeling pain all over her body, she covered herself with a blanket and slept without eating.

The next day, AAA could not stand up and could not eat breakfast. She only drank Milo and then went back to bed. The following day, December 24, 1994, she forced herself to stand up. She was only able to eat lunch. Feeling dirty and uncomfortable, she went to the bathroom and washed herself. There she noticed her neck, breast and feet with hematoma, contusions and bruises. She also found out that her panty was bloodied with garter detached and her wristwatch broken. Then, she went back to bed.

Apprehensive of AAA's strange behavior, BBB confronted her. Right then and there, AAA bared her horrifying ordeal to her mother and CCC. Immediately, they brought her to the Tabaco Police Station where she gave her statement on her suffering in the hands of Delos Reyes and Go. Upon the advice of the Chief of Police, they also had the incident entered in the blotter of *Barangay* San Roque where Delos Reyes resided. They then went to the hospital for medical examination.

On January 26, 1995, AAA felt pain in her vagina. After an examination, she was found positive for urinary tract infection.

In support of the prosecution, BBB recounted that on that day, CCC requested AAA to deliver the baptismal pictures to Go. Late in the afternoon, BBB got worried because AAA had not returned. So, she went to Go's place to fetch her. Upon reaching Go's place, she noticed that Go appeared uneasy and shaking. When she inquired about her daughter, he replied that she had already left. She, thus, went home but AAA was not yet there. Later that night, however, she saw her being accompanied by Go and Delos Reyes, who immediately left. AAA went straight to bed without eating and she remained in bed the following day. Upon her urging, AAA disclosed what the two had done to her and their threats to kill her.

Dr. Marissa Saguinsin, the City Health Physician, testified that she received a letter-request from the Tabaco Police Station to conduct a physical and medical examination on AAA. Upon examination, she issued the corresponding Medical Certificate[16] stating the following findings:

External: Fairly developed and fairly nourished female adult.

Internal:

1.) Pubic hair fully grown.

2.) Labia majora and menora are coaptated.

3.) No tear on sharp angle base on the fourchette.

4.) Healed superficial hymenal laceration corresponding to 4.6 & 8 o'clock positions in the face of the clock.

5.) Hymenal orifice admits 2 fingers with moderate resistance.

Conclusion:

Physical virginity lost.

On the other hand, the defense presented five (5) witnesses, namely: Delos Reyes himself; his sister, Maribel Delos Reyes

[16] *Id.* at 211.

(Maribel); a co-worker of CCC, Zenaida Borjal *(Zenaida)*; Arlene Nonato *(Arlene)*; and Hernando Pantojo, Jr. *(Pantojo)* of PAGASA.

Maribel and Arlene both testified that they resided near the house of Go and Delos Reyes; that Go and AAA were sweethearts; and that AAA used to frequent the house of Go.

Zenaida testified that she was the co-worker of CCC at the Dr. Cabredo Hospital; that on December 25, 1994, CCC was absent; that CCC informed her that she did not go to work on that day because she had beaten up AAA and that out fear of what she had done, she brought her to the hospital.

When it was his turn at the witness stand, Delos Reyes stated that on December 22, 1994, he, Jose Bolber and Jun de los Santos were in the house of Go drinking a few bottles of beer. At around 4:00 o'clock in the afternoon, AAA arrived carrying pictures taken at a baptism. When Go invited her inside the house, he and his other companions went home. At around 8:30 o'clock in the evening, he went out of his house and saw AAA, Go, Jose Bolber, and Jun de los Santos talking to each other along a nearby alley. He then approached the group and joined the conversation. Later, upon the invitation of Go, they all rode on a *pedicab* and brought her home. They stayed in her house for ten (10) minutes and then left. Two days later, on December 24, 1994, he saw AAA waiting for him in his house. When he asked what was wrong, she told him that she had a problem. He noticed that she had bruises and contusions all over her body. She then told him that she was beaten up by CCC. Afraid to go home, she asked him if he could marry her. Shocked by the proposal, he accompanied her to the house of Go and informed him of her problem. It was the last time he saw her. Sometime thereafter, he received a letter from her asking for his forgiveness.

Pantojo, Region 5 PAGASA Chief Meteorological Officer, stated that on December 22, 1994, the area of Legaspi City and an area spanning fifty (50) kilometers, including Tabaco City, experienced intermittent rains.

On rebuttal, AAA was again presented. She denied having a relationship with Go and also disowned the letter addressed to Delos Reyes.[17] She then offered in evidence a specimen of her own handwriting.[18]

On June 28, 2005, the RTC rendered judgment[19] finding Delos Reyes guilty beyond reasonable doubt for three (3) counts of rape. Thus, the RTC disposed:

> WHEREFORE, judgment is hereby rendered, finding the accused VAL DEL LOS REYES guilty beyond reasonable doubt of the crime of RAPE as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him as follows:
>
> In Criminal Case No. T-2639, as principal by direct participation, to suffer the penalty of DEATH and additionally to indemnify the victim AAA the sum of Fifty Thousand (₱50,000.00) Pesos as damages, together with interest at the rate of six (6%) percent per annum computed from the time of the filing of the complaint;
>
> In Criminal Case No. T-2640, as principal [by] indispensable cooperation, to suffer the penalty of DEATH and to indemnify the private offended party AAA, the sum of Fifty Thousand (₱50,000.00) Pesos as damages, together with interest at the rate of six (6%) percent per annum computed from the time of the filing of the complaint; and,
>
> In Criminal Case No. T-2641, as principal by direct participation, to suffer the penalty of DEATH and additionally to indemnify AAA the sum of Fifty Thousand (₱50,000.00) Pesos as damages, together with interest at the rate of six (6%) percent per annum computed from the time of the filing of the complaint.
>
> SO ORDERED.[20]

Undaunted, Delos Reyes interposed his appeal before the CA, which, on December 19, 2006, promulgated the assailed decision affirming his conviction. The CA, however, reduced

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[17] *Rollo*, pp. 127-128; records (Volume I), pp. 331-331-A.

[18] Records, p. 332.

[19] CA *rollo*, pp. 97-126.

[20] *Id.* at 125-126.

the penalty from death to *reclusion perpetua*, pursuant to Republic Act *(R.A.)* No. 9346.[21] Despite the reduction of the penalty, the CA was of the view that the award of civil indemnity should be maintained at ₱50,000.00.[22] The CA also found the award of moral damages warranted, but similarly limited the amount to ₱50,000.00.[23] The dispositive portion of the CA decision reads:

> WHEREFORE, premises considered, the appeal is hereby DENIED and the assailed joint decision dated June 28, 2005 of the RTC, Branch 15, Tabaco City in Criminal Cases Nos. T-2639 to T-2641 is hereby AFFIRMED with MODIFICATIONS:
>
> 1. the death penalty is reduced to *reclusion perpetua*; and
>
> 2. moral damages of ₱50,000.00 is granted to victim AAA.
>
> The rest of the decision stands.
>
> SO ORDERED.

In its March 22, 2007 Resolution,[24] the Court gave due course to Delos Reyes' appeal. In its Resolution,[25] dated June 27, 2007, the Court required the parties to file their respective supplemental briefs within thirty (30) days from notice, if they so desired.

In its *Manifestation*,[26] dated September 7, 2007, the Office of the Solicitor General *(OSG)* opted to stand by its brief filed before the CA. On September 24, 2007, the counsel for Delos Reyes filed his Supplemental Brief[27] presenting the following arguments:

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[21] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[22] CA Decision, p. 19; *rollo*, p. 20.

[23] *Id.*

[24] *Id.* at 24.

[25] *Id.* at 25.

[26] *Id.* at 35.

[27] *Id.* at 44-79.

I.

THE HONORABLE COURT OF APPEALS FAILED TO APPRECIATE THAT THE PROSECUTION EVIDENCE IS ON THE WHOLE IMPROBABLE AND INSUFFICIENT TO SUSTAIN THE RULING OF THE TRIAL COURT THAT THE ACCUSED-PETITIONER IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

A THE HONORABLE COURT OF APPEALS OVERLOOKED THE INCONSISTENCIES ON MATERIAL POINTS OF THE STATEMENT AND TESTIMONY OF THE PLAINTIFF-APPELLEE AND THE PROSECUTION WITNESSES

B. THE HONORABLE COURT OF APPEALS OVERLOOKED THE IMPROBABILITIES OF THE STATEMENT AND TESTIMONY OF THE PLAINTIFF-APPELLEE, WHICH IF PROPERLY CONSIDERED ARE MANIFESTLY CONTRARY TO HUMAN NATURE AND EXPERIENCE

C. THE HONORABLE COURT OF APPEALS OVERLOOKED THE INSUFFICIENCY OF EVIDENCE ADDUCED BY THE PLAINTIFF-APPELLE[E] TO SUSTAIN A CONVICTION BEYOND REASONABLE DOUBT

II.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT SUSTAINED THE TRIAL COURT CONVICTING THE ACCUSED-APPELLANT OF AN OFFENSE NOT CHARGED IN THE COMPLAINT.

III.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT SUSTAINED THE ORDER OF THE TRIAL COURT AND DID NOT GIVE WEIGHT TO THE EVIDENCE OF THE DEFENSE.[28]

In the main, Delos Reyes argues that there were inconsistencies and improbabilities in the prosecution's evidence which vitiate its integrity. On the inconsistencies, he points out

[28] *Id.* at 48-49.

that AAA's testimony in court is inconsistent with her sworn statement on a) how she was forced to drink beer; b) where she was when she was forced to stay in the house of Go; and c) what Delos Reyes was doing when Go was raping her. He also asked the Court to consider that BBB's testimony on the circumstances when she was brought home by the two accused was not corroborated by AAA herself. Also, AAA's claim that there was a heavy downpour was belied by the meteorologist of PAGASA who testified that there were merely intermittent rains on that day.

On how she was forced to drink beer, AAA testified that Delos Reyes pressed her nose and Go forcibly opened her mouth. In her sworn statement, however, she stated that because of her fear, she drank the beer. Regarding where she was when Go forced her to stay, she testified that she was already inside the house of Go but her sworn statement stated that she was still outside. With respect to what Delos Reyes was doing when Go was raping her, she testified that Delos Reyes was holding her while her sworn statement stated that he was just watching them.

Aside from the inconsistencies, Delos Reyes claims there are improbabilities in her story that render it hard to believe as they are contrary to human experience. These are, among others: 1) that she did not cry out when she could have, while she was being forced to drink beer or threatened with rape; 2) that she did not run when she could have, when Delos Reyes was taking off his clothes with his two hands; 3) that the two accused still inserted their penises in her mouth after they had satisfied their lust; 4) that she did not bite their penises when she could have and should have done it; 5) that she was still brought to a place under construction when she could be defiled right then and there in the house of Go; and 6) that the two still brought her home even after they had molested her.

After due consideration of the evidence on record, the Court affirms the conviction of Delos Reyes.

The rule is well-settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the

trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case.[29] The Court finds no reason to deviate from the general rule under the proven circumstances of this case.

The testimony of AAA on the elements constituting the crime of rape, as committed on three separate occasions through force and intimidation after she was rendered almost unconscious after being forced to drink two (2) bottles of beer, was clear, categorical and positive. In the absence of corroboration, the insinuation of Delos Reyes that he was only included in the complaint because he refused to marry her deserves scant consideration. A candid narration by a rape victim deserves credence particularly where no ill motive is attributed to the rape victim that would make her testify falsely against the accused. For no woman in her right mind will admit to having been raped, allow an examination of her most private parts and subject herself as well as her family to the humiliation and shame concomitant with a rape prosecution, unless the charges are true. Where an alleged rape victim says she was sexually abused, she says almost all that is necessary to show that rape had been inflicted on her person, provided her testimony meets the test of credibility.[30]

The Court finds it hard to reconcile the allegation of Delos Reyes that Go and AAA were sweethearts and his contention that the only reason why he was being implicated in the charges of rape was because of his refusal to accept her demand for marriage. In this regard, the Court quotes, with affirmation, the disquisition of the RTC. Thus:

x x x If it is true that Donel Go and AAA are lovers as the accused Delos Reyes now claims, the Court could hardly imagine why the

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[29] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 696-697.

[30] *People v. Sampior*, 383 Phil. 775 (2000).

victim should demand that accused Delos Reyes should marry her with the defense ostensibly arguing that because Delos Reyes refused to such proposal, these three (3) cases for rape were filed against him. It is highly imaginable that a woman single and of good repute would ambivalently be linked in so swift a time to two male persons whom she is not fully acquainted with. The records clearly showed that accused Donel Go was only known to AAA five (5) days prior to the rape incident on the occasion of him standing as sponsor in the christening of her niece, and accused Val Delos Reyes having just been introduced to her that fateful day of December 22, 1994.[31]

On the inconsistencies between her oral testimony and her sworn statement, raised by the accused, the Court sees them as minor and cannot be categorized as prevarication, sufficient to render the case doubtful. On the contrary, these alleged inconsistencies are signs that AAA was not rehearsed and that she was telling the truth. Inconsistencies in the testimony of witnesses, when referring only to minor details and collateral matters, do not affect the substance of their declaration, their veracity or the weight of their testimony. They do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailants.[32] Such inconsistency is insignificant and cannot have any bearing on the essential fact testified to.[33]

On this point, it should be borne in mind that more than ten (10) years had elapsed from the time of the incident to the time AAA gave her last testimony. Surely, one cannot expect that she could vividly remember every minor detail that transpired on that fateful day of December 22, 1994.

At any rate, these alleged inconsistencies do not militate against her credibility as the Court has repeatedly held that sworn statements are almost always incomplete and inaccurate

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[31] *Joint Decision,* p. 26; CA *rollo,* pp. 121-122.

[32] *People v. De Leon*, 387 Phil. 779, 791 (2000); *People v. Vicente Valla,* 380 Phil. 31, 43 (2000).

[33] *People v. Macapanas,* G.R. No. 187049, May 4, 2010, 620 SCRA 54; *People v. Sabardan*, G.R. No. 132135, May 21, 2004, 429 SCRA 9, 19.

and do not disclose the complete facts for want of inquiries or suggestions.[34] It is a matter of judicial experience that an affidavit, being taken *ex parte*, is almost always incomplete and often inaccurate and is generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross-examination.[35]

The forensic evidence showing old lacerations of AAA's hymen corroborates her claim that she had been sexually assaulted. When a woman states that she had been raped, she says in effect all that is necessary to show that rape was committed.[36] When such testimony corresponds with medical findings, there is sufficient basis to conclude that the essential requisites of carnal knowledge have been established.[37] Contrary to what Delos Reyes would like the Court to believe, the bite marks on her neck, breasts and thighs are not indicative of sexual foreplay. Rather, these marks are badges of bestiality which are a testament to his depravity.

The Court also looks into the so-called improbabilities claimed by the accused and finds them as not totally contrary to human experience. Rape is not commonly experienced by a woman. Thus, there is no common reaction to it. The failure of AAA to run away when Delos Reyes was taking his pants off using both his hands can be explained by the fear already instilled in her as well as the effect of having been forced to imbibe two (2) bottles of beer, a beverage she was not used to drink.

The same can be said of the failure of AAA to shout for help, kick the accused or bite their penises during the assault.

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[34] *People v. Bajada*, G.R. No. 180507, November 20, 2008, 571 SCRA 455; and *People v. Alegado*, G.R. No. 80532, November 8, 1993, 227 SCRA 514, 520.

[35] *People v. Ebet*, G.R. No. 181635, November 15, 2010, 634 SCRA 689.

[36] *People v. Jacob*, G.R. No. 177151, August 22, 2008, 563 SCRA 191, 207.

[37] *People v. Tuazon*, G.R. No. 168102, August 22, 2008, 563 SCRA 124, 135.

It has been said that though a man lays no hand on a woman, yet if by an array of physical forces, he so overpowers her mind that she does not resist, or she ceases resistance through fear of greater harm, the consummation of the sexual act is recognized in jurisprudence as rape.[38] Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's embrace because of fear for life and personal safety.[39] Threats, intimidation, violence, fear, and terror all combined to suppress the will to resist, kick, shout, or struggle against the rapist. AAA added that she could not shout because Delos Reyes was squeezing her neck.

The close physical proximity of other residents and passersby at the construction site or the neighbors of Go does not render impossible the commission of the crime. It has been repeatedly emphasized that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. Lust is not a respecter of time and place.[40] The fact that it could have been more convenient for Delos Reyes to rape AAA in the house of Go instead of bringing her to the construction site and back again does not affect her credibility. The choice was that of her ravisher, not hers.

Neither does the Court find strange the testimony of AAA that after she was raped, Delos Reyes and Go had the guts to bring her home in a *pedicab*. Again, it was the choice of her assailants, not hers. The records, moreover, reveal that while bringing her home, he and Go warned her not to tell anyone of what they did to her, otherwise, they would kill her. Coming

[38] *People v. Sagun*, 363 Phil. 1, 18 (1999).

[39] *Id.; People v. Rabosa*, 339 Phil. 339 (1997*)*; *People v. Gumahob*, 332 Phil. 855, 870 (1996); *People v. Padre-e*, 319 Phil. 545, 554 (1995); *People v. Angeles*, G.R. Nos. 104285-86, May 21, 1993, 222 SCRA 451.

[40] *People v. Bernabe*, 421 Phil. 805 (2001); and *People v. Cura*, 310 Phil. 237 (1995).

from persons who just forcibly imposed their bestiality on her, they were not empty threats.

AAA cannot be faulted either if she failed to corroborate her mother's testimony that she saw the two accompany her daughter. Her failure has no controlling significance. It should not be taken against her or the prosecution.

The failure to immediately report the dastardly acts to her family or to the authorities at the soonest possible time or her failure to immediately change her clothes is not enough reason to cast reasonable doubt on the guilt of Delos Reyes. This Court has repeatedly held that delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim.[41] Further, it has been written that a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror, which would, he hopes, numb his victim into silence and submissiveness.[42]

Contrary to the assertions of the accused, the trial court took into consideration the evidence presented by the defense. The undated letter, allegedly written by AAA to him seeking his forgiveness, was vehemently denied by her. Comparing the copied portion of the letter by AAA and the letter presented by him,[43] one could readily see that there are marked differences in the strokes of the handwriting. Delos Reyes could have helped his case had he presented the person who handed to him the said letter to prove that it was AAA who wrote the letter, but he never did.

The testimony of PAGASA meteorologist Pantojo that there was only intermittent rainfall on the night of December 22, 1994, was properly considered by the lower court. The trial

[41] *People v. Ibay*, 260 Phil. 334 (1990); *People v. Lucas*, 260 Phil. 334 (1990), *People v. Valdez*, 234 Phil. 399 (1987); *People v. Ibal*, 227 Phil. 294 (1986); *People v. Sculles*, 217 Phil. 294 (1984).

[42] *People v. Melivo*, 323 Phil. 412 (1996).

[43] Records (Volume 1), pp. 331 and 332

court, however, also took into consideration his statements during cross-examination that weather conditions were not the same in all places, and that while some places might have heavy rains, other places within the 50-kilometer radius could have no rainfall at all.[44]

The argument of Delos Reyes that he was convicted for an offense not charged in the sworn complaint simply lacks merit. As aptly explained by the CA:

> A close scrutiny of the sworn complaint reveals that accused-appellant De los Reyes was charged with the crime of rape. Similarly, the Informations filed against him (Crim. Cases Nos. T-2639, T-2640 and T-2641) charged him of the same crime of rape, penalized under Art. 335 of the Revised Penal Code, now found under Art. 266-A. Surely accused-appellant De los Reyes has been afforded his fundamental right to be apprised of the nature and cause of the accusation against him.
>
> The Information alleged that accused-appellant De los Reyes, by means of force and intimidation and rendering the victim AAA almost unconscious by forcing her to drink two (2) bottles of beer, succeeded in having carnal knowledge against her will. If accused-appellant De los Reyes found the Information to be insufficient or defective, he should have filed a motion to quash the information or a bill of particulars before he was arraigned, but he never did. He was assisted by counsel during his arraignment and he pleaded not guilty. The Information was read to him but he did not complain that the charge against him was defective or insufficient. Whatever objections he had as to the form and substance of the information is thus, deemed to have been waived by him. Accused-appellant De los Reyes, *ergo*, has no right to object to whatever evidence which could be lawfully introduced and admitted under said information which sufficiently charged him of the crime of rape.
>
> Accused-appellant De los Reyes actively participated in the trial of this case. He presented evidence for his defense and cross-examined the prosecution witnesses. It is now too late in the day for him to declare that his right to be informed of the nature and cause of the accusation against him was violated. Accused-appellant De los Reyes could not raise this issue for the first time on appeal.

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[44] TSN, June 7, 2005, pp. 8-9.

It is not the designation of the offense in the Information that governs, rather it is the allegations that must be considered in determining what crime is charged.[45] (Citations omitted.)

The contention of Delos Reyes that the RTC erred in denying his motion to have an ocular inspection of the construction site also deserves scant consideration. It has been said that ocular inspection rests within the sound discretion of the court. Inspection may be granted only where it is reasonably certain that it will be of substantial aid to the court in reaching a correct verdict. The trial court in this case correctly refused to make the inspection where testimonial evidence adequately pictured the condition of the place. Thus, a view of the place would serve no useful purpose.[46] As correctly noted by the CA, considering the long lapse of time since the rape, the construction site would have been finished and many houses erected within the vicinity.

The CA, however, in reducing the penalty from death to *reclusion perpetua*, failed to state in the dispositive portion that the reduction should be without eligibility for parole as held in the case of *People v. Antonio Ortiz*.[47] This should be rectified.

The CA also limited the amount of civil indemnity to ₱50,000.00. On this score, the discussion of the Court in *People of the Philippines v. Rodolfo Lopez*[48] is worth noting. Thus:

> On pecuniary liability, this Court ruled in *People of the Philippines v. Sarcia* that:
>
> > The principal consideration for the award of damages, under the ruling in *People v. Salome* and *People v. Quiachon* is the **penalty provided by law or imposable for the offense because of its heinousness, not** the public **penalty** actually imposed on the offender. Regarding the civil indemnity and moral damages,

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[45] CA Decision, pp. 14-16; *rollo*, pp. 15-16.

[46] *People v. Baniel*, 341 Phil. 471 (1997).

[47] G.R. No. 179944, September 4, 2009, 598 SCRA 452.

[48] G.R. No. 179714, October 2, 2009, 602 SCRA 517, 529-530.

People v. Salome explained the basis for increasing the amount of said civil damages as follows:

> The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in *People v. Sambrano* which states:
>
> As to damages, we have held that **if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty**, **the civil indemnity for the victim shall be Php75,000.00** . . . Also, in rape cases, moral damages are [a]warded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, **the trial court's award of Php50,000.00 as moral damages should also be increased to Php75,000.00 pursuant to current jurisprudence on qualified rape.**"
>
> It should be noted that while the new law prohibits the *imposition* of the death penalty, **the penalty provided for by law for a heinous offense is still death and the offense is still heinous**. Consequently, the civil indemnity for the victim is still Php75,000.00.
>
> *People v. Quiachon* also ratiocinates as follows:
>
> With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts; Php75,000.00 as civil indemnity **which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty**; Php75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof, x x x.
>
> **Even if** the penalty of death is not to be imposed on the appellant because of the prohibition in R. A. No. 9346, **the civil indemnity of Php75,000.00 is still proper** because, following the ratiocination in *People v. Victor*, **the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.** The Court declared that the award of ₱75,000.00 shows "**not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time but also the**

expression of the displeasure of the court of the incidence of heinous crimes against chastity."

The litmus test therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually is reduced to *reclusion perpetua*. [Citations omitted. Emphases included]

Finally, an award of exemplary damages of ₱30,000.00 for each count of rape is also warranted. In *People v. Rayos*,[49] it was said that "Article 2229 of the Civil Code sanctions the grant of exemplary or correction damages in order to deter the commission of similar acts in the future and to allow the courts to mould behaviour that can have grave and deleterious consequences to society." It goes without saying that the civil liabilities imposed and modified herein should bear interest at the legal rate of 6% reckoned from the filing of the complaint up to the finality of this judgment, after which the rate should be 12% per annum.

WHEREFORE, the December 19, 2006 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 001642, finding accused Val Delos Reyes guilty of three (3) counts of rape is **AFFIRMED WITH MODIFICATIONS.** For each count of rape, accused Val delos Reyes is hereby sentenced to suffer the penalty of *reclusion perpetua,* without eligibility for parole; and to pay AAA civil indemnity in the amount of ₱75,000.00, moral damages in the amount of ₱75,000.00, and exemplary damages in the amount of ₱30,000.00, plus interest at the legal rate of 6% reckoned from the filing of the complaint up to the finality of this judgment, after which the rate should be 12% per annum.

SO ORDERED.

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

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[49] 404 Phil. 151, 169 (2001).

[*] Designated acting member, per Special Order No. 1343, dated October 9, 2012.

THIRD DIVISION

[A.M. No. P-06-2196. October 22, 2012]
(Formerly OCA I.P.I. No. 05-2272-P)

MARITES FLORES-TUMBAGA, *complainant, vs.* **JOSELITO S. TUMBAGA, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, La Trinidad, Benguet,** *respondent*.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ONLY SUBSTANTIAL EVIDENCE IS REQUIRED.—** In administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. In the instant case, we find no room to doubt the Investigating Judge's findings of fact which we find to be a result of a meticulous examination of the testimonies of the complainant, the respondent, as well as their respective witnesses.

2. **REMEDIAL LAW; EVIDENCE; THE POSITIVE TESTIMONIES OF THE WITNESSES PREVAIL OVER THE RESPONDENT'S BARE DENIAL.—** The presumption is that witnesses are not actuated by any improper motive absent any proof to the contrary and that their testimonies must accordingly be met with considerable, if not conclusive, favor under the rules of evidence because it is not expected that said witnesses would prevaricate and cause the damnation of one who brought them no harm or injury. Thus, respondent's bare denial *vis-a-vis* the positive testimonies of the witnesses, the latter should prevail.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE OF DISGRACEFUL AND IMMORAL CONDUCT; THE ADMISSION OF THE RESPONDENT, COUPLED WITH THE TESTIMONIES OF THE WITNESSES, SATISFIES THE STANDARD OF SUBSTANTIAL EVIDENCE REQUIRED IN ADMINISTRATIVE PROCEEDINGS.—** We likewise note that respondent had actually admitted to Atty. Cabansag that it was

his fault that their marriage failed since he was engaged in an extra-marital affair with another woman. Indeed, while respondent claimed that he was pressured to make such admission to Atty. Cabansag, he however failed to show proof of such pressure to convince the court otherwise. Respondent's admission, coupled with the testimonies of the witnesses, satisfies the standard of substantial evidence required in administrative proceedings that there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.

4. ID.; ID.; ADMINISTRATIVE CHARGES; ABANDONMENT OF ONE'S WIFE AND CHILDREN, AND COHABITATION WITH A WOMAN NOT HIS WIFE, CONSTITUTES IMMORAL CONDUCT THAT IS SUBJECT TO DISCIPLINARY ACTION; PROPER PENALTY.— Immoral conduct is conduct which is "willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community." In several cases, we have ruled that abandonment of one's wife and children, and cohabitation with a woman not his wife, constitutes immoral conduct that is subject to disciplinary action. Under the *Revised Uniform Rules on Administrative Cases in the Civil Service Commission*, disgraceful and immoral conduct is a grave offense which merits a penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense.

APPEARANCES OF COUNSEL

Bartolome R. Rillera for complainant.

D E C I S I O N

PERALTA, *J.*:

Before this Court is an Administrative Complaint[1] filed by Marites Flores-Tumbaga against her husband, Joselito S.

[1] *Rollo*, pp. 1-6.

Tumbaga, Sheriff IV, Office of the Clerk of Court, Regional Trial Court, La Trinidad, Benguet for Disgraceful and Immoral Conduct.

Complainant alleged that sometime in December 2002, respondent confessed to her that he was having an extra-marital affair with a woman albeit he promised to put an end to said affair. However, complainant claimed that despite respondent's promise, he continued his illicit relation with another woman. In August 2003, respondent abandoned her. After their separation, complainant alleged that her husband and his woman were frequently seen together in public, acting as though they are husband and wife.

In support of her allegations, complainant submitted the Affidavit[2] dated August 2, 2005 of Perfecto B. Cabansag (Cabansag), one of their wedding sponsors. In the said Affidavit, Cabansag stated that complainant came to their house seeking assistance and advice because respondent left her. In order to help complainant, sometime in September 2003, Cabansag and complainant met with respondent wherein the latter tearfully admitted to be the one at fault for having an extra-marital affair. Cabansag claimed that respondent promised them that he would end his extra-marital relationship with his woman, but a month after their meeting, respondent filed a petition for annulment of marriage in court.

Also attached to the complaint was the transcript of stenographic notes (TSN)[3] of complainant's testimony on July 28, 2005 in Civil Case No. 03-F-1364, entitled *"Joselito S. Tumbaga vs. Marites F. Tumbaga,"* for Declaration of Nullity of Marriage wherein complainant narrated anew when respondent (1) confessed his extra-marital affair with another woman; (2) pleaded forgiveness from her; (3) first abandoned her to be with the other woman to the time respondent returned to their conjugal home and again pleaded for forgiveness from her;

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[2] *Id.* at 5-6.

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

and to the time he abandoned her for good in order to live with the other woman.

On August 30, 2005, the Office of the Court Administrator (OCA) directed respondent to Comment on the complaint against him.[4]

In his Comment[5] dated October 17, 2005, respondent denied having an extra-marital affair with another woman. He likewise denied admitting to anyone, much less to the complainant, having any extra-marital affairs. Respondent, however, admitted that their marriage has been dysfunctional and was besieged with constant conflicts that they were unable to resolve which prompted him to leave their conjugal dwelling.

In his defense, respondent submitted the Affidavit of Ardel Briones[6] who attested that respondent told him of his marital woes. Respondent likewise submitted the Affidavit of Arnel Delenela,[7] who attested that there is no truth to complainant's allegation that respondent and his sister are maintaining an illicit affair.

Due to the conflicting versions of the parties, the OCA recommended that the instant complaint be redocketed as a regular administrative matter and be referred to the Executive Judge of the Regional Trial Court of La Trinidad, Benguet for investigation, report and recommendation.[8]

In a Resolution[9] dated July 10, 2006, the Court resolved to refer this administrative matter to the Executive Judge of the Regional Trial Court, La Trinidad, Benguet for investigation, report and recommendation.

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[4] *Id*. at 35.

[5] *Id*. at 39-48.

[6] *Id*. at 45.

[7] *Id*. at 46.

[8] *Id*. at 51-52.

[9] *Id*. at 53-54.

However, in a Letter[10] dated September 12, 2006, Executive Judge Francis A. Buliyat, Regional Trial Court, La Trinidad, Benguet, directed instead then Vice-Executive Judge Marybelle L. Demot Mariñas to conduct the investigation and thereafter submit a report and recommendation on the case, since he could not conduct an impartial investigation as the annulment case involving complainant and respondent is pending in the court which he presides.

In a Resolution[11] dated November 22, 2006, the Court confirmed the designation of then Vice-Executive Judge Mariñas to investigate this administrative matter and to submit her report and recommendation within sixty (60) days from receipt of the records. In an Order[12] dated February 27, 2007, Judge Mariñas confirmed receipt of the records of the instant case on February 16, 2007.

Upon her request, the Court gave Judge Mariñas a fresh period to investigate the case, or a period of ninety (90) days from April 25, 2007 within which to conduct an investigation and submit her report and recommendation.[13] However, Judge Mariñas failed to submit the required report and recommendation. Thus, in a Resolution dated December 13, 2010, the Court required her to "SHOW CAUSE" why she should not be disciplinarily dealt with or held in contempt for her failure to submit the investigation report on the case.

Finally, on May 2, 2011, Judge Mariñas submitted her Report and Recommendation dated March 18, 2011 wherein she apologized for the delay in complying with the Court's directive to submit the report within the required period.

Meanwhile, in her report, after examination of the evidence, the testimonies of the witnesses as well as the demeanors of both complainant and respondent during the hearing of the case,

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

[11] *Id*. at 259.

[12] *Id*. at 264.

[13] Resolution dated April 23, 2007, *id*. at 292.

Judge Mariñas believed that respondent is indeed guilty of immorality. The positive testimonies of the complainant and her witnesses *vis-a-vis* the mere denial of respondent, the former should prevail.

Thus, in a Memorandum dated October 27, 2011, the OCA recommended that: (a) the failure of Judge Mariñas to comply with the April 23, 2007 Resolution of the Court be treated as a separate administrative case against her; (b) Judge Mariñas be fined in the amount of ₱11,000.00 for violation of a Court directive, and (c) respondent Tumbaga, Sheriff IV, be suspended from the service without pay and benefits for six (6) months and one (1) day.

We adopt the findings and recommendation of the Investigating Judge.

In administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required.[14] In the instant case, we find no room to doubt the Investigating Judge's findings of fact which we find to be a result of a meticulous examination of the testimonies of the complainant, the respondent, as well as their respective witnesses.

The presumption is that witnesses are not actuated by any improper motive absent any proof to the contrary and that their testimonies must accordingly be met with considerable, if not conclusive, favor under the rules of evidence because it is not expected that said witnesses would prevaricate and cause the damnation of one who brought them no harm or injury.[15] Thus, respondent's bare denial *vis-a-vis* the positive testimonies of the witnesses, the latter should prevail.

