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FROM

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MANILA
2015

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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. RTJ-96-1336. November 20, 2012]

JOCELYN C. TALENS-DABON, *complainant, vs.* **JUDGE HERMIN E. ARCEO, REGIONAL TRIAL COURT, BRANCH 43, SAN FERNANDO, PAMPANGA,** *respondent.*

RE: PETITION FOR JUDICIAL CLEMENCY OF THEN JUDGE HERMIN E. ARCEO.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; JUDICIAL CLEMENCY; GUIDELINES IN RESOLVING REQUESTS FOR CLEMENCY; APPLIED.— In *A.M. No. 07-7-17-SC (Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Clemency),* the Court laid down the following guidelines in resolving requests for judicial clemency, to wit: 1. There must be proof of remorse and reformation. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation. 2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reform. 3. The age of the person asking for clemency must show that he

still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself. 4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service. 5. There must be other relevant factors and circumstances that may justify clemency. Applying the foregoing standards to this case, the Court finds merit in respondent's prayer for the lifting of the ban against his re-employment in the government service.

2. ID.; ID.; ID.; ID.; PROBATIONER - JUDGE'S REMORSE AND REFORMATION AFTER HIS DISMISSAL FROM THE SERVICE MERITS THE COURT'S LIBERALITY.— Respondent has sufficiently shown his remorse and reformation after his dismissal from the service meriting the Court's liberality. While it may be conceded that respondent at 71 years old had already reached retirement age and can no longer be eligible for regular employment in the public service, yet, considering his achievements and mental aptitude, it cannot be doubted that he could still be of service to the government in some other capacity. In *Castillo v. Calanog, Jr.*, the Court lifted the penalty of disqualification imposed against the respondent judge found guilty of immorality after he showed sincere repentance and taking into account his contributions during his tenure in the judiciary. In *R*e: *Conviction of Imelda B. Fortus, Clerk III, RTC, Br. 40, Calapan City for the Crime of Violation of B.P. 22*, the Court dismissed the errant probationer-employee on the ground that the crime she committed involved moral turpitude but at the same time decreed that "*she may be allowed to re-enter the government service if she can prove that she is fit to serve again*."

3. ID.; ID.; ID.; ID.; ALL THE CIVIL RIGHTS WHICH THE PROBATIONER - JUDGE HAD LOST AS A RESULT OF HIS CONVICTION, INCLUDING THE RIGHT TO BE EMPLOYED IN THE PUBLIC SERVICE, WILL BE RESTORED UPON HIS DISCHARGE, AFTER COMPLYING WITH ALL THE CONDITIONS OF HIS PROBATION.— True, respondent was convicted by the *Sandiganbayan* in its November 11, 2004 Decision in Criminal Case Nos. 24198-24199 for violation of the Anti-Sexual Harassment Law and Article 336 of the Revised

Penal Code, respectively. Records, however, reveal that he was granted probation and finally discharged after having complied with all the conditions thereof. Concomitantly, all his civil rights which he had lost as a result of his conviction, including the right to be employed in the public service, were restored.

4. ID.; ID.; DISMISSAL; ACCRUED LEAVE CREDITS ARE EXEMPT FROM THE FORFEITURE OF BENEFITS.— On respondent's request for payment of accrued leave credits during his tenure in the government, Section 11, paragraph 1 of Rule 140 of the Rules of Court explicitly exempts accrued leave credits from the forfeiture of benefits, thus: Section 11. *Sanctions*. - A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporations: Provided, *however*, That the forfeiture of benefits shall in no case include accrued leave credits; Moreover, Civil Service Commission Memorandum Circular (MC) No. 41, Series of 1998, as amended by MC No. 14, s. of 1999, provides: x x x Section 65. Effect of decision in administrative case. - An official or employee who has been penalized with dismissal from the service is likewise not barred from entitlement to his terminal leave benefits. Jurisprudence is likewise replete with cases wherein dismissed judges and government personnel or officials were allowed to claim their earned/accrued leave credits and other monetary benefits.

APPEARANCES OF COUNSEL

Malcolm Law for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For resolution is the Petition for Judicial Clemency[1] filed by Hermin E. Arceo (respondent), former Presiding Judge of the

[1] *Rollo*, pp. 403-415.

Regional Trial Court, Branch 43, San Fernando, Pampanga, seeking to lift the ban against his employment in any branch of the government, including government-owned or -controlled corporations, and to be allowed to receive his accrued leave credits and other monetary benefits.

In the Decision[2] dated July 25, 1996, the Court dismissed respondent from service for committing lewd and lustful acts against complainant Atty. Jocelyn Talens-Dabon which constituted gross misconduct and immorality prejudicial to the best interest of the service. The dispositive portion of the subject Decision reads:

> WHEREFORE, Judge Hermin E. Arceo is hereby DISMISSED from the service for gross misconduct and immorality prejudicial to the best interest of the service, with forfeiture of all retirement benefits and with prejudice to re-employment in any branch of the government, including government-owned and controlled corporations. This decision is immediately executory.
>
> SO ORDERED.

Thereafter, respondent filed the following pleadings: (a) Motion for Reconsideration with Leave of Court;[3] (b) Motion for Leave to File Second Motion for Reconsideration and for Admission of herein Second Motion for Reconsideration,[4] which were denied in the Resolutions dated August 27, 1996[5] and October 22, 1996,[6] respectively; and (c) a Personal Plea for Reinstatement[7] dated December 17, 1997, which was merely noted without action in the Resolution[8] dated January 27, 1998.

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[2] *Id.* at 251-268.

[3] *Id.* at 276-352.

[4] *Id.* at 355-372.

[5] *Id.* at 353.

[6] *Id.* at 373.

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

[8] *Id.* at 401.

On October 1, 2012, sixteen (16) years after his dismissal, respondent filed the instant petition alleging that he had immensely suffered from and endured the stigma caused by his dismissal from the service. He also claimed to have been humbled by his experience and has become remorseful of his previous acts causing him to reform his ways and treat each person with dignity and respect. He has devoted the past sixteen (16) years to "mending his ways and proving to himself and to the community that he can be a better man."[9]

In *A.M. No. 07-7-17-SC (Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Clemency)*,[10] the Court laid down the following guidelines in resolving requests for judicial clemency, to wit:

1. There must be proof of remorse and reformation. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.
2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reform.
3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.
4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service.
5. There must be other relevant factors and circumstances that may justify clemency. (Citations omitted)

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[9] *Id.* at 404-406.

[10] September 19, 2007, 533 SCRA 534, 539.

Applying the foregoing standards to this case, the Court finds merit in respondent's prayer for the lifting of the ban against his re-employment in the government service.