We likewise note that respondent had actually admitted to Atty. Cabansag that it was his fault that their marriage failed

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[14] *Evelyn V. Jallorina v. Richelle Taneo-Regner*, A.M. No. P-11-2948, April 23, 2012.

[15] *Naval v. Panday*, A.M. No. RTJ-95-1283, December 21, 1999, 321 SCRA 290, 308; 378 Phil. 924, 942 (1999).

since he was engaged in an extra-marital affair with another woman. Indeed, while respondent claimed that he was pressured to make such admission to Atty. Cabansag, he however failed to show proof of such pressure to convince the court otherwise. Respondent's admission, coupled with the testimonies of the witnesses, satisfies the standard of substantial evidence required in administrative proceedings that there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.[16]

Immoral conduct is conduct which is "willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community." In several cases, we have ruled that abandonment of one's wife and children, and cohabitation with a woman not his wife, constitutes immoral conduct that is subject to disciplinary action.[17]

Under the *Revised Uniform Rules on Administrative Cases in the Civil Service Commission*, disgraceful and immoral conduct is a grave offense which merits a penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense.

With regards to Judge Mariñas' delay in complying with the Court's directive, we find the OCA's recommendation to be a little too harsh considering that this is her first offense. Likewise, there was no showing that Judge Mariñas intentionally defied the Court's directive; and, coupled with her immediate offer of apology and submission of the report when she was required to explain the delay, we deem it fit that she be merely admonished for her actuation in this administrative case.

WHEREFORE, this Court finds respondent **JOSELITO S. TUMBAGA,** Sheriff IV, Office of the Clerk of Court, Regional Trial Court, La Trinidad, Benguet, **GUILTY** of Disgraceful and

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[16] See *Evelina C. Banaag v. Olivia C. Espeleta*, A.M. No. P-11-3011, December 16, 2011, 661 SCRA 513, 521.

[17] *Babante-Caples v. Caples*, A.M. No. HOJ-10-03, November 15, 2010, 634 SCRA 498, 503.

Immoral Conduct, and is hereby **SUSPENDED** from service for a period of six (6) months and one (1) day without pay, and *WARNED* that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

Likewise, **JUDGE MARYBELLE L. DEMOT-MARIÑAS** is hereby **ADMONISHED** to exercise due care in the performance of her functions and duties.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-12-2333. October 22, 2012]
(Formerly OCA-I.P.I. No. 11-3721-RTJ)

PROSECUTORS HYDIERABAD A. CASAR, JONALD E. HERNANDEZ, DANTE P. SINDAC and ATTY. JOBERT D. REYES, *complainants, vs.* **CORAZON D. SOLUREN, Presiding Judge Regional Trial Court, Branch 96, Baler, Aurora,** *respondent.*

SYLLABUS

JUDICIAL ETHICS; JUDGES; SIMPLE MISCONDUCT; A JUDGE WHO SOLICITS THE SYMPATHIES AND SIGNATURES OF DETENTION PRISONERS WHO HAD PENDING CASES BEFORE HER SALA IS GUILTY OF SIMPLE MISCONDUCT; PENALTY OF FINE, IMPOSED; JUDGES ARE ENJOINED TO AVOID NOT JUST IMPROPRIETY IN THEIR CONDUCT BUT EVEN THE MERE APPEARANCE OF IMPROPRIETY.— Judge

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[*] Designated Acting Member, per Special Order No. 1343 dated October 9, 2012.

> Soluren opened herself to charges of impropriety when she went to the Aurora Provincial Jail to solicit the sympathies and signatures of the prisoners, especially those who had pending cases in her sala. This Court has consistently enjoined judges to avoid not just impropriety in their conduct but even the mere appearance of impropriety because the appearance of bias or prejudice can be damaging as actual bias or prejudice to the public's confidence on the Judiciary's role in the administration of justice. To say the least, using detention prisoners who had cases before Judge Soluren cannot be countenanced.

R E S O L U T I O N

MENDOZA, *J.*:

Before the Court is an administrative complaint against Judge Corazon D. Soluren (*Judge Soluren*) of the Regional Trial Court (*RTC*), Branch 96, Baler, Aurora.

In a Complaint,[1] dated August 12, 2011, Assistant Provincial Prosecutors Hydierabad A. Casar, Jonald E. Hernandez, Dante P. Sindac and Atty. Jobert D. Reyes (*complainants*) of the Public Attorney's Office, Baler, Aurora, charged Judge Soluren with Gross Misconduct.

Complainants aver that on June 20 and 22, 2011 and July 19, 2011, Judge Soluren went to the Aurora Provincial Jail and conferred with the inmates including those who had pending cases before her sala. This was in contravention of Office of the Court Administrator (*OCA*) Circular No. 03-2010, dated January 12, 2010, which suspended the conduct of jail visitation and inspection by Executive Judges and Presiding Judges pending results of the re-examination of the provisions of A.M. No. 07-3-02-SC.

According to complainants, the purpose of Judge Soluren's visit was to persuade the prisoners into signing a letter addressed to then Chief Justice Renato C. Corona, calling for the dismissal

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[1] *Rollo,* pp. 1-9.

of the administrative complaint filed against her by Atty. Juliet M. Isidro-Reyes, District Public Attorney, Baler, Aurora, and for the removal of Judge Evelyn Atienza-Turla as Presiding Judge of RTC, Branch 6, Baler, Aurora.

Attached to the complaint were: the certification[2] issued by the Prison Guard Administrator as proof of Judge Soluren's unauthorized visits to the provincial jail and the affidavit[3] executed by Dolores P. Sollano, her companion during the visits. Also presented was a subsequent handwritten letter[4] signed by the detention prisoners admitting that they were not aware of the import of the letter to the Chief Justice due to lack of explanation by Judge Soluren. They wished to withdraw the same, not wanting to be a part of the conflict between Judge Soluren and the Public Attorney's Office of Baler, Aurora.

In her Comment,[5] dated November 5, 2011, Judge Soluren admitted that she went to the Aurora Provincial Jail on four (4) occasions but they were not official jail visitations because she went there without the presence and assistance of her staff member and not in compliance with the orders of the Supreme Court.

After the filing of the Reply by complainants and the Rejoinder by Judge Soluren, the OCA issued its Report, dated August 17, 2012, finding Judge Soluren guilty of Simple Misconduct and imposing upon her a fine of ten thousand pesos (₱10,000.00) to be deducted from her retirement benefits in view of her compulsory retirement from the service on January 29, 2012.

The Court resolves to adopt the recommendation.

Judge Soluren opened herself to charges of impropriety when she went to the Aurora Provincial Jail to solicit the sympathies and signatures of the prisoners, especially those who had pending cases in her *sala*.

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[2] *Id.* at 10.

[3] *Id.* at 11.

[4] *Id.* at 17.

[5] *Id.* at 55-68.

This Court has consistently enjoined judges to avoid not just impropriety in their conduct but even the mere appearance of impropriety[6] because the appearance of bias or prejudice can be damaging as actual bias or prejudice to the public's confidence on the Judiciary's role in the administration of justice. To say the least, using detention prisoners who had cases before Judge Soluren cannot be countenanced.

WHEREFORE, the Court **RESOLVES** to **APPROVE** and **ADOPT** the findings and recommendation of the Office of the Court Administrator. Accordingly, the Court finds retired Judge Corazon D. Soluren, Regional Trial Court, Branch 96, Baler, Aurora, **GUILTY** of **SIMPLE MISCONDUCT** and imposes upon her the penalty of **FINE** in the amount of Ten Thousand Pesos (₱10,000.00) to be deducted from her retirement/gratuity benefits.

SO ORDERED.

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

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[6] *San Juan v. Bagalasca*, 347 Phil. 696 (1997).

[*] Designated acting member, per Special Order No. 1343, dated October 9, 2012.

THIRD DIVISION

[G.R. No. 175155. October 22, 2012]

JOHN C. ARROYO, JASMIN ALIPATO, PRIMITIVO BELANDRES, NESTOR LEDUNA, PATRICK SEMENA, ANITA DE LOS REYES, MERCY SILVESTRE, RODOLFO CABALLERO, GINA CABALLERO, LETECIA HUEBOS, TARCILA PINILI, RODELIA UY, CRIS PARAS, FLOR MORENO, and JOSE PEROTE, *petitioners, vs.* **ROSAL HOMEOWNERS ASSOCIATION, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; DUE PROCESS; PARTIES WHO HAVE CHOSEN NOT TO AVAIL OF THE OPPORTUNITY TO PRESENT EVIDENCE TO REBUT THE CHARGES AGAINST THEM CANNOT COMPLAIN OF DENIAL OF DUE PROCESS.— The record shows that petitioners were accorded a fair trial in the RTC. In fact, they were properly represented by a counsel who was able to confront and cross-examine the witnesses presented by RHAI. They had ample opportunity to substantiate their claim that they were not expelled as members and to present witnesses. Unfortunately, petitioners did not present their own evidence to bolster their defense. Thus, they cannot feign denial of due process where they had been afforded the opportunity to present their side. Petitioners, having chosen not to avail of the opportunity to present evidence to rebut the charges against them, cannot complain of denial of due process. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. What is offensive to due process is the denial of this opportunity to be heard.

2. ID.; ID.; PARTIES WHO WERE ABLE TO APPEAL AND MOVE FOR THE RECONSIDERATION OF THE RULINGS OF THE TRIAL COURT CANNOT CLAIM A DENIAL OF DUE PROCESS.— At any rate, when the RTC rendered its decision adverse to petitioners, the latter were able to seek reconsideration and avail of their right to appeal to the CA.

The CA then required the parties to file their respective pleadings before it rendered a decision denying petitioners' appeal. They even moved for the reconsideration of the denial of their appeal. Having been able to appeal and move for a reconsideration of the assailed rulings, petitioners cannot claim a denial of due process.

3. ID.; ID.; THE LAW PROHIBITS NOT THE ABSENCE OF PREVIOUS NOTICE BUT THE ABSOLUTE ABSENCE THEREOF AND THE LACK OF OPPORTUNITY TO BE HEARD.— Likewise devoid of merit is petitioners' claim that they were deprived of their right to due process when they were allegedly expelled from RHAI. The essence of due process is the opportunity to be heard. What the law prohibits is not the absence of previous notice but the absolute absence thereof and the lack of opportunity to be heard. The records of this case disclose that there was a board resolution issued for the expulsion of the erring or defaulting members of RHAI. The latter were duly informed that they were already expelled as members of the association through notices sent to them. These notices, however, were refused to be received by petitioners. Their expulsion was made pursuant to the By-Laws of RHAI as shown by the testimony of Mildred de la Peña *(dela Peña)*, President, on cross-examination by the counsel for petitioners x x x. The x x x testimony strongly indicates that petitioners were duly expelled from RHAI. There is nothing irregular when they were expelled for non-payment of dues and for non-attendance of meetings. This is expressly sanctioned by the By-Laws of RHAI.

4. ID.; ID.; THE DUE PROCESS GUARANTEE CANNOT BE INVOKED WHEN NO VESTED RIGHT HAS BEEN ACQUIRED.— Apparently, petitioners' refusal to sign and submit the LPA, the most important requirement of the NHMFC for the acquisition of the land, disqualified them as loan beneficiaries. As such, they acquire no better rights than mere occupants of the subject land. In any case, the due process guarantee cannot be invoked when no vested right has been acquired.

5. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; THE ACTS OF POSSESSORY CHARACTER EXECUTED BY VIRTUE OF LICENSE OR

TOLERANCE OF THE OWNER, NO MATTER HOW LONG, DO NOT START THE RUNNING OF THE PERIOD OF ACQUISITIVE PRESCRIPTION.— The period during which petitioners occupied the lots, no matter how long, did not vest them with any right to claim ownership since it is a fundamental principle of law that acts of possessory character executed by virtue of license or tolerance of the owner, no matter how long, do not start the running of the period of acquisitive prescription. Indeed, the Court does not lose sight of the fact that petitioners were actual occupants of the subject land. True enough, the RHAI was purposely formed to enable the dwellers, including petitioners, to purchase the lots they were occupying, being the ultimate beneficiaries of the CMP of the NHMFC. Petitioners, however, must be reminded that they have to comply with certain requirements and obligations to qualify as beneficiaries and be entitled to the benefits under the program. Their unreasonable refusal to join RHAI and their negative response to comply with their obligations compelled RHAI to either expel them or declare them as non-members of the association. Petitioners cannot now claim that they were denied the right to own the portions of land they were occupying for their homes under the CMP.

APPEARANCES OF COUNSEL

Allan L. Zamora for petitioners.
Goldwyn V. Nifras for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the November 23, 2005 Decision[1] and the October 4, 2006 Resolution[2] of the Court

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[1] Annex "A" of Petition, *rollo*, pp. 38-45. Penned by Associate Justice Isaias P. Dicdican with Associate Justice Ramon M. Bato, Jr. and Associate Justice Apolinario D. Bruselas, Jr., concurring.

[2] Annex "B" of Petition, *id.* at 48-49.

of Appeals *(CA)* in CA-G.R. CV No. 70994 entitled *"Rosal Homeowners Association, Inc. v. John C. Arroyo, et al."*

The Facts

Respondent Rosal Homeowners Association, Incorporated (*RHAI*) is a non-stock, non-profit organization duly organized and existing under the laws of the Philippines. Its membership is composed mainly of occupants of a parcel of land with an area of 19,897 square meters, situated in Brgy. Rosal, Taculing, Bacolod City, and formerly owned by Philippine Commercial International Bank (*PCIB*).

Petitioners Jasmin Alipato, Primitivo Belandres, Nestor Leduna, Anita de los Reyes, and Gina Caballero (*petitioners*)[3] were among the actual occupants of the subject land. They occupied the land by mere tolerance long before the said land was acquired by PCIB in 1989. To evade eviction from PCIB and in order to avail of the benefits of acquiring land under the Community Mortgage Program (*CMP*) of the National Home Mortgage Finance Corporation (*NHMFC*), the said occupants formally organized themselves into an association, the RHAI. With the aid and representation of the Bacolod Housing Authority (*BHA*), RHAI was able to obtain a loan from the NHMFC and acquired the subject land from PCIB. As a consequence, the Registry of Deeds of Bacolod City issued a Transfer Certificate of Title (*TCT*) No. T- 202933,[4] covering the 19,897 square-meter land, in the name of RHAI. By virtue of the land acquisition by RHAI, all the occupants of the land became automatic members of RHAI. To fully avail of the benefits of the CMP, the NHMFC required the RHAI members to sign the Lease Purchase Agreement (*LPA*) and to maintain their membership in good standing in accordance with the provisions of the By-Laws[5] of

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[3] The other petitioners in the Motion for Extension of Time to File Petition for Review on *Certiorari*, John C. Arroyo, Patrick Semena, Mercy Silvestre, Rodolfo Caballero, Letecia Huebos, Tarcila Pinili, Rodelia Uy, Cris Paras, Flor Moreno, and Jose Perote, did not continue or participate in the filing of the instant petition.

[4] *Rollo*, p. 75.

[5] *Id.* at 76-77.

RHAI. Petitioners, however, refused to sign the LPA as a precondition under the CMP. They likewise failed to attend the regular meetings and pay their membership dues as required by the RHAI By-Laws. As a result, RHAI through its Board of Directors, approved a resolution[6] to enforce the eviction of petitioners and recover possession of the portions of land which they were occupying. Pursuant to the said resolution, RHAI, through written letters of demand,[7] called for petitioners to vacate the premises and deliver possession thereof to RHAI. Petitioners, however, ignored the demand. This prompted RHAI to file an action for recovery of possession of the subject property before the Regional Trial Court, Branch 49, Bacolod City (*RTC*), which was docketed as Civil Case No. 98-10388.[8]

In their Answer, petitioners denied RHAI's claim that they were illegal occupants of the subject land. They argued that they could not be ejected from the said property because they were entitled to own the land that they had occupied for several years prior to RHAI's acquisition of title therein. They also claimed that RHAI sought their ejectment to accommodate other persons who were not qualified beneficiaries of the CMP.[9]

After trial on the merits, the RTC ruled in favor of RHAI. The RTC found petitioners as already non-members, having been expelled from the RHAI. Petitioners did not qualify as loan beneficiaries for their refusal to sign the LPA as required by the NHMFC. As such, they had no more right to remain in the land they are occupying. The dispositive portion of the RTC decision reads:

FOR ALL THE FOREGOING, judgment is hereby rendered as follows:

1. Defendants are ordered to vacate the premises of the lot covered by TCT No. T-202933 situated at Taculing,

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[6] *Id.* at 78.

[7] *Id.* at 80, 82, 89-91.

[8] Annex "D" of Petition, *id*. at 68-73.

[9] *Id.* at 40.

Bacolod City and to remove their structures constructed thereon.

2. Defendants are ordered to pay the amount of ₱500.00 monthly for the use of the lot occupied by their respective houses starting from date of this decision until they actually leave the premises.[10]

Aggrieved, petitioners appealed to the CA, claiming that they were denied due process by the RTC when it rendered judgment in favor of RHAI. They added that the RTC erred in finding that they refused to join the association or were expelled therefrom for failure to comply with their obligations, specifically the payment of membership dues and attendance in meetings.

On November 23, 2005, the CA rendered its decision affirming the RTC decision. It ruled that petitioners were not denied of their right to procedural due process as they were given opportunity to present evidence, but failed to do so. According to the CA, "[w]here opportunity to be heard either through oral argument or pleadings is accorded, there can be no denial of procedural due process."[11]

Further, the CA sustained the RTC's finding that petitioners refused to become members of RHAI or were considered expelled from the same because of their failure to comply with their duties and responsibilities. The decretal portion of the CA Decision states:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the appeal filed in this case and **AFFIRMING** the assailed decision of the Regional Trial Court, Branch 49, in Bacolod City in Civil Case No. 98-10388.

SO ORDERED.[12]

Petitioners filed a motion for reconsideration[13] of the said decision on the ground that their expulsion from RHAI was

[10] *Id.* at 107-108.

[11] *Id.* at 42.

[12] *Id.* at 45.

[13] Dated December 26, 2005, *id*. at 50-67.

illegal for want of due process. The motion, however, was denied by the CA in its Resolution, dated October 4, 2006.

Hence, petitioners interpose the present petition before this Court anchored on the following

GROUNDS

That the Honorable Court of Appeals committed errors when it overlooked the following formulations:

1. The petitioners were denied of their right to due process when they were expelled as members of respondent.

2. The petitioners were denied of their right to own a piece of land for their homes under the socialized housing program of the government.[14]

The issues to be resolved are: 1) whether due process was observed in this case; and 2) whether petitioners were denied of their right to own a piece of land for their homes under the socialized housing program of the government.

Petitioners contend that the CA committed a serious error in upholding the ruling of the RTC that they were expelled as members of RHAI because the records are bereft of any evidence indicating the initiation of expulsion proceedings against them. In addition, they claim that they were not informed by RHAI that they had been expelled as members of the association. Invoking the case of *Ynot v. Intermediate Court of Appeals*,[15] petitioners insist that, consistent with the requirements of due process, they should have been given the opportunity to be heard.

Petitioners insist that they cannot be ejected by RHAI being the actual occupants of the portions of the subject land long before the same was acquired by the latter. They opine that RHAI, in filing the ejectment case against them, violated the very purpose for the creation and existence of the socialized

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[14] *Id.* at 18.

[15] 232 Phil. 615 (1987).

housing program, that is, to allow actual beneficiaries, like them, to own the portions of the land they were actually occupying.

On the other hand, RHAI, in its Memorandum,[16] points out that the issues being raised involve questions of fact which were properly disposed of both by the RTC and the CA when they found that petitioners were deemed expelled from their membership of RHAI for non-compliance with its rules and regulations specifically their refusal to pay membership dues and reasonable fees. The evidence on record conclusively shows that petitioners were validly expelled from the association in accordance with its By-Laws and in compliance with the demands of due process. Their refusal to comply with the requirements of the CMP disqualified them from being member-beneficiaries of RHAI. Hence, they were not denied of their right to own the portions of land they occupy for their homes.

The petition must fail.

On the first issue raised by petitioners, the Court finds no merit in their repeated claim of denial of due process.

The record shows that petitioners were accorded a fair trial in the RTC. In fact, they were properly represented by a counsel who was able to confront and cross-examine the witnesses presented by RHAI. They had ample opportunity to substantiate their claim that they were not expelled as members and to present witnesses. Unfortunately, petitioners did not present their own evidence to bolster their defense. Thus, they cannot feign denial of due process where they had been afforded the opportunity to present their side.[17] Petitioners, having chosen not to avail of the opportunity to present evidence to rebut the charges against them, cannot complain of denial of due process. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently

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[16] Dated March 2, 2008, *rollo*, pp. 164-183.

[17] *Cada v. Time Saver Laundry*, G.R. No. 181480, January 30, 2009, 577 SCRA 565, 579, citing *Audion Electric Co., Inc. v. National Labor Relations Commission*, 367 Phil. 620, 633 (1999).

met. What is offensive to due process is the denial of this opportunity to be heard.[18]

Relevant in this regard is the findings of the CA, as follows:

> It is basic that, as long as a party is given the opportunity to defend his interest in due course, he would have no reason to complain, for it is this opportunity to be heard that makes upon the essence of due process. Where opportunity to be heard, either through oral argument or pleadings is accorded, there can be no denial of procedural due process. In the case at bench, the record reveals that, during the trial on the merits of Civil Case No. 98-10388, the defendants-appellants were accordingly represented by their counsel on record, Atty. Allan Zamora. The said counsel was able to cross-examine the witnesses for the plaintiff-appellee association. Although it appears that, on the May 23, 2000 hearing of Civil Case No. 98-10388, said counsel raised to the court *a quo* the issue of a possible conflict of interest on his part, considering that he was then the City Legal Officer of Bacolod, the fact remains that the court *a quo*, in its order dated March 31, 2002, gave said counsel an opportunity to file a manifestation within 10 days as to whether or not he would still continue to act as counsel for the defendants-appellants. Unfortunately, the 10-day period stated in the order lapsed with the failure of Atty. Zamora to file his manifestation to withdraw as counsel for the defendants-appellants. When the court *a quo* heard again Civil Case No. 98-10388, the defendants-appellants' counsel still did not appear. When the court *a quo* rendered its assailed decision on March 21, 2001, defendants-appellants did not even bother to seek for reconsideration thereof. It is rather unfortunate that defendants-appellants' counsel neglected his duties to the latter. Be that as it may, the negligence of counsel binds the client.[19]

At any rate, when the RTC rendered its decision adverse to petitioners, the latter were able to seek reconsideration and avail of their right to appeal to the CA. The CA then required the parties to file their respective pleadings before it rendered a decision denying petitioners' appeal. They even moved for the reconsideration of the denial of their appeal. Having been able

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[18] *Flores v. Montemayor*, G.R. No. 170146, June 8, 2011, 651 SCRA 396, 406.

[19] *Rollo*, pp. 42-43.

to appeal and move for a reconsideration of the assailed rulings, petitioners cannot claim a denial of due process.[20]

Likewise devoid of merit is petitioners' claim that they were deprived of their right to due process when they were allegedly expelled from RHAI.

The essence of due process is the opportunity to be heard. What the law prohibits is not the absence of previous notice but the absolute absence thereof and the lack of opportunity to be heard.[21]

The records of this case disclose that there was a board resolution issued for the expulsion of the erring or defaulting members of RHAI. The latter were duly informed that they were already expelled as members of the association through notices sent to them. These notices, however, were refused to be received by petitioners. Their expulsion was made pursuant to the By-Laws of RHAI as shown by the testimony of Mildred de la Peña (*dela Peña*), President, on cross-examination by the counsel for petitioners:

ATTY ZAMORA:

Q. Is there any provision in the by-laws which provides for expulsion of the members of the association?

A. Yes, Attorney.

Q. And is there a procedure to be followed before a member xxx (is) expelled from the association?

A. Yes, Attorney.

Q. And could you please tell us those procedure to be followed before a member could be expelled from association?

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[20] *Equitable PCI Banking Corporation v. RCBC Capital Corporation*, G.R. No. 182248, December 18, 2008, 574 SCRA 858, 890, citing *Sunrise Manning Agency, Inc. v. National Labor Relations Commission*, G.R. No. 146703, November 18, 2004, 443 SCRA 35, 42.

[21] *Espinocilla, Jr. v. Bagong Tanyag Homeowners Association, Inc.*, G.R. No. 151019, August 9, 2007, 529 SCRA 654, 660, citing *Medenilla v. Civil Service Commission*, G.R. No. 93868, February 19, 1991, 194 SCRA 278, 285 (citations omitted).

x x x x x x x x x x x x

A. As per by-laws of the association **we are sending notices** for the members to come, to attend the meeting and inform them whether they have paid their obligation. Three (3) successive demand from the association and they will not still appear with the association, the association have the right to default them as per by-laws.

COURT

Q. The question of counsel is not on the matter of how a member is defaulted. He is asking about the procedure on how to expel a member. How do you go about expelling a member?

A. Before we expel a member we go over and **follow the by-laws.**

Q. And what does your by-laws say about that?

A. As to the obligation, a member should pay his monthly obligation, joined all the activities and meetings of the association. If a member could not comply with his obligation for three (3) successive months that member is already capable for a default.

Q. You are always talking of default. Alright, assuming that a member has already incurred a default. How do you go about expelling him?

A. We will inform that member that they are no longer with the association. The association will send them a notice that they are already expelled from the association.

Q. Meaning to say that they are no longer member of the association?

A. Yes, your Honor.

ATTY. ZAMORA

Q. Madam witness this decision of the association to expel a member from membership, is that through a resolution?

x x x x x x x x x x x x

A. Yes, Attorney.

Q. Now, [was] there any board resolution expelling the defendants their membership from the association?

A. We have.

Q. Where are those?

A. We could give it to Atty. Figura.

COURT

Q. Now, did you give the defendants here copies of the resolution expelling them from the membership in your association?

A. Actually, your Honor, we did not furnish them since we furnished the National Homes. **The defendants will not accept any communications from us.**

Q. The Court is not asking you whether you notify the National Home Mortgage, whether there was an acceptance or rejection by the defendants. The Court is only asking you **if you notify the defendants that resolution expelling them from Membership?**

A. **Yes, your Honor.**[22]

[Emphases and underscoring supplied]

The foregoing testimony strongly indicates that petitioners were duly expelled from RHAI. There is nothing irregular when they were expelled for non-payment of dues and for non-attendance of meetings. This is expressly sanctioned by the By-Laws of RHAI. The Court quotes with approval the ruling of the CA on the matter, *viz*:

Like any other organization, plaintiff-appellee association has to set certain rules and regulations. The evidence adduced in the court *a quo* by the plaintiff-appellee association proved that the defendants-appellants failed to pay their membership fees and other reasonable fees. A perusal of the by-laws of the plaintiff-appellee association reveals that a member is only required to pay a membership fee of ₱100.00 to be paid every fiscal year and a monthly maintenance fee in the amount of ₱10.00. Although it likewise provides for contribution and special assessments which the defendants-appellants claimed to be unreasonable, yet, the defendants-appellants failed to prove by the amount of evidence required by law as to what extent the plaintiff-appellee association unreasonably assessed them. To us, there is no reason at all for the defendants-appellants to protest

[22] *Rollo*, pp. 171-174.

the fees or dues as assessed against them by the plaintiff-appellee association. Such unwholesome attitude of the defendant-appellants to pay the memberships fees and monthly dues to the plaintiff-association clearly indicates that they do not want to be a part of the membership of the association. Thus, the court *a quo* was correct in holding that defendants-appellants were deemed expelled from their membership of the plaintiff-appellee association because of their irrational failure to obey the rules and regulations of the latter. The defendants-appellants likewise refused to acknowledge and sign the Lease Purchase Agreement (LPA) as required by the NHMFC. Because of the defendants-appellants' refusal to be members in good standing of the plaintiff-appellee corporation, they remained squatters of the subject land in the true sense of the word. As such, their possession is only by tolerance of the plaintiff-appellee association, and the latter can recover possession of the subject land as the lawful owner thereof. Squatting is unlawful and no amount of acquiescence converts it into a lawful act.[23]

Apparently, petitioners' refusal to sign and submit the LPA, the most important requirement of the NHMFC for the acquisition of the land, disqualified them as loan beneficiaries. As such, they acquire no better rights than mere occupants of the subject land.

In any case, the due process guarantee cannot be invoked when no vested right has been acquired. The period during which petitioners occupied the lots, no matter how long, did not vest them with any right to claim ownership since it is a fundamental principle of law that acts of possessory character executed by virtue of license or tolerance of the owner, no matter how long, do not start the running of the period of acquisitive prescription.[24]

Indeed, the Court does not lose sight of the fact that petitioners were actual occupants of the subject land. True enough, the RHAI was purposely formed to enable the dwellers, including petitioners, to purchase the lots they were occupying, being the ultimate beneficiaries of the CMP of the NHMFC. Petitioners,

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[23] *Id.* at 44-45.

[24] *Espinocilla, Jr. v. Bagong Tanyag Homeowners Association, Inc.*, *supra* note 21 at 662.

however, must be reminded that they have to comply with certain requirements and obligations to qualify as beneficiaries and be entitled to the benefits under the program. Their unreasonable refusal to join RHAI and their negative response to comply with their obligations compelled RHAI to either expel them or declare them as non-members of the association. Petitioners cannot now claim that they were denied the right to own the portions of land they were occupying for their homes under the CMP.

It should be noted that petitioners were never prevented from becoming members of RHAI. In fact, they were strongly encouraged to join and comply with the requirements of the CMP, not only by the RHAI, but also by the BHA. The following testimony of De la Pena illustrate that the direct intervention of the BHA proved futile, thus:

ATTY. ZAMORA

Q. Madam witness, inasmuch as the facilitator of the loan was the Bacolod Housing Authority, did you call the attention of the Bacolod Housing Authority about it?

A. Yes, sir.

Q. And was there any action taken by the Bacolod Housing Authority on that Question?

A. Yes, sir.

Q. What action was taken?

A. They go back to the area and called for another meeting. Actually, when the Bacolod Housing Authority was asking for a meeting to patch up this problems the defendants were not attending.

Q. And the meeting was called by the Bacolod Housing Authority on what dates?

A. The meeting of the association we have a date but I cannot remember. We invite the Bacolod Housing Committee to help us patch up this problems.

Q. And who in particular?

A. Mrs. Tornilla.

Q. And Mrs. Tornilla try to reach out with the defendants?
A. Yes, Attorney.

Q. And did Mrs. Tornilla tell you about the reason why the defendants acted that way?
A. Mrs. Tornilla did not tell me. So the advise off Mrs. Tornilla and the Bacolod Housing Authority that if the defendants will go on resisting not to sign the documents we have nothing to do with them.[25]

Moreover, the Court cannot accept petitioners' contention that the non-payment of dues was simply a convenient excuse by the officers of RHAI to eject them from their lands to allow strangers to become beneficiaries to the prejudice of the actual occupants.

Needless to state, petitioners' presence as non-paying occupants had caused RHAI to experience deficiency in the payment of the monthly amortizations for the land to the detriment of the other RHAI members who had been complying with the requirements. This was the reason why RHAI filed a suit against them – to cause their eviction from their present occupancy and to place, in their stead, substitutes who would be willing to comply with the requirements. Before the case was filed, RHAI made formal demands to petitioners to vacate the lots they were occupying. As testified to by Jeanette Deslate, Regional Director (Region IV) of the NHMFC, to wit:

ATTY. NIFRAS

Q. In brief, can you tell the [H]onorable [C]ourt the basic functions of the corporation?
A. The corporation is one of the housing agencies under the Housing Coordinating council. It provides shelter and we finance housing loans and we have projects like unified Home Lending program, the regular housing loan of the subdivision. We also extend loans for developers. xxx and we have a special project called Community Mortgage Program which caters to squatters and non-owners of any residential units in Urban areas and danger zones.

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[25] *Rollo*, pp. 177-178.

Q. Can you please tell us some more of this Community Mortgage program, Mrs. Witness?

A. The Community Mortgage Program is a noble community program wherein the community association or people residing in Urban areas or danger areas organized themselves into community association and they, through an originator, they contract a loan with us and they are the dwellers of these areas which they are willing to buy and wherein the owners are willing to sell, and through that agreement a loan is filed with us and through the originator, they take out the loan after complying all the requirements of the corporation.

(TSN, 23 March 2000, pp. 08-11)

Q. You mentioned about the originator. In the case of Rosal Homeowners Association, who is the originator?

A. The originator of Rosal Homeowners Association is Bacolod Housing Authority.

Q. And the Bacolod Housing Authority is connected with the City Government?

(TSN, 23 March 2000, pp. 13-14)

Q. As far as the Rosal Homeowners is concerned what is now the status in relation to the program of the corporation?

A. The association is a legitimate association who is now amortizing their loans with us.

(TSN, 23 March 2000, p. 17)

COURT

What do the individual applicants for housing come in?

WITNESS

Actually, as members of the association.

COURT

Just the individual member.

WITNESS

As individual member, they have to maintain their membership or their legitimacy or their obedience of the rules of the association or to become the direct beneficiaries

but as of now, they have the assigned lots. Although this is temporary but if they prove that they can pay the lot up to the end of the term, it will be awarded to each of them.