Records show that after his dismissal from the service, respondent engaged in private practice and most of his cases involve poor litigants, neighbors and close friends.[11] He also submitted a Certificate of Good Moral Character[12] dated July 16, 2012 issued by Maria Theresa V. Mendoza-Arcega, Acting Executive Judge of the Regional Trial Court of Malolos City, Bulacan and Certificate of Favorable Endorsement[13] dated July 27, 2012 from Cecilio C. Villanueva, President of the Integrated Bar of the Philippines (IBP) Marcelo H. Del Pilar (Bulacan Chapter) attesting to his reformation and recognizing his valuable contributions to the bar and the bench. For these services, he was given the award *Gawad Bunying Abogadong Bulakenyo* on August 25, 2011.[14] The Court also notes the many years that had elapsed from the time of his dismissal and recognizes respondent's dedication, citations and contributions[15] to the legal profession and to the judiciary prior to his dismissal from the service.

Respondent has sufficiently shown his remorse and reformation after his dismissal from the service meriting the Court's liberality. While it may be conceded that respondent at 71 years old[16] had already reached retirement age and can no longer be eligible for regular employment in the public service, yet, considering his achievements and mental aptitude, it cannot be doubted that he could still be of service to the government in some other capacity. In *Castillo v. Calanog, Jr.*,[17] the Court lifted the penalty of disqualification imposed against the respondent judge

[11] *Rollo*, p. 404.

[12] *Id.* at 416.

[13] *Id.* at 417-420.

[14] *Id.* at 418.

[15] *Id.* at 407-410.

[16] *Id.* at 404.

[17] A.M. No. RTJ-90-447, December 16, 1994, 239 SCRA 268.

found guilty of immorality after he showed sincere repentance and taking into account his contributions during his tenure in the judiciary. In *Re*: *Conviction of Imelda B. Fortus, Clerk III, RTC, Br. 40, Calapan City for the Crime of Violation of B.P. 22*,[18] the Court dismissed the errant probationer-employee on the ground that the crime she committed involved moral turpitude but at the same time decreed that "*she may be allowed to re-enter the government service if she can prove that she is fit to serve again*."

True, respondent was convicted by the *Sandiganbayan* in its November 11, 2004 Decision[19] in Criminal Case Nos. 24198-24199 for violation of the Anti-Sexual Harassment Law and Article 336 of the Revised Penal Code, respectively. Records, however, reveal that he was granted probation[20] and finally discharged[21] after having complied with all the conditions thereof. Concomitantly, all his civil rights which he had lost as a result of his conviction, including the right to be employed in the public service, were restored.[22]

On respondent's request for payment of accrued leave credits during his tenure in the government, Section 11, paragraph 1 of Rule 140 of the Rules of Court explicitly exempts accrued leave credits from the forfeiture of benefits, thus:

Section 11. *Sanctions*. - A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporations: Provided, *however*,

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[18] A.M. No. P-04-1808, June 27, 2005, 461 SCRA 231, 235; See also *OCA v. Librado*, A.M. No. P-94-1089, August 22, 1996, 260 SCRA 624.

[19] *Rollo*, pp. 423-451.

[20] *Id.* at 466-470.

[21] *Id.* at 473.

[22] *Moreno v. Commission on Elections*, G.R. No. 168550, August 10, 2006, 498 SCRA 547, 559.

That the forfeiture of benefits shall in no case include accrued leave credits;

Moreover, Civil Service Commission Memorandum Circular (MC) No. 41, Series of 1998, as amended by MC No. 14, s. of 1999, provides:

Section 37. Payment of terminal leave. - Any official/employee of the government who retires, voluntarily resigns, or is separated from the service and who is not otherwise covered by special law, shall be entitled to the commutation of his leave credits exclusive of Saturdays, Sundays and Holidays without limitation and regardless of the period when the credits were earned.

Section 65. Effect of decision in administrative case. - An official or employee who has been penalized with dismissal from the service is likewise not barred from entitlement to his terminal leave benefits.

Jurisprudence is likewise replete with cases wherein dismissed judges and government personnel or officials were allowed to claim their earned/accrued leave credits and other monetary benefits.[23]

WHEREFORE, premises considered, Hermin E. Arceo is hereby **GRANTED** judicial clemency lifting the ban against his disqualification from re-employment in any branch of the government, including government-owned or -controlled corporations.

The Fiscal Management and Budget Office is ordered to compute the accrued leave credits of respondent, if any, and to release the same to him.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Velasco, Jr., Peralta, and *Reyes, JJ.,* on official leave.

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[23] See *Meris v. Ofilada,* A.M. Nos. RTJ-97-1390 and RTJ-98-1411, October 17, 2001, 367 SCRA 321; *Paredes v. Padua,* A.M. No. CA-91-3-P, April 14, 2004, 427 SCRA 134; *Junio v. Rivera, Jr.,* A.M. No. MTJ-91-565, October 5, 2005, 472 SCRA 69; *Garcia v. De la Peña,* A.M. No. MTJ-92-687, December 8, 2008, 573 SCRA 172; and *Igoy v. Soriano,* A.M. No. 2001-9-SC, July 14, 2006, 495 SCRA 1.

EN BANC

[G.R. No. 176172. November 20, 2012]

EFREN G. AMIT, *petitioner, vs.* **COMMISSION ON AUDIT, REGIONAL OFFICE NO. VI, OFFICE OF THE OMBUDSMAN (VISAYAS), and THE SECRETARY OF AGRICULTURE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; AN OCCUPANT OF A HIGH OFFICE MUST ACT IN ACCORDANCE WITH THE DEMANDS OF THE RESPONSIBILITY ATTACHED TO THE OFFICE HE IS OCCUPYING AND MUST BE MORE CIRCUMSPECT IN HIS ACTIONS OR IN THE DISCHARGE OF HIS OFFICIAL DUTIES.— [A]mit's acts did not result from a mere failure to exercise the necessary prudence in complying with the proper procedure. The performance of the complained acts was discretionary on his part. **Amit's acts were done willfully and deliberately.** They were done without regard to the high positions that he occupied, which impose upon him greater responsibility, and obliged him to be more circumspect in his actions or in the discharge of his official duties. Amit, for instance, inexplicably signed the issue slips **despite his alleged knowledge that these documents were unnecessary.** With Amit's signing of the documents, however, the immediate release of the funds was facilitated. This indicates shortsightedness on the part of Amit which is so gross that it cannot be considered a result of indifference or carelessness. Amit simply failed to conduct himself in the manner expected of an occupant of a high office. In other words, he failed to act in accordance with the demands of the responsibility that attaches to the office he was occupying.