COURT

The court understands that they are not co-makes of the promissory notes for the loan with the association?

WITNESS

They have individual loan purchase agreement and promissory notes submitted to us.

(TSN, 23 March 2000, pp. 23-24)

WITNESS

Through our visits and interviews, we knew that there are member-beneficiaries who do not pay their monthly amortization. Some of the reasons are perhaps… ah…some of them, we call them "recalcitrants" who are very… we call them "hard-headed" in paying their amortization.

(TSN, 23 March 2000, pp. 31-32)

ATTY. NIFRAS

Q. As far as the recalcitrants, in the procedure of payment is concerned what can the association do if there are recalcitrant members?

A. If the reason for the low collection deficiency is because of recalcitrants, we have the so called **substitution of beneficiaries. Substitution of beneficiaries can only be possible because of three reasons: One, is the default in paying the monthly amortization: one the waiver of the beneficiary because he lost interest in the lot anymore and the loan and the third, is non-compliance or disobedience of the rules and regulation of the association or the community.**

(TSN, 23 March 2000, pp. 34-35)

ATTY. NIFRAS

Q. In other words, the association had [been] given the authority to determine the recalcitrants and in a way submit the names

to the corporation so that the said recalcitrants can be substituted?

WITNESS

Yes, sir, through the process I mentioned.

ATTY. NIFRAS

Are you aware whether the process was followed by the association

WITNESS

Yes, sir, because they have already submitted the requirements of the corporation.

(TSN, March 23, 2000, pp. 37-38)

ATTY. NIFRAS

In your process with emerging with the community, do you know whether the Bacolod Housing Authority, the originator also participates the same activity as assisting the Rosal Homeowners Association?

WITNESS

Yes. Actually, this is not the only project of the BHA so we required the BHA to improve their collection deficiency, that is why, they campaigned within their association to pay regularly.

ATTY. NIFRAS

Are you aware whether or not the Bacolod Housing Authority also favorably indorsed the action of the Rosal Homeowners Association, as far as, the recalcitrant members are concerned?

WITNESS

I think. Bacolod Housing Authority is aware and even recommends for the substitution in order to improve the collection of the association.

(TSN, 23 March 2000, pp. 46-48)[26]
[Emphases and underscoring supplied]

[26] *Id*. at 179-182.

On the basis of all the foregoing, the Court finds no error on the part of the CA to warrant the reversal or modification of the assailed decision.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181089. October 22, 2012]

MERLINDA CIPRIANO MONTAÑEZ, *complainant, vs.* **LOURDES TAJOLOSA CIPRIANO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CASES; RULE; THE PETITION ASSAILING THE RULING OR ORDER OF THE TRIAL JUDGE IN A CRIMINAL CASE MAYBE DISMISSED ON TECHNICAL GROUND WHERE THE SAME WAS FILED BY PRIVATE COMPLAINANT AND NOT BY THE OFFICE OF THE SOLICITOR GENERAL (OSG) EXCEPT IF THE CHALLENGED ORDER AFFECTS THE INTEREST OF THE STATE OR THE PLAINTIFF PEOPLE OF THE PHILIPPINES.— [W]e note that the instant petition assailing the RTC's dismissal of the Information for bigamy was filed by private complainant and not by the Office of the Solicitor General (OSG) which should represent the government in all judicial proceedings filed before us. Notwithstanding, we will give due course to this petition as we had done in the past.

[*] Designated acting member, per Special Order No. 1343, dated October 9, 2012.

x x x. In *Labaro v. Panay*, this Court dealt with a similar defect in the following manner: It must, however, be stressed that if the public prosecution is aggrieved by any order ruling of the trial judge in a criminal case, the OSG, and not the prosecutor, must be the one to question the order or ruling before us. x x x Nevertheless, **since the challenged order affects the interest of the State or the plaintiff People of the Philippines, we opted not to dismiss the petition on this technical ground**. Instead, we required the OSG to comment on the petition, as we had done before in some cases. In light of its Comment, we rule that the OSG has ratified and adopted as its own the instant petition for the People of the Philippines. Considering that we also required the OSG to file a Comment on the petition, which it did, praying that the petition be granted in effect, such Comment had ratified the petition filed with us.

2. CRIMINAL LAW; BIGAMY; ELEMENTS.— The elements of the crime of bigamy are: (a) the offender has been legally married; (b) the marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (c) that he contracts a second or subsequent marriage; and (d) the second or subsequent marriage has all the essential requisites for validity. The felony is consummated on the celebration of the second marriage or subsequent marriage. It is essential in the prosecution for bigamy that the alleged second marriage, having all the essential requirements, would be valid were it not for the subsistence of the first marriage. In this case, it appears that when respondent contracted a second marriage with Silverio in 1983, her first marriage with Socrates celebrated in 1976 was still subsisting as the same had not yet been annulled or declared void by a competent authority. Thus, all the elements of bigamy were alleged in the Information.

3. ID.; ID.; THE ACCUSED MAY BE CONVICTED FOR BIGAMY FOR CONTRACTING A SECOND MARRIAGE DURING THE SUBSISTENCE OF THE FIRST MARRIAGE AND THE SUBSEQUENT JUDICIAL DECLARATION OF THE NULLITY OF THE FIRST MARRIAGE IS IMMATERIAL.— In *Mercado v. Tan*, we ruled that the subsequent judicial declaration of the nullity of the first marriage was immaterial, because prior to the declaration of nullity, the crime of bigamy

had already been consummated. And by contracting a second marriage while the first was still subsisting, the accused committed the acts punishable under Article 349 of the Revised Penal Code. x x x. [I]n *Jarillo v. People*, x x x, we affirmed the accused's conviction for bigamy, ruling that the moment the accused contracted a second marriage without the previous one having been judicially declared null and void, the crime of bigamy was already consummated because at the time of the celebration of the second marriage, the accused's first marriage which had not yet been declared null and void by a court of competent jurisdiction was deemed valid and subsisting. Here, at the time respondent contracted the second marriage, the first marriage was still subsisting as it had not yet been legally dissolved. As ruled in the above-mentioned jurisprudence, the subsequent judicial declaration of nullity of the first marriage would not change the fact that she contracted the second marriage during the subsistence of the first marriage. Thus, respondent was properly charged of the crime of bigamy, since the essential elements of the offense charged were sufficiently alleged.

4. ID.; ID.; ID.; PARTIES TO THE MARRIAGE SHOULD NOT BE PERMITTED TO JUDGE FOR THEMSELVES ITS NULLITY, FOR THE SAME MUST BE SUBMITTED TO THE JUDGMENT OF COMPETENT COURTS AND ONLY WHEN THE NULLITY OF THE MARRIAGE IS SO DECLARED CAN IT BE HELD AS VOID, AND SO LONG AS THERE IS NO SUCH DECLARATION, THE PRESUMPTION IS THAT THE MARRIAGE EXISTS.— Respondent claims that *Tenebro v. CA* is not applicable, since the declaration of nullity of the previous marriage came after the filing of the Information, unlike in this case where the declaration was rendered before the information was filed. We do not agree. What makes a person criminally liable for bigamy is when he contracts a second or subsequent marriage during the subsistence of a valid marriage. Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy.

5. CIVIL LAW; FAMILY CODE, ARTICLE 40 THEREOF; SHOULD BE APPLIED RETROACTIVELY; RATIONALE.— In *Jarillo v. People*, where the accused, in her motion for reconsideration, argued that since her marriages were entered into before the effectivity of the Family Code, then the applicable law is Section 29 of the Marriage Law (Act 3613), instead of Article 40 of the Family Code, which requires a final judgment declaring the previous marriage void before a person may contract a subsequent marriage. We did not find the argument meritorious and said: As far back as 1995, in *Atienza v. Brillantes, Jr.*, the Court already made the declaration that Article 40, which is a rule of procedure, should be applied retroactively because Article 256 of the Family Code itself provides that said "Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights." x x x. In *Marbella-Bobis v. Bobis*, the Court pointed out the danger of not enforcing the provisions of Article 40 of the Family Code, to wit: In the case at bar, respondent's clear intent is to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy. He cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is disregard Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first. A party may even enter into a marriage aware of the absence of a requisite - usually the marriage license - and thereafter contract a subsequent marriage without obtaining a declaration of nullity of the first on the assumption that the first marriage is void. Such scenario would render nugatory the provision on bigamy.

APPEARANCES OF COUNSEL

Jose Marlon P. Pabiton for complainant.
Robert Sison for respondent.

D E C I S I O N

PERALTA, *J.*:

For our resolution is a petition for review on *certiorari* which seeks to annul the Order[1] dated September 24, 2007 of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31, issued in Criminal Case No. 4990-SPL which dismissed the Information for Bigamy filed against respondent Lourdes Tajolosa Cipriano. Also assailed is the RTC Resolution[2] dated January 2, 2008 denying the motion for reconsideration.

On April 8, 1976, respondent married Socrates Flores (Socrates) in Lezo, Aklan.[3] On January 24, 1983, during the subsistence of the said marriage, respondent married Silverio V. Cipriano (Silverio) in San Pedro, Laguna.[4] In 2001, respondent filed with the RTC of Muntinlupa, Branch 256, a Petition for the Annulment of her marriage with Socrates on the ground of the latter's psychological incapacity as defined under Article 36 of the Family Code, which was docketed as Civil Case No. 01-204. On July 18, 2003, the RTC of Muntinlupa, Branch 256, rendered an Amended Decision[5] declaring the marriage of respondent with Socrates null and void. Said decision became final and executory on October 13, 2003.[6]

On May 14, 2004, petitioner Merlinda Cipriano Montañez, Silverio's daughter from the first marriage, filed with the Municipal Trial Court of San Pedro, Laguna, a Complaint[7] for Bigamy against respondent, which was docketed as Criminal Case No. 41972. Attached to the complaint was an Affidavit[8] (*Malayang*

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[1] *Rollo*, pp. 54-55; Per Judge Sonia T. Yu-Casano.

[2] *Id*. at 52-53.

[3] *Id*. at 60.

[4] *Id*. at 62.

[5] *Id*. at 66-68.

[6] *Id*. at 69.

[7] *Id*. at 71.

[8] *Id*. at 72.

Sinumpaang Salaysay) dated August 23, 2004, thumb- marked and signed by Silverio,[9] which alleged, among others, that respondent failed to reveal to Silverio that she was still married to Socrates. On November 17, 2004, an Information[10] for Bigamy was filed against respondent with the RTC of San Pedro, Laguna, Branch 31. The case was docketed as Criminal Case No. 4990-SPL. The Information reads:

> That on or about January 24, 1983, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously contract a second or subsequent marriage with one SILVERIO CIPRIANO VINALON while her first marriage with SOCRATES FLORES has not been judicially dissolved by proper judicial authorities.[11]

On July 24, 2007 and before her arraignment, respondent, through counsel, filed a Motion to Quash Information (and Dismissal of the Criminal Complaint)[12] alleging that her marriage with Socrates had already been declared void *ab initio* in 2003, thus, there was no more marriage to speak of prior to her marriage to Silverio on January 24, 1983; that the basic element of the crime of bigamy, *i.e.*, two valid marriages, is therefore wanting. She also claimed that since the second marriage was held in 1983, the crime of bigamy had already prescribed. The prosecution filed its Comment[13] arguing that the crime of bigamy had already been consummated when respondent filed her petition for declaration of nullity; that the law punishes the act of contracting a second marriage which appears to be valid, while the first marriage is still subsisting and has not yet been annulled or declared void by the court.

In its Order[14] dated August 3, 2007, the RTC denied the motion. It found respondent's argument that with the declaration

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[9] Died on May 27, 2007; *id*. at 59.

[10] *Id*. at 75.

[11] *Id*.

[12] *Id*. at 80-81.

[13] *Id*. at 82-83.

[14] *Id*. at 84.

of nullity of her first marriage, there was no more first marriage to speak of and thus the element of two valid marriages in bigamy was absent, to have been laid to rest by our ruling in *Mercado v. Tan*[15] where we held:

> In the instant case, petitioner contracted a second marriage although there was yet no judicial declaration of nullity of his first marriage. In fact, he instituted the Petition to have the first marriage declared void only after complainant had filed a letter-complaint charging him with bigamy. For contracting a second marriage while the first is still subsisting, he committed the acts punishable under Article 349 of the Revised Penal Code.
>
> That he subsequently obtained a judicial declaration of the nullity of the first marriage was immaterial. To repeat, the crime had already been consummated by then. x x x[16]

As to respondent's claim that the action had already prescribed, the RTC found that while the second marriage indeed took place in 1983, or more than the 15-year prescriptive period for the crime of bigamy, the commission of the crime was only discovered on November 17, 2004, which should be the reckoning period, hence, prescription has not yet set in.

Respondent filed a Motion for Reconsideration[17] claiming that the *Mercado* ruling was not applicable, since respondent contracted her first marriage in 1976, *i.e.*, before the Family Code; that the petition for annulment was granted and became final before the criminal complaint for bigamy was filed; and, that Article 40 of the Family Code cannot be given any retroactive effect because this will impair her right to remarry without need of securing a declaration of nullity of a completely void prior marriage.

On September 24, 2007, the RTC issued its assailed Order,[18] the dispositive portion of which reads:

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[15] G.R. No. 137110, August 1, 2000, 337 SCRA 122; 391 Phil. 809 (2000).

[16] *Mercado v. Tan, supra*, at 133; at 824.

[17] *Rollo*, pp. 85-87.

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

Wherefore, the Order of August 3, 2007 is reconsidered and set aside. Let a new one be entered quashing the information. Accordingly, let the instant case be DISMISSED.

SO ORDERED.

In so ruling, the RTC said that at the time the accused had contracted a second marriage on January 24, 1983, *i.e.*, before the effectivity of the Family Code, the existing law did not require a judicial declaration of absolute nullity as a condition precedent to contracting a subsequent marriage; that jurisprudence before the Family Code was ambivalent on the issue of the need of prior judicial declaration of absolute nullity of the first marriage. The RTC found that both marriages of respondent took place before the effectivity of the Family Code, thus, considering the unsettled state of jurisprudence on the need for a prior declaration of absolute nullity of marriage before commencing a second marriage and the principle that laws should be interpreted liberally in favor of the accused, it declared that the absence of a judicial declaration of nullity should not prejudice the accused whose second marriage was declared once and for all valid with the annulment of her first marriage by the RTC of Muntinlupa City in 2003.

Dissatisfied, a Motion for Reconsideration was filed by the prosecution, but opposed by respondent. In a Resolution dated January 2, 2008, the RTC denied the same ruling, among others, that the judicial declaration of nullity of respondent's marriage is tantamount to a mere declaration or confirmation that said marriage never existed at all, and for this reason, her act in contracting a second marriage cannot be considered criminal.

Aggrieved, petitioner directly filed the present petition with us raising the following issues:

I. Whether the judicial nullity of a first marriage prior to the enactment of the Family Code and the pronouncement in Wiegel vs. Sempio-Diy on the ground of psychological incapacity is a valid defense for a charge of bigamy for entering into a second marriage prior to the enactment of the Family Code and the pronouncement in *Wiegel vs. Sempio-Diy*?

II. Whether the trial court erred in stating that the jurisprudence prior to the enactment of the Family Code and the pronouncement in *Wiegel vs. Sempio-Diy* regarding the necessity of securing a declaration of nullity of the first marriage before entering a second marriage ambivalent, such that a person was allowed to enter a subsequent marriage without the annulment of the first without incurring criminal liability.[19]

Preliminarily, we note that the instant petition assailing the RTC's dismissal of the Information for bigamy was filed by private complainant and not by the Office of the Solicitor General (OSG) which should represent the government in all judicial proceedings filed before us.[20] Notwithstanding, we will give due course to this petition as we had done in the past. In *Antone v. Beronilla*,[21] the offended party (private complainant) questioned before the Court of Appeals (CA) the RTC's dismissal of the Information for bigamy filed against her husband, and the CA dismissed the petition on the ground, among others, that the petition should have been filed in behalf of the People of the Philippines by the OSG, being its statutory counsel in all appealed

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

[20] Section 35, Chapter 12, Title III of Book IV of the 1987 Administrative Code provides:

Sec. 35. *Powers and Functions.* - The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. xxx It shall have the following specific powers and functions:

> (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

As an exception to this rule, the Solicitor General is allowed to:

> (8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases.

[21] G.R. No. 183824, December 8, 2010, 637 SCRA 615.

criminal cases. In a petition filed with us, we said that we had given due course to a number of actions even when the respective interests of the government were not properly represented by the OSG and said:

> In *Labaro v. Panay*, this Court dealt with a similar defect in the following manner:
>
> It must, however, be stressed that if the public prosecution is aggrieved by any order ruling of the trial judge in a criminal case, the OSG, and not the prosecutor, must be the one to question the order or ruling before us. x x x
>
> Nevertheless, **since the challenged order affects the interest of the State or the plaintiff People of the Philippines, we opted not to dismiss the petition on this technical ground**. Instead, we required the OSG to comment on the petition, as we had done before in some cases. In light of its Comment, we rule that the OSG has ratified and adopted as its own the instant petition for the People of the Philippines. (Emphasis supplied)[22]

Considering that we also required the OSG to file a Comment on the petition, which it did, praying that the petition be granted in effect, such Comment had ratified the petition filed with us.

As to the merit of the petition, the issue for resolution is whether or not the RTC erred in quashing the Information for bigamy filed against respondent.

Article 349 of the Revised Penal Code defines and penalizes bigamy as follow:

> Art. 349. *Bigamy.* – The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

The elements of the crime of bigamy are: (a) the offender has been legally married; (b) the marriage has not been legally dissolved or, in case his or her spouse is absent, the absent

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[22] *Antone v. Beronilla, supra,* at 623.

spouse could not yet be presumed dead according to the Civil Code; (c) that he contracts a second or subsequent marriage; and (d) the second or subsequent marriage has all the essential requisites for validity. The felony is consummated on the celebration of the second marriage or subsequent marriage.[23] It is essential in the prosecution for bigamy that the alleged second marriage, having all the essential requirements, would be valid were it not for the subsistence of the first marriage.[24]

In this case, it appears that when respondent contracted a second marriage with Silverio in 1983, her first marriage with Socrates celebrated in 1976 was still subsisting as the same had not yet been annulled or declared void by a competent authority. Thus, all the elements of bigamy were alleged in the Information. In her Motion to Quash the Information, she alleged, among others, that:

x x x x x x x x x

2. The records of this case would bear out that accused's marriage with said Socrates Flores was declared void *ab initio* on 14 April 2003 by Branch 256 of the Regional Trial Court of Muntinlupa City. The said decision was never appealed, and became final and executory shortly thereafter.

3. In other words, before the filing of the Information in this case, her marriage with Mr. Flores had already been declared void from the beginning.

4. There was therefore no marriage prior to 24 January 1983 to speak of. In other words, there was only one marriage.

5. The basic element of the crime of bigamy, that is, two valid marriages, is therefore wanting.[25]

Clearly, the annulment of respondent's first marriage on the ground of psychological incapacity was declared only in 2003. The question now is whether the declaration of nullity of

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[23] *Manuel v. People*, G.R. No. 165842, November 29, 2005, 476 SCRA 461, 477; 512 Phil. 818, 833-834 (2005).

[24] *Id.* at 833.

[25] *Rollo*, p. 80.

respondent's first marriage justifies the dismissal of the Information for bigamy filed against her.

We rule in the negative.

In *Mercado v. Tan*,[26] we ruled that the subsequent judicial declaration of the nullity of the first marriage was immaterial, because prior to the declaration of nullity, the crime of bigamy had already been consummated. And by contracting a second marriage while the first was still subsisting, the accused committed the acts punishable under Article 349 of the Revised Penal Code.

In *Abunado v. People*,[27] we held that what is required for the charge of bigamy to prosper is that the first marriage be subsisting at the time the second marriage is contracted.[28] Even if the accused eventually obtained a declaration that his first marriage was void *ab initio*, the point is, both the first and the second marriage were subsisting before the first marriage was annulled.[29]

In *Tenebro v. CA*,[30] we declared that although the judicial declaration of the nullity of a marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the *vinculum* between the spouses is concerned, it is significant to note that said marriage is not without legal effects. Among these effects is that children conceived or born before the judgment of absolute nullity of the marriage shall be considered legitimate. There is, therefore, a recognition *written into the law itself* that such a marriage, although void *ab initio*, may still produce legal consequences. Among these legal consequences is incurring criminal liability for bigamy. To hold otherwise would render the State's penal laws on bigamy completely nugatory, and allow individuals to

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[26] *Supra* note 15, at 133; at 824.

[27] G.R. No. 159218, March 30, 2004, 426 SCRA 562.

[28] *Id.* at 568

[29] *Id*.

[30] G.R. No. 150758, February 18, 2004, 423 SCRA 272; 467 Phil. 723 (2004).

deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriages, while beguiling throngs of hapless women with the promise of futurity and commitment.[31]

And in *Jarillo v. People*,[32] applying the foregoing jurisprudence, we affirmed the accused's conviction for bigamy, ruling that the moment the accused contracted a second marriage without the previous one having been judicially declared null and void, the crime of bigamy was already consummated because at the time of the celebration of the second marriage, the accused's first marriage which had not yet been declared null and void by a court of competent jurisdiction was deemed valid and subsisting.

Here, at the time respondent contracted the second marriage, the first marriage was still subsisting as it had not yet been legally dissolved. As ruled in the above-mentioned jurisprudence, the subsequent judicial declaration of nullity of the first marriage would not change the fact that she contracted the second marriage during the subsistence of the first marriage. Thus, respondent was properly charged of the crime of bigamy, since the essential elements of the offense charged were sufficiently alleged.

Respondent claims that *Tenebro v. CA*[33] is not applicable, since the declaration of nullity of the previous marriage came after the filing of the Information, unlike in this case where the declaration was rendered before the information was filed. We do not agree. What makes a person criminally liable for bigamy is when he contracts a second or subsequent marriage during the subsistence of a valid marriage.

Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage

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[31] *Id.* at 284; at 744.

[32] G.R. No. 164435, September 29, 2009, 601 SCRA 236.

[33] *Supra* note 30.

exists.[34] Therefore, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy.[35]

Anent respondent's contention in her Comment that since her two marriages were contracted prior to the effectivity of the Family Code, Article 40 of the Family Code cannot be given retroactive effect because this will impair her right to remarry without need of securing a judicial declaration of nullity of a completely void marriage.

We are not persuaded.

In *Jarillo v. People*,[36] where the accused, in her motion for reconsideration, argued that since her marriages were entered into before the effectivity of the Family Code, then the applicable law is Section 29 of the Marriage Law (Act 3613),[37] instead of Article 40 of the Family Code, which requires a final judgment declaring the previous marriage void before a person may contract a subsequent marriage. We did not find the argument meritorious and said:

As far back as 1995, in *Atienza v. Brillantes, Jr.*, the Court already made the declaration that Article 40, which is a rule of procedure,

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[34] *Landicho v. Relova*, G.R. No. L-22579, February 23, 1968, 22 SCRA 731, 734; 130 Phil. 745, 748 (1968).

[35] *Id*.

[36] G.R. No. 164435, June 29, 2010, 622 SCRA 24.

[37] Section 29 of Act No. 3613 (Marriage Law), which provided:

Illegal marriages. — Any marriage subsequently contracted by any person during the lifetime of the first spouse shall be illegal and void from its performance, unless:

(a) The first marriage was annulled or dissolved;

(b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, the marriage as contracted being valid in either case until declared null and void by a competent court.

should be applied retroactively because Article 256 of the Family Code itself provides that said "Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights." The Court went on to explain, thus:

> The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. The reason is that as a general rule, no vested right may attach to, nor arise from, procedural laws.

In *Marbella-Bobis v. Bobis*, the Court pointed out the danger of not enforcing the provisions of Article 40 of the Family Code, to wit:

> In the case at bar, respondent's clear intent is to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy. He cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is disregard Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first. A party may even enter into a marriage aware of the absence of a requisite - usually the marriage license - and thereafter contract a subsequent marriage without obtaining a declaration of nullity of the first on the assumption that the first marriage is void. Such scenario would render nugatory the provision on bigamy.[38]

WHEREFORE, considering the foregoing, the petition is **GRANTED.** The Order dated September 24, 2007 and the Resolution dated January 2, 2008 of the Regional Trial Court of San Pedro, Laguna, Branch 31, issued in Criminal Case No. 4990-SPL, are hereby **SET ASIDE.** Criminal Case No. 4990-SPL is ordered **REMANDED** to the trial court for further proceedings.

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[38] *Jarillo v. People*, *supra* note 36, at 25-26. (Citation omitted)

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197151. October 22, 2012]

SM LAND, INC. (Formerly Shoemart, Inc.) and WATSONS PERSONAL CARE STORES, PHILS., INC., *petitioners, vs.* **CITY OF MANILA, LIBERTY TOLEDO, in her official capacity as the City Treasurer of Manila and JOSEPH SANTIAGO, in his official capacity as the Chief of License Division of the City of Manila,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS FROM THE REGIONAL TRIAL COURT TO THE COURT OF TAX APPEALS; THE 30-DAY ORIGINAL PERIOD FOR FILING A PETITION FOR REVIEW MAY BE EXTENDED FOR A PERIOD OF 15 DAYS.— [T]he Court is not persuaded by petitioners' insistence that the 30-day period to appeal decisions of the RTC to the CTA is non-extendible. Petitioners cited cases decided by this Court wherein it was held that the 30-day period within which to file an appeal with the CTA is jurisdictional and non-extendible. However, these rulings had been superseded by this Court's decision in the case of *City of Manila v. Coca- Cola Bottlers, Philippines, Inc.*, as correctly cited by the CTA *En Banc*. Suffice it to say that this Court's ruling in the said case is instructive, to wit: x x x The period to appeal the decision

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[*] Designated Acting Member, per Special Order No. 1343 dated October 9, 2012.

or ruling of the RTC to the CTA *via* a Petition for Review is specifically governed by Section 11 of Republic Act No. 9282, and Section 3 (a), Rule 8 of the Revised Rules of the CTA. x x x. Appeal shall be made by filing a **petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure** with the CTA within **thirty (30) days** from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. x x x. It is also true that the same provisions are silent as to whether such 30-day period can be extended or not. However, Section 11 of Republic Act No. 9282 does state that the Petition for Review shall be filed with the CTA **following the procedure analogous to Rule 42 of the Revised Rules of Civil Procedure**. Section 1, Rule 42 of the Revised Rules of Civil Procedure provides that the Petition for Review of an adverse judgment or final order of the RTC must be filed with the Court of Appeals within: (1) the original 15-day period from receipt of the judgment or final order to be appealed; (2) an extended period of 15 days from the lapse of the original period; and (3) only **for the most compelling reasons,** another extended period not to exceed 15 days from the lapse of the first extended period. Following by analogy, Section 1, Rule 42 of the Revised Rules of Civil Procedure, the **30-day** original period for filing a Petition for Review with the CTA under Section 11 of Republic Act No. 9282, as implemented by Section 3 (a), Rule 8 of the Revised Rules of the CTA, may be extended for a period of **15 days**. No further extension shall be allowed thereafter, except only for the most compelling reasons, in which case the extended period shall not exceed **15 days**.

2. ID.; ID.; THE COURT OF TAX APPEALS HAS STATUTORY AUTHORITY TO GRANT AN EXTENSION OF FIFTEEN DAYS (15) WITHIN WHICH TO FILE THE PETITION FOR REVIEW.— At the time that the CTA Second Division granted petitioners' motion for extension to file their petition for review, Republic Act 9282 (RA 9282), which amended certain provisions of RA 1125, were already in effect, and it is clearly provided therein that appeals from the RTC to the CTA shall follow a procedure analogous to that provided for under Rule 42 of the Rules of Court. Rule 42 of the said Rules, in turn, provides that the court may grant an extension of fifteen (15)

days within which to file the petition for review. Thus, independent of the *Coca-Cola* case, the CTA Second Division had clear statutory authority in granting petitioners' motion for extension. This Court's ruling in *Coca-Cola* is a mere clarification and affirmation of what is provided for under the provisions of RA 1125, as amended by RA 9282.

3. ID.; PLEADINGS AND PRACTICES; RULES ON NON-FORUM SHOPPING AND VERIFICATION; EVEN IF THERE WAS COMPLETE NON-COMPLIANCE WITH THE RULE ON CERTIFICATION AGAINST FORUM SHOPPING, THE COURT MAY STILL PROCEED TO DECIDE THE CASE ON THE MERITS, PURSUANT TO ITS INHERENT POWER TO SUSPEND ITS OWN RULES ON GROUNDS OF SUBSTANTIAL JUSTICE AND APPARENT MERIT OF THE CASE.— [T]he Court agrees with petitioners' contention in its second argument that there are compelling reasons in the present case which justify the relaxation of the rules on verification and certification of non-forum shopping. It must be kept in mind that while the requirement of the certification of non-forum shopping is mandatory, nonetheless, the requirements must not be interpreted too literally and, thus, defeat the objective of preventing the undesirable practice of forum shopping. Time and again, this Court has held that rules of procedure are established to secure substantial justice. Being instruments for the speedy and efficient administration of justice, they must be used to achieve such end, not to derail it. In particular, when a strict and literal application of the rules on non-forum shopping and verification will result in a patent denial of substantial justice, these may be liberally construed. In the instant case, petitioner Watsons' procedural lapse was its belated submission of a Secretary's Certificate authorizing Atty. Cruz as its representative. On the other hand, petitioner SM Land, Inc.'s infraction was not only its late submission of its Secretary's Certificate but also its failure to timely submit its verification and certification of non-forum shopping. In a number of cases, this Court has excused the belated filing of the required verification and certification of non-forum shopping, citing that special circumstances or compelling reasons make the strict application of the rule clearly unjustified. This Court ruled that substantial justice and the apparent merits

of the substantive aspect of the case are deemed special circumstances or compelling reasons to relax the said rule. In fact, this Court has held that even if there was complete non-compliance with the rule on certification against forum shopping, the Court may still proceed to decide the case on the merits, pursuant to its inherent power to suspend its own rules on grounds, as stated above, of substantial justice and apparent merit of the case.

4. ID.; ID.; ID.; NON-COMPLIANCE WITH REQUIREMENTS ON OR SUBMISSION OF DEFECTIVE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING, RULE THEREON.— [I]n *Vda. de Formoso v. Philippine National Bank*, this Court reiterated, in capsule form, the rule on non-compliance with the requirements on, or submission of defective verification and certification of non-forum shopping, to wit: 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. 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.

5. ID.; ID.; ID.; THE SIGNATURE OF THE REPRESENTATIVE OF THE OTHER CO-PLAINTIFFS MAY BE CONSIDERED AS SUBSTANTIAL COMPLIANCE WITH THE RULE ON VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING, CONSISTENT WITH THE COURT'S PRONOUNCEMENT THAT WHEN ALL THE 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 RULES.— In the present case, there is no dispute that Tax Ordinance Nos. 7988 and 8011 have already been declared null and void by this Court as early as 2006 in the case of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila*. The nullity of the said Tax Ordinances is affirmed in the more recent case of *City of Manila v. Coca-Cola Bottlers, Philippines, Inc.*, as cited above. Thus, to the mind of this Court, the unquestioned nullity of the above assailed Tax Ordinances upon which petitioners were previously taxed, makes petitioners' claim for tax refund clearly meritorious. In fact, petitioners' sister companies, which were their co-plaintiffs in their Complaint filed with the RTC, were granted tax refund in accordance with the judgments of the trial court, the CTA Second Division and the CTA *En Banc*. On this basis, petitioners' meritorious claims are compelling reasons to relax the rule on verification and certification of non-forum shopping. In any case, it would bear to point out that petitioners and their co-plaintiffs in the trial court filed their claim for tax refund as a collective group, because they share a common interest and invoke a common cause of action. Hence, the signature of the representative of the other co-plaintiffs may be considered as substantial compliance with the rule on verification and certification of non-forum shopping, consistent with this Court's pronouncement that when all the

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 rules.

APPEARANCES OF COUNSEL

Salvador & Associates for petitioners.
Renato G. Dela Cruz for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Tax Appeals (CTA) *En Banc*, dated December 17, 2010 and May 27, 2011, respectively, in CTA EB No. 548. The assailed Decision affirmed the July 3, 2009 Decision[3] and September 30, 2009 Resolution[4] of the CTA Second Division in CTA AC No. 51, while the questioned Resolution denied herein petitioners' Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

On the strength of the provisions of Tax Ordinance Nos. 7988 and 8011, which amended Ordinance No. 7794, also known as the *Revenue Code of Manila*, herein respondent City of Manila

[1] Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla, concurring; Annex "A" to Petition, *rollo*, pp. 64-78.

[2] Annex "B" to Petition, *rollo*, pp. 79-84.

[3] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez concurring; Annex "C" to Petition, *rollo*, pp. 85-104.

[4] Annex "E" to Petition, *rollo*, pp. 129-137.

assessed herein petitioners, together with their other sister companies, increased rates of business taxes for the year 2003 and the first to third quarters of 2004.

Petitioners and their sister companies paid the additional taxes under protest.

Subsequently, petitioners and their sister companies claimed with herein respondent City Treasurer of Manila a credit or refund of the increased business taxes which they paid for the period abovementioned. However, the City Treasurer denied their claim.

Aggrieved, petitioners and their sister companies filed with the Regional Trial Court (RTC) of Pasay City a Complaint for Refund and/or Issuance of Tax Credit of Taxes Illegally Collected.[5]

On July 10, 2007, the RTC rendered a summary judgment in favor of herein petitioners, disposing as follows:

> WHEREFORE, this Court renders judgment in plaintiffs' favor and directs the defendants to grant a refund/tax credit:
>
> (a) To Plaintff SM Mart, Inc. –
>
> i. The amount of ₱3,543,318.97 representing overpayment of increased local business taxes under Sections 15, 16, 17, 18, and 19, under the rates imposed by Ordinance Nos. 7988 and 8011, and
>
> ii. The amount of ₱17,519,133.16 representing payment of the Section 21 tax;
>
> (b) To Plaintiff SM Prime Holdings, Inc. –
>
> i. The amount of ₱667,377.21 representing overpayment of increased local business taxes under Sections 15, 16, 17, 18, and 19, under the rates imposed by Ordinance Nos. 7988 and 8011, and
>
> ii. The amount of ₱6,711,068.38 representing payment of the Section 21 tax;

[5] Annex "H" to Petition, *rollo*, pp. 168-207.

(c) To Plaintiff Shoemart, Inc. –

i. The amount of ₱691,887.07 representing overpayment of increased local business taxes under Section 17, under the rates imposed by Ordinance Nos. 7988 and 8011, and

ii. The amount of ₱2,954,520.24 representing payment of the Section 21 tax;

(d) To Plaintiff Star Appliances Center –

i. The amount of ₱700,974.98 representing overpayment of increased local business taxes under Section 17, under the rates imposed by Ordinance Nos. 7988 and 8011, and

ii. The amount of ₱3,459,812.76 representing payment of the Section 21 tax;

(e) To Plaintiff Supervalue, Inc. –

i. The amount of ₱1,360,984.69 representing overpayment of increased local business taxes under Sections 17 and 18, under the rates imposed by Ordinance Nos. 7988 and 8011, and

ii. The amount of ₱2,774,859.82 representing payment of the Section 21 tax;

(f) To Plaintiff Ace Hardware Philippines, Inc. –

i. The amount of ₱202,175.67 representing overpayment of increased local business taxes under Section 17, under the rates imposed by Ordinance Nos. 7988 and 8011, and

ii. The amount of ₱988,347.16 representing payment of the Section 21 tax;

(g) To Plaintiff Watsons Personal Care Stores Philippines, Inc.–

i. The amount of ₱214,667.73 representing overpayment of increased local business taxes under Section 17, under the rates imposed by Ordinance Nos. 7988 and 8011, and

ii. The amount of ₱636,857.15 representing payment of the Section 21 tax;

(h) To Plaintiff Jollimart Phils., Corp. –

i. The amount of ₱98,223.61 representing overpayment of increased local business taxes under Section 17, under the rates imposed by Ordinance Nos. 7988 and 8011, and

ii. The amount of ₱296,178.13 representing payment of the Section 21 tax;

(i) To Plaintiff Surplus Marketing Corporation –

i. The amount of ₱84,494.76 representing overpayment of increased local business taxes under Section 17, under the rates imposed by Ordinance Nos. 7988 and 8011, and

ii. The amount of ₱399,942.81 representing payment of the Section 21 tax;

(j) To Plaintiff Signature Lines –

i. The amount of ₱49,566.91 representing overpayment of increased local business taxes under Section 17, under the rates imposed by Ordinance Nos. 7988 and 8011, and

ii. The amount of ₱222,565.79 representing payment of the Section 21 tax.

No Costs.

SO ORDERED.[6]

The RTC held that Tax Ordinance Nos. 7988 and 8011, which were the bases of the City of Manila in imposing the assailed additional business taxes on petitioners and their co-plaintiffs, had already been declared null and void by this Court in the case of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila.*[7] On this ground, the RTC ruled that respondents cannot use the assailed Ordinances in imposing additional taxes on petitioners and their co-plaintiffs.

Respondents moved for reconsideration, but the RTC denied it in its Order dated December 14, 2007.

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[6] Annex "M" to Petition, *rollo*, pp. 256-258.

[7] G.R. No. 156252, June 27, 2006, 493 SCRA 279.

After the CTA granted their request for extension of time, herein respondents filed a petition for review with the tax court.[8] The case was raffled to the Second Division of the said court.

On July 3, 2009, the CTA Second Division rendered its Decision, the dispositive portion of which reads, thus:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The appealed Order dated July 10, 2007 and Order dated December 14, 2007 of the Regional Trial Court of Pasay City, Branch 115, in Civil Case No. 05-0051-CFM are hereby **MODIFIED**. Accordingly, with the exception of Shoemart, Inc. and Watsons Personal Care Stores, Phils., petitioners are hereby **ORDERED to REFUND** the rest of the respondents, their erroneously paid local business taxes for taxable year 2003 and for the first to third quarters of taxable year 2004 in the aggregate amount of **THIRTY-NINE MILLION SEVENTY-EIGHT THOUSAND NINE HUNDRED EIGHTY-EIGHT PESOS AND 81/100 (₱39,078,988.81)**, detailed as follows:[9]

The CTA Second Division sustained the ruling of the RTC that Ordinance Nos. 7988 and 8011 are null and void. Applying the doctrine of *stare decisis*, the CTA Second Division held that the ruling in the *Coca-Cola* case cited by the RTC is applicable in the present case as both cases involve substantially the same facts and issues. The CTA Second Division, nonetheless, held that herein petitioners' claims for tax refund should be denied because of their failure to comply with the provisions of the Rules of Court requiring verification and submission of a certificate of non-forum shopping. The CTA Second Division noted that petitioners failed to attach to the complaint filed with the RTC their respective Secretary's Certificates authorizing their supposed representative, a certain Atty. Rex Enrico V. Cruz III (Atty. Cruz), to file the said complaint in their behalf. The CTA also observed that in the Verification and Certification of Non-Forum Shopping attached to the complaint, petitioner SM Land, Inc. was not included in the list of corporations represented by the person who executed the said Verification and Certification.

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[8] Annex "F" to Petition, *rollo*, pp. 138-151.

[9] *Rollo*, p. 102.

Petitioners filed a Motion for Partial Reconsideration.[10] Attached to the said Motion was the Verification and Certification executed by Atty. Cruz as the representative of petitioner SM Land, Inc. Also attached were petitioners' Secretary's Certificates authorizing Atty. Cruz as their representative. The CTA Second Division, however, denied the Motion for Partial Reconsideration in its Resolution[11] dated September 30, 2009.

Aggrieved, petitioners filed a petition for review with the CTA *En Banc*, contending that: (1) the CTA Second Division erred in holding that the 30-day period provided by law within which to appeal decisions of the RTC to the CTA may be extended; and (2) the CTA Second Division committed error in denying herein petitioners' claim for tax refund on the ground that they violated the rules on verification and certification of non-forum shopping.

On December 17, 2010, the CTA *En Banc* rendered its assailed Decision affirming *in toto* the judgment of the CTA Second Division.

Petitioners' Motion for Reconsideration was subsequently denied by the CTA *En Banc* in its Resolution dated May 27, 2011.

Hence, the present petition anchored on the following arguments:

A. SECTION 11, REPUBLIC ACT NO. 1125, AS AMENDED BY REPUBLIC ACT NO. 9282, CLEARLY DID NOT INTEND FOR THE THIRTY (30)-DAY PERIOD TO APPEAL DECISIONS OF THE REGIONAL TRIAL COURT TO THE CTA TO BE EXTENDIBLE; AND

B. ASSUMING HYPOTHETICALLY THAT THE CTA WAS CORRECT IN GRANTING RESPONDENTS AN EXTENSION, THERE WERE STILL COMPELLING REASONS TO JUSTIFY THE RELAXATION OF THE RULES REQUIRING VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING.[12]

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[10] Annex "D" to Petition, *id*. at 105-128.

[11] Annex "E" to Petition, *rollo*, pp. 129-137.

[12] *Rollo*, p. 19.

The Court finds the petition meritorious. Nonetheless, the Court does not fully agree with petitioners' contentions.

In the first argument raised, the Court is not persuaded by petitioners' insistence that the 30-day period to appeal decisions of the RTC to the CTA is non-extendible.

Petitioners cited cases decided by this Court wherein it was held that the 30-day period within which to file an appeal with the CTA is jurisdictional and non-extendible. However, these rulings had been superseded by this Court's decision in the case of *City of Manila v. Coca- Cola Bottlers, Philippines, Inc.*,[13] as correctly cited by the CTA *En Banc*. Suffice it to say that this Court's ruling in the said case is instructive, to wit:

x x x x x x x x x

The period to appeal the decision or ruling of the RTC to the CTA *via* a Petition for Review is specifically governed by Section 11 of Republic Act No. 9282, and Section 3 (a), Rule 8 of the Revised Rules of the CTA.

Section 11 of Republic Act No. 9282 provides:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal*. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the **Regional Trial Courts** may file an Appeal with the CTA within **thirty (30) days** after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a **petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure** with the CTA within **thirty (30) days** from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. x x x. (Emphasis supplied.)

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[13] G.R. No. 181845, August 4, 2009, 595 SCRA 299.

Section 3(a), Rule 8 of the Revised Rules of the CTA states:

> SEC. 3. *Who may appeal; period to file petition*. – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a **Regional Trial Court** in the exercise of its original jurisdiction may appeal to the Court by **petition for review** filed within **thirty days** after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. x x x. (Emphasis supplied.)

It is crystal clear from the afore-quoted provisions that to appeal an adverse decision or ruling of the RTC to the CTA, the taxpayer must file a **Petition for Review** with the CTA **within 30 days** from receipt of said adverse decision or ruling of the RTC.

It is also true that the same provisions are silent as to whether such 30-day period can be extended or not. However, Section 11 of Republic Act No. 9282 does state that the Petition for Review shall be filed with the CTA **following the procedure analogous to Rule 42 of the Revised Rules of Civil Procedure**. Section 1, Rule 42 of the Revised Rules of Civil Procedure provides that the Petition for Review of an adverse judgment or final order of the RTC must be filed with the Court of Appeals within: (1) the original 15-day period from receipt of the judgment or final order to be appealed; (2) an extended period of 15 days from the lapse of the original period; and (3) only **for the most compelling reasons,** another extended period not to exceed 15 days from the lapse of the first extended period.

Following by analogy, Section 1, Rule 42 of the Revised Rules of Civil Procedure, the **30-day** original period for filing a Petition for Review with the CTA under Section 11 of Republic Act No. 9282, as implemented by Section 3 (a), Rule 8 of the Revised Rules of the CTA, may be extended for a period of **15 days**. No further extension shall be allowed thereafter, except only for the most compelling reasons, in which case the extended period shall not exceed **15 days**.

x x x x x x x x x [14]

Petitioners further contend that the Order of the CTA Second Division granting petitioners' motion for extension to file their petition for review is invalid, because at the time that the said motion was granted on March 4, 2008, this Court has not yet promulgated its decision in the above-cited *Coca-Cola* case. It was only on August 4, 2009 that this Court issued its decision in the said case and, that petitioners reason out that the same is inapplicable to the instant case as the ruling therein cannot be applied retroactively. Petitioners argue that, aside from the *Coca-Cola* case, the CTA Second Division had no clear statutory authority or jurisprudential basis in granting petitioners' motion for extension to file their petition for review.

The Court does not agree.

At the time that the CTA Second Division granted petitioners' motion for extension to file their petition for review, Republic Act 9282[15] (RA 9282), which amended certain provisions of RA 1125,[16] were already in effect,[17] and it is clearly provided therein that appeals from the RTC to the CTA shall follow a procedure analogous to that provided for under Rule 42 of the Rules of Court. Rule 42 of the said Rules, in turn, provides that the court may grant an extension of fifteen (15) days within which to file the petition for review. Thus, independent of the *Coca-Cola* case, the CTA Second Division had clear statutory authority in granting petitioners' motion for extension. This Court's ruling in *Coca-Cola* is a mere clarification and affirmation of what is provided for under the provisions of RA 1125, as amended by RA 9282.

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[14] *Id.* at 313-315.

[15] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, otherwise known as the Law Creating the Court of Tax Appeals, and for other purposes.

[16] An Act Creating the Court of Tax Appeals.

[17] RA 9282 took effect on April 23, 2004.

Nonetheless, the Court agrees with petitioners' contention in its second argument that there are compelling reasons in the present case which justify the relaxation of the rules on verification and certification of non-forum shopping.

It must be kept in mind that while the requirement of the certification of non-forum shopping is mandatory, nonetheless, the requirements must not be interpreted too literally and, thus, defeat the objective of preventing the undesirable practice of forum shopping.[18]

Time and again, this Court has held that rules of procedure are established to secure substantial justice.[19] Being instruments for the speedy and efficient administration of justice, they must be used to achieve such end, not to derail it.[20] In particular, when a strict and literal application of the rules on non-forum shopping and verification will result in a patent denial of substantial justice, these may be liberally construed.[21]

In the instant case, petitioner Watsons' procedural lapse was its belated submission of a Secretary's Certificate authorizing Atty. Cruz as its representative. On the other hand, petitioner SM Land, Inc.'s infraction was not only its late submission of its Secretary's Certificate but also its failure to timely submit its verification and certification of non-forum shopping.

In a number of cases, this Court has excused the belated filing of the required verification and certification of non-forum shopping, citing that special circumstances or compelling reasons make the strict application of the rule clearly unjustified.[22] This

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[18] *Varorient Shipping Co., Inc. v. National Labor Relations Commission*, G.R. No. 164940, November 28, 2007, 539 SCRA 131, 140.

[19] *Ateneo de Naga University v. Manalo*, G.R. No. 160455, May 9, 2005, 458 SCRA 325, 336; 497 Phil. 635, 645 (2005).

[20] *Id*.

[21] *Id*.

[22] *Heirs of the Deceased Spouses Vicente S. Arcilla and Josefa Asuncion Arcilla v. Teodoro*, G.R. No. 162886, August 11, 2008, 561 SCRA 545, 558; *Shipside Incorporated v. Court of Appeals*, G.R. No. 143377, February

Court ruled that substantial justice and the apparent merits of the substantive aspect of the case are deemed special circumstances or compelling reasons to relax the said rule.

In fact, this Court has held that even if there was complete non-compliance with the rule on certification against forum shopping, the Court may still proceed to decide the case on the merits, pursuant to its inherent power to suspend its own rules on grounds, as stated above, of substantial justice and apparent merit of the case.[23]

Thus, in *Vda. de Formoso v. Philippine National Bank*,[24] this Court reiterated, in capsule form, the rule on non-compliance with the requirements on, or submission of defective verification and certification of non-forum shopping, to wit:

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

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20, 2001, 352 SCRA 334, 346, citing *Uy v. Land Bank of the Philippines*, G.R. No. 136100, July 24, 2000, 336 SCRA 419, 428-429; *Loyola v. Court of Appeals*, G.R. No. 117186, June 29, 1995, 245 SCRA 477, 483; and *Roadway Express, Inc. v. Court of Appeals*, G.R. No. 121488, November 21, 1996, 264 SCRA 696, 701.

[23] *Heirs of the Deceased Spouses Vicente S. Arcilla and Josefa Asuncion Arcilla v. Teodoro, supra* note 22, citing *De Guia v. De Guia*, G.R. No. 135384, April 4, 2001, 356 SCRA 287, 294-295 and *Estribillo v. Department of Agrarian Reform*, G.R. No. 159674, June 30, 2006, 494 SCRA 218, 233-234.

[24] G.R. No. 154704, June 1, 2011, 650 SCRA 35.

alleged in the petition have been made in good faith or are true and correct.

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.[25] (Emphasis supplied)

In the present case, there is no dispute that Tax Ordinance Nos. 7988 and 8011 have already been declared null and void by this Court as early as 2006 in the case of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila*.[26] The nullity of the said Tax Ordinances is affirmed in the more recent case of *City of Manila v. Coca-Cola Bottlers, Philippines, Inc.*,[27] as cited above. Thus, to the mind of this Court, the unquestioned nullity of the above assailed Tax Ordinances upon which petitioners were previously taxed, makes petitioners' claim for tax refund clearly meritorious. In fact, petitioners' sister companies, which were

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[25] *Vda. De Formoso v. Philippine National Bank, supra,* at 44-45, citing *Traveño v. Bobongon Banana Growers Multi-Purpose Cooperative*, G.R. No. 164205, September 3, 2009, 598 SCRA 27, 35-36 and *Altres v. Empleo*, G.R. No. 180986, December 10, 2008, 573 SCRA 583, 596-598.

[26] *Supra* note 7.

[27] *Supra* note 13.

their co-plaintiffs in their Complaint filed with the RTC, were granted tax refund in accordance with the judgments of the trial court, the CTA Second Division and the CTA *En Banc*. On this basis, petitioners' meritorious claims are compelling reasons to relax the rule on verification and certification of non-forum shopping.

In any case, it would bear to point out that petitioners and their co-plaintiffs in the trial court filed their claim for tax refund as a collective group, because they share a common interest and invoke a common cause of action. Hence, the signature of the representative of the other co-plaintiffs may be considered as substantial compliance with the rule on verification and certification of non-forum shopping, consistent with this Court's pronouncement that when all the 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 rules.[28]

WHEREFORE, the instant petition is **GRANTED.** The Decision and Resolution of the Court of Tax Appeals *En Banc*, dated December 17, 2010 and May 27, 2011, respectively, in CTA EB No. 548, as well as the July 3, 2009 Decision and September 30, 2009 Resolution of the Court of Tax Appeals Second Division in CTA AC No. 51, are **REVERSED AND SET ASIDE** and the Orders of the Regional Trial Court of Pasay City, Branch 115, dated July 10, 2007 and December 14, 2007, are **REINSTATED.**

SO ORDERED.

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

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[28] See *Vda. de Formoso v. Philippine National Bank*, *supra* note 24, at 47-48; *Prince Transport, Inc. v. Garcia*, G.R. No. 167291, January 12, 2011, 639 SCRA 312, 326.

[*] Designated Acting Member, per Special Order No. 1343 dated October 9, 2012.

EN BANC

[G.R. No. 198423. October 23, 2012]

LEO A. GONZALES, *petitioner, vs.* **SOLID CEMENT CORPORATION and ALLEN QUERUBIN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; FINAL JUDGMENTS; A DEFINITIVE FINAL JUDGMENT, HOWEVER ERRONEOUS, IS NO LONGER SUBJECT TO CHANGE OR REVISION; PRINCIPLE OF IMMUTABILITY OF FINAL JUDGMENT, ELABORATED; A SECOND MOTION FOR RECONSIDERATION IS A PROHIBITED PLEADING.— As a rule, a second motion for reconsideration is a prohibited pleading under the Rules of Court, and this reason alone is sufficient basis for us to dismiss the present second motion for reconsideration. The ruling in the original case, as affirmed by the Court, has been expressly declared final. A definitive final judgment, however erroneous, is no longer subject to change or revision. A **decision that has acquired finality becomes immutable and unalterable**. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And **this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land**. **The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law.** The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.

2. ID.; ID.; ID.; EXCEPTIONS TO THE RULE ON IMMUTABILITY OF FINAL JUDGMENTS; A VOID DECISION CAN NEVER BECOME FINAL.— After due consideration and further analysis of the case, however, we believe and so hold that the CA **did not only legally err but even acted outside its jurisdiction** when it issued its May 31, 2011 decision. Specifically, by deleting the awards properly granted by the NLRC and by reverting back to the LA's execution order, **the CA effectively varied the final and executory *judgment in the original case*, as modified on appeal and ultimately affirmed by the Court, and thereby acted outside its jurisdiction.** The CA likewise, in the course of its rulings and as discussed below, acted with grave abuse of discretion amounting to lack or excess of jurisdiction by using wrong considerations, thereby acting outside the contemplation of law. The CA's actions outside its jurisdiction cannot produce legal effects and cannot likewise be perpetuated by a simple reference to the principle of immutability of final judgment; a void decision can never become final. "The only **exceptions to the rule** on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) **void judgments**." For these reasons, the Court sees it legally appropriate to **vacate the assailed Minute Resolutions of November 16, 2011 and February 27, 2012**, and to reconsider its ruling on the current petition.

3. ID.; ID.; WHEN A CONFLICT EXISTS BETWEEN THE DISPOSITIVE PORTION AND THE OPINION OF THE COURT IN THE TEXT OR BODY OF THE DECISION, THE FORMER MUST PREVAIL OVER THE LATTER; THE EXECUTION MUST CONFORM WITH WHAT THE FALLO OR DISPOSITIVE PORTION OF THE DECISION ORDAINS OR DECREES.— The resolution of the court in a given issue – embodied in the *fallo* or dispositive part of a decision or order – is the controlling factor in resolving the issues in a case. The *fallo* embodies the court's decisive action on the issue/s posed, and is thus the part of the decision that must be enforced during execution. The other parts of the decision only contain, and are aptly called, the *ratio decidendi* (or reason for the decision) and, in this sense, assume a lesser role in carrying into effect the tribunal's disposition of the case. When a conflict exists between the *dispositive portion* and the *opinion of the court* in the text or body of the decision, the former must

prevail over the latter under the rule that the dispositive portion is the definitive order, while the opinion is merely an explanatory statement without the effect of a directive. Hence, the execution must conform with what the fallo or dispositive portion of the decision ordains or decrees.

4. LABOR AND SOCIAL LEGISLATION; ILLEGAL DISMISSAL; IN COMPUTING BACKWAGES, SALARY INCREASES FROM THE TIME OF DISMISSAL UNTIL ACTUAL REINSTATEMENT, AND BENEFITS NOT YET GRANTED AT THE TIME OF DISMISSAL, ARE EXCLUDED.— In the case of *BPI Employees Union – Metro Manila and Zenaida Uy v. Bank of the Philippine Islands and Bank of the Philippine Islands v. BPI Employees Union – Metro Manila and Zenaida Uy*, the Court ruled that in computing backwages, salary increases from the time of dismissal until actual reinstatement, and benefits *not yet granted at the time of dismissal are* ***excluded***. Hence, we cannot fault the CA for finding that the NLRC committed grave abuse of discretion in awarding **the salary differential amounting to ₱617,517.48 and the 13th month pay differentials amounting to ₱51,459.48** that accrued subsequent to Gonzales' dismissal.

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXISTS WHEN THE RULING ENTITY USED THE WRONG CONSIDERATIONS AND THEREBY ACTED OUTSIDE THE CONTEMPLATION OF LAW.— However, based on the same *BPI* case, Gonzales is entitled to **12% interest on the total unpaid judgment amount**, from the time the Court's decision (on the merits in the original case) became final. When the CA reversed the NLRC and reinstated the LA's ruling (which did not order payment of interest), the CA overstepped the due bounds of its jurisdiction under a *certiorari* petition as it acted on the basis of wrong considerations and outside the contemplation of the law on the legal interests that final orders and rulings on forbearance of money should bear. In a *certiorari* petition, the scope of review is limited to the determination of whether a judicial or quasi-judicial tribunal acted without or in excess of its jurisdiction or grave abuse of discretion amounting to lack of jurisdiction; such grave abuse of discretion can exist when the ruling entity used the wrong considerations and thereby acted outside the contemplation of law. In justifying

the return to and adoption of the LA's execution order, the CA solely relied on the doctrine of immutability of judgment which it considered to the exclusion of other attendant and relevant factors. This is a fatal error that amounted to **grave abuse of discretion**, particularly on the award of 12% interest.

6. ID.; JUDGMENTS; DELETION OF MONETARY AWARD BASED SOLELY ON IMMUTABILITY OF THE JUDGMENT IN THE ORIGINAL CASE IS A WRONG CONSIDERATION THAT FATALLY AFFLICTS AND RENDERS THE RULING OF THE APPELLATE COURT VOID.— The seminal case of *Eastern Shipping Lines, Inc. v. Court of Appeals* cannot be clearer on the rate of interest that applies: 3. **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest** x x x **shall be 12% per annum from such finality until its satisfaction,** this interim period being deemed to be by then an equivalent to a forbearance of credit. In *BPI*, we even said that "[t]his natural consequence of a final judgment is not defeated notwithstanding the fact that the parties were at variance in the computation of what is due" under the judgment. In the present case, the LA's failure to include this award in its order was properly corrected by the NLRC on appeal, only to be unreasonably deleted by the CA. Such deletion, based solely on the immutability of the judgment in the original case, is a wrong consideration that fatally afflicts and renders the CA's ruling void.

7. ID.; APPEALS; AN APPEAL ON THE LABOR ARBITER'S DETERMINATION OF THE AMOUNT DUE THROWS THE LABOR ARBITER'S DETERMINATION WIDE OPEN FOR REVIEW BY THE NLRC.— We reach the same conclusion on the other deletions the CA made, particularly on the deletion of the **13th month pay for 2000-2001, amounting to ₱80,000.00, and the additional backwages for the period of December 13, 2000 to January 21, 2001, amounting to ₱50,800.00**. We note in this regard that the execution proceedings were conducted before the LA issued an Order requiring the payment of **₱965,014.15** in Gonzales' favor. An appeal of this computation to the NLRC to question the LA's determination of the amount due throws the LA's determination wide open for the NLRC's review.

8. ID.; EVIDENCE; BURDEN OF PROOF; THE DEBTOR HAS THE BURDEN OF SHOWING WITH LEGAL CERTAINTY THAT

THE OBLIGATION HAS BEEN DISCHARGED BY PAYMENT.— In granting these monetary reliefs, the NLRC reasoned that – Since there is **no showing that complainant was paid his salaries** from the time when he should have been immediately reinstated until his payroll reinstatement, he is entitled thereto. To be sure, if the NLRC's findings had been arrived at arbitrarily or in disregard of the evidence on record, the CA would have been right and could have granted the petition for *certiorari* on the finding that the NLRC made a factual finding not supported by substantial evidence. The CA, in fact, did not appear to have looked into these matters and did not at all ask whether the NLRC's findings on the awarded monetary benefits were supported by substantial evidence. This omission, however, did not render the NLRC's ruling defective as *Jimenez v. NLRC, et al.* teaches us that – x x x. As a general rule, one who pleads payment has the burden of proving it. **Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.** The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

9. LABOR AND SOCIAL LEGISLATION; ILLEGAL DISMISSAL; BACKWAGES; SALARIES WHICH ARE DUE AFTER THE LABOR ARBITER'S REINSTATEMENT ORDER UNTIL ACTUAL REINSTATEMENT OF THE ILLEGALLY DISMISSED EMPLOYEE ARE NOT EXCLUDED FROM THE CONCEPT OF BACKWAGES; AWARD OF ADDITIONAL BACKWAGES AND 13TH MONTH PAY, UPHELD.— Thus, even without proof of nonpayment, the NLRC was right in requiring the payment of the 13th month pay and the salaries due after the LA's decision until the illegally dismissed petitioner was reinstated in the payroll, *i.e.*, from December 13, 2000 to January 21, 2001. It follows that the CA was wrong when it concluded that the NLRC acted outside its jurisdiction by including these monetary awards as items for execution. These amounts are ***not excluded*** from the concept of backwages as the salaries fell due after Gonzales should have been reinstated, while the 13th month pay fell due for the same period by legal mandate. These are entitlements that cannot now be glossed over if the final decision on the merits in this case were to be respected.

10. REMEDIAL LAW; JUDGMENTS; THE IMMUTABILITY PRINCIPLE IS INAPPLICABLE WHEN A DECISION CLAIMED TO BE FINAL IS NOT ONLY ERRONEOUS, BUT NULL AND VOID.— The x x x discussions unavoidably lead to the conclusion that the Court's Minute Resolutions denying Gonzales' petition were not properly issued and are tainted by the nullity of the CA decision these Resolutions effectively approved. We do not aim to defend these actions, however, by mechanically and blindly applying the principle of immutability of judgment, nor by tolerating the CA's inappropriate application of this principle. The immutability principle, rather than being absolute, is subject to well-settled exceptions, among which is its inapplicability when a decision claimed to be final is not only erroneous, but null and void.

11. ID.; ID.; AN ORDER OF EXECUTION THAT VARIES THE TENOR OF A FINAL AND EXECUTORY JUDGMENT IS NULL AND VOID.— Additionally, while continued consideration of a case on second motion for reconsideration very strongly remains an exception, our action in doing so in this case is not without sound legal justification. An order of execution that varies the tenor of a final and executory judgment is null and void. This was what the CA effectively did – it varied the final and executory judgment of the LA, as modified on appeal and ultimately affirmed by the Court. We would simply be enforcing our own Decision on the merits of the original case by nullifying what the CA did. Viewed in these lights, the recognition of, and our corrective action on, the nullity of the CA's ruling on the current petition is a duty this Court is under obligation to undertake pursuant to Section 1, Article VIII of the Constitution. We undertake this corrective action by restoring what the CA should have properly recognized to be covered by the Decision on the merits of the original case.

APPEARANCES OF COUNSEL

Bumactao Domingo & Associates Law Office for petitioner.
Castillo Laman Tan Pantaleon and San Jose for respondent.
De La Rosa & Nograles for Solid Cement Corp.

R E S O L U T I O N

BRION, *J.*:

Before us is the *Second Motion for Reconsideration*[1] *filed by petitioner Leo Gonzales (petitioner) in the case in caption (**the current petition***). Previously, the Court granted the petitioner's *Motion for Leave to File and Admit the Attached Motion to Refer the Case to the Court En Banc.* The motion for reconsideration addresses our Minute Resolutions of November 16, 2011 and February 27, 2012, both denying petitioner's petition for review on *certiorari.*

The Antecedent Facts

The current petition arose from the execution of the final and executory judgment in the parties' illegal dismissal dispute (referred to as "***original case***," docketed in this Court as G.R. No. 165330 and entitled *Solid Cement Corporation, et al. v. Leo Gonzales*). The Labor Arbiter (*LA*) resolved the case at his level on December 12, 2000. Since the LA found that an illegal dismissal took place, the company ***reinstated*** petitioner Gonzales ***in the payroll*** on January 22, 2001.[2]

In the meanwhile, the parties continued to pursue the original case on the merits. The case was appealed to the National Labor Relations Commission (*NLRC*) and from there to the Court of Appeals (*CA*) on a petition for *certiorari* under Rule 65 of the Rules of Court. The LA's ruling of illegal dismissal was largely left undisturbed in these subsequent recourses. The ***original case*** eventually came to this Court. In our Resolutions of March 9, 2005[3] and June 8, 2005,[4] we denied the petition of respondent Solid Cement Corporation (*Solid Cement*) for lack of merit. Our ruling became final and *entry of judgment took place on July 12, 2005*.

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[1] *Rollo,* pp. 616-619.

[2] *Id.* at 17.

[3] *Id.* at 141.

[4] *Id.* at 142.

Soon after its finality, the original case was remanded to the LA for execution. The LA decision dated December 12, 2000 declared the respondents guilty of illegal dismissal and ordered the reinstatement of Gonzales to his former position "with full backwages and without loss of seniority rights and other benefits[.]"[5] Under this ruling, as modified by the NLRC ruling on appeal, Gonzales was awarded the following:

(1) Backwages in the amount of ₱636,633.33;

(2) Food and Transportation Allowance in the amount of ₱18,080.00;

(3) Moral damages in the amount of ₱100,000.00;

(4) Exemplary damages in the amount of ₱50,000.00; and

(5) Ten percent (10%) of all sums owing to the petitioner as attorney's fees.

Actual reinstatement and return to work for Gonzales (who had been on payroll reinstatement since January 22, 2001) came on July 15, 2008.[6]

When Gonzales moved for the issuance of an *alias* writ of execution on August 4, 2008, he included several items as components in computing the amount of his backwages. Acting on the motion, the LA added ₱57,900.00 as rice allowance and ₱14,675.00 as medical reimbursement (with the company's apparent conformity), and excluded the rest of the items prayed for in the motion, either because these items have been paid or that, based on the records of the case, Gonzales was not entitled thereto. Under the LA's execution order dated August 18, 2009, Gonzales was entitled to a total of **₱965,014.15**.[7]

The NLRC, in its decision[8] dated February 19, 2010 and resolution dated May 18, 2010, modified the LA's execution

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[5] *Id*. at 16.

[6] *Id*. at 19.

[7] *Id*. at 310.

[8] *Id*. at 312-326.

order by including the following amounts as part of the judgment award:

Additional backwages from Dec. 13, 2000 to Jan. 21, 2001	₱ 50, 800.00[9]
Salary differentials from year 2000 until August 2008	617,517.48
13th month pay differential	51,459.79
13th month pay for years 2000 and 2001	80,000.00
12% interest from July 12, 2005	878,183.42

This ruling increased Gonzales' entitlement to **₱2,805,698.04.**

On a petition for *certiorari* under Rule 65 of the Rules of Court, the CA set aside the NLRC's decision and reinstated the LA's order, prompting Gonzales to come to the Court *via* a petition for review on *certiorari* (docketed as G.R. No. 198423) under Rule 45 of the Rules of Court. In our Minute Resolutions, we denied Gonzales' Rule 45 petition. **At this point came the two motions now under consideration.**

For easier tracking and understanding, the developments in the original case and in the current petition are chronologically arranged in the table below:

October 5, 1999	Solid Cement terminated Gonzales' employment;
December 12, 2000	The LA declared that Gonzales was illegally dismissed and ordered his reinstatement;
January 5, 2001	Gonzales filed a Motion for Execution of reinstatement aspect;
January 22, 2001	Solid Cement reinstated Gonzales in the payroll;
March 26, 2002	The NLRC modified the LA decision by reducing amount of damages awarded by the LA but otherwise affirmed the judgment;

[9] *Id*. at 329.