2. REMEDIAL LAW; EVIDENCE; CONSPIRACY; PRESENT WHERE THE ACTS OF THE PARTIES POINTED TO ONE CRIMINAL INTENT WITH ONE PARTICIPANT PERFORMING A PART OF THE TRANSACTION AND THE OTHERS PERFORMING OTHER PARTS OF THE SAME TRANSACTION TO COMPLETE THE WHOLE SCHEME, WITH A VIEW OF

ATTAINING THE OBJECT WHICH THEY WERE PURSUING.— [T]he Ombudsman's finding of conspiracy reveals the crucial role which Amit played in the commission of fraud with other officials. **Amit's acts were one of the more, if not the most, indispensable, final, and operative acts that ultimately led to the consummation of the fraud.** No disbursement or release of government funds could happen without Amit's imprimatur. Amit's participatory acts were, in other words, of a degree that their absence could have prevented the completion of the acts complained of. **Amit's role in the committed irregularities shows his concurrence – although based on circumstantial, not direct, evidence – with the other officials' objective to defraud the government**. The irregularities will not see their fruition if Amit and the other officials involved in the fraud did not consent to its implementation by making it appear that there were valid requisitions, deliveries, inspections, pre-auditing and approval of the vouchers and checks paid to the contractors/suppliers. **These acts pointed to one (1) criminal intent – with one participant performing a part of the transaction and the others performing other parts of the same transaction to complete the whole scheme, with a view of attaining the object which they were pursuing.** In other words, there was the required concurrence of wills supporting the finding of conspiracy, **made more pronounced** in the case of Amit because of his positions and peculiarly important role in the completion of the acts.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; FULL RELIANCE ON THE ACTS OF THE SUBORDINATES IS ANTITHETICAL TO THE DUTIES IMPOSED UPON THOSE OCCUPYING HIGH POSITIONS.— [A]mit's defense – the alleged reliance on the acts of his subordinates in good faith – is simply unacceptable. Public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives. This high constitutional standard of conduct is not intended to be mere rhetoric; those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service. As such, Amit has the duty to supervise his subordinates – he must see to it that his

subordinates have performed their functions in accordance with the law. We cannot allow him to simply interpose this defense, as he is precisely duty-bound to check whether these acts are regular, lawful and valid, and his full reliance on the acts of his subordinates is antithetical to the duties imposed by his position on them. The excuse or defense is totally unacceptable, too, given that **the transaction relates to disbursement of public funds**, over which great responsibility attaches.

4. ID.; ID.; ID.; MISCONDUCT, ELABORATED; CORRUPTION AS AN ELEMENT OF GRAVE MISCONDUCT CONSISTS IN THE OFFICIAL'S UNLAWFUL AND WRONGFUL USE OF HIS STATION OR CHARACTER TO PROCURE SOME BENEFIT FOR HIMSELF OR FOR ANOTHER PERSON, CONTRARY TO THE DUTY AND RIGHTS OF OTHERS.— [A]mit did not wholly rely on the acts of his subordinates. As earlier mentioned, he performed functions using independent judgment. Amit signed the issue slips despite the absence of some of the required documents for the release of government funds for the MPDP projects. **By his admission too, Amit voluntarily agreed to a system, per the Accounting Division's prodding, that purportedly shows disbursement of funds for supplies and materials, when in truth and in fact, the disbursement is actually for reimbursement of advances by recipient farmers' organizations.** Viewed in these lights, the Court of Appeals committed no reversible error of law in affirming the Ombudsman's decision. "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. As differentiated from simple misconduct, in grave misconduct[,] the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest." "[C]orruption as an element of grave misconduct consists in the official's **unlawful and wrongful use of his station** or character [reputation] to procure some benefit for himself or for another person, **contrary to duty** and the rights of others." In *Manuel v. Judge Calimag, Jr.*, we held: By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x *It is settled that misconduct, misfeasance, or malfeasance* ***warranting removal from office of an officer must have direct***

relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office[.] We declared in *Office of the Ombudsman v. Apolonio* that "if a nexus between the public [officer's] acts and functions is established, such act is properly referred to as misconduct."

5. ID.; ID.; ID.; THE PRESENCE OF CORRUPT MOTIVE AND FLAGRANT DISREGARD OF THE RULES QUALIFY PETITIONER'S ACTS TO GRAVE MISCONDUCT.— Amit's acts were well within the scope of his functions. There is no doubt that his inability to live up to the standards so imposed on him in the performance of his duties is misconduct. In this case, the misconduct cannot be considered simple misconduct; it is grave misconduct, considering the presence of the qualifying elements of corrupt motive and flagrant disregard of the rules taken from a collective consideration of the circumstances of the case.

APPEARANCES OF COUNSEL

Turuel Law Office for petitioner.
Arnel T. Jaranilla for respondents.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the decision[2] dated July 18, 2006 and the resolution[3] dated December 21, 2006 of the Court of Appeals (*CA*) in CA-G.R. CEB-SP No. 01398, which affirmed the decision[4] dated July 9, 2004 of the Office of the Ombudsman

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[1] *Rollo*, pp. 12-45.

[2] *Id*. at 49-55. Penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Agustin S. Dizon.

[3] *Id*. at 68-69.

[4] *Id*. at 102-245.

(Visayas) (*Ombudsman*) in OMB-VIS-ADM-2001-0137. The Ombudsman found petitioner Efren G. Amit guilty of five counts of grave misconduct and gross dishonesty for which he was dismissed from the service, with forfeiture of benefits and disqualification from holding public office.[5]

The Facts

The special audit results, conducted by the respondent Commission on Audit (*COA*) on the Multi-Purpose Drying Pavement (*MPDP*) projects, under the Grains Production Enhancement Program of the Department of Agriculture Regional Field Unit No. (*DA RFU*) 6, are as follows:

1. **Nineteen (19) MPDP projects** in the Province of Iloilo **do not exist**, resulting to the loss of **₱1,130,000.00** on the part of the government.

2. **The construction of 101 MPDP projects in the Province of Iloilo falls short of the standard measurement of 420 square meters** as per approved plan and specifications of DA RFU 6, Iloilo City, resulting in an estimated loss of ₱879,301.00 on the part of the government.

3. **The checks** representing the reimbursement for the cost of materials for the construction of the MPDP projects **were released to persons other than the payee, without authority from the recipient, MCPI,** in violation of COA Circular 92-386 and Article 1240 (*sic*) of the Revised Penal Code.

4. **The supplies and materials for the construction of the MPDP projects were procured by DA RFU 6**, in violation of the Memorandum of Agreement.[6]

For these irregularities, eleven (11) government employees (including Amit) – allegedly responsible for the ghost projects and the misappropriation – were administratively charged before the Ombudsman.

Amit was a Senior Agriculturist of DA RFU 6, designated to hold the concurrent positions of Chief of the Regional

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

[6] *Id*. at 103-198.

Agricultural Engineering Group, Iloilo City, and DA Provincial Coordinator of the Province of Antique for Infrastructure Projects.[7] **He approved five issue slips of materials for the construction of MPDP units** in: 1) Poblacion Batad, Iloilo; 2) Barangay Ginomay, Alimodian, Iloilo; 3) Barangay Lapayon, Leganes, Iloilo; 4) Barangay Cayos, Dumangas, Iloilo; and 5) Barangay San Diego, Lemery, Iloilo; and signed the disbursement voucher for the MPDP project in Barangay Ginomay, Alimodian, Iloilo.

The MPDP Project Processes and Procedure

The decision of the Ombudsman summarizes the MPDP project processes and procedures as follows:

In [MPDP] projects, the DA-6 and the beneficiary [MCPI] are required to enter into a Memorandum of Agreement with the following terms:

The DA Regional Field Office shall:

1) Administer, manage and disburse the FUND in accordance with government accounting and auditing rules and regulations;

2) Maintain separate books of account and record all transactions related to the FUND'S utilization under trust fund, 200-07, and maintain a separate subsidiary ledger for each grantee;

3) Reimburse through full payment the actual expenses incurred by the recipient for supplies and materials relative to the construction of the pavement in the amount not exceeding ₱60,000.00, and payment shall be released only upon recipient's submission of official receipt/s for actual expenses incurred for supplies and materials;

4) Prepare a monthly report of disbursement attested to by its resident auditor and submit the same to the DA Central Office together with duplicate copies of the disbursement vouchers

[7] *Id*. at 14.

and complete supporting documents, as liquidation of funds utilized for the implementation of the project covered by the budget;

5) Furnish the Regional Auditor a copy of the Agreement and other pertinent documents;

6) Conduct periodic inspections to ascertain progress of work, proper fund utilization and the recipient's compliance with the specifications of the MPDP.

The recipient shall:

1) Acknowledge acceptance of payment upon receipt of the fund in the form prescribed by the DA regional office;

2) Provide labor for the clearing and preparation of the area and the construction of the MPDP;

3) Conduct a canvass of at least three (3) reputable suppliers in the area who can offer the most beneficial terms for the supply of the materials required in the construction of the MPDP;

4) Advance the initial expenses for the supplies and materials relative to the project and finish the construction of the MPDP in strict conformity with the project's purpose and specifications and, save for justifiable causes, within thirty (30) days from the signing of the Agreement;

5) Make available project records and related documents to the DA Regional Office's representative for inspection;

6) Ensure that the MPDP is at all times properly identified and labeled as a DA Multi-Purpose Drying Pavement;

7) Whenever feasible and without, in any way, detracting from the grant's major purpose and the recipient's priority of usage, allow the pavement's use for the immediate community's social and other activities. To this end, the recipient shall promulgate rules relative to the pavement's usage, copy furnished the DA Regional Office and the community's Barangay Captain;

8) Assume/shoulder the cost of the required supplies and materials in excess of ₱60,000.00;

9) Desist/refrain from the introduction of any modification or the construction of any building or structure on the MPDP which will defeat the grant's purpose;

10) Refund/return to the DA Regional Office the total amount received from the DA in cases of a) commission of fraud and/or misrepresentation thereof; b) Non-compliance with the project's specifications; and c) any other violation of the Agreement.[8] (emphases ours)

There must also be a stipulation that in case of fraud or misappropriation of the fund granted to the beneficiary, the latter, represented by its board of directors and officers, shall be subject to administrative and penal sanctions.[9]

Under DA Special Order No. 165, issued on December 6, 1996, **the following must be submitted by the beneficiary Multi-Purpose Cooperative, Inc. for the *reimbursement of funds*** used in the construction of an MPDP:

1) Requisition and issue voucher;
2) Canvass papers;
3) Abstract of canvass;
4) Purchase order;
5) CAF (COA);
6) COA Circular No. 76-34;
7) COA Memo. No. 83-333;
8) Charge invoice/bill of collection;
9) Inspection report by a DA and COA representative;
10) Inspection report by the LGU committee;
11) Memorandum of Agreement;
12) Two (2) copies of pictures (of the MPDP);
13) Deed of donation/usufruct;
14) Certificate of registration; and
15) Resolution.[10] (emphasis ours)

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[8] *Id*. at 199-203.

[9] *Id*. at 203.

[10] *Id*. at 204.

For the expenses and cost of materials related to the 1998 MPDP projects to be reimbursed to the farmers' organizations, the following must be submitted:

1) Project proposal;
2) Resolution;
3) Memorandum of agreement;
4) Approved plans and specifications;
5) Notices to commence;
6) Delivery/official receipts;
7) Request for inspection of supplies and materials from the beneficiary farmers[']s organizations;
8) Inspection report of all specified materials procured and delivered;
9) Certificate of final completion to be signed by the chairman of the farmers' organization[s] or his duly authorized representatives;
10) Request from the beneficiary farmers' organization[s] for inspection of completed projects addressed to the DA-6 Inspection Committee and the COA;
11) Report of inspection by the DA-6 with a COA representative (a written manifestation is to be made by the COA in the absence of its representative);
12) Two (2) copies of MPDP pictures with the farmers' organization Chairman and marketing (sic) label – "MPDP-DA-FO Project";
13) Certificate of acceptance from the farmers' organization[s], noted by the Municipal Agriculture Officer.[11] (emphasis ours)

The Findings of the Ombudsman

The Ombudsman found all the officials so charged **guilty of grave misconduct and dishonesty for conspiring in the falsification of documents to facilitate the disbursement and misappropriation of the funds intended for the MPDP projects.** It imposed on all of the officials the penalty of dismissal from the public service, with forfeiture of benefits and disqualification from holding public office.[12] This conclusion was based on the following findings:

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[11] *Id.* at 204-206.

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

When the Audit Team, however, examined the vouchers covering the claims for reimbursements of supplies and materials used for the MPDP's, **only the following documents were attached thereto**:

1) Memoranda of Agreement;
2) Requests for obligation of allotment;
3) Certificates as to availability of fund;
4) Requisition Issue Vouchers;
5) Canvass of prices;
6) Abstracts of Canvass;
7) Purchase orders;
8) Reports of inspection of delivery of materials;
9) Reports of acceptance of delivery;
10) Request issue slips;
11) Supplier's official receipts;
12) Duplicate copies of checks issued;
13) Acknowledgment receipts; [and]
14) RAEG's Inspection reports as to 100% completion of projects.