June 28, 2004	The CA dismissed Solid Cement's *certiorari* petition;
March 9, 2005	The Court ultimately denied Solid Cement's petition for review;
July 12, 2005	The judgment became final and an entry of judgment was recorded;
July 15, 2008	Gonzales was actually reinstated;
August 4, 2008	Gonzales filed with the LA a motion for the issuance of an *alias* writ of execution (with computation of monetary benefits as of August 28, 2008 – the day before his termination anew, allegedly due to redundancy, shall take effect);
August 18, 2009	The LA issued an Order directing the issuance of a writ of execution;
February 19, 2010	The NLRC rendered a decision affirming with modification the LA's Order by including certain monetary benefits in favor of Gonzales;
May 31, 2011	The CA reversed the NLRC and reinstated the LA's Order;
November 16, 2011	The Court denied Gonzales' petition for review, questioning the reinstatement of the LA's Order;
February 27, 2012	The Court denied Gonzales' 1st motion for reconsideration;
April 12, 2012	Gonzales again moved for reconsideration and asked that his case be referred to the *En Banc*.

Our Ruling

As a rule, a second motion for reconsideration is a prohibited pleading under the Rules of Court,[10] and this reason alone is sufficient basis for us to dismiss the present second motion for reconsideration. The ruling in the original case, as affirmed by the Court, has been expressly declared final. A definitive final judgment, however erroneous, is no longer subject to change or revision.

A **decision that has acquired finality becomes immutable and unalterable**. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And **this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land**. **The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law.** The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.[11] (emphases ours, citations omitted)

After due consideration and further analysis of the case, however, we believe and so hold that the CA **did not only legally err but even acted outside its jurisdiction** when it issued its May 31, 2011 decision. Specifically, by deleting the awards properly granted by the NLRC and by reverting back to the LA's execution order, **the CA effectively varied the final and executory *judgment in the original case*, as modified**

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[10] Rule 37, Section 5, par. 2.

[11] *Mocorro, Jr. v. Ramirez*, G.R. No. 178366, July 28, 2008, 560 SCRA 362, 372-373.

on appeal and ultimately affirmed by the Court, and thereby acted outside its jurisdiction. The CA likewise, in the course of its rulings and as discussed below, acted with grave abuse of discretion amounting to lack or excess of jurisdiction by using wrong considerations, thereby acting outside the contemplation of law.

The CA's actions outside its jurisdiction cannot produce legal effects and cannot likewise be perpetuated by a simple reference to the principle of immutability of final judgment; a void decision can never become final. "The only **exceptions to the rule** on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) **void judgments**."[12] For these reasons, the Court sees it legally appropriate to **vacate the assailed Minute Resolutions of November 16, 2011 and February 27, 2012**, and to reconsider its ruling on the current petition.

The fallo or the dispositive portion

The resolution of the court in a given issue – embodied in the *fallo* or dispositive part of a decision or order – is the controlling factor in resolving the issues in a case. The *fallo* embodies the court's decisive action on the issue/s posed, and is thus the part of the decision that must be enforced during execution. The other parts of the decision only contain, and are aptly called, the *ratio decidendi* (or reason for the decision) and, in this sense, assume a lesser role in carrying into effect the tribunal's disposition of the case.

When a conflict exists between the *dispositive portion* and the *opinion of the court* in the text or body of the decision, the former must prevail over the latter under the rule that the dispositive portion is the definitive order, while the opinion is merely an explanatory statement without the effect of a directive. Hence, the execution must conform with what the *fallo* or dispositive portion of the decision ordains or decrees.

Significantly, no claim or issue has arisen regarding the *fallo* of the labor tribunals and the CA's ruling ***on the merits*** of the

[12] *Id*. at 373; emphases ours.

original case. We quote below the *fallo* of these rulings, which this Court ultimately sustained.

LA ruling:

> WHEREFORE, premises considered, respondents are hereby declared guilty of ILLEGAL DISMISSAL and ordered to reinstate complainant to his former position with full backwages and without loss of seniority rights and other benefits which to date amounts (sic) to Six Hundred Thirty Six Thousand and Six Hundred Thirty Three Pesos and Thirty Three Centavos (₱636,633.33).
>
> **Further,** respondents are jointly and severally liable to pay the following:
>
> 1. ₱18,080 as reimbursement for food and transportation allowance;
> 2. Five Hundred Thousand (₱500,000.00) Pesos as moral damages;
> 3. Two Hundred Fifty Thousand (₱250,000.00) Pesos as exemplary damages; and
> 4. 10% of all sums owing to complainant as attorney's fees.[13] (emphasis and underscoring ours)

NLRC Ruling:

> WHEREFORE, premises considered, the decision under review is hereby, MODIFIED by REDUCING the amount of moral and exemplary damages due the complainant to the sum of ₱100,000.00 an ₱50,000.00, respectively.
>
> Further, joint and several liability for the payment of backwages, food and transportation allowance and attorney's fees as adjudged in the appealed decision is hereby imposed only upon respondents Allen Querubin and Solid Cement Corporation, the latter having a personality which is distinct and separate from its officers.
>
> The relief of reinstatement is likewise, AFFIRMED.[14]

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[13] *Rollo*, p. 16.

[14] *Id*. at 17.

CA Ruling:

> IN VIEW OF ALL THE FOREGOING, the instant petition is hereby dismissed for lack of merit. Accordingly, the decision of the Second Division of the NLRC dated 26 March 2002 in NLRC CA No. 027452-01 is hereby AFFIRMED.[15]

We affirmed the CA ruling on the original case in the final recourse to us; thus, on the merits, the judgment in Gonzales' favor is already final. *From that point, only the implementation or execution of the fallo of the final ruling remained to be done.*

Re-computation of awards during execution of an illegal dismissal decision

On the execution aspect of an illegal dismissal decision, the case of *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*,[16] despite its lack of a complete factual congruence with the present case, serves as a good guide on how to approach the execution of an illegal dismissal decision that contains a monetary award.

In *Session Delights*, the LA found that the employee had been illegally dismissed and consequently ordered the payment of separation pay (in lieu of reinstatement), backwages, 13th month pay, and indemnity, all of which the LA itemized and computed *as of the time of his decision.* The NLRC and the CA affirmed the LA's decision on appellate review, except that the CA *deleted* the award for 13th month pay and indemnity. In due course, the CA decision became final.

During the execution stage of the decision, the LA arrived at an updated computation of the final awards that included additional backwages, separation pay (computed from the date of the LA decision to the finality of the ruling on the case) and 13th month pay. This updated computation was affirmed by the NLRC

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[15] *Id.* at 18.

[16] G.R. No. 172149, February 8, 2010, 612 SCRA 10.

and by the CA, except for the latter's deletion of the 13th month pay award.

Session Delights went to this Court raising the issue of whether the original *fallo* of the LA's decision *on the merits* – at that point already final – could still be re-computed. After stating that only the monetary awards of backwages, separation pay, and attorney's fees required active enforcement and re-computation, the Court stated:

> A source of misunderstanding in implementing the final decision in this case proceeds from the way the original labor arbiter framed his decision. The decision consists essentially of two parts.
>
> The *first* is x x x the finding of the illegality of the dismissal and the awards of separation pay in lieu of reinstatement, backwages, attorney's fees, and legal interests.
>
> The *second* part is the computation of the awards made. On its face, the computation the labor arbiter made shows that it was time-bound as can be seen from the figures used in the computation. This part, being merely a computation of what the first part of the decision established and declared, can, by its nature, be re-computed. x x x.
>
> x x x x x x x x x
>
> However, the petitioner disagreed with the labor arbiter's findings on all counts – *i.e.*, on the finding of illegality as well as on all the consequent awards made. Hence, the petitioner appealed the case to the NLRC which, in turn, affirmed the labor arbiter's decision. x x x.
>
> The petitioner appropriately sought to nullify the NLRC decision on jurisdictional grounds through a timely filed Rule 65 petition for *certiorari*. The CA decision, finding that NLRC exceeded its authority in affirming the payment of 13th month pay and indemnity, lapsed to finality and was subsequently returned to the labor arbiter of origin for execution.
>
> It was at this point that the present case arose. Focusing on the core illegal dismissal portion of the original labor arbiter's decision, the implementing labor arbiter ordered the award re-computed; he apparently read the figures originally ordered to be paid to be the computation due had the case been terminated and implemented at the labor arbiter's level. Thus, the labor arbiter re-computed the

award to include the separation pay and the backwages due up to the finality of the CA decision that fully terminated the case on the merits. Unfortunately, the labor arbiter's approved computation went beyond the finality of the CA decision (July 29, 2003) and included as well the payment for awards the final CA decision had deleted – specifically, the proportionate 13th month pay and the indemnity awards. Hence, the CA issued the decision now questioned in the present petition.

We see no error in the CA decision confirming that a re-computation is necessary as it essentially considered the labor arbiter's original decision in accordance with its basic component parts as we discussed above. To reiterate, the first part contains the finding of illegality and its monetary consequences; the second part is the computation of the awards or monetary consequences of the illegal dismissal, computed as of the time of the labor arbiter's original decision.

x x x x x x x x x

x x x. What the petitioner simply disputes is the re-computation of the award when the final CA decision did not order any re-computation while the NLRC decision that the CA affirmed and the labor arbiter decision the NLRC in turn affirmed, already made a computation that – on the basis of immutability of judgment and the rule on execution of the dispositive portion of the decision – should not now be disturbed.

Consistent with what we discussed above, we hold that under the terms of the decision under execution, no essential change is made by a re-computation as this step is a necessary consequence that flows from the nature of the illegality of dismissal declared in that decision. A re-computation (or an original computation, if no previous computation has been made) is a part of the law – specifically, Article 279 of the Labor Code and the established jurisprudence on this provision – that is read into the decision. **By the nature of an illegal dismissal case, the reliefs continue to add on until full satisfaction, as expressed under Article 279 of the Labor Code. The re-computation of the consequences of illegal dismissal upon execution of the decision does not constitute an alteration or amendment of the final decision being implemented. The illegal dismissal ruling stands; only the computation of monetary consequences of this dismissal**

is affected and this is not a violation of the principle of immutability of final judgments.

x x x [T]he core issue in this case is not the payment of separation pay and backwages but their re-computation in light of an original labor arbiter ruling that already contained a dated computation of the monetary consequences of illegal dismissal.

That the amount the petitioner shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the labor arbiter's decision. Article 279 provides for the consequences of illegal dismissal in no uncertain terms, qualified only by jurisprudence in its interpretation of when separation pay in lieu of reinstatement is allowed. When that happens, the finality of the illegal dismissal decision becomes the reckoning point instead of the reinstatement that the law decrees. In allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point. The decision also becomes a judgment for money from which another consequence flows – the payment of interest in case of delay. This was what the CA correctly decreed when it provided for the payment of the legal interest of 12% from the finality of the judgment, in accordance with our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*.[17] (emphases ours, italics supplied)

The **re-computation** of the amounts still due took off from the LA's decision that contained the itemized and computed dispositive portion *as of the time the LA rendered his judgment.* It was necessary because time transpired between the LA's decision and the final termination of the case on appeal, during which time the illegally dismissed employee should have been paid his salary and benefit entitlements.

The present case, of course, is not totally the same as *Session Delights*. At the most obvious level, separation pay is not an issue here as reinstatement, not separation from service, is the final directive; Gonzales was almost immediately reinstated pending appeal, although only by way of a payroll reinstatement as allowed by law. Upon the finality of the decision on the appeal, Gonzales was *actually* reinstated.

[17] *Id*. at 21-27.

Although backwages was an issue in both cases, the thrusts of this issue in the two cases were different. In *Session Delights*, the issue was more on whether the award would be confined to what the LA originally awarded or would continue to run during the period of appeal. This is not an issue in the present case, *since Gonzales received his salary and benefit entitlements during his payroll reinstatement*; the general concern in the present case is more on the items that should be included in the award, part of which are the backwages.

In other words, the current petition only *generally* involves a determination of ***the scope*** of the awards that include the backwages. The following were the demanded items:

1. Additional backwages from the LA's decision (on the merits) until Gonzales was payroll reinstated;
2. Seniority rights
    a. longevity pay/loyalty/service award
    b. general annual bonus
    c. annual birthday gift
    d. bereavement assistance;
3. Other benefits
    a. vacation and sick leave
    b. holiday pay;
4. Other allowances
    a. monetary equivalent of rice allowance (from October 1999 to July 2005) which should be included in computing backwages
    b. monetary equivalent of yearly medical allowance from 2000 to July 2005 which should be included in computing backwages
    c. meal allowance
    d. uniform and clothing allowance

e. transportation, gasoline and representation allowance;

5. 13th month pay for the years 2000 and 2001;

6. Salary differentials;

7. Damages;

8. Interest on the computed judgment award; and

9. Attorney's fees.[18]

The LA and the NLRC uniformly excluded some of these items from the awards they made and we could have dismissed the current petition outright on the *issue of entitlement to these benefits*, since entitlement mainly involves questions of fact which a Rule 45 petition generally does not allow. A deeper consideration of the current petition, however, shows that there is more beyond the factual issues of entitlement that are evident on the surface.

To recall, the NLRC differed from the LA on the actual details of implementation and modified the latter's ruling by including –

Additional backwages from Dec. 13, 2000 to Jan. 21, 2001	₱ 50, 800.00[19]
Salary differentials from year 2000 until August 2008	617,517.48
13th month pay differential	51,459.79
13th month pay for years 2000 and 2001	80,000.00
12% interest from July 12, 2005	878,183.42

The CA, in its own Rule 65 review of the NLRC ruling, effectively found that the NLRC acted outside its jurisdiction when it modified the LA's execution order and, on this basis, ruled for the implementation of what the LA ordered.

Under this situation and in the context of the Rule 45 petition before us, the reviewable issue before us is ***whether the CA***

[18] *Rollo*, pp. 44-70.

[19] *Supra* note 9.

was legally correct in finding that the NLRC acted outside its jurisdiction when it modified the LA's execution order. This is the issue on which our assailed Resolutions would rise or fall. For, indeed, a Rule 45 petition which seeks a review of the CA decision on a Rule 65 petition should be reviewed "from the prism of whether [the CA] correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."[20] In short, we do **not** rule whether the CA committed grave abuse of discretion; rather, ***we rule on whether the CA correctly determined the absence or presence of grave abuse of discretion by the NLRC.***

The components of the backwages

a. Salary and 13th month differential due after dismissal

In the case of *BPI Employees Union – Metro Manila and Zenaida Uy v. Bank of the Philippine Islands and Bank of the Philippine Islands v. BPI Employees Union – Metro Manila and Zenaida Uy*,[21] the Court ruled that in computing backwages, salary increases from the time of dismissal until actual reinstatement, and benefits *not yet granted at the time of dismissal are* ***excluded***. Hence, we cannot fault the CA for finding that the NLRC committed grave abuse of discretion in awarding **the salary differential amounting to ₱617,517.48 and the 13th month pay differentials amounting to ₱51,459.48** that accrued subsequent to Gonzales' dismissal.

b. Legal interest of 12% on total judgment

However, based on the same *BPI* case, Gonzales is entitled to **12% interest on the total unpaid judgment amount**, from the time the Court's decision (on the merits in the original case) became final. When the CA reversed the NLRC and reinstated the LA's ruling (which did not order payment of

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[20] *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343, cited in *Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA 218, 232-233.

[21] G.R. Nos. 178699 and 178735, September 21, 2011.

interest), the CA overstepped the due bounds of its jurisdiction under a *certiorari* petition as it acted on the basis of wrong considerations and outside the contemplation of the law on the legal interests that final orders and rulings on forbearance of money should bear.

In a *certiorari* petition, the scope of review is limited to the determination of whether a judicial or quasi-judicial tribunal acted without or in excess of its jurisdiction or grave abuse of discretion amounting to lack of jurisdiction; such grave abuse of discretion can exist when the ruling entity used the wrong considerations and thereby acted outside the contemplation of law. In justifying the return to and adoption of the LA's execution order, the CA solely relied on the doctrine of immutability of judgment which it considered to the exclusion of other attendant and relevant factors. This is a fatal error that amounted to **grave abuse of discretion**, particularly on the award of 12% interest. The seminal case of *Eastern Shipping Lines, Inc. v. Court of Appeals*[22] cannot be clearer on the rate of interest that applies:

> 3. **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest** x x x **shall be 12% per annum from such finality until its satisfaction,** this interim period being deemed to be by then an equivalent to a forbearance of credit.[23] (emphasis ours)

In *BPI*, we even said that "[t]his natural consequence of a final judgment is not defeated notwithstanding the fact that the parties were at variance in the computation of what is due"[24] under the judgment. In the present case, the LA's failure to include this award in its order was properly corrected by the NLRC on appeal, only to be unreasonably deleted by the CA. Such deletion, based solely on the immutability of the judgment in the original case, is a wrong consideration that fatally afflicts and renders the CA's ruling void.

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

[23] *Id.* at 97.

[24] *Supra* note 21.

c. Additional backwages and 13th month pay

We reach the same conclusion on the other deletions the CA made, particularly on the deletion of the **13th month pay for 2000-2001, amounting to ₱80,000.00, and the additional backwages for the period of December 13, 2000 to January 21, 2001, amounting to ₱50,800.00**. We note in this regard that the execution proceedings were conducted before the LA issued an Order requiring the payment of **₱965,014.15** in Gonzales' favor. An appeal of this computation to the NLRC to question the LA's determination of the amount due throws the LA's determination wide open for the NLRC's review. In granting these monetary reliefs, the NLRC reasoned that –

> Since there is **no showing that complainant was paid his salaries** from the time when he should have been immediately reinstated until his payroll reinstatement, he is entitled thereto.[25] (emphasis ours)

To be sure, if the NLRC's findings had been arrived at arbitrarily or in disregard of the evidence on record, the CA would have been right and could have granted the petition for *certiorari* on the finding that the NLRC made a factual finding not supported by substantial evidence.[26] The CA, in fact, did not appear to have looked into these matters and did not at all ask whether the NLRC's findings on the awarded monetary benefits were supported by substantial evidence. This omission, however, did not render the NLRC's ruling defective as *Jimenez v. NLRC, et al.*[27] teaches us that –

> On the first issue, we find no reason to disturb the findings of respondent NLRC that the entire amount of commissions was not paid, this by reason of the evident failure of herein petitioners to present evidence that full payment thereof has been made. **It is a basic rule in evidence that each party must prove his affirmative allegations. Since the burden of evidence lies with the party who asserts an affirmative allegation**, the plaintiff or complainant

[25] Decision dated February 19, 2010; *rollo*, p. 321.

[26] *Prince Transport, Inc. v. Garcia*, G.R. No. 167291, January 12, 2011, 639 SCRA 312, 325.

[27] 326 Phil. 89 (1996).

has to prove his affirmative allegation, in the complaint and the defendant or respondent has to prove the affirmative allegations in his affirmative defenses and counterclaim. Considering that petitioners herein assert that the disputed commissions have been paid, they have the bounden duty to prove that fact.

As a general rule, one who pleads payment has the burden of proving it. **Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.** The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the creditor. Where the debtor introduces some evidence of payment, the burden of going forward with the evidence – as distinct from the general burden of proof – shifts to the creditor, who is then under a duty of producing some evidence to show non-payment.[28] (emphases ours, citations omitted)

Thus, even without proof of nonpayment, the NLRC was right in requiring the payment of the 13th month pay and the salaries due after the LA's decision until the illegally dismissed petitioner was reinstated in the payroll, *i.e.*, from December 13, 2000 to January 21, 2001. It follows that the CA was wrong when it concluded that the NLRC acted outside its jurisdiction by including these monetary awards as items for execution.

These amounts are ***not excluded*** from the concept of backwages as the salaries fell due after Gonzales should have been reinstated, while the 13th month pay fell due for the same period by legal mandate. These are entitlements that cannot now be glossed over if the final decision on the merits in this case were to be respected.

The Legal Obstacle: the prohibition on 2nd motion for reconsideration

The above discussions unavoidably lead to the conclusion that the Court's Minute Resolutions denying Gonzales' petition

[28] *Id.* at 95.

were not properly issued and are tainted by the nullity of the CA decision these Resolutions effectively approved. We do not aim to defend these actions, however, by mechanically and blindly applying the principle of immutability of judgment, nor by tolerating the CA's inappropriate application of this principle. The immutability principle, rather than being absolute, is subject to well-settled exceptions, among which is its inapplicability when a decision claimed to be final is not only erroneous, but null and void.

We cannot also be oblivious to the legal reality that the matter before us is no longer the validity of Gonzales' dismissal and the legal consequences that follow – matters long laid to rest and which we do not and cannot now disturb. Nor is the matter before us the additional monetary benefits that Gonzales claims in his petition, since these essentially involve factual matters that are beyond a Rule 45 petition to rule upon and correct.

The matter before us – in the Rule 45 petition questioning the CA's Rule 65 determination – is the **scope of the benefits *awarded by the LA, as modified on appeal and ultimately affirmed by this Court***, which ruling has become final and which now must be implemented as a matter of law.

Given these considerations, to reopen this case on second motion for reconsideration would not actually embroil the Court with changes in the decision on the merits of the case, but would confine itself solely to the issue of the CA's actions in the course of determining lack or excess of jurisdiction or the presence of grave abuse of discretion in reviewing the NLRC's ruling on the execution aspect of the case.

Additionally, while continued consideration of a case on second motion for reconsideration very strongly remains an exception, our action in doing so in this case is not without sound legal justification.[29] An order of execution that varies the tenor of a final and executory judgment is null and void.[30] This was what

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[29] Resolution, *Muñoz v. Court of Appeals*, G.R. No. 125451, August 22, 2001.

[30] *INIMACO v. NLRC*, 387 Phil. 659, 667 (2000).

the CA effectively did – it varied the final and executory judgment of the LA, as modified on appeal and ultimately affirmed by the Court. We would simply be enforcing our own Decision on the merits of the original case by nullifying what the CA did.

Viewed in these lights, the recognition of, and our corrective action on, the nullity of the CA's ruling on the current petition is a duty this Court is under obligation to undertake pursuant to Section 1, Article VIII of the Constitution. We undertake this corrective action by restoring what the CA should have properly recognized to be covered by the Decision on the merits of the original case.

WHEREFORE, premises considered, in lieu of our Minute Resolutions of November 16, 2011 and February 27, 2012 which we hereby vacate, we hereby **PARTIALLY GRANT** the petition and **DIRECT** the payment of the following deficiencies in the payments due petitioner Leo Gonzales under the Labor Arbiter's Order of August 18, 2009:

1. 13th month pay for the years 2000 and 2001;
2. Additional backwages from December 13, 2000 until January 21, 2001; and
3. 12% interest on the total judgment award from the time of the judgment's finality on July 12, 2005 until the total award is fully paid.

The Labor Arbiter is hereby **DIRECTED** to issue the appropriate writ of execution incorporating these additional awards to those reflected in his Order of August 18, 2009.

Costs against respondents Solid Cement Corporation and Allen Querubin.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Abad, Villarama, Jr., Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio, del Castillo, and *Perez, JJ.,* on leave.

EN BANC

[G.R. No. 201112. October 23, 2012]

ARCHBISHOP FERNANDO R. CAPALLA, OMAR SOLITARIO ALI and MARY ANNE L. SUSANO, *petitioners, vs.* **THE HONORABLE COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 201121. October 23, 2012]

SOLIDARITY FOR SOVEREIGNITY (S4S) represented by Ma. Linda Olaguer; RAMON PEDROSA, BENJAMIN PAULINO SR., EVELYN CORONEL, MA. LINDA OLAGUER MONTAYRE, and NELSON T. MONTAYRE, *petitioners, vs.* **COMMISSION ON ELECTIONS represented by its Chairman, Commissioner SIXTO S. BRILLANTES, JR.,** *respondent.*

[G.R. No. 201127. October 23, 2012]

TEOFISTO T. GUINGONA, BISHOP BRODERICK S. PABILLO, SOLITA COLLAS MONSOD, MARIA CORAZON MENDOZA ACOL, FR. JOSE DIZON, NELSON JAVA CELIS, PABLO R. MANALASTAS, GEORGINA R. ENCANTO and ANNA LEAH E. COLINA, *petitioners, vs.* **COMMISSION ON ELECTIONS and SMARTMATIC-TIM CORPORATION,** *respondents.*

[G.R. No. 201413. October 23, 2012]

TANGGULANG DEMOKRASYA (TAN DEM), INC., EVELYN L. KILAYKO, TERESITA D. BALTAZAR, PILAR L. CALDERON and ELITA T. MONTILLA, *petitioners, vs.* **COMMISSION ON ELECTIONS and SMARTMATIC-TIM CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF LEASE WITH OPTION TO PURCHASE (OTP); THE CONTRACT MAY BE AMENDED BY MUTUAL AGREEMENT OF THE PARTIES, PROVIDED THE CONTRACT IS STILL EFFECTIVE; THE RIGHT OF THE PARTIES TO AMEND THE SUBJECT CONTRACT, INCLUDING THE EXTENSION OF THE OPTION PERIOD, SUSTAINED.— In our June 13, 2012 Decision, we decided in favor of respondents and placed a stamp of validity on the assailed resolutions and transactions entered into. Based on the AES Contract, we sustained the parties' right to amend the same by extending the option period. Considering that the performance security had not been released to Smartmatic-TIM, the contract was still effective which can still be amended by the mutual agreement of the parties, such amendment being reduced in writing. To be sure, the option contract is embodied in the AES Contract whereby the Comelec was given the right to decide whether or not to buy the subject goods listed therein under the terms and conditions also agreed upon by the parties. As we simply held in the assailed decision: While the contract indeed specifically required the Comelec to notify Smartmatic-TIM of its OTP the subject goods until December 31, 2010, a reading of the other provisions of the AES contract would show that the parties are given the right to amend the contract which may include the period within which to exercise the option. There is, likewise, no prohibition on the extension of the period, provided that the contract is still effective.

2. ID.; ID.; ID.; PROVISION ON OTP NOT SEPARATE FROM THE MAIN CONTRACT OF LEASE; THE CONTRACT FOR THE PROVISION OF AN AUTOMATED ELECTION SYSTEM FOR THE MAY 10, 2010 SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS (AES CONTRACT) IS STILL EFFECTIVE BECAUSE THE SECURITY HAS NOT BEEN RELEASED; THE OPTION AND WARRANTY PROVISIONS AS WELL AS THE ENTIRE CONTRACT SURVIVE.— Article 2.2 of the AES Contract reads: **Article 2 EFFECTIVITY** xxx ***2.2. The Term of this Contract begins from the date of effectivity until the release of the Performance Security,***

without prejudice to the surviving provisions of this Contract including the warranty provision as prescribed in Article 8.3 and the period of the option to purchase. The provision means that the contract takes effect from the date of effectivity until the release of the performance security. Article 8 thereof, on the other hand, states when the performance security is released, to wit: **Article 8 Performance Security and Warranty** xxx. Within seven (7) days from delivery by the PROVIDER to COMELEC of the Over-all Project Management Report after successful conduct of the May 10, 2010 elections, COMELEC shall release to the PROVIDER the above-mentioned Performance Security without need of demand. The performance security may, therefore, be released before December 31, 2010, the deadline set in the AES Contract within which the Comelec could exercise the option. The moment the performance security is released, the contract would have ceased to exist. However, since it is without prejudice to the surviving provisions of the contract, the warranty provision and the period of the option to purchase survive even after the release of the performance security. While these surviving provisions may have different terms, in no way can we then consider the provision on the OTP separate from the main contract of lease such that it cannot be amended under Article 19. In this case, the contract is still effective because the performance security has not been released. Thus, not only the option and warranty provisions survive but the entire contract as well. In light of the contractual provisions, we, therefore, sustain the amendment of the option period.

3. ID.; ID.; ID.; THE AMENDMENT OF A PREVIOUSLY BIDDED CONTRACT WILL BE NULLIFIED WHEN THE AMENDMENT IS SUBSTANTIAL SUCH THAT THE OTHER BIDDERS WERE DEPRIVED OF THE TERMS AND OPPORTUNITIES GRANTED TO THE WINNING BIDDER AFTER IT WON THE SAME AND THAT IT IS PREJUDICIAL TO PUBLIC INTEREST; AMENDMENT OF THE SUBJECT CONTRACT EXTENDING THE PERIOD OF THE OPTION TO PURCHASE, CONSIDERED NOT SUBSTANTIAL; REASONS.— The amendment of a previously bidded contract is not *per se* invalid. For it to be nullified, the amendment must be substantial such that the other bidders were deprived of the terms and opportunities granted to the winning bidder after it won the same and that it is

prejudicial to public interest. In our assailed decision, we found the amendment not substantial because no additional right was made available to Smartmatic-TIM that was not previously available to the other bidders; except for the extension of the option period, the exercise of the option was still subject to same terms and conditions such as the purchase price and the warranty provisions; and the amendment is more advantageous to the Comelec and the public.

4. ID.; ID.; ID.; PUBLIC BIDDINGS ARE HELD FOR THE BEST PROTECTION OF THE PUBLIC AND TO GIVE THE PUBLIC THE BEST POSSIBLE ADVANTAGES BY MEANS OF OPEN COMPETITION BETWEEN THE BIDDERS, AND TO CHANGE THEM WITHOUT COMPLYING WITH THE BIDDING REQUIREMENT WOULD BE AGAINST PUBLIC POLICY; IN THE CASE AT BAR THE EXTENSION OF THE OPTION PERIOD AND THE EVENTUAL PURCHASE OF THE SUBJECT GOODS RESULTED IN MORE BENEFITS AND ADVANTAGES TO THE GOVERNMENT AND TO THE PUBLIC IN GENERAL.— We maintain the view that the extension of the option period is an amendment to the AES Contract authorized by Article 19 thereof. As held in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*: While we concede that a winning bidder is not precluded from modifying or amending certain provisions of the contract bidded upon, such changes **must not constitute substantial or material amendments that would alter the basic parameters of the contract and would constitute a denial to the other bidders of the opportunity to bid on the same terms.** Hence, the determination of whether or not a modification or amendment of a contract bidded out constitutes a substantial amendment rests on whether the contract, when taken as a whole, would contain substantially different terms and conditions that would have the effect of altering the technical and/or financial proposals previously submitted by other bidders. The alterations and modifications in the contract executed between the government and the winning bidder must be such as to render such executed contract to be **an entirely different contract from the one that was bidded upon**. It must be pointed out that public biddings are held for the best protection of the public and to give the public the best possible advantages by means of open competition between the bidders, and to change them without complying

with the bidding requirement would be against public policy. What are prohibited are modifications or amendments which give the winning bidder an edge or advantage over the other bidders who took part in the bidding, or which make the signed contract unfavorable to the government. In this case, as thoroughly discussed in our June 13, 2012 Decision, the extension of the option period and the eventual purchase of the subject goods resulted in more benefits and advantages to the government and to the public in general. While movants may have apprehensions on the effect to government contracts of allowing "advantage to the government" as justification for the absence of competitive public bidding, it must be stressed that the same reasoning could only be used under similar circumstances. The "advantage to the government," time and budget constraints, the application of the rules on valid amendment of government contracts, and the successful conduct of the May 2010 elections are among the factors looked into in arriving at the conclusion that the assailed Resolutions issued by the Comelec and the agreement and deed entered into between the Comelec and Smartmatic-TIM, are valid.

VELASCO, JR., *J., concurring opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT CONTRACTS; WHETHER OR NOT SMARTMATIC-TIM HAS ALREADY RECEIVED THE PERFORMANCE SECURITY IS IMMATERIAL WITH RESPECT TO THE PROPER DETERMINATION OF THE DATE WHEN THE OPTION TO PURCHASE (OTP) WAS TERMINATED, THE OTP HAVING ITS OWN PERIOD OF EXISTENCE, INDEPENDENT FROM THAT OF THE AUTOMATED ELECTION SYSTEM (AES) CONTRACT.— Shorn of the non-essentials, [Article 2.2 of the AES Contract] would read "*The Term of this Contract [is] x x x until the release of the Performance Security, without prejudice to x x x the period of the option to purchase*." With, this, the only interpretation that can be given to the provision is that the life of the AES Contract GENERALLY ends upon the release of the Performance Security, EXCEPT with respect to the period of the OTP, hence the use of the qualifying phrase "*without prejudice to*." As such, whether or not Smartmatic-TIM has already received the Performance Security is immaterial

with respect to the proper determination of the date when the OTP was terminated, the OTP having its own period of existence, independent from that of the AES Contract.