Respondent Legaspi, himself, admits that the requirements he enumerated were not complied with.

In some vouchers, **the signatures of the [MCPI] Chairmen and officers in the Memoranda of Agreement greatly differ from the signatures attributed to them** in the documents attached to the vouchers, such as the:

1) Canvass papers;
2) Abstracts of canvass;
3) Reports of inspection;
4) Certificates of acceptance;
5) Acknowledgment receipts; and
6) Requisition and issue voucher.

According to the Chairmen and officers of some beneficiary cooperatives, **they were given sets of documents** – MOA, canvass papers, abstracts of canvass, acknowledgment receipts, inspection reports as to the delivery of materials, and certificates of acceptance of items delivered, by DA personnel, Provincial and/or municipal agriculturists – **for them to sign. All those documents, except the MOA, were in blank.**

A canvass was required to be made by the recipients of at least three (3) reputable suppliers in the area who can offer the most beneficial terms in the purchase of materials necessary for the construction of an MPDP. **It is apparent, however, that no canvass were made by the recipients,** and in the canvass papers, only three (3) suppliers were involved, namely: AVV Marketing, Marietta Marketing and Datsan Multi-Traders, all with business addresses in Iloilo City, and **only one supplier – the AVV Marketing of respondent Villaruz – was awarded the right to supply the materials in the nineteen (19) MPDP projects**.

The purchase orders were signed, and the supplies were paid for, not by the recipients but by (officials of) the DA-6 despite the provisions of the Memoranda of Agreement that it was the recipients who shall purchase the necessary materials, subject to reimbursement from the DA-6 upon completion of all the requirements therefor.

According to respondents Gonzales and Josefa Majaducon, the "paper flow" for the processing of claims for payment at the DA-6 is as follows:

a) The claim for payment starts at the office of the division chief concerned where the project to be paid belongs. There, Box A of the Voucher is signed by the division chief concerned;

b) The voucher and the supporting documents are brought to the Budget Section for the allocation of funds and the preparation and signature of the Request for Obligation of Allotment (ROA);

c) The Budget Section sends the documents to the Office of the Accountant for processing and preparation of the voucher for payment;

d) The Office of the Accountant sends the voucher and supporting documents to the Regional Director for the approval of the voucher;

e) After approval of the voucher, the claim is sent to the Cashier's Office for the preparation of the check;

f) **The check and the rest of the documents are then sent to the Office of the Regional Director for counter-signature**;

g) Thereafter, the check and the documents are sent to the Releasing Clerk in the Cashier's Office for release to the payee or his duly authorized representative.

Had there been no predisposition on the part of the respondents to release the funds, none of them could have failed to notice the foregoing irregularities. Moreover, there is no evidence that efforts have been exerted to recover the funds from the beneficiaries or make them answerable therefor as stipulated in the memoranda of agreement covering the subject projects. Worse, although the vouchers and checks covering the subject MPDP projects were in the name of the beneficiary [MCPI]'s, the Warrant Registry Book shows that the checks were released to Dan Villaruz, Jr. or his representative, without written authority (such as special power of attorney) from the said beneficiaries. None of the [MCPI] officers admits (sic) having received any check from the DA-6, and even those few among them who received something for the construction of MPDP's, what they received were materials, not money or check. *One could not help but conclude that there existed conspiracy among the respondents and officers/ members of some of the beneficiaries/cooperatives*.

There is substantial evidence, therefore, that the respondents, conspiring and confederating with one another, falsified documents to facilitate the disbursement of, and misappropriated, the funds intended for the subject MPDP projects.[13] (emphases and italics ours)

Amit moved to reconsider the decision, essentially objecting to the Ombudsman's finding of conspiracy. Amit argued that there was no evidence of an agreement between him and all the other officials to commit the alleged fraud.

The Ombudsman denied the motion on the following reasoning:

As we have pointed out in the questioned Decision, **Sixteen (16) of the subject MPDP projects were not implemented[,] but the funds intended therefor were disbursed and released**. In other words, these projects turned out to be "ghosts". Not only that.

None of the respondents-movants disputed the findings of this Office and the COA-6 that so **many of the documents,** including photographs of the MPDP's with the MCPI's chairman and a label – "MPDP-DA-FO Project", **which were required to be submitted by the beneficiary [MCPI]'s before the release of the funds, were not submitted.**

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[13] *Id.* at 206-211.

In some vouchers, **the signatures of the [MCPI] chairpersons and officers affixed in the memoranda of agreement differ from those attributed to them** in the documents attached to the vouchers, such as the canvass papers, abstracts of canvass, reports of inspection, certificates of acceptance, acknowledgment receipts and requisition and issue vouchers.

A canvass was required to be done by the beneficiaries themselves from at least three (3) reputable suppliers in the areas concerned. But it is apparent that **no canvass was made by the beneficiaries.** Canvass papers were produced with the names of only Three (3) suppliers, all based in Iloilo City, appearing thereon.

The purchase orders were signed, and the supplies were paid for, not by the recipients as required[,] but by DA-6 officials.

Despite the provisions of the memoranda of agreement that the DA-6 must maintain separate books of account and record all transactions related to the utilization of the MPDP funds under trust fund, **those funds were actually released under supplies and materials.**

We wonder how the non-implementation or non-existence of not one but sixteen MPDP projects, and the anomalies in the documents that supported the vouchers and the process by which the funds were disbursed and released, could have escaped the notice of the officials responsible therefor.

Nevertheless, we did not just conclude from the foregoing facts that the respondents, including the movants, are liable therefor. Our findings were based on the actual individual participation of the respondents in the processes by which the funds intended for the non-existent MPDP's were disbursed, released and eventually, misappropriated.

The findings of this Office in OMB-V-C-02-0389-G that only ABUNDIO M. LEGASPI, JR. is liable for the deficiencies in Thirty (30) other MPDP's is irrelevant in this case. Suffice it to say that in those MPDP's, only deficiencies were found.

Instead of helping his defense, the allegations of respondent Amit that the Issue Slips were totally unnecessary seem to strengthen the evidence against him. **He knew that [the] Issue Slips were not necessary, why did he not just tell the accounting section of the DA-6 that he was not signing those documents because they were not necessary?** That what was done – releasing the MPDP funds

under supplies and materials – was irregular? **But considering that purchases made under supplies and materials expense must be released through the issuance of Issue Slips, the issuance by respondent Amit of the Issue Slips of materials were intended to facilitate, as it facilitated, the disbursement and release of the misappropriated funds.**[14] (emphases ours)

The Rule 43 Petition with the CA

Thereafter, Amit filed a petition for review under Rule 43 of the 1997 Rules of Court with the CA. The CA denied the petition on the reasoning that the decision of the Ombudsman was supported by substantial evidence – *i.e.*, affidavits, special audit report, and COA inspection report – that are entitled to great respect and credence.

The CA also ruled that **the approval of the issue slips of construction materials for the MPDP projects is not ministerial, but involves the determination of the propriety or impropriety of approving the same, as well as the duty to verify whether the materials were actually issued and received by the recipient farmers' organizations;** and that Amit is not obliged to approve them, but **he did despite knowledge that the DA was never in possession of construction materials because it was not involved in the requisition, canvass and purchase thereof.**[15] It affirmed the Ombudsman's ruling stated in the order denying the motion for reconsideration.[16]

Amit moved to reconsider the denial of his petition but the CA denied the motion. Hence, the present petition.

The Petition

Amit argues in his petition that he cannot be held liable for falsification because:

1. the issue slips, which were ordinarily used in the requisition and procurement of supplies and materials by the DA RFU

[14] *Id*. at 340-343.

[15] *Id.* at 52.

[16] *Id.* at 55.

6, were unnecessary in the implementation of the MPDP projects since the DA merely reimburses the actual expenses incurred by the farmers' organizations in the construction of the MPDP;

2. due to the error in releasing funds under supplies and materials, the issue slips were required by the Accounting Section for the purpose of dropping the entry of inventory for supplies and materials in the Monthly Report of Supplies and Materials which he followed because he believed that the Accounting Section was better equipped to determine the requirements for the disbursement of funds;

3. in signing the issue slips, neither did he make it appear that the construction materials listed therein have been issued and delivered to the farmers' organizations since he had no participation in the procurement, canvass, delivery, receipt and acceptance of materials, nor did he certify on the delivery and acceptance of the materials, which functions pertained to the Reports of Inspection and the Certificate of Acceptance by the farmers' organizations concerned; and

4. the issue slips were not intended to facilitate the release of funds because under the memorandum of agreement, full payment shall be released upon the recipient's submission of official receipts for the actual expenses incurred in the construction of the MPDP, subject to the issuance by the DA of the Certificate of Inspection on the full completion of the projects, which he had no participation in the issuance thereof.[17]

He also argues that there was no conspiracy between him and the other officials in the administrative case to falsify documents to facilitate the disbursement and release of public funds and/or to misappropriate the funds.[18]

The Court's Ruling

The petition lacks merit.

First, Amit's acts did not result from a mere failure to exercise the necessary prudence in complying with the proper procedure.

[17] *Id.* at 22-33.

[18] *Id.* at 33.

The performance of the complained acts was discretionary on his part. **Amit's acts were done willfully and deliberately.** They were done without regard to the high positions that he occupied, which impose upon him greater responsibility, and obliged him to be more circumspect in his actions or in the discharge of his official duties.

Amit, for instance, inexplicably signed the issue slips **despite his alleged knowledge that these documents were unnecessary.** With Amit's signing of the documents, however, the immediate release of the funds was facilitated. This indicates shortsightedness on the part of Amit which is so gross that it cannot be considered a result of indifference or carelessness. Amit simply failed to conduct himself in the manner expected of an occupant of a high office. In other words, he failed to act in accordance with the demands of the responsibility that attaches to the office he was occupying.

Second, the Ombudsman's finding of conspiracy reveals the crucial role which Amit played in the commission of fraud with other officials. **Amit's acts were one of the more, if not the most, indispensable, final, and operative acts that ultimately led to the consummation of the fraud.** No disbursement or release of government funds could happen without Amit's imprimatur. Amit's participatory acts were, in other words, of a degree that their absence could have prevented the completion of the acts complained of.

Amit's role in the committed irregularities shows his concurrence – although based on circumstantial, not direct, evidence – with the other officials' objective to defraud the government. The irregularities will not see their fruition if Amit and the other officials involved in the fraud did not consent to its implementation by making it appear that there were valid requisitions, deliveries, inspections, pre-auditing and approval of the vouchers and checks paid to the contractors/ suppliers. **These acts pointed to one (1) criminal intent – with one participant performing a part of the transaction and the others performing other parts of the same transaction to complete the whole scheme, with a view**

of attaining the object which they were pursuing.[19]

In other words, there was the required concurrence of wills supporting the finding of conspiracy, **made more pronounced** in the case of Amit because of his positions and peculiarly important role in the completion of the acts.

Third, Amit's defense – the alleged reliance on the acts of his subordinates in good faith – is simply unacceptable.

Public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives.[20] This high constitutional standard of conduct is not intended to be mere rhetoric; those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service.

As such, Amit has the duty to supervise his subordinates – he must see to it that his subordinates have performed their functions in accordance with the law. We cannot allow him to simply interpose this defense, as he is precisely duty-bound to check whether these acts are regular, lawful and valid, and his full reliance on the acts of his subordinates is antithetical to the duties imposed by his position on them. The excuse or defense is totally unacceptable, too, given that **the transaction relates to disbursement of public funds**, over which great responsibility attaches.

Fourth, Amit did not wholly rely on the acts of his subordinates. As earlier mentioned, he performed functions using independent judgment. Amit signed the issue slips despite the absence of some of the required documents for the release of government funds for the MPDP projects. **By his admission too, Amit voluntarily agreed to a system, per the**

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[19] See *Baldebrin v. Sandiganbayan*, G.R. Nos. 144950-71, March 22, 2007, 518 SCRA 627, 638-639.

[20] Section 1, Article XI of the 1987 Constitution.

Accounting Division's prodding, that purportedly shows disbursement of funds for supplies and materials, when in truth and in fact, the disbursement is actually for reimbursement of advances by recipient farmers' organizations.

Viewed in these lights, the Court of Appeals committed no reversible error of law in affirming the Ombudsman's decision. "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. As differentiated from simple misconduct, in grave misconduct[,] the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest."[21] "[C]orruption as an element of grave misconduct consists in the official's **unlawful and wrongful use of his station** or character [reputation] to procure some benefit for himself or for another person, **contrary to duty** and the rights of others."[22]

In *Manuel v. Judge Calimag, Jr.*,[23] we held:

> By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x *It is settled that misconduct, misfeasance, or malfeasance* ***warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office***[.][24] (emphasis and italics ours)

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[21] *Echano, Jr. v. Toledo*, G.R. No. 173930, September 15, 2010, 630 SCRA 532, 535.

[22] *National Power Corporation v. Civil Service Commission*, G.R. No. 152093, January 24, 2012, 663 SCRA 492, 495; emphases ours.