2. ID.; ID.; ID.; GOVERNMENT PROCUREMENT ACT (RA 9184); ALTERNATIVE MODES OF PROCUREMENT APPLICABLE; PURCHASE OF PCOS MACHINES FOR THE UPCOMING 2013 ELECTIONS UNDER THE DIRECT CONTRACTING MODE, JUSTIFIED.— The period of the OTP is specified in Par. 28.1 of Part V of the RFP, which states that "[a]n offer for an option to purchase by component shall be decided by the COMELEC *before December 31, 2010*." Admittedly, the COMELEC failed to exercise the OTP within the prescribed period and this failure resulted in the expiration of the OTP. This is not to say, however, that the purchase of the PCOS machines and allied components via a *new contract*, separate and distinct from the AES Contract, by the COMELEC is invalid for lack of a public bidding. Concededly, the subsequent contract in question is not an extension of the previous AES Contract, but a new one. And not being an ordinary contract but a procurement by the government, RA 9184 or the *Government Procurement Reform Act* applies. Section 10 of said law requires for the validity of every government procurement that competitive bidding be conducted. x x x. This rule, however, is not absolute. There are recognized exceptions to the bidding requirement x x x. The exceptions are laid out on the provisions of "Alternative Modes of Procurement" under Section 48, Article XVI of RA 9184 x x x: Sec. 48. Alternative Methods. — Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement x x x; b. Direct Contracting, otherwise known as Single Source Procurement - a method dof Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma voice together with the conditions of sale, which offer may be accepted immediately or after some negotiations; x x x. At first glance, it is easily deduced that, being a new contract, the purchase of PCOS machines for the upcoming 2013 elections should undergo public bidding. However, in view of the uniqueness of the

circumstances obtaining, x x x the validity of the purchase agreement finds footing in the application of the alternative mode *Direct Contracting*. As such, competitive bidding is not required.

3. ID.; ID.; ID.; ID.; CONDITIONS TO JUSTIFY RESORT TO ALTERNATIVE MODES OF PROCUREMENT; EXIST. — To justify resort to any of the alternative methods of procurement, the following conditions must exist: 1. There is prior approval of the Head of the Procuring Entity on the use of alternative methods of procurement, as recommended by the BAC; and 2. The conditions required by law for the use of alternative methods are present; and 3. The method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained. In this regard, x x x all the foregoing conditions exist in the present case, thus allowing COMELEC to use an alternative method of procurement permitted under said statute.

4. ID.; ID.; ID.; ID.; CONDITIONS TO JUSTIFY RESORT TO DIRECT CONTRACTING MODE; PRESENCE OF ONLY ONE CONDITION IS REQUIRED.— [T]he Deed of Sale executed by respondents is analogous to the "**Direct Contracting**" mode defined in x x x Sec. 48(b), Art. XVI of RA 9184 that is exempt from the more protracted process of competitive bidding. Sec. 50, RA 9184, provides the alternative conditions before a resort to direct contracting is permitted: Section 50. Direct Contracting. Direct Contracting may be resorted to only **in any** of the following conditions: a. **Procurement of Goods of *proprietary nature*, which can be obtained only from the proprietary source, *i.e.*, when patents, trade secrets and copyrights prohibit others from manufacturing the same items; b.** When the Procurement of critical components from a specific manufacturer, supplier, or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or c. **Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.** Note that while only one condition is needed to justify direct contracting, **two (2) of the stated conditions actually exist in the present controversy thereby exempting the Deed of Sale**

from the requirement of a prior competitive bidding, namely: Sec. 50(a) on the procurement of goods of proprietary nature and Sec. 50(c) on the procurement of goods sold by an exclusive dealer that does not have sub-dealers selling at a lower price and for which a suitable substitute can be obtained at terms more advantageous to the government.

5. ID.; ID.; ID.; ID.; THE DEED OF SALE FOR THE ACQUISITION OF THE PCOS MACHINES AND CCS HARDWARE AND SOFTWARE IS EXEMPT FROM COMPETITIVE BIDDING AS IT INVOLVES GOODS OF PROPIETARY NATURE; GOODS WHEN CONSIDERED OF PROPRIETARY NATURE.— Under Sec. 50(a), the Deed of Sale is exempt from competitive bidding as it involves goods of "proprietary nature." Goods are considered of "**proprietary nature**" when they are owned by a person who has a protectable interest in them or *an interest protected by the intellectual property laws.*

6. ID.; ID.; ID.; ID.; THE HARDWARE AND THE PROPRIETARY SOFTWARE AND FIRMWARE PROVIDED BY SMARTMATIC-TIM, ALTHOUGH BY THEIR NATURE ARE SEPARABLE, WERE TREATED INDIVISIBLE BY CONTRACTUAL STIPULATION, THUS, MUST BE BOTH PROCURED; A DIVISIBLE THING MAY BE TREATED INDIVISIBLE BY AGREEMENT OF THE PARTIES.— In Philippine contract law, one species of an indivisible object is a divisible thing which the parties treated as indivisible. Article 1225 of the Civil Code provides: Art. 1225. For the purpose of the preceding articles, obligations to give definite things x x x shall be deemed to be indivisible. x x x However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties. In the present case, not only was the object of the contract a determinate thing, the parties likewise agreed that the subject Deed of Sale is for the purchase of the *entire first component.* While the hardware and software are, by their nature, separable, the parties, however, intended to treat them as indivisible. Such being the case, the software cannot then be procured without the accompanying hardware on which they are embedded. In other words, what was purchased by the COMELEC was the *whole system*, that is, the entire first component of the original AES Contract, which includes the software needed for the PCOS

machines consisting of the Election Management System (EMS) and the PCOS firmware applications, protected by our copyright laws, together with the hardware. Being inseparable by contractual stipulation, the COMELEC is thus required to procure the hardware and the proprietary software and firmware provided by Smartmatic-TIM. To further show the importance of treating the software and hardware as indivisible, without Smartmatic-TIM's EMS which dictates the functioning of the entire system, by directing the processes by which the PCOS and the CCS hardware and software interpret the data scanned from the cast ballots and later accumulate, tally and consolidate all the votes cast, the PCOS hardware are lifeless. The EMS is the fundamental software on which all other applications and machines in the entire Smartmatic-TIM AES depend. It serves as the brain that commands all other components in the entire AES.

7. ID.; ID.; ID.; ID.; CONDITIONS TO JUSTIFY RESORT TO DIRECT CONTRACTING MODE, PRESENT; THE HARDWARE AND SOFTWARE, SUBJECT OF THE ASSAILED DEED OF SALE, ARE SOLD EXCLUSIVELY BY SMARTMATIC-TIM WHICH HAS NO SUB-DEALER AND FOR WHICH NO SUITABLE SUBSTITUTE CAN BE OBTAINED AT TERMS MORE ADVANTAGEOUS TO THE GOVERNMENT.— [I]t is important to underscore that the EMS application which has been manufactured, configured and customized by Smartmatic-TIM to fit the needs of Philippine elections *cannot be obtained from any source other than Smartmatic-TIM*. This satisfies the requirement under Sec. 50(c) of RA 9184, *viz*: Section 50. Direct Contracting. Direct Contracting may be resorted to only in any of the following conditions: x x x **(c)Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.** For the condition provided under Sec. 50(c) of RA 9184 to exist, three elements must be established: 1. The goods subject of the procurement are sold by an exclusive dealer or manufacturer; 2. The exclusive dealer or manufacturer does not have sub-dealers selling the same goods at lower prices; 3. There are no suitable substitutes for the goods offered by another supplier at terms more advantageous to the government. In this regard, All these elements are present in

the case at bar. [T]he specific goods subject of the assailed Deed of Sale are goods of proprietary nature as they include the Smartmatic EMS, which is a proprietary software that cannot be used, redistributed, or modified without the permission of Smartmatic. This software, together with the PCOS firmware and hardware, is owned and distributed exclusively by respondent Smartmatic-TIM. Hence, the first element of the condition set forth in Sec. 50(c) is clearly present. On the existence of the second element, it is an uncontested fact that Smartmatic-TIM has no sub-dealers and that there are no other persons selling the said software and hardware, much less selling them at prices lower than that offered by Smartmatic-TIM under the questioned Deed of Sale. As to the third element, that there is no suitable substitute for the hardware and software offered by Smartmatic-TIM, it is material to recall that for the automation of the 2010 elections, only two bidders qualified, Smartmatic-TIM and the Indra Consortium (Indra), and that the terms offered by Smartmatic-TIM are far better than that of Indra on several material points, the most important of which is that Indra pegged the lease price of just 57,231 PCOS machines at PhP 11.22 billion, PhP 4 billion more than the price offered by Smartmatic-TIM for the lease of 82,000 PCOS machines. It is, thus, reasonable to conclude that, as of the moment, no other supplier can match Smartmatic-TIM's offer, which even included the contested OTP over more than 81,000 PCOS units at only PhP 1.8 billion, or 50% of the lease price of the original 2009 AES Contract and almost PhP 7 billion less than that estimated by the COMELEC to purchase the same number of PCOS machines (without the software and accompanying hardware) based on the lowest calculated responsive bid for the 2010 elections. With the above considerations, x x x the terms of the procurement contract are undeniably more advantageous to the government.

8. ID.; ID.; ID.; DIRECT CONTRACTING WITH SMARTMATIC-TIM FOR THE HARDWARE AND SOFTWARE SUBJECT OF THE DEED OF SALE PROMOTES ECONOMY AND EFFICIENCY AND IS MORE ADVANTAGEOUS TO THE GOVERNMENT.— To further add to the government's advantage, Smartmatic-TIM also shouldered the storage price of the PCOS units and offered them for sale without considering inflation or putting a price on the enhancements and modifications demanded by COMELEC. Too, obtaining more

funds from Congress and going through with competitive bidding, as insisted by petitioners, will eat up the precious time necessary to test and modify a new AES, if any, and prepare and educate the electorate and poll officers on its operation to prevent any human blunders that might lead to an erroneous declaration of the results of an election, when here is a system with which the electorate and the concerned poll officials are already familiar with. This not only reduces the attending time constraint for it abbreviates the learning curve of all the parties concerned, it also minimizes the errors attributable to the variations and differences offered by a new AES, as seen in the 2010 elections where the system was used for the first time on a national scale. Besides, to require the COMELEC to procure a new and, as demanded by petitioners, flawless AES for the 2013 elections with a budget of PhP 2.2 billion, at least PhP 5 billion short of the original amount requested, is requiring the Commission to execute a financial miracle with only a few months to pull it off. Given the prevailing conditions and the constraints imposed on COMELEC, the course of action taken by the poll body proves to be the most efficient and economical avenue that guarantees the conduct of an automated election in 2013. Procuring the same, tested AES from the supplier who helped the conduct of a successful and peaceful election in 2010 dispenses the need for additional funding and so reserves the remaining time before the elections for the conduct of essential modifications and enhancements on the Smartmatic-TIM AES that could remove the problems complained of by petitioners. Hence, x x x direct contracting with Smartmatic-TIM for the hardware and software subject of the Deed of Sale is justified under Sec. 50(c) of RA 9184.

BRION, *J., dissenting opinion:*

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OPTION CONTRACT; THE OPTION TO PURCHASE (OTP) IS AN OPTION CONTRACT PREPARATORY TO A CONTRACT OF SALE AND DISTINCT FROM THE MAIN CONTRACT OF LEASE; WHERE THE PARTY FAILED TO EXERCISE THE RIGHT TO BUY THE LEASED GOODS AT A FIXED PRICE WITHIN THE OPTION PERIOD, ALLOWING THE OPTION TO EXPIRE, THE OTHER PARTY IS THUS RELEASED FROM

ITS OBLIGATION TO RESPECT THE FORMER'S RIGHT OR PRIVILEGE TO BUY; THE COMELEC-SMARTMATIC-TIM's OPTION TO PURCHASE (OTP) CONTRACT ALREADY LAPSED AFTER DECEMBER 31, 2010.— [The ponente submits] that the OTP simply lapsed when the COMELEC failed to exercise the option on or before December 31, 2010. By virtue of the OTP - an option contract preparatory to a contract of sale and distinct from the main contract of lease - SMARTMATIC-TIM, as owner, agreed with the COMELEC that it shall have the right to buy the leased goods at a fixed price, to be exercised within a specific period. Failing to exercise this right within the option period, the COMELEC allowed the option to expire and thus, SMARTMATIC-TIM was released from its obligation to respect the COMELEC's right or privilege to buy.

2. ID.; ID.; ID.; THE EFFECTIVITY OF THE WARRANTY PROVISION AND OF THE OTP ARE COVERED BY AN ENTIRELY DIFFERENT PERIOD AND NOT BY THE TERM OF THE MAIN CONTRACT OF LEASE OF GOODS.— [The ponente takes] exception to the *ponencia*'s conclusion that Section 2.2, Article 2 of the AES Contract cannot be interpreted to mean that the provision on the OTP is separate from the main contract of lease such that it cannot be amended under Article 19 of the AES Contract. A basic disagreement with the *ponencia* relates to the interpretation of the provision on effectivity of the AES Contract, which reads: x x x. 2.2. The term of this Contract *begins* from the date of effectivity *until* the release of the performance security, ***without prejudice*** to the surviving provisions of this Contract including the warranty provision as prescribed in Article 8.3 ***and the period of the option to purchase*****.** As explained in [the *ponente's* Dissent] while [he concedes] that the AES Contract still technically subsists because of the COMELEC's retention of SMARTMATIC-TIM's performance security, Section 2.2, Article 2 of the AES Contract clearly mandates that its continued effectivity is without prejudice to "the period of the option to purchase." Thus, [he concludes] that under these terms, the COMELEC and SMARTMATIC-TIM clearly recognized that the OTP and the period for its exercise stand differently from the main contract of lease of goods and service. In other words, **the effectivity of the warranty provision and of the OTP are covered by an entirely different period and not by the term of**

the main contract of lease of goods. Properly viewed from this perspective, this interpretation thus demolishes the *ponencia*'s position that the OTP in this case still subsists. As emphasized in [the ponente's] Dissent: In the present case, COMELEC and SMARTMATIC-TIM's intention to extend an already expired option period could not have validly gone past the negotiation stage. Specifically, SMARTMATIC-TIM formally made an offer to the COMELEC to extend the original period and, upon its lapse, to provide for a *new* period to exercise the same option; these, COMELEC simply ignored. ***Thus, this offer is merely an imperfect promise (politacion) that, by reason of lack of acceptance before the expiration of the period, did not give rise to any binding commitment.***

3. ID.; ID.; ID.; THE UNILATERAL EXTENSION OF THE OTP IS A SUBSTANTIAL AMENDMENT SINCE THE PERIOD FOR THE EXERCISE OF THE OPTION IS A SUBSTANTIAL PARTICULAR IN THE OPTION CONTRACT.— [The *ponente*] cannot subscribe to the majority's view that the extension of the OTP cannot be characterized as a substantial amendment because no additional right was given to SMARTMATIC-TIM and that the option was still subject to the same terms and conditions previously agreed upon. To [his] mind, this view seriously ignores the fact that **the period for the exercise of the option is a *substantial particular* in the option contract**. [The *ponente*] reached this conclusion bearing in mind that the subject of the OTP is a novel technological system in the conduct of an election and the transitory nature of the information technology employed by the AES, *viz.*: It should be considered in this regard that the subject of the OTP is, collectively and broadly speaking, a technological system in the conduct of an election. To my mind, a change in technology over a short period of time through the advent of a more advanced technology is a vital reason for limiting the period within which the option must be exercised. **Therefore, the fact that the original price in the AES contract is maintained is no argument, in favor of the modification of the period of the OTP.** If indeed the original expiration date of the OTP is legally insignificant in view of the deemed-sold provision under Article 5.11 of the AES contract. I see no reason why SMARTMATIC-TIM would make several unilateral offers to the COMELEC before and after the expiration of the period of the OTP.

4. ID.; ID.; ID.; APPLICABILITY OF THE SUPREME COURT'S RULING IN SAN DIEGO CASE (107 PHIL. 118 (1960) TO THE CASE AT BAR.— While it is true that the case of *San Diego v. The Municipality of Naujan, Province of Mindoro* involved the extension of the period of the lease contract prior to its expiration, without the benefit of a public bidding, and not an option contract as in the present case, [the *ponente* submits] that *San Diego* is relevant to the present case for the simple reason that the period of the option is a vital and essential particular to the contract. Thus, in *San Diego,* the Court held: Furthermore, it has been ruled that ***statutes requiring public bidding apply to amendments of any contract already executed*** in compliance with the law where such amendments alter the original contract in some vital and essential particular. Inasmuch as ***the period*** in a lease ***is a vital and essential particular to the contract***, we believe that the extension of the lease period in this case, which was granted without the essential requisite of public bidding, is not in accordance with law. And it follows that Resolution 222, series of 1951, and the contract authorized thereby, extending the original five-year lease to another five years are null and void as contrary to law and public policy. Thus, [the *ponente*] cited the case for the reason that: The above rationale for prohibiting the extension of the period of the main contract of lease should equally apply to the period of the OTP; this period of the option is a vital and essential particular to the contract. With the short interval of three years before the next elections, the extension of the period beyond what was originally intended tends to give the winning bidder (SMARTMATIC-TIM) ***undue advantage*** in securing the contract of sale, not on the basis of having the best possible advantages for the public, but on the convenient excuse that the next election is "already a matter of urgency" and its equipment, having been previously used, needs only to be improved to replicate the 2010 election results.

5. POLITICAL LAW; ELECTIONS; AUTOMATED ELECTION; SYSTEM (RA 8436); THE CONTINUING VIOLATION BY THE COMMISSION ON ELECTIONS OF THE LAW AND THE CONSTITUTION CAN NEVER BE LAID TO REST UNLESS AND UNTIL IT COMPLIES WITH THE TERMS OF SECTION 26 OF REPUBLIC ACT NO. 8436 AND THE INDEPENDENCE THAT THE CONSTITUTION GUARANTEES TO IT.— [The

> *ponente* submits] anew [his] **continuing objection** as he did in [his] dissents in *Roque, Jr. v. Commission on Elections* and the present case to the COMELEC's failure to observe Section 26 of Republic Act No. 8436 – the very law which mandated the COMELEC to undertake an automated election system. [He reiterates] the view that: [Had] only the COMELEC faithfully complied with Section 26 of Republic Act No. 8436 and undertook the automation of election system in line with the law's intent ***for the COMELEC itself to keep pace along with the new system***, the government would not be a "captive market" of SMARTMATIC-TIM for the subsequent elections. COMELEC, unfortunately, cannot do so without SMARTMATIC-TIM by its side as it is not, up to now, technologically up to date and self-sufficient as its independence requires. In any case, should the COMELEC choose to purchase election related hardware and software, and the accompanying system from a new provider, the same advantage that SMARTMATIC-TIM now enjoys would be enjoyed as well by this provider in a subsequent bidding, for the rendition of technical services to make the system fully functional. However, since the COMELEC does not, at any time, appear to consider Section 26 of Republic Act No. 8436, the subsequent bidding for services (for technical support involving the operation of the items purchased from SMARTMATIC-TIM) would result in the same scheme of a shared responsibility that would put the COMELEC in continuous violation of the law and the Constitution. To [He *ponente's* mind], this is constitutionally objectionable. [The *ponente* also takes] the view that this violation by the COMELEC of the law and the Constitution can never be laid to rest and remains to be a continuing violation ***unless and until*** the COMELEC complies with the terms of Section 26 of Republic Act No. 8436 and the independence that the Constitution guarantees to it.

APPEARANCES OF COUNSEL

Espejo Associates for petitioners in G.R. No. 201112.

Librojo & Associates Law Offices for petitioners in G.R. No. 201121.

Felix D. Carao, Jr. and Rona Ann V. Caritos for petitioners in G.R. No. 201127.

Jose Ventura Aspiras and Mario Bernardo S. Cerro for petitioners in G.R. No. 201413.

Victor P. Lazatin, Johanna Lorenzo, Sophia Guira, George Aquino, Gilberto Gallos and Jacqueline Alegre for Smartmatic TIM Corp.

Demosthenes B. Donato and Amanda Regina G. Reyes for petitioners in G.R. No. 201413.

The Solicitor General for public respondent.

R E S O L U T I O N

PERALTA, *J.*:

Before the Court are the Motions for Reconsideration separately filed by movants Teofisto T. Guingona, Bishop Broderick S. Pabillo, Solita Collas Monsod, Maria Corazon Mendoza Acol, Fr. Jose Dizon, Nelson Java Celis, Pablo R. Manalastas, Georgina R. Encanto and Anna Leah E. Colina (herein referred to as Guingona, *et al.*) in G.R. No. 201127;[1] Solidarity for Sovereignty (S4S) represented by Ma. Linda Olaguer, Ramon Pedrosa, Benjamin Paulino Sr., Evelyn Coronel, Ma. Linda Olaguer Montayre, and Nelson T. Montayre (referred to as S4S, *et al.*) in G.R. No. 201121;[2] and Tanggulang Demokrasya (Tan Dem), Inc., Evelyn L. Kilayko, Teresita D. Baltazar, Pilar L. Calderon and Elita T. Montilla (Tan Dem, *et al.* for brevity) in G.R. No. 201413.[3] Movants implore the Court to take a second look at the June 13, 2012 Decision[4] dismissing their petitions filed against respondents Commission on Elections (Comelec), represented by its Chairman Commissioner Sixto S. Brillantes, Jr.

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[1] *Rollo* (G.R. No. 201413), pp. 847-872.

[2] *Id.* at 893-908.

[3] *Id.* at 946-953.

[4] *Id.* at 557-591.

(Chairman Brillantes), and Smartmatic-TIM Corporation (Smartmatic-TIM).

For a proper perspective, the facts as found by the Court in the assailed decision are briefly stated below:

On July 10, 2009, the Comelec and Smartmatic-TIM entered into a *Contract for the Provision of an Automated Election System for the May 10, 2010 Synchronized National and Local Elections* (AES Contract) which is a Contract of Lease with Option to Purchase (OTP) the goods listed therein consisting of the Precinct Count Optical Scan (PCOS), both software and hardware.[5] The Comelec was given until December 31, 2010 within which to exercise the option but opted not to exercise the same except for 920 units of PCOS machines with the corresponding canvassing/consolidation system (CCS) for the special elections in certain areas in Basilan, Lanao del Sur and Bulacan.[6]

On March 6, 2012, the Comelec issued Resolution No. 9373 resolving to seriously consider exercising the OTP subject to certain conditions.[7] It issued another Resolution numbered 9376 resolving to exercise the OTP in accordance with the AES Contract.[8] On March 29, 2012, it issued Resolution No. 9377 resolving to accept Smartmatic-TIM's offer to extend the period to exercise the OTP until March 31, 2012.[9] The Agreement on the Extension of the OTP under the AES Contract (Extension Agreement) was eventually signed on March 30, 2012.[10] Finally, it issued Resolution No. 9378 resolving to approve the Deed of Sale between the Comelec and Smartmatic-TIM to purchase the latter's PCOS machines

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[5] *Id.* at 559.

[6] *Id.* at 559-560.

[7] *Id.* at 560.

[8] *Id*.

[9] *Id*.

[10] *Id*.

to be used in the upcoming 2013 elections.[11] The Deed of Sale was forthwith executed.[12]

Claiming that the foregoing Comelec issuances and transactions entered pursuant thereto are illegal and unconstitutional, movants filed separate petitions for *certiorari*, prohibition and *mandamus* before the Court.

Movants failed to obtain a favorable decision when the Court rendered a Decision[13] on June 13, 2012 dismissing their petitions. Hence, the motions for reconsideration based on the following grounds:

G.R. No. 201127

I. THE HONORABLE COURT, WITH ALL DUE RESPECT, ERRED IN HOLDING THAT THE PERIOD OF THE OPTION TO PURCHASE HAS NOT EXPIRED;

II. THE HONORABLE COURT, WITH ALL DUE RESPECT, ERRED IN HOLDING THAT THERE WAS NO SUBSTANTIAL AMENDMENT TO THE AES CONTRACT; [AND]

III. THE HONORABLE COURT, WITH ALL DUE RESPECT, ERRED IN HOLDING THAT THE SUBJECT AMENDMENT IS ADVANTAGEOUS TO THE PUBLIC.[14]

Movants Guingona, *et al.* disagree with the Court's interpretation of Article 2.2 of the AES Contract and insist that the use of the words "without prejudice" and "surviving" explicitly distinguished the "period of the option to purchase" from the "Term of this Contract." They thus conclude that the warranty provision and the OTP are covered by a totally different period and not by the term of the AES Contract.[15] They also argue that the bid bulletins relative to the AES Contract expressly

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[11] *Id.* at 560-561.

[12] *Id.* at 561.

[13] *Id.* at 557-590.

[14] *Id.* at 848.

[15] *Id.* at 850.

stated the deadline for Comelec to exercise the OTP[16] and that the parties intended that the stated period be definite and non-extendible.[17] Movants likewise aver that the Court erred in holding that there was no substantial amendment to the AES Contract.[18] Citing *San Diego v. The Municipality of Naujan, Province of Mindoro*[19] as discussed in Justice Arturo D. Brion's Dissenting Opinion,[20] and as allegedly reiterated in *San Buenaventura v. Municipality of San Jose, Camarines Sur, et al.*,[21] Guingona *et al.* points out that an extension, however short, of the period of a publicly bidded out contract is a substantial amendment that requires public bidding because the period in an OTP is a vital and essential particular to the contract.[22] Movants add that the Court erred in holding that the subject amendment is advantageous to the public as the extended option contract is void and thus can never be said to inure to the benefit of the public.[23] Lastly, movants claim that the Comelec still has the time to conduct public bidding to procure the items necessary for the 2013 elections and that the needed budget could be provided by Congress.[24]

G.R. No. 201121

Petitioners humbly submit that the Order of this Honorable Court dismissing the petition by upholding the validity of the extended option to purchase and the constitutionality of the AES Contract implementation is contrary to law and the Constitution.[25]

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[16] *Id.* at 851-853.

[17] *Id.* at 854-857.

[18] *Id.* at 858.

[19] 107 Phil. 118 (1960).

[20] *Rollo* (G.R. No. 201413), pp. 639-672.

[21] 121 Phil. 101 (1965).

[22] *Rollo* (G.R. No. 201413), pp. 860-863.

[23] *Id.* at 864-867.

[24] *Id.* at 868-869.

[25] *Id.* at 895.

Movants S4S, *et al.* implore the Court to take a second look at the relevance of the release of the performance security to the subject expired option contract since it did not alter the fact of such expiration.[26] They explain that the Court's conclusion is a dangerous precedent, because it would encourage circumvention of the laws and rules on government contracts since the parties could enter into collusion to defer the release of the performance security for the sole purpose of prolonging the effectivity of the contract.[27] They reiterate their argument that any extension of the option period amounts to a new procurement which must comply with the requirements of bidding under Republic Act (RA) No. 9184[28] and stress that the March 31, 2012 Deed of Sale is not a special transaction which warrants any exemption from the mandatory requirements of a public bidding.[29] It is likewise their view that time constraints, budgetary consideration and other advantages in extending the option period are not plausible justifications for non-compliance with the requirements of public bidding.[30] Finally, movants assail the constitutionality of the entire AES Contract and consequently of the option contract because of its failure to provide that the mandatory minimum system capabilities be complied with; and because of the provision on shared responsibility between the Comelec and Smartmatic.[31]

G.R. No. 201413

I. THE NON-RELEASE OF THE SECURITY DEPOSIT BY COMELEC INDICATES THE EXISTENCE OF UNFULFILLED OBLIGATIONS BY THE CONTRACTOR, AND THEREFORE, IT IS ABSURD TO CITE THIS UNCURED BREACH BY THE CONTRACTOR TO JUSTIFY THE GRANT OF MORE RIGHTS TO THE SAID CONTRACTOR BY EXTENDING THE

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[26] *Id*.

[27] *Id*. at 896-897.

[28] *Id*. at 897-898.

[29] *Id*. at 899.

[30] *Id*.

[31] *Id*. at 901-904.

EXPIRED OPTION TO PURCHASE WHICH EFFECTIVELY CIRCUMVENTS THE GOVERNMENT PROCUREMENT LAW.

II. THERE IS NO JUSTIFIABLE BASIS TO ACCEPT MERE ARGUMENTS THAT THE PCOS IS CAPABLE OF RUNNING WITH DIGITAL SIGNATURES, SECURE[D] FROM HACKING AND COMPLIANT WITH THE MINIMUM ACCURACY RATE OF 99.995%, WHEN IN ACTUAL PERFORMANCE DURING MAY 2010 [ELECTIONS,] THE PCOS OPERATED WITHOUT DIGITAL SIGNATURES, FOUND VULNERABLE TO HACKING AND FAILED BY THE ACCURACY REQUIREMENT, AS SHOWN BY THE APPLICABLE COMELEC RESOLUTIONS, TWG-RMA REPORT, AUDIT LOGS AND PRINT LOGS.[32]

Movants Tan Dem, *et al.* convey their view on the absurdity of the Court's decision in justifying the resurrection of the dead OTP with the continuing effectivity of the stipulation on performance security notwithstanding the presumed existence of uncured contractual breach by the contractor.[33] They also express doubt that the PCOS machines are capable of running with digital signatures compliant with the minimum accuracy rate.[34]

For their part, respondents offer the following comments:

COMELEC

The Comelec, on the other hand, argues that it validly exercised the OTP because the period for its exercise was amended and accordingly extended to March 31, 2012. It highlights the provision in the AES Contract on the right to amend the contract which the parties did during its effectivity.[35] It does not agree with movants' claim that the parties to the contract intended

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[32] *Id.* at 946.

[33] *Id.* at 947-948.

[34] *Id.* at 948.

[35] *Id.* at 975-978.

that the option period be definite.[36] Rather, it maintains that the parties are free to extend the option period in the same way that they can amend the other provisions of the contract.[37] Moreover, the Comelec insists that the extension of the option period is neither a material nor substantial amendment considering that after the extension, the AES Contract taken as a whole still contains substantially the same terms and conditions as the original contract and does not translate to concrete financial advantages to Smartmatic-TIM.[38] It also argues that the extension of the option period could not have affected the bid prices or financial proposals of the bidders since they understood from the RFP that it had no separate price allocation.[39] It emphasizes that a longer period was not a benefit but a burden to the bidders such that they would not have submitted a lower but in fact a higher bid because they would have to give up the opportunity to lease or sell the PCOS machines to third parties and it would also result in higher costs in warehousing and security.[40] The Comelec also opines that *San Diego* and *San Buenaventura*, cited by movants, are not applicable because they involve alterations of the essential terms and conditions of the main contract to the disadvantage of the government unlike this case where there is an alteration only with respect to the ancillary provision of the AES Contract and for the benefit of the Comelec.[41] The Comelec reiterates that the extension of the option period is advantageous to it and burdensome for Smartmatic-TIM.[42] Lastly, it posits that the exercise of the OTP was the more prudent choice for the Comelec taking into consideration the budget and time constraints.[43]

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[36] *Id*. at 980-981.

[37] *Id*. at 982.

[38] *Id*. at 982-987.

[39] *Id*. at 991.

[40] *Id*. at 993.

[41] *Id*. at 998.

[42] *Id*. at 999-1002.

[43] *Id*. at 1003-1008.

SMARTMATIC-TIM

Smartmatic-TIM contends that the OTP is only an ancillary provision in the subsisting AES Contract which has already satisfied the public bidding requirements.[44] It disagrees with petitioners that the extension of the option period was unilateral and claims instead that it was mutual as the parties in fact executed an agreement on the extension.[45] Assuming that the option period had already expired, the extension is not a substantial or material amendment since it only pertains to a residual component of the AES Contract.[46] It also echoes the Comelec's argument that the *San Diego* and *San Buenaventura* cases are not applicable to the present case because of the difference in factual circumstances.[47] Moreover, it reiterates its claim that the extension is favorable to the Comelec and does not prejudice the other bidders.[48] Smartmatic-TIM explains that the retention of the performance security is due to its residual continuing obligations to maintain the PCOS machines and update the software in anticipation of their possible use for elections after 2010, and not due to the existence of unfulfilled obligations as provided in the AES Contract.[49] It likewise points out that the alleged flaws and deficiencies of the PCOS machines do not affect its compliance with the requirements of RA 9369.[50] It emphasizes that the use of digital signatures and their availability for use in future elections have been adequately established.[51] It also defends PCOS machines' compliance with the minimum requirements under RA 9369 as found by the Court in *Roque v. Comelec*.[52] As to the alleged glitches, Smartmatic-TIM claims

[44] *Id*. at 1018.

[45] *Id*. at 1025.

[46] *Id*. at 1026-1027.

[47] *Id*. at 1028.

[48] *Id.* at 1030.

[49] *Id*. at 1033.

[50] *Id*. at 1034.

[51] *Id*. at 1036.

[52] *Id*. at 1042.

that they are not attributable to any inherent defect in the PCOS machines and, in any case, enhancements have already been made.[53] Lastly, Smartmatic-TIM stresses that the arguments challenging the validity and constitutionality of the AES Contract and the performance by the Comelec of its mandate have already been rejected with finality by the Court in *Roque v. Comelec*.[54]

We find no reason to disturb our June 13, 2012 Decision.

Clearly, under the AES Contract, the Comelec was given until December 31, 2010 within which to exercise the OTP the subject goods listed therein including the PCOS machines. The option was, however, not exercised within said period. But the parties later entered into an extension agreement giving the Comelec until March 31, 2012 within which to exercise it. With the extension of the period, the Comelec validly exercised the option and eventually entered into a contract of sale of the subject goods. The extension of the option period, the subsequent exercise thereof, and the eventual execution of the Deed of Sale became the subjects of the petitions challenging their validity in light of the contractual stipulations of respondents and the provisions of RA 9184.