[23] 367 Phil. 162, 166 (1999).

[24] See *Largo v. Court of Appeals*, G.R. No. 177244, November 20, 2007, 537 SCRA 721, 730-731; and *Philippine Amusement and Gaming Corporation v. Rilloraza*, 412 Phil. 114, 134-135 (2001) .

We declared in *Office of the Ombudsman v. Apolonio*[25] that "if a nexus between the public [officer's] acts and functions is established, such act is properly referred to as misconduct."

Amit's acts were well within the scope of his functions. There is no doubt that his inability to live up to the standards so imposed on him in the performance of his duties is misconduct. In this case, the misconduct cannot be considered simple misconduct; it is grave misconduct, considering the presence of the qualifying elements of corrupt motive and flagrant disregard of the rules taken from a collective consideration of the circumstances of the case.

WHEREFORE, premises considered, we **DENY** the petition for lack of merit.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., Peralta, and *Reyes, JJ.,* on leave.

EN BANC

[G.R. No. 177657. November 20, 2012]

SONIA V. SEVILLE, *petitioner, vs.* **COMMISSION ON AUDIT, Regional Office VI, Iloilo City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; TERMS "MISCONDUCT"

[25] G.R. No. 165132, March 7, 2012, 667 SCRA 583, 604.

AND "DISHONESTY," DEFINED; BOTH OFFENSES CONSIDERED GRAVE FOR WHICH THE PENALTY OF DISMISSAL IS METED EVEN FOR FIRST TIME OFFENDERS.— In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be evident. Misconduct, in the administrative sense, is a transgression of some established and definite rule of action. On the other hand, dishonesty is intentionally making a false statement in any material fact or the disposition to lie, cheat, deceive or defraud. Both are considered grave offenses for which the penalty of dismissal is meted even for first time offenders.

2. **ID.; ID.; IN THE DISCHARGE OF DUTIES, A PUBLIC OFFICER MUST USE PRUDENCE, CAUTION, AND ATTENTON WHICH CAREFUL PERSONS USE IN THE MANAGEMENT OF THEIR AFFAIRS.—** While Seville merely substituted for the absent Regional Director at that time, it is not an excuse for lightly shirking from the latter's duties and responsibilities. It was her responsibility when she signed that disbursement voucher for the Regional Director to verify the accuracy and completeness of the supporting documents presented to her. In the discharge of duties, a public officer must use prudence, caution, and attention which careful persons use in the management of their affairs. Public servants must show at all times utmost dedication to duty.

3. **ID.; ID.; GRAVE MISCONDUCT; CORRUPTION, AN ELEMENT THEREOF; NOT PRESENT.—** The Court finds, however, that Seville cannot be held liable for grave misconduct. Corruption, as an element of grave misconduct, consists in the official or employee's act of unlawfully or wrongfully using his position to gain benefit for one's self. Here, the Court is not convinced that under the circumstances then present, she had depraved motives.

4. **ID.; ID.; RESPONDENT FOUND GUILTY ONLY OF SIMPLE MISCONDUCT; PENALTY OF SUSPENSION, IMPOSED.—** Seville signed on the rare happenstance that both the Regional Director and the Assistant Regional Director for Administration were absent. That both signatories were absent when the Sto. Rosario project was presented to her for signature was a coincidence that cannot be imputed to her for she could not have orchestrated that for her gain, absent evidence to the contrary. She did not volunteer for the position nor is there

proof that she lobbied for the OIC designation, it being provided by a DA internal regulation. She is but liable for the lesser offense of simple misconduct since she should have exercised the necessary prudence to ensure that the proper procedure was complied with in the release of government funds. The penalty for simple misconduct is suspension for one month and one day to six months for the first offense. There being no aggravating or mitigating circumstances, Section 54(b) of the Uniform Rules on Administrative Cases in the Civil Service provides that the medium of the penalty should be imposed.

5. ID.; ID.; ERROR IN JUDGMENT CANNOT BE EQUATED WITH GROSS DISHONESTY.— As for the offense of gross dishonesty, the Court also clears petitioner from liability. Her participation in the release of funds is brought upon by her OIC designation and not spurred by corrupt intent. A post-harvest facility such as MPDP is related to rice farming and not within her knowledge as Assistant Director for Fisheries. To a certain extent, leniency can be afforded for her reliance on the credibility and expertise of her co-signatories namely the Chief of Crops Sector Division and Chief of Finance and Administrative Division. Her error in judgment cannot be equated with gross dishonesty. The evidence does not prove conscious distortion of the truth or even an inclination to it.

APPEARANCES OF COUNSEL

Posecion Sindico & Firmeza Law Office for petitioner.
Arnel Jaranilla for respondent.

D E C I S I O N

ABAD, *J.*:

This case provides what it takes to make a government official or employee liable for ghost projects.

The Facts and the Case

The Commission on Audit (COA) Regional Office VI administratively charged 11 officials and employees of the Department of Agriculture (DA) Regional Field Unit in Iloilo

City, including petitioner Sonia V. Seville, an Assistant Regional Director for Fisheries, before the Office of the Ombudsman-Visayas.

The complaint alleged that, as a result of a special audit[1] of the Post Harvest Component of the Grains Production Enhancement Program of the DA, particularly the construction of Multi-Purpose Drying Pavements (MPDPs) projects in Iloilo from January 1, 1995 to June 30, 1999, it was discovered that she signed a ghost MPDP project in Sto. Rosario, Ajuy, Iloilo, out of the 120 such projects that were subject of the audit.

She signed the disbursement voucher, as required by Memorandum Order 104, Series of 1998, in view of the absence of the Regional Director and the Assistant Regional Director for Administration. But she claimed that she acted in good faith, merely relying on the completeness and genuineness of the supporting documents that were shown to her. She had no prior knowledge of the MPDPs, which catered to rice production, since she was an Assistant Regional Director for Fisheries. She admitted, however, not conducting an actual physical inspection of the project since she believed that it was not her responsibility to do so.

The investigators filed a separate criminal complaint against petitioner Seville for violation of the anti-graft and corrupt practices act before the Office of the Ombudsman to determine if she had any criminal liability for her acts. Subsequently, the investigation resulted in her exoneration, absent any proof that she took part in a conspiracy to defraud the government.

In its Decision dated July 9, 2004,[2] however, the Office of Deputy Ombudsman for Visayas found those charged in connection with the ghost MPDPs, including petitioner, guilty of Grave Misconduct and Gross Dishonesty, resulting in their

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[1] Special Audit Report dated September 13, 2000; *rollo*, pp. 346-388.

[2] Penned by Macaundas M. Hadjirasul, Graft Investigation and Prosecution Officer II with the recommendation of Edgardo G. Canton, Director, EIO and approved by Primo C. Miro, Deputy Ombudsman for the Visayas; *id*. at 89-229.

dismissal from government service with forfeiture of benefits and disqualification from holding public office.

Petitioner Seville filed a petition for review of the Deputy Ombudsman's decision before the Court of Appeals (CA) in CA-G.R. CEB-SP 01492. On July 20, 2006 the CA rendered a decision,[3] holding that her failure to verify the correctness and sufficiency of the documents presented to her for signing led to the unrequited disbursement of public funds. She filed a motion for reconsideration but the CA denied the same, hence, this petition for review.

The Issue Presented

The sole issue in this case is whether or not the CA correctly affirmed the Ombudsman's decision that found petitioner liable for grave misconduct and gross dishonesty for signing the disbursement voucher for the particular ghost MPDP in Sto. Rosario, Ajuy, Iloilo.

The Court's Rulings

In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be evident.[4] Misconduct, in the administrative sense, is a transgression of some established and definite rule of action. On the other hand, dishonesty is intentionally making a false statement in any material fact or the disposition to lie, cheat, deceive or defraud.[5] Both are considered grave offenses for which the penalty of dismissal is meted even for first time offenders.[6]

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[3] Penned by Associate Justice Isaias P. Dicdican with the concurrence of Associate Justices Apolinario D. Bruselas, Jr. and Agustin S. Dizon; *id*. at 35-42.

[4] *Narvasa v. Sanchez, Jr.*, G.R. No. 169449, March 26, 2010, 616 SCRA 586, 591.

[5] *National Power Corporation v. Olandesca*, G.R. No. 171434, April 28, 2010, 619 SCRA 264, 273-274.

[6] *De Guzman, Jr. v. Mendoza*, 493 Phil. 690, 698-699 (2005).

Here, the COA charged petitioner Seville administratively because the government released funds for that particular ghost project in Sto. Rosario, Ajuy, Iloilo. Seville anchors her innocence on good faith. Good faith implies honest intent, free from any knowledge of circumstances that ought to have prompted an individual to undertake an inquiry.

While Seville merely substituted for the absent Regional Director at that time, it is not an excuse for lightly shirking from the latter's duties and responsibilities. It was her responsibility when she signed that disbursement voucher for the Regional Director to verify the accuracy and completeness of the supporting documents presented to her. In the discharge of duties, a public officer must use prudence, caution, and attention which careful persons use in the management of their affairs. Public servants must show at all times utmost dedication to duty.

The Court finds, however, that Seville cannot be held liable for grave misconduct. Corruption, as an element of grave misconduct, consists in the official or employee's act of unlawfully or wrongfully using his position to gain benefit for one's self.[7] Here, the Court is not convinced that under the circumstances then present, she had depraved motives.

Seville signed on the rare happenstance that both the Regional Director and the Assistant Regional Director for Administration were absent. That both signatories were absent when the Sto. Rosario project was presented to her for signature was a coincidence that cannot be imputed to her for she could not have orchestrated that for her gain, absent evidence to the contrary. She did not volunteer for the position nor is there proof that she lobbied for the OIC designation, it being provided by a DA internal regulation.[8] She is but liable for the lesser offense of simple misconduct since she should have exercised the necessary prudence to ensure that the proper procedure was complied with in the release of government funds.[9]

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[7] *Civil Service Commission v. Nierras*, G.R. No. 165121, February 14, 2008, 545 SCRA 316, 322.

[8] Memorandum Order 104, Series of 1998.

[9] *Office of the Ombudsman v. Miedes, Sr.*, G.R. No. 176409, February 27, 2008, 547 SCRA 148, 157.

The penalty for simple misconduct is suspension for one month and one day to six months for the first offense.[10] There being no aggravating or mitigating circumstances, Section 54(b) of the Uniform Rules on Administrative Cases in the Civil Service provides that the medium of the penalty should be imposed.

As for the offense of gross dishonesty, the Court also clears petitioner from liability. Her participation in the release of funds is brought upon by her OIC designation and not spurred by corrupt intent. A post-harvest facility such as MPDP is related to rice farming and not within her knowledge as Assistant Director for Fisheries. To a certain extent, leniency can be afforded for her reliance on the credibility and expertise of her co-signatories namely the Chief of Crops Sector Division and Chief of Finance and Administrative Division. Her error in judgment cannot be equated with gross dishonesty. The evidence does not prove conscious distortion of the truth or even an inclination to it.

WHEREFORE, the Court **REVERSES and SETS ASIDE** the decision of the Court of Appeals in CA-G.R. CEB-SP 01492 dated July 20, 2006. In its place, the Court **FINDS** petitioner Sonia V. Seville liable for **SIMPLE MISCONDUCT** and **IMPOSES** on her the penalty of three months suspension without pay in accordance with Section 54(b) of the Uniform Rules on Administrative Cases in the Civil Service.[11]

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., J., on leave.

Peralta and *Reyes, JJ.,* on official leave.

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[10] Section 52(b)(2).

[11] Section 54. *Manner of imposition*. When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

x x x x x x x x x

b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.

EN BANC

[G.R. No. 200238. November 20, 2012]

PHILIPPINE SAVINGS BANK (PSBANK) and PASCUAL M. GARCIA III, as representative of Philippine Savings Bank and in his personal capacity, *petitioners, vs.* **SENATE IMPEACHMENT COURT, consisting of the senators of the Republic of the Philippines acting as Senator Judges, namely: JUAN PONCE ENRILE, JINGGOY EJERCITO ESTRADA, VICENTE C. SOTTO III, ALAN PETER S. CAYETANO, EDGARDO J. ANGARA, JOKER P. ARROYO, PIA S. CAYETANO, FRANKLIN M. DRILON, FRANCIS G. ESCUDERO, TEOFISTO GUINGONA III, GREGORIO B. HONASAN II, PANFILO M. LACSON, MANUEL M. LAPID, LOREN B. LEGARDA, FERDINAND R. MARCOS, JR., SERGIO R. OSMEÑA III, FRANCIS "KIKO" PANGILINAN, AQUILINO PIMENTEL III, RALPH G. RECTO, RAMON REVILLA, JR., ANTONIO F. TRILLANES IV, MANNY VILLAR; and THE HONORABLE MEMBERS OF THE PROSECUTION PANEL OF THE HOUSE OF REPRESENTATIVES,** *respondents.*

SYLLABUS

REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; COURTS WILL NOT DETERMINE QUESTIONS THAT HAVE BECOME MOOT AND ACADEMIC BECAUSE THERE