In our June 13, 2012 Decision, we decided in favor of respondents and placed a stamp of validity on the assailed resolutions and transactions entered into. Based on the AES Contract, we sustained the parties' right to amend the same by extending the option period. Considering that the performance security had not been released to Smartmatic-TIM, the contract was still effective which can still be amended by the mutual agreement of the parties, such amendment being reduced in writing. To be sure, the option contract is embodied in the AES Contract whereby the Comelec was given the right to decide whether or not to buy the subject goods listed therein under the terms and conditions also agreed upon by the parties. As we simply held in the assailed decision:

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[53] *Id*. at 1045-1049.

[54] *Id*. at 1050.

While the contract indeed specifically required the Comelec to notify Smartmatic-TIM of its OTP the subject goods until December 31, 2010, a reading of the other provisions of the AES contract would show that the parties are given the right to amend the contract which may include the period within which to exercise the option. There is, likewise, no prohibition on the extension of the period, provided that the contract is still effective.[55]

In interpreting Article 2.2 of the AES Contract, movants claim that the use of the word "surviving" and the phrase "without prejudice" suggests that the warranty provision and the OTP are covered by a different period and not by the term of the AES Contract.[56]

We cannot subscribe to said postulation. Article 2.2 of the AES Contract reads:

Article 2
EFFECTIVITY

x x x x x x x x x

2.2. The Term of this Contract begins from the date of effectivity until the release of the Performance Security, without prejudice to the surviving provisions of this Contract including the warranty provision as prescribed in Article 8.3 and the period of the option to purchase (Emphasis supplied)**.**

The provision means that the contract takes effect from the date of effectivity until the release of the performance security. Article 8 thereof, on the other hand, states when the performance security is released, to wit:

Article 8
Performance Security and Warranty

x x x x x x x x x

Within seven (7) days from delivery by the PROVIDER to COMELEC of the Over-all Project Management Report after successful conduct

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[55] *Id.* at 570-571.

[56] *Id.* at 850.

of the May 10, 2010 elections, COMELEC shall release to the PROVIDER the above-mentioned Performance Security without need of demand.

The performance security may, therefore, be released before December 31, 2010, the deadline set in the AES Contract within which the Comelec could exercise the option. The moment the performance security is released, the contract would have ceased to exist. However, since it is without prejudice to the surviving provisions of the contract, the warranty provision and the period of the option to purchase survive even after the release of the performance security. While these surviving provisions may have different terms, in no way can we then consider the provision on the OTP separate from the main contract of lease such that it cannot be amended under Article 19.

In this case, the contract is still effective because the performance security has not been released. Thus, not only the option and warranty provisions survive but the entire contract as well. In light of the contractual provisions, we, therefore, sustain the amendment of the option period.

The amendment of a previously bidded contract is not *per se* invalid. For it to be nullified, the amendment must be substantial such that the other bidders were deprived of the terms and opportunities granted to the winning bidder after it won the same and that it is prejudicial to public interest. In our assailed decision, we found the amendment not substantial because no additional right was made available to Smartmatic-TIM that was not previously available to the other bidders; except for the extension of the option period, the exercise of the option was still subject to same terms and conditions such as the purchase price and the warranty provisions; and the amendment is more advantageous to the Comelec and the public.

Movants seek the application of *San Diego*[57] where we nullified the extension of the lease agreement and considered said amendment substantial. We, however, find the case inapplicable. The extension made in *San Diego* pertained to

[57] *Supra* note 19.

the period of the main contract of lease while in this case, the extension referred not to the main contract of lease of goods and services but to the period within which to exercise the OTP. In extending the original period of lease of five years to another five years without public bidding, the Municipality of Naujan, Province of Mindoro acted in violation of existing law. The period of lease undoubtedly was a vital and essential particular to the contract of lease. In *San Diego*, the Municipality of Naujan was the lessor of its municipal waters and the petitioner, the lessee. An extension of the lease contract would mean that the lessee would be given undue advantage because it would enjoy the lease of the property under the same terms and conditions for a longer period. Moreover, prior to the extension of the lease period, the rentals were reduced upon the request of the lessee. The end result was that the municipality was deprived of income by way of rentals because of the reduced rates and longer period of lease.

In this case, the extension of the option period means that the Comelec had more time to determine the propriety of exercising the option. With the extension, the Comelec could acquire the subject PCOS machines under the same terms and conditions as earlier agreed upon. The end result is that the Comelec acquired the subject PCOS machines with its meager budget and was able to utilize the rentals paid for the 2010 elections as part of the purchase price.

We maintain the view that the extension of the option period is an amendment to the AES Contract authorized by Article 19 thereof. As held in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*:[58]

> While we concede that a winning bidder is not precluded from modifying or amending certain provisions of the contract bidded upon, such changes **must not constitute substantial or material amendments that would alter the basic parameters of the contract and would constitute a denial to the other bidders of the opportunity to bid on the same terms.** Hence, the determination of whether or

[58] G.R. Nos. 155001, 155547 and 155661, May 5, 2003, 402 SCRA 612; 450 Phil. 744 (2003).

not a modification or amendment of a contract bidded out constitutes a substantial amendment rests on whether the contract, when taken as a whole, would contain substantially different terms and conditions that would have the effect of altering the technical and/or financial proposals previously submitted by other bidders. The alterations and modifications in the contract executed between the government and the winning bidder must be such as to render such executed contract to be **an entirely different contract from the one that was bidded upon.**[59]

It must be pointed out that public biddings are held for the best protection of the public and to give the public the best possible advantages by means of open competition between the bidders, and to change them without complying with the bidding requirement would be against public policy.[60] What are prohibited are modifications or amendments which give the winning bidder an edge or advantage over the other bidders who took part in the bidding, or which make the signed contract unfavorable to the government.[61] In this case, as thoroughly discussed in our June 13, 2012 Decision, the extension of the option period and the eventual purchase of the subject goods resulted in more benefits and advantages to the government and to the public in general.

While movants may have apprehensions on the effect to government contracts of allowing "advantage to the government" as justification for the absence of competitive public bidding, it must be stressed that the same reasoning could only be used under similar circumstances. The "advantage to the government," time and budget constraints, the application of the rules on valid amendment of government contracts, and the successful conduct of the May 2010 elections are among the factors looked into

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[59] *Agan, Jr. v. Philippine International Air Terminals Co., Inc., supra*, at 655-656. (Emphasis in the original)

[60] *San Diego v. The Municipality of Naujan, Province of Mindoro, supra* note 19, at 124.

[61] *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines Incorporated*, G.R. No. 183789, August 24, 2011, 656 SCRA 214, 232.

in arriving at the conclusion that the assailed Resolutions issued by the Comelec and the agreement and deed entered into between the Comelec and Smartmatic-TIM, are valid.

Lastly, we need not further discuss the issues raised by movants on the alleged glitches of the subject PCOS machines, their compliance with the minimum system capabilities required by law, and the supposed abdication of the Comelec's exclusive power in the conduct of elections as these issues have been either thoroughly discussed in the assailed decision or in the earlier case of *Roque, Jr. v. Commission on Elections*.[62]

WHEREFORE, premises considered, the motions for reconsideration are **DENIED** for lack of merit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Bersamin, Abad, Mendoza, and *Reyes, JJ.,* concur.

Velasco, Jr., J., see concurring opinion.

Brion, J., see dissenting opinion.

Villarama, Jr. and *Perlas-Bernabe, JJ.,* maintain their dissent in the June 13, 2012 Decision.

Carpio and *Perez, JJ.,* on official leave.

Del Castillo, J., on leave.

CONCURRING OPINION

VELASCO, JR., *J.*:

I agree with the *ponencia* that the Motions for Reconsideration dated October 3, 2012 should be dismissed, but for a different reason, *i.e.*, the disputed Deed of Sale for the acquisition of the PCOS machines and CCS hardware and software can be considered as a purchase through direct contracting, a mode of acquisition not subject to the usual bidding

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[62] G.R. No. 188456, September 10, 2009, 599 SCRA 69.

requirements under Republic Act No. (RA) 9184 or the *Government Procurement Reform Act*. I am, however, of a different disposition with respect to the majority's holding that the extension of the Option to Purchase (OTP) is valid, and consequently, the assailed deed of sale is also valid.

The OTP Has Expired

The majority's position is that the OTP was still subsisting when the Deed of Sale was executed in view of the non-receipt by Smartmatic-TIM Corporation of the Performance Security, which receipt will terminate the AES Contract pursuant to Article 2 thereof. I beg to disagree. As I have discussed in my June 13, 2012 separate concurring opinion, I am of the view that a different period is given by the parties with respect to the OTP, as articulated in Article 2.2 of the AES Contract, which reads:

Article 2
EFFECTIVITY

2.2. ***The Term of this Contract*** begins from the date of effectivity ***until the release of the Performance Security***, ***without prejudice to*** the surviving provisions of this Contract, including the warranty provision as prescribed in Article 8.3 and ***the period of the option to purchase.*** (Emphasis ours.)

Shorn of the non-essentials, the provision would read "*The Term of this Contract [is] x x x until the release of the Performance Security, without prejudice to x x x the period of the option to purchase*." With, this, the only interpretation that can be given to the provision is that the life of the AES Contract GENERALLY ends upon the release of the Performance Security, EXCEPT with respect to the period of the OTP, hence the use of the qualifying phrase "*without prejudice to*." As such, whether or not Smartmatic-TIM has already received the Performance Security is immaterial with respect to the proper determination of the date when the OTP was terminated, the OTP having its own period of existence, independent from that of the AES Contract.

The period of the OTP is specified in Par. 28.1 of Part V of the RFP, which states that "[a]n offer for an option to purchase

by component shall be decided by the COMELEC *before December 31, 2010*." Admittedly, the COMELEC failed to exercise the OTP within the prescribed period and this failure resulted in the expiration of the OTP. This is not to say, however, that the purchase of the PCOS machines and allied components via a *new contract*, separate and distinct from the AES Contract, by the COMELEC is invalid for lack of a public bidding.

The purchase can be justified under the Direct Contracting mode, an Alternative Mode of Procurement under RA 9184

Concededly, the subsequent contract in question is not an extension of the previous AES Contract, but a new one. And not being an ordinary contract but a procurement by the government, RA 9184 or the *Government Procurement Reform Act* applies. Section 10 of said law requires for the validity of every government procurement that competitive bidding be conducted. As the law provides:

ARTICLE IV
COMPETITIVE BIDDING

Sec. 10. Competitive Bidding. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

This rule, however, is not absolute. There are recognized exceptions to the bidding requirement, as can be gleaned in the above-quoted provision. The exceptions are laid out on the provisions of "Alternative Modes of Procurement" under Section 48, Article XVI of RA 9184, which reads:

Sec. 48. Alternative Methods. – Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

a. *Limited Source Bidding, otherwise known as Selective Bidding* - a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or

consultants with known experience and proven capability relative to the requirements of a particular contract;

b. *Direct Contracting, otherwise known as Single Source Procurement* - a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma voice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;

c. *Repeat Order*. - a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;

d. *Shopping* - a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or

e. *Negotiated Procurement* - a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained.

At first glance, it is easily deduced that, being a new contract, the purchase of PCOS machines for the upcoming 2013 elections should undergo public bidding. However, in view of the uniqueness of the circumstances obtaining, I am of the view that the validity of the purchase agreement finds footing in the application of the alternative mode *Direct Contracting*. As such, competitive bidding is not required.

To justify resort to any of the alternative methods of procurement, the following conditions must exist:

1. There is prior approval of the Head of the Procuring Entity on the use of alternative methods of procurement, as recommended by the BAC; and

2. The conditions required by law for the use of alternative methods are present; and

3. The method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained.[1]

In this regard, I reiterate my position that all the foregoing conditions exist in the present case, thus allowing COMELEC to use an alternative method of procurement permitted under said statute. Allow me to discuss the existence of said conditions in *seriatim.*

Prior approval of the procuring entity

The prior approval of the procuring entity, respondent COMELEC in this case, was made through COMELEC Resolution Nos. 9376 and 9377. In said Resolutions, COMELEC manifested its resolve to purchase the AES hardware and software covered by the OTP in the AES Contract between it and Smartmatic-TIM. In its Resolution No. 9376, the COMELEC stated:

NOW, THEREFORE, the Commission on Elections, by virtue of the powers vested in it by the Constitution, the Omnibus Election Code, Republic Act No. 9369 and other election laws, and after finding the exercise of the Option to Purchase **most advantageous to the government**, RESOLVED, as it hereby RESOLVES, to exercise its Option to Purchase the PCOS and CCS hardware and software in accordance with Section 4.3, Article 4 of the AES contract between the Commission and SMARTMATIC-TIM in connection with the May 10, 2010 National and Local Elections x x x.

Conditions justifying a Direct Contracting

As for the second condition, I submit that the Deed of Sale executed by respondents is analogous to the "**Direct Contracting**" mode defined in the above-quoted Sec. 48(b), Art. XVI of RA 9184 that is exempt from the more protracted process of competitive bidding. Sec. 50, RA 9184, provides

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[1] Manual of Procedures for the Procurement of Goods and Services, p. 81.

the alternative conditions before a resort to direct contracting is permitted:

> Section 50. Direct Contracting. Direct Contracting may be resorted to only **in any** of the following conditions:
>
> a. **Procurement of Goods of *proprietary nature*, which can be obtained only from the proprietary source, *i.e.*, when patents, trade secrets and copyrights prohibit others from manufacturing the same items;**
>
> b. When the Procurement of critical components from a specific manufacturer, supplier, or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or
>
> c. **Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.** (Emphasis supplied.)

Note that while only one condition is needed to justify direct contracting, **two (2) of the stated conditions actually exist in the present controversy thereby exempting the Deed of Sale from the requirement of a prior competitive bidding**, namely: Sec. 50(a) on the procurement of goods of proprietary nature and Sec. 50(c) on the procurement of goods sold by an exclusive dealer that does not have sub-dealers selling at a lower price and for which a suitable substitute can be obtained at terms more advantageous to the government.

The Deed of Sale involves the procurement of proprietary goods

Under Sec. 50(a), the Deed of Sale is exempt from competitive bidding as it involves goods of "proprietary nature." Goods are considered of "**proprietary nature**" when they are owned by a person who has a protectable interest in them[2] or *an interest protected by the intellectual property laws.*

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[2] BLACK'S LAW DICTIONARY 1339 (9th ed. for the iPhone/iPad/iPod touch, Version 2.1.0 [B112136]).

Our Intellectual Property Code protects, among others, original works, as provided for under Section 172, which reads in part:

> Chapter II
> ORIGINAL WORKS
>
> Sec. 172. Literary and Artistic Works.-
>
> 172.1 Literary and artistic works, hereinafter referred to as "works," are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:
>
> x x x x x x x x x
>
> (n) **Computer programs**; and
>
> x x x x x x x x x
>
> 172.2 Works are protected by the sole fact of their creation, irrespective of their mode or form of expression, as well as of their content, quality and purpose. (Emphasis supplied.)

In the case at bar, petitioners have raised the argument that Sec. 50(a) of RA 9184 cannot apply because the EMS and the PCOS firmware are "mere component(s) of the entire Automated Election System" that also includes the PCOS hardware, canvassing system and servers listed in Annexes "E" and "E-1" of the Deed of Sale. This argument, however, fails to consider the fact that *this proprietary software is a bundled software "that is sold together with hardware, other software, or services at a single price."*[3]

In Philippine contract law, one species of an indivisible object is a divisible thing which the parties treated as indivisible.[4] Article 1225 of the Civil Code provides:

> Art. 1225. For the purpose of the preceding articles, obligations to give definite things x x x shall be deemed to be indivisible.

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[3] *Id*. at 223.

[4] See *Groves v. Sentell*, 153 U.S. 465 (1894) where it was stated that *indivisibility [of contract] rests upon intention.*

x x x x x x x x x

However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties.

In the present case, not only was the object of the contract a determinate thing, the parties likewise agreed that the subject Deed of Sale is for the purchase of the *entire first component*.[5] While the hardware and software are, by their nature, separable,

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[5] The Whereas clause of the 2009 AES Contract defines Component 1 of the AES, viz:

Component 1: Paper Based Automated Election System (AES)

1-A. Election Management System (EMS)

1-B. Precinct-Count Optical Scan (PCOS) System

1-C. Consolidation/Canvassing System (CCS)

This is consistent with the items/goods listed under Annex "E" of the Deed of Sale that include:

1.1 PCOS Software

a. EMS application

b. PCOS application

1.2 PCOS Hardware

a. EMS machine

b. PCOS machines

c. modems

1.3 Canvassing System

a. Canvassing units

b. Central servers

1.4 Servers

a. KBP servers for dominant majority and minority parties, accredited citizen's arms

b. Servers National BOC-COMELEC

c. Servers National BOC-Congress

d. Printers (canvassing)

e. Modems

f. Public Website (for publication of canvassing results)

g. Back-up data center.

the parties, however, intended to treat them as indivisible. Such being the case, the software cannot then be procured without the accompanying hardware on which they are embedded. In other words, what was purchased by the COMELEC was the *whole system*, that is, the entire first component of the original AES Contract, which includes the software needed for the PCOS machines consisting of the Election Management System (EMS) and the PCOS firmware[6] applications, protected by our copyright laws, together with the hardware.[7] Being inseparable by contractual stipulation, the COMELEC is thus required to procure the hardware and the proprietary software and firmware provided by Smartmatic-TIM.

To further show the importance of treating the software and hardware as indivisible, without Smartmatic-TIM's EMS which dictates the functioning of the entire system, by directing the processes by which the PCOS and the CCS hardware and software interpret the data scanned from the cast ballots and later accumulate, tally and consolidate all the votes cast, the PCOS hardware are lifeless. The EMS is the fundamental software on which all other applications and machines in the entire Smartmatic-TIM AES depend. It serves as the brain that commands all other components in the entire AES.

The goods subjects of the assailed procurement are sold exclusively by Smartmatic-TIM which has no sub-dealer and for which no suitable substitute can be obtained at terms more advantageous to the government

In addition to the foregoing, it is important to underscore that the EMS application which has been manufactured, configured and customized by Smartmatic-TIM[8] to fit the needs of Philippine

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[6] Firmware means the permanent instructions and data programmed directly into circuitry of read-only memory for controlling the operation of the machines. (Article 1.10, AES Contract dated July 10, 2009)

[7] INTELLECTUAL PROPERTY CODE, Sec. 172.

[8] Final Certification Test Report, COMELEC AES 2011 Voting System prepared by Global Solutions, p. 9.

elections *cannot be obtained from any source other than Smartmatic-TIM*. This satisfies the requirement under Sec. 50(c) of RA 9184, *viz*:

Section 50. Direct Contracting. Direct Contracting may be resorted to only in any of the following conditions:

x x x x x x x x x

(c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

For the condition provided under Sec. 50(c) of RA 9184 to exist, three elements must be established:

1. The goods subject of the procurement are sold by an exclusive dealer or manufacturer;
2. The exclusive dealer or manufacturer does not have sub-dealers selling the same goods at lower prices;
3. There are no suitable substitutes for the goods offered by another supplier at terms more advantageous to the government.

In this regard, I submit that all these elements are present in the case at bar.

As discussed, the specific goods subject of the assailed Deed of Sale are goods of proprietary nature as they include the Smartmatic EMS, which is a proprietary software that cannot be used, redistributed, or modified without the permission of Smartmatic.[9] This software, together with the PCOS firmware[10] and hardware, is owned and distributed exclusively by respondent

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[9] Proprietary software is usually sold for profit, consists only of machine readable code, and carries a limited license that restricts copying, modification and redistribution. A user may usually backup any copy for personal use; but if the software is sold or given away, any backup copies must be passed on to the new user or destroyed. BLACK'S LAW DICTIONARY, *supra* note 41.

[10] Over which Smartmatic has a license from Dominion Voting System.

Smartmatic-TIM. Hence, the first element of the condition set forth in Sec. 50(c) is clearly present.

On the existence of the second element, it is an uncontested fact that Smartmatic-TIM has no sub-dealers[11] and that there are no other persons selling the said software and hardware,[12] much less selling them at prices lower than that offered by Smartmatic-TIM under the questioned Deed of Sale.

As to the third element, that there is no suitable substitute for the hardware and software offered by Smartmatic-TIM, it is material to recall that for the automation of the 2010 elections, only two bidders qualified, Smartmatic-TIM and the Indra Consortium (Indra), and that the terms offered by Smartmatic-TIM are far better than that of Indra on several material points, the most important of which is that Indra pegged the lease price of just 57,231 PCOS machines at PhP 11.22 billion, PhP 4 billion more than the price offered by Smartmatic-TIM for the lease of 82,000 PCOS machines.

It is, thus, reasonable to conclude that, as of the moment, no other supplier can match Smartmatic-TIM's offer, which even included the contested OTP over more than 81,000 PCOS units at only PhP 1.8 billion, or 50% of the lease price of the original 2009 AES Contract and almost PhP 7 billion less than that estimated by the COMELEC to purchase the same number of PCOS machines (without the software and accompanying hardware) based on the lowest calculated responsive bid for the 2010 elections.

With the above considerations, I respectfully submit that the terms of the procurement contract are undeniably more advantageous to the government.

The assailed Deed of Sale promotes economy and efficiency, and obtains for the most advantageous price

Anent the last requisite, I am of the opinion that it is likewise present in the instant case.

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[11] TSN, May 8, 2012, pp. 72-73.

[12] *Id*.

In addition to the considerations discussed above which show that the COMELEC is no longer in a position to seek other suppliers, as petitioners would have it, recall that the automation of the 2013 elections is bombarded with numerous complications, including time and budget constraints. Note that based on the bids submitted for the 2010 automated elections, the COMELEC determined that the funds needed for the procurement of 125,000 PCOS machines to ensure a 600:1 voter-to-precinct ratio is around PhP 12.85 billion. However, it was only given a PhP 7.96 billion budget for the entire automation of the 2013 elections, which will involve not only the procurement of the equipment but also the price of the allied services. This budget is obviously insufficient for the Commission to be able to perform its mandate of automating the upcoming 2013 elections.

To further add to the government's advantage, Smartmatic-TIM also shouldered the storage price of the PCOS units and offered them for sale without considering inflation or putting a price on the enhancements and modifications demanded by COMELEC. Too, obtaining more funds from Congress and going through with competitive bidding, as insisted by petitioners, will eat up the precious time necessary to test and modify a new AES, if any, and prepare and educate the electorate and poll officers on its operation to prevent any human blunders that might lead to an erroneous declaration of the results of an election, when here is a system with which the electorate and the concerned poll officials are already familiar with. This not only reduces the attending time constraint for it abbreviates the learning curve of all the parties concerned, it also minimizes the errors attributable to the variations and differences offered by a new AES, as seen in the 2010 elections where the system was used for the first time on a national scale. Besides, to require the COMELEC to procure a new and, as demanded by petitioners, flawless AES for the 2013 elections with a budget of PhP 2.2 billion, at least PhP 5 billion short of the original amount requested, is requiring the Commission to execute a financial miracle with only a few months to pull it off.

Given the prevailing conditions and the constraints imposed on COMELEC, the course of action taken by the poll body

proves to be the most efficient and economical avenue that guarantees the conduct of an automated election in 2013. Procuring the same, tested AES from the supplier who helped the conduct of a successful and peaceful election in 2010 dispenses the need for additional funding and so reserves the remaining time before the elections for the conduct of essential modifications and enhancements on the Smartmatic-TIM AES that could remove the problems complained of by petitioners. Hence, I submit that direct contracting with Smartmatic-TIM for the hardware and software subject of the Deed of Sale is justified under Sec. 50(c) of RA 9184.

ACCORDINGLY, I vote to **DENY** the Motions for Reconsideration.

DISSENTING OPINION

BRION, *J.*:

With due respect, I register my dissent to the *ponencia*'s conclusion that the: (i) COMELEC-SMARTMATIC-TIM's Agreement on the Extension of the Option to Purchase (*OTP*) Under the Contract for the Provision of an Automated Election System (*AES*) for the May 10, 2010 synchronized National and Local Elections; (ii) the Deed of Sale of March 30, 2012; and (iii) COMELEC Resolution No. 9378 (approving the Deed of Sale) are valid and constitutional. In my June 13, 2012 Dissent, I held the view that the aforementioned contracts and COMELEC issuance are null and void, as viewed from the prism of contract law, the law on government procurement, and the constitutional set-up of the COMELEC's independence.

For a complete treatment and presentation of the issues raised, the arguments in the Resolution and the refutation are discussed below.

First, the *ponencia* emphasizes that although the option was not exercised within the period (*i.e.*, December 31, 2010), the same was validly extended when the parties entered into an extension agreement giving the COMELEC until March 31,

2012 within which to exercise the option. Considering that the performance security has not been released to SMARTMATIC-TIM, the contract remained effective and could still be amended by mutual agreement of the parties.

Second, the *ponencia* maintains that pursuant to Section 2.2, Article 2 of the AES Contract, the entire contract, as well as the option and warranty provisions, remains effective since the performance security has not been released. It also notes that while the surviving provisions (the option and warranty) have different terms, Section 2.2 cannot be interpreted to mean that the provision on the OTP is separate from the main contract of lease such that it cannot be amended under Article 19 of the AES Contract.

Third, the *ponencia* asserts that the amendment, if any, to the AES Contract was not substantial because no additional right was given to SMARTMATIC-TIM that was not available to the other bidders. It emphasizes that except for the extension of the option period, the exercise of the option remained subject to the same terms and conditions; in fact, the amendment is more advantageous to the COMELEC and the public.

Fourth, the *ponencia* argues that the Court's ruling in *San Diego v. The Municipality of Naujan, Province of Mindoro*[1] is inapplicable for the reason that the extension made in that case pertained to the period of the main contract of lease and not to the period of an ancillary contract such as the OTP, as in the present case. It notes that in *San Diego,* the extension of the lease contract meant that the lessee would be given undue advantage because it would enjoy the lease of the property under the same terms and conditions for a longer period; here, the extension of the option period gave the COMELEC more time to determine the propriety of exercising the option. Thus, with the extension, the COMELEC could acquire the PCOS machines under the same terms and conditions as previously agreed upon.

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[1] 107 Phil. 118 (1960).

Fifth, the *ponencia* submits that it is unnecessary to discuss the issues raised by the movants pertaining to the glitches of the PCOS machines, their compliance with the minimum system capabilities and the COMELEC's abdication of its exclusive power in the conduct of the elections since these issues have been discussed and passed upon in the case of *Roque, Jr. v. Commission on Elections*.[2]

These arguments are addressed in the same order they are posed under the topical headings below.

a. The OTP clearly lapsed

Contrary to the majority's conclusion, I submit that the OTP simply lapsed when the COMELEC failed to exercise the option on or before December 31, 2010. By virtue of the OTP - an option contract preparatory to a contract of sale and distinct from the main contract of lease - SMARTMATIC-TIM, as owner, agreed with the COMELEC that it shall have the right to buy the leased goods at a fixed price, to be exercised within a specific period. Failing to exercise this right within the option period, the COMELEC allowed the option to expire and thus, SMARTMATIC-TIM was released from its obligation to respect the COMELEC's right or privilege to buy. As I emphasized in my June 13, 2012 Dissent:

> As authorized by the AES contract, COMELEC exercised the OTP for the 2010 special elections in the ARMM by purchasing 920 units of Precinct-Count Optical Scan System (*PCOS*) machines and 36 units of Consolidated Canvassing System (*CCS*). No further action was taken by COMELEC on the OTP for the remainder of the goods under the option (81,280 PCOS machines and 1,684 CCS) ***on or before 31 December 2010***. Under these developments, the option clearly lapsed. [italics and emphasis supplied]

Significantly, SMARTMATIC-TIM even acted under the assumption that the option has been terminated, *viz.*:

The COMELEC inaction is highlighted by SMARTMATIC-TIM's unilateral offers to extend the period for the COMELEC's exercise of

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[2] G.R. No. 188456, September 10, 2009, 599 SCRA 69.

its OTP (through its letters of December 18, 2010, March 23, 2011, April 1, 2011 and September 23, 2011), which the COMELEC clearly ignored *before* the lapse of the option period. ***With the expiration of the period, the option itself ceased to exist.*** There was thus no option that could be *extended*. Interestingly, ***even SMARTMATIC-TIM itself admitted that the period for the OTP already lapsed after December 31, 2010.*** In its several letters to the COMELEC, SMARTMATIC-TIM disowned any legal obligation to sell to the COMELEC the goods covered by the COMELEC's OTP simply because the option already expired after December 31, 2010.[3] (italics and emphases supplied)

b. The terms of Section 2.2, Article 2 of the AES Contract plainly evince the parties' intention to treat the ancillary OTP contract and the period for its exercise differently from the main contract of lease

I take exception to the *ponencia*'s conclusion that Section 2.2, Article 2 of the AES Contract cannot be interpreted to mean that the provision on the OTP is separate from the main contract of lease such that it cannot be amended under Article 19 of the AES Contract.

A basic disagreement with the *ponencia* relates to the interpretation of the provision on effectivity of the AES Contract, which reads:

ARTICLE 2
EFFECTIVITY

2.1 This Contract shall take effect upon the fulfillment of all of the following conditions:

a) Submission by the Provider of the Performance Security;
b) Signing of this Contract in seven (7) copies by the parties; and
c) Receipt by the provider of the Notice to Proceed.

2.2. The term of this Contract *begins* from the date of effectivity *until* the release of the performance security, ***without prejudice***

[3] Dissenting Opinion dated June 13, 2012.

> to the surviving provisions of this Contract including the warranty provision as prescribed in Article 8.3 ***and the period of the option to purchase.*** [italics and emphases supplied]

As explained in my Dissent, while I concede that the AES Contract still technically subsists because of the COMELEC's retention of SMARTMATIC-TIM's performance security, Section 2.2, Article 2 of the AES Contract clearly mandates that its continued effectivity is without prejudice to "the period of the option to purchase." Thus, I conclude that under these terms, the COMELEC and SMARTMATIC-TIM clearly recognized that the OTP and the period for its exercise stand differently from the main contract of lease of goods and service. In other words, **the effectivity of the warranty provision and of the OTP are covered by an entirely different period and not by the term of the main contract of lease of goods**. Properly viewed from this perspective, this interpretation thus demolishes the *ponencia*'s position that the OTP in this case still subsists. As emphasized in my Dissent:

> In the present case, COMELEC and SMARTMATIC-TIM's intention to extend an already expired option period could not have validly gone past the negotiation stage. Specifically, SMARTMATIC-TIM formally made an offer to the COMELEC to extend the original period and, upon its lapse, to provide for a *new* period to exercise the same option; these, COMELEC simply ignored. ***Thus, this offer is merely an imperfect promise (politacion) that, by reason of lack of acceptance before the expiration of the period, did not give rise to any binding commitment.*** [italics and emphasis supplied]

c. The unilateral extension of the OTP amounts to a substantial amendment of the AES Contract

I cannot subscribe to the majority's view that the extension of the OTP cannot be characterized as a substantial amendment because no additional right was given to SMARTMATIC-TIM and that the option was still subject to the same terms and conditions previously agreed upon. To my mind, this view seriously ignores the fact that **the period for the exercise of the option is a *substantial particular* in the option**

contract. I reached this conclusion bearing in mind that the subject of the OTP is a novel technological system in the conduct of an election and the transitory nature of the information technology employed by the AES, *viz.*:

> It should be considered in this regard that the subject of the OTP is, collectively and broadly speaking, a technological system in the conduct of an election. To my mind, a change in technology over a short period of time through the advent of a more advanced technology is a vital reason for limiting the period within which the option must be exercised. **Therefore, the fact that the original price in the AES contract is maintained is no argument, in favor of the modification of the period of the OTP.** If indeed the original expiration date of the OTP is legally insignificant in view of the deemed-sold provision under Article 5.11 of the AES contract, I see no reason why SMARTMATIC-TIM would make several unilateral offers to the COMELEC before and after the expiration of the period of the OTP.
>
> Contrary to the respondents' claim, ***the period is actually for the benefit of both parties and not just of the COMELEC alone***. A seven-month period (reckoned from the conduct of the elections) within which the OTP may be exercised is a reasonable period to evaluate the pros and cons of the technology used in the previous 2010 elections, which may affect the COMELEC's decision to exercise the option or not. Should the COMELEC refuse to exercise the option, the parties obviously anticipated that, at least, the COMELEC would still have the remaining more than two years (prior to the conduct of the next national and local elections) to look for another technological system and make the necessary administrative, technical and legal preparations. SMARTMATIC-TIM, on the other hand, could still competitively market its PCOS machines, *etc*. to other countries or users. Thus, the extension or renewal of the option period on the pretext that it is beneficial to the COMELEC seriously ignores these considerations.[4] (emphases ours, italics supplied)

d. By analogy, the Court's ruling in San Diego supports the view that the extension of the OTP amounts to a substantial amendment since the period to exercise the OTP is a

[4] *Ibid.*

substantial particular in the option contract

While it is true that the case of *San Diego v. The Municipality of Naujan, Province of Mindoro*[5] involved the extension of the period of the lease contract prior to its expiration, without the benefit of a public bidding, and not an option contract as in the present case, I submit that *San Diego* is relevant to the present case for the simple reason that the period of the option is a vital and essential particular to the contract. Thus, in *San Diego*, the Court held:

> Furthermore, it has been ruled that ***statutes requiring public bidding apply to amendments of any contract already executed*** in compliance with the law where such amendments alter the original contract in some vital and essential particular. Inasmuch as ***the period*** in a lease ***is a vital and essential particular to the contract***, we believe that the extension of the lease period in this case, which was granted without the essential requisite of public bidding, is not in accordance with law. And it follows that Resolution 222, series of 1951, and the contract authorized thereby, extending the original five-year lease to another five years are null and void as contrary to law and public policy.[6] [citations omitted, emphases and underscores ours]

Thus, I cited the case for the reason that:

> The above rationale for prohibiting the extension of the period of the main contract of lease should equally apply to the period of the OTP; this period of the option is a vital and essential particular to the contract. With the short interval of three years before the next elections, the extension of the period beyond what was originally intended tends to give the winning bidder (SMARTMATIC-TIM) ***undue advantage*** in securing the contract of sale, not on the basis of having the best possible advantages for the public, but on the convenient excuse that the next election is "already a matter of urgency" and its equipment, having been previously used, needs only to be improved to replicate the 2010 election results.

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[5] *Supra* note 1.

[6] *Id*. at 123.

If the legality of the extension of the period of the OTP *prior* to its expiration is already legally problematic, then *a fortiori* the revival of a *lapsed* period by mutual agreement of the parties must suffer the same fate – and even worse. It must at least be subjected to competitive bidding, or invalidated for fatal infirmity based on other grounds. I note that in *Roque, Jr. v. Commission on Elections,* filed before the 2010 elections, even the majority conceded that "the real worth of the PCOS system and the machines will of course come after they shall have been subjected to the gamut of acceptance tests." The real test came during the actual elections where, unfortunately, serious deficiencies and issues affecting the integrity of the PCOS system surfaced, compromising some of the *minimum* system capabilities mandated by law.

If the present case simply involves an ordinary contract where, ordinarily, only the pertinent provisions of the Civil Code would apply, I would not perhaps have qualms with the suggestion that since the option period was a limitation imposed by SMARTMATIC-TIM on the COMELEC's *right* to exercise its OTP, then nothing prevents SMARTMATIC-TIM from waiving the period it imposed. ***The present case, however, involves not just any government contract but one involving a constitutional office tasked with the independent enforcement and administration of all laws and regulations relating to the conduct of elections to public office to ensure a free, orderly and honest electoral exercise;*** it involves an ambitious step to replicate the first ever automated election held in 2010 by purchasing, out of the national coffers, the same PCOS machines and the CCS hardware and software worth billions of pesos. The respondents sorely miss this point of distinction between a government contract, on one hand, and an ordinary contract, on the other hand, by approaching the issue ***from the perspective of a purely private contract***.[7] (emphases and italics supplied)

e. A continuing violation of the constitutional set-up of the Comelec's independence in the present case can never be laid to rest by the majority's ruling in Roque, Jr. v. Commission on Elections

[7] *Supra* note 3.

I submit anew my **continuing objection** as I did in my dissents in *Roque, Jr. v. Commission on Elections*[8] and the present case to the COMELEC's failure to observe Section 26 of Republic Act No. 8436 – the very law which mandated the COMELEC to undertake an automated election system. I reiterate the view that:

> [Had] only the COMELEC faithfully complied with Section 26 of Republic Act No. 8436 and undertook the automation of election system in line with the law's intent ***for the COMELEC itself to keep pace along with the new system***, the government would not be a "captive market" of SMARTMATIC-TIM for the subsequent elections. COMELEC, unfortunately, cannot do so without SMARTMATIC-TIM by its side as it is not, up to now, technologically up to date and self-sufficient as its independence requires.
>
> In any case, should the COMELEC choose to purchase election related hardware and software, and the accompanying system from a new provider, the same advantage that SMARTMATIC-TIM now enjoys would be enjoyed as well by this provider in a subsequent bidding, for the rendition of technical services to make the system fully functional. However, since the COMELEC does not, at any time, appear to consider Section 26 of Republic Act No. 8436, the subsequent bidding for services (for technical support involving the operation of the items purchased from SMARTMATIC-TIM) would result in the same scheme of a shared responsibility that would put the COMELEC in continuous violation of the law and the Constitution. To my mind, this is constitutionally objectionable.[9] (emphasis and italics supplied)

I also take the view that this violation by the COMELEC of the law and the Constitution can never be laid to rest and remains to be a continuing violation ***unless and until*** the COMELEC complies with the terms of Section 26 of Republic Act No. 8436 and the independence that the Constitution guarantees to it.

For the foregoing reasons, I vote to grant the motions for reconsideration.

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[8] *Supra* note 2.

[9] *Supra* note 3.

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EJECTMENT

Issue of ownership — Any adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property. (Heirs of Albina G. Ampil *vs*. Manahan, G.R. No. 175990, Oct. 11, 2012) p. 413

Right of co-owner to bring an action for ejectment — Anyone of the co-owners may bring an action for ejectment without joining the others, including all kinds of suits for recovery of possession because the suit is presumed to have been instituted for the benefit of all. (Heirs of Albina G. Ampil *vs*. Manahan, G.R. No. 175990, Oct. 11, 2012) p. 413

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — The Department of Labor and Employment (DOLE) has the authority to determine the existence of an employer-employee relationship as it falls within the purview of its visitorial and enforcement power under Article 128 (b) of the Labor Code. (Superior Packaging Corp. *vs*. Balagsay, G.R. No. 178909, Oct. 10, 2012) p. 62

Reasonable causal connection with the employer-employee relationship — A requirement not only in employees' money claims against the employer but is, likewise, a condition when the claimant is the employer. (Portillo *vs*. Rudolf Lietz, Inc., G.R. No. 196539, Oct. 10, 2012) p. 232

EMPLOYMENT, TERMINATION OF

Backwages — In computing backwages, salary increases from the time of dismissal until actual reinstatement, and benefits not yet granted at the time of dismissal, are excluded. (Gonzales *vs*. Solid Cement Corp., G.R. No. 198423, Oct. 23, 2012) p. 619

— Salaries and 13th month pay which are due after the Labor Arbiter's reinstatement order until actual reinstatement of the illegally dismissed employee are not excluded from the concept of backwages. *(Id.)*

Closure or cessation of business as a ground — The closure of a department is unlawful when it is undertaken in bad faith. (Digital Telecommunications Phils., Inc. *vs*. Digitel Employees Union [DEU], G.R. Nos. 184903-04, Oct. 10, 2012) p. 132

Doctrine of strained relations — Payment of separation pay is allowed in lieu of reinstatement if the employee no longer wishes to be reinstated. (Johansen World Group Corp. *vs*. Gonzales III, G.R. No. 198733, Oct. 10, 2012) p. 276

— 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. (Digital Telecommunications Phils., Inc. *vs.* Digitel Employees Union (DEU), G.R. Nos. 184903-04, Oct. 10, 2012) p. 132

Loss of trust and confidence, as ground — Breach of trust and confidence must be willful. (Johansen World Group Corp. *vs*. Gonzales III, G.R. No. 198733, Oct. 10, 2012) p. 276

— Mere existence of a basis for the loss of trust and confidence justifies the dismissal of managerial employees. (Manese *vs*. Jollibee Foods Corp., G.R. No. 170454, Oct. 11, 2012) p. 322

— The loss of trust and confidence must be substantial and founded on clearly established facts sufficient to warrant the managerial employee's separation from the company. *(Id.)*

Retrenchment — Elements of a valid retrenchment, not present. (Digital Telecommunications Phils., Inc. *vs*. Digitel Employees Union [DEU], G.R. Nos. 184903-04, Oct. 10, 2012) p. 132

Serious misconduct — Requisites. (Johansen World Group Corp. *vs*. Gonzales III, G.R. No. 198733, Oct. 10, 2012) p. 276

EVIDENCE

Ocular inspection — Ocular inspection may be granted only where it is reasonably certain that it will be of substantial aid to the court in reaching a correct verdict. (People of the Phils. *vs*. Delos Reyes, G.R. No. 177357, Oct. 17, 2012) p. 531

Substantial evidence — In administrative proceedings, only substantial evidence, i.e., that amount of relevant evidence that reasonable mind might accept as adequate to support a conclusion, is required. (Flores-Tumbaga *vs*. Tumbaga, A.M. No. P-06-2196 [Formerly OCA IPI No. 05-2272-P], Oct. 22, 2012) p. 557

Testimonial evidence — Establishing the insanity of an accused requires opinion testimony. (Crewlink, Inc. and/or Gulf Marine Services *vs*. Editha Teringtering, G.R. No. 166803, Oct. 11, 2012) p. 302

Weight and sufficiency of — Bare allegation of peaceful and continuous possession as owner since time immemorial cannot prevail over documentary evidence of right to property. (Heirs of Albina G. Ampil *vs*. Manahan, G.R. No. 175990, Oct. 11, 2012) p. 413

— The positive testimonies of the witnesses prevail over bare denial. (Flores-Tumbaga *vs*. Tumbaga, A.M. No. P-06-2196 [Formerly OCA IPI No. 05-2272-P], Oct. 22, 2012) p. 557

EXEMPTING CIRCUMSTANCES

Imbecile or insane person — Testimonial evidence establishing the insanity of an accused requires opinion testimony. (Crewlink, Inc. and/or Gulf Marine Services *vs*. Editha Teringtering, G.R. No. 166803, Oct. 11, 2012) p. 302

FORUM SHOPPING

Certification of non-forum shopping — Even if there was complete non-compliance with the rule on certification against forum shopping, the court may still proceed to decide the case on the merits, pursuant to its inherent power to suspend

its own rules on grounds of substantial justice and apparent merit of the case. (SM Land, Inc. [Formerly Shoemart, Inc.] *vs.* City of Manila, G.R. No. 197151, Oct. 22, 2012) p. 601

Rule on non-compliance with the requirements on or submission of defective verification and certification of non-forum shopping — Distinguished. (SM Land, Inc. [Formerly Shoemart, Inc.] *vs.* City of Manila, G.R. No. 197151, Oct. 22, 2012) p. 601

Rule on verification and certification of non-forum shopping — When all the 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 rules. (SM Land, Inc. [Formerly Shoemart, Inc.] *vs.* City of Manila, G.R. No. 197151, Oct. 22, 2012) p. 601

GOVERNMENT PROCUREMENT REFORM ACT (R.A. NO. 9184)

Alternative modes of procurement — The exceptions to the requirement for the conduct of a competitive bidding for the validity of government procurement are laid out on the provisions under Section 48, Article XVI of R.A. No. 9184. (Archbishop Fernando R. Capalla *vs.* Hon. Commission on Elections, G.R. No. 201112, Oct. 23, 2012; *Velasco, Jr., J., concurring opinion*) p. 644

— To justify resort to any of the alternative methods of procurement, the following conditions must exist: 1. There is prior approval of the Head of the Procuring Entity on the use of alternative methods of procurement, as recommended by the BAC; 2. The conditions required by law for the use of alternative methods are present; and 3. The method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained. (*(Id.)*

Direct contracting — For the condition provided under Sec. 50(c) of RA No. 9184 to exist, three elements must be established: 1. The goods subject of the procurement are sold by an exclusive dealer or manufacturer; 2. The exclusive dealer or manufacturer does not have sub-dealers selling

the same goods at lower prices; and 3. There are no suitable substitutes for the goods offered by another supplier at terms more advantageous to the government. (Archbishop Fernando R. Capalla *vs*. Hon. Commission on Elections, G.R. No. 201112, Oct. 23, 2012; *Velasco, Jr., J., concurring opinion*) p. 644

Section 50 of — Provides the alternative conditions before a resort to direct contracting is permitted; direct contracting may be resorted to only in any of the following conditions: a. Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, i.e., when patents, trade secrets and copyrights prohibit others from manufacturing the same items; b. When the Procurement of critical components from a specific manufacturer, supplier, or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or c. Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government. (Archbishop Fernando R. Capalla *vs*. Hon. Commission on Elections, G.R. No. 201112, Oct. 23, 2012; *Velasco, Jr., J., concurring opinion*) p. 644

— The Deed of Sale for the acquisition of the PCOS machines and CCS hardware and software is exempt from competitive bidding as it involves good of "proprietary nature" or when they are owned by a person who has a protectable interest in them or an interest protected by the intellectual property laws. *(Id.)*

GRAVE ABUSE OF DISCRETION

Existence of — Denial by the RTC and the Court of Appeals of the motion to annotate *lis pendens* on the subject club membership certificates does not amount to grave abuse of discretion. (MR Holdings, Ltd. *vs*. Sheriff Bajar, G.R. No. 153478, Oct, 10, 2012) p. 10

— Utter disregard by the NLRC of the findings of the Regional Director and the DOLE Secretary amounts to grave abuse of discretion amounting to lack or excess of jurisdiction. (Norkis Trading Corp. *vs*. Buenavista, G.R. No. 182018, Oct. 10, 2012) p. 74

INTERESTS

Iniquitous and void interest — Interest of five percent (5%) a month is iniquitous and void, and may be reduced to a reasonable rate. (Menchanvez *vs.* Bermudez, G.R. No. 185368, Oct. 11, 2012) p. 447

JUDGES

Simple misconduct — A judge who solicits the sympathies and signatures of detention prisoners who had pending cases before her sala is guilty of simple misconduct. (Pros. Hydierabad A. Casar *vs*. Soluren, A.M. No. RTJ-12-2333 [Formerly OCA-IPI No. 11-3721-RTJ], Oct. 22, 2012) p. 564

Undue delay in the disposition of cases — Heavy caseload and demanding workload, not valid reasons to fall beyond the mandatory period for disposition of cases. (OCAD *vs*. Santos, A.M. No. MTJ-11-1787 [Formerly A.M. No. 08-5-146-MeTC], Oct. 11, 2012) p. 292

— Judge should always be mindful of their duty to render justice within the period prescribed by law. *(Id.)*

— Sanctions. *(Id.)*

JUDGMENTS

Execution of — An order of execution that varies the tenor of a final and executory judgment is null and void. (Gonzales *vs.* Solid Cement Corp., G.R. No. 198423, Oct. 23, 2012) p. 619

— The resolution of the court in a given issue embodied in the *fallo* or dispositive part of a decision or order is the controlling factor in resolving the issues in a case, hence, the execution must conform to what it ordains or decrees. *(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. (Gonzales *vs*. Solid Cement Corp., G.R. No. 198423, Oct. 23, 2012) p. 619

— Elucidated. *(Id.)*

— The immutability principle is inapplicable when a decision claimed to be final is not only erroneous, but null and void. *(Id.)*

Principle of judicial stability — The judgment or order of a court of competent jurisdiction, may not be interfered with by any court of concurrent jurisdiction, for the simple reason that the power to open, modify or vacate the said judgment or order is not only possessed by but is restricted to the court in which the judgment or order is rendered or issued. (Heirs of the Late Spouses Laura Yadno and Pugsong Mat-An *vs*. Heirs of the Late Spouses Mauro and Elisa Anchales, G.R. No. 174582, Oct. 11, 2012) p. 390

Void judgment — Deletion of monetary award based solely on immutability of the judgment in the original case is a wrong consideration that fatally afflicts and renders the ruling of the appellate court void. (Gonzales *vs*. Solid Cement Corp., G.R. No. 198423, Oct. 23, 2012) p. 619

JURISDICTION

Jurisdiction over the subject matter — Jurisdiction over the subject matter of the case is conferred by law and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to recover upon all or some of the claims asserted therein. (Rapsing *vs*. Hon. Judge Ables, G.R. No. 171855, Oct.15, 2012) p. 472

— Murder committed by members of the Armed Forces of the Philippines is within the jurisdiction of the Regional Trial Court. *(Id.)*

KIDNAPPING FOR RANSOM AND SERIOUS ILLEGAL DETENTION

Commission of — Elements. (People of the Phils. *vs*. Basao *alias* "Dodong", G.R. No. 189820, Oct. 10, 2012) p. 193

LABOR CONTRACTING OR SUB-CONTRACTING

Independent contracting — Requirements. (Digital Telecommunications Phils., Inc. *vs.* Digitel Employees Union [DEU], G.R. Nos. 184903-04, Oct. 10, 2012) p. 132

Labor-only contracting — A finding that a contractor is a "labor-only" contractor is equivalent to declaring that there is an employer-employee relationship between the principal and the employees of the supposed contractor, and the "labor-only" contractor is considered as a mere agent of the principal, the real employer; the former becomes solidarily liable for all the rightful claims of the employees. (Superior Packaging Corp. *vs*. Balagsay, G.R. No. 178909, Oct. 10, 2012) p. 62

— Effects where an employer is found to be engaged in labor-only contracting, enumerated. (Digital Telecommunications Phils., Inc. *vs*. Digitel Employees Union (DEU), G.R. Nos. 184903-04, Oct. 10, 2012) p. 132

Labor-only contracting and legitimate job contracting — Distinguished. (Norkis Trading Corp. *vs*. Buenavista, G.R. No. 182018, Oct. 10, 2012) p. 74

— Effects where an entity is declared to be a labor-only contractor. *(Id.)*

— Where transfer of employees supplied by labor-only contractor amounts to illegal dismissal. *(Id.)*

LEASE

Contract of lease with option to purchase — The provision on option to purchase is not separate from the main contract of lease. (Archbishop Fernando R. Capalla *vs*. Hon. Commission on Elections, G.R. No. 201112, Oct. 23, 2012) p. 644

Extension of period of lease — Inasmuch as the period in a lease is a vital and essential particular to the contract, the extension of the lease period, which was granted without the essential requisite of public bidding, is not in accordance with law. (Archbishop Fernando R. Capalla *vs*. Hon. Commission on Elections, G.R. No. 201112, Oct. 23, 2012; *Brion, J., dissenting opinion*) p. 644

LIS PENDENS

Concept — Elucidated. (MR Holdings, Ltd. *vs*. Sheriff Bajar, G.R. No. 153478, Oct, 10, 2012) p. 10

Notice of — Notice of *lis pendens* may not be availed of in actions involving title to or any right or interest in personal property. (MR Holdings, Ltd. *vs*. Sheriff Bajar, G.R. No. 153478, Oct, 10, 2012) p. 10

MARRIAGE

Declaration of nullity of marriage — Article 40 of the Family Code, which requires a final judgment declaring the previous marriage void before a person may contract a subsequent marriage should be applied retroactively. (Cipriano Montañez *vs*. Tajolosa Cipriano, G.R. No. 181089, Oct. 22, 2012) p. 586

Presumption of existence of marriage — Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration that the presumption is that the marriage exists. (Cipriano Montañez *vs*. Tajolosa Cipriano, G.R. No. 181089, Oct. 22, 2012) p. 586

NATIONAL LABOR RELATIONS COMMISSION

Rules of procedure — The Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case without regard to technicalities of law or procedure. (Ace Navigation Co., Inc. *vs*. Fernandez, G.R. No. 197309, Oct. 10, 2012) p. 250

OBLIGATIONS

Demand for payment — The employer's demand for payment of the employee's amortization on their car loans, or, in the alternative, the return of the cars to the employer, is not a labor, but a civil, dispute. (Manese *vs*. Jollibee Foods Corp., G.R. No. 170454, Oct. 11, 2012) p. 322

Indivisible obligations — Even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties. (Archbishop Fernando R. Capalla *vs*. Hon. Commission on Elections, G.R. No. 201112, Oct. 23, 2012; *Velasco, Jr., J., concurring opinion*) p. 644

Obligations with a period — There is no default where compliance therefor is demanded prior to date set. (RCJ Bus Lines, Inc. *vs*. Master Tours and Travel Corp. G.R. No. 177232, Oct. 11, 2012) p. 425

Reciprocal obligations — A construction contract necessarily involves reciprocal obligations as it imposes upon the contractor the obligation to build the structure subject of the contract, and upon the owner the obligation to pay for the project upon its completion. (Pascua *vs*. G & G Realty Corp., G.R. No. 196383, Oct. 15, 2012) p. 483

Solidary obligations — Joint tort feasors who acted together are solidarily liable. (Philippine Airlines, Inc. *vs*. Lao Lim, G.R. No. 168987, Oct. 17, 2012) p. 497

OBLIGATIONS, EXTINGUISHMENT OF

Compensation — The labor tribunal in an employee's claim for unpaid wages is without authority to allow the compensation of such claims against the post employment claim of the

former employer for breach of a post employment condition; the labor tribunal does not have jurisdiction over the civil case of breach of contract. (Portillo *vs*. Rudolf Lietz, Inc., G.R. No. 196539, Oct. 10, 2012) p. 232

Novation — A contract of lease and a contract of deposit create essentially distinct obligations that would result in a novation only if the parties entered into one after the other concerning the same subject matter. (RCJ Bus Lines, Inc. *vs*. Master Tours and Travel Corp. G.R. No. 177232, Oct. 11, 2012) p. 425

— Article 1292 of the Civil Code provides that in novation, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. *(Id.)*

Payment — Should be made to the proper person in order to be effective to discharge an obligation. (Sps. Dela Cruz *vs*. Concepcion, G.R. No. 172825, Oct. 11, 2012) p. 360

OWNERSHIP, MODES OF ACQUIRING

Prescription — The acts of possessory character executed by virtue of license or tolerance of the owner, no matter how long, do not start the running of the period of acquisitive prescription. (Arroyo *vs*. Rosal Homeowners Association, Inc., G.R. No. 175155, Oct. 22, 2012) p. 568

PAYMENT

Burden of proof — The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment. (Gonzales *vs*. Solid Cement Corp., G.R. No. 198423, Oct. 23, 2012) p. 619

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Application —While construed logically and liberally in favor of Filipino seamen, still the rule is that justice is in every case for the deserving, to be dispensed with in the light

of established facts, the applicable law, and existing jurisprudence. (Crewlink, Inc. and/or Gulf Marine Services *vs.* Editha Teringtering, G.R. No. 166803, Oct. 11, 2012) p. 302

Death compensation benefits — The death of a seaman during the term of employment makes the employer liable for death compensation benefits except if the employer can successfully prove that the seaman's death was caused by an injury directly attributable to his deliberate or willful act. (Crewlink, Inc. and/or Gulf Marine Services *vs.* Editha Teringtering, G.R. No. 166803, Oct. 11, 2012) p. 302

PLEADINGS

Amended and supplemental pleadings — Amendment to conform to or authorize presentation of evidence; explained. (Sps. Dela Cruz *vs.* Concepcion, G.R. No. 172825, Oct. 11, 2012) p. 360

Answer, filing of — It is within the discretion of the trial court to permit the filing of an answer even beyond the reglementary period, provided that there is justification for the belated action and there is no showing that the defendant intended to delay the case. (Hernandez *vs*. San Pedro Agoncillo, G.R. No. 194122, Oct. 11, 2012) p. 459

PRESCRIPTION OF ACTIONS

Action for reconveyance — The right to seek reconveyance does not prescribe where the person claiming to be owner of the property is in actual possession thereof. (Heirs of Dr. Mario S. Intac *vs*. CA, G.R. No. 173211, Oct. 11, 2012) p. 373

Action to recover property held in trust — Prescribes after ten years from the time the cause of action accrues. (Neri *vs*. Heirs of Hadji Yusop Uy, G.R. No. 194366, Oct. 10, 2012) p. 217

PROHIBITION OF FRATERNITIES AND SORORITIES IN ELEMENTARY AND SECONDARY SCHOOLS (DECS ORDER NO. 20, S. 1991)

Authority of private schools — Private schools still have authority to establish disciplinary rules and regulations even without such prohibition in DECS Order No. 20. (Sps. Go *vs*. Colegio De San Juan De Letran, G.R. No. 169391, Oct. 10, 2012) p. 31

Fraternities and sororities — Prohibition to join fraternities and sororities applies to all elementary and high school students of public and private schools. (Sps. Go *vs*. Colegio De San Juan De Letran, G.R. No. 169391, Oct. 10, 2012) p. 31

Penalty for non-compliance thereof — Violating students may be summarily dismissed. (Sps. Go *vs*. Colegio De San Juan De Letran, G.R. No. 169391, Oct. 10, 2012) p. 31

PROSECUTION OF OFFENSES

Criminal prosecutions — The petition assailing the ruling or order of the trial judge in a criminal case may be dismissed on technical grounds where the same was filed by private complainant and not by the Office of the Solicitor General except if the challenged order affects the interest of the State or the plaintiff People of the Philippines. (Montañez *vs*. Cipriano, G.R. No. 181089, Oct. 22, 2012) p. 586

PUBLIC BIDDING

Purpose — Public biddings are held for the best protection of the public and to give the public the best possible advantages by means of open competition between the bidder, and to change them without complying with the bidding requirement would be against public policy. (Archbishop Fernando R. Capalla *vs*. Hon. Commission on Elections, G.R. No. 201112, Oct. 23, 2012) p. 644

PUBLIC LAND ACT (C.A. NO. 141)

Homestead patent — Section 118 thereof, discussed. (Filinvest Land, Inc. *vs*. Abdul Backy, G.R. No. 174715, Oct. 11, 2012) p. 403

— The conditional sale entered into by the parties is still a conveyance of the homestead patent before the expiration of the five-year period. *(Id.)*

RAPE

Civil liabilities — If the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be ₱75,000, moral damages of ₱75,000.00, and exemplary damages of ₱30,000.00 for each count of rape which should bear interest at the legal rate of 6% reckoned from the filing of the complaint up to the finality of the judgment, after which the rate should be 12% per annum. (People of the Phils. *vs*. Delos Reyes, G.R. No. 177357, Oct.17, 2012) p. 531

Commission of — Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. (People of the Phils. *vs*. Delos Reyes, G.R. No. 177357, Oct.17, 2012) p. 531

— Though a man lays no hand on a woman, yet if by an array of physical forces, he so overpowers her mind that she does not resist, or she ceases resistance through fear of greater harm, the consummation of the sexual act is recognized in jurisprudence as rape. *(Id.)*

Element of violence or intimidation — In rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation. (People of the Phils. *vs*. Viojela *y* Asartin, G.R. No. 177140, Oct. 17, 2012) p. 513

Prosecution of rape cases — Delay in reporting rape incidents, in the face of physical violence, cannot be taken against the victims. (People of the Phils. *vs*. Delos Reyes, G.R. No. 177357, Oct.17, 2012) p. 531

— In a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things. (People of the Philippines *vs*. Viojela *y* Asartin, G.R. No. 177140, Oct. 17, 2012) p. 513

Qualified rape — Bare testimony that victim was below 12 years old is insufficient to qualify rape. (People of the Philippines *vs*. Viojela *y* Asartin, G.R. No. 177140, Oct. 17, 2012) p. 513

— Not appreciated as common-law relationship of the victim's mother and accused was not alleged in the information, and they were not married to support the alleged stepfather-stepdaughter relationship. *(Id.)*

Statutory rape — Sexual intercourse with a girl below 12 years old is referred to as statutory rape where force and intimidation are immaterial since the only subject of inquiry is (1) the age of the woman, and (2) whether carnal knowledge took place. (People of the Phils. *vs*. Viojela *y* Asartin, G.R. No. 177140, Oct. 17, 2012) p. 513

RECONSTITUTION OF TORRENS CERTIFICATE OF TITLE LOST OR DESTROYED, AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE (R.A. NO. 26)

Petition for reconstitution —The procedures and requirements in the reconstitution of lost or destroyed certificates of title depend on the source of the petition for reconstitution. (Rep. of the Phils. *vs*. Domingo, G.R. No. 197315, Oct. 10, 2012) p. 265

— The requirements under Sections 12 and 13 of R.A. No. 26 do not apply to all petitions for judicial reconstitution. *(Id.)*

— Where the source of the petition for reconstitution falls under Section 2 (a) of R.A. No. 26, the procedure and requirements that should be observed are those provided under Section 10 in relation to Section 9 of R.A. No. 26. *(Id.)*

RES JUDICATA

Concepts — Secs. 47 (b) and (c) of Rule 39 provides for the two (2) concepts of res judicata: bar by prior judgment and conclusiveness of judgment. (Norkis Trading Corp. *vs*. Buenavista, G.R. No. 182018, Oct. 10, 2012) p. 74

RIGHTS OF THE ACCUSED

Right to pray for affirmative relief before the courts — Once an accused escapes from prison or confinement, jumps bail, or flees to a foreign country, he loses his standing in court, and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief therefrom. (People of the Phils. *vs*. De Los Reyes, G.R. Nos. 130714 & 139634, Oct. 16, 2012) p. 491

ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS COMMITTED BY A BAND

Commission of — Elements. (People of the Phils. *vs*. Basao *alias* "Dodong", G.R. No. 189820, Oct. 10, 2012) p. 193

SALES

Interpretation of — The primary consideration in determining the true nature of a contract is the intention of the parties. (Heirs of Dr. Mario S. Intac *vs*. CA, G.R. No. 173211, Oct. 11, 2012) p. 373

Option to purchase — The option to purchase has its own period of existence, independent from the main contract. (Archbishop Fernando R. Capalla *vs*. Hon. Commission on Elections, G.R. No. 201112, Oct. 23, 2012; *Velasco, Jr., J., concurring opinion*) p. 644

— The option to purchase is an option contract preparatory to a contract of sale and distinct from the main contract of lease such that where the party failed to exercise the right to buy the leased goods at a fixed price within the option period, allowing the option to expire, the other party is released from its obligation to respect the former's

right or privilege to buy. (Archbishop Fernando R. Capalla *vs*. Hon. Commission on Elections, G.R. No. 201112, Oct. 23, 2012; *Brion, J., dissenting opinion*) p. 644

Perfection of contract of sale — In a contract of sale, its perfection is consummated at the moment there is a meeting of the minds upon the thing that is the object of the contract and upon the price. (Heirs of Dr. Mario S. Intac *vs*. CA, G.R. No. 173211, Oct. 11, 2012) p. 373

SETTLEMENT OF ESTATE OF A DECEASED PERSON

Appointment of an administrator — Circumstances showing unsuitability of the appointed administrator. (Suntay III *vs.* Cojuangco-Suntay, G.R. No. 183053, Oct. 10, 2012) p. 106

— Paramount consideration and order of preference in the appointment of an administrator, explained. *(Id.)*

Extrajudicial settlement — The settlement of estate is a total nullity where the heirs were admittedly excluded or not properly represented therein. (Neri *vs.* Heirs of Hadji Yusop Uy, G.R. No. 194366, Oct. 10, 2012) p. 217

Succession — Heirs acquire their respective shares in the properties of the decedent from the moment of the latter's death and as owners thereof, they can very well sell their undivided share in the estate. (Neri *vs.* Heirs of Hadji Yusop Uy, G.R. No. 194366, Oct. 10, 2012) p. 217

TAX REFUND

Requirements — In claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following basic requirements: (1) The claim for refund was filed within two years as prescribed under Section 229 of the NIRC of 1997; (2) The income upon which the taxes were withheld were included in the return of the recipient (Section 10, Revenue Regulations No. 6-85); and (3) The fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount

paid and the amount of tax withheld therefrom (Section 10, Revenue Regulations No. 6-85). (United International Pictures AB *vs*. Commissioner of Internal Revenue, G.R. No. 168331, Oct. 11, 2012) p. 312

TAXES

Corporate income tax — Once a corporation exercises the option to carry-over, such option is irrevocable for that taxable period. (United International Pictures AB *vs*. Commissioner of Internal Revenue, G.R. No. 168331, Oct. 11, 2012) p. 312

UNFAIR LABOR PRACTICES

Commission of — The dismissal constitutes an unfair labor practice under Article 248(c) of the Labor Code when certain services performed by union members-employees are contracted out to interfere with, restrain or coerce them in the exercise of their right to self-organization. (Digital Telecommunications Phils., Inc. *vs*. Digitel Employees Union (DEU), G.R. Nos. 184903-04, Oct. 10, 2012) p. 132

UNJUST ENRICHMENT

Principle of — There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited; and (2) such benefit is derived at the expense of or with damages to another. (Menchanvez *vs*. Bermudez, G.R. No. 185368, Oct. 11, 2012) p. 447

VOLUNTARY ARBITRATORS OR PANEL OF VOLUNTARY ARBITRATORS

Jurisdiction — The voluntary arbitrators or panel of voluntary arbitrators has jurisdiction where the collective bargaining agreement unmistakably reflects the agreement of the parties to submit their disputes to voluntary arbitration. (Ace Navigation Co., Inc. *vs*. Fernandez, G.R. No. 197309, Oct. 10, 2012) p. 250

— Upheld in recognition of the State's express preference for voluntary modes of dispute settlement. *(Id.)*

WITNESSES

Credibility of — A candid narration by a rape victim deserves credence particularly where no ill motive is attributed to the rape victim that would make her testify falsely against the accused. (People of the Phils. *vs*. Delos Reyes, G.R. No. 177357, Oct.17, 2012) p. 531

— Alleged inconsistencies are minor or trivial which serve to strengthen, rather than destroy, the credibility of the said witnesses as they erase doubts that the said testimonies had been coached or rehearsed. *(Id.)*

— Findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when affirmed by the CA, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case. (People of the Phils. *vs*. Delos Reyes, G.R. No. 177357, Oct. 17, 2012) p. 531

(People of the Phils. *vs*. Basao *alias* "Dodong", G.R. No. 189820, Oct. 10, 2012) p. 193

— Findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. (Philippine Airlines, Inc. *vs*. Lao Lim, G.R. No. 168987, Oct. 17, 2012) p. 497

— When the testimony of the rape victim corresponds with medical findings, there is sufficient basis to conclude that the essential requisites of carnal knowledge have been established. (People of the Phils. *vs*. Delos Reyes, G.R. No. 177357, Oct. 17, 2012) p. 531

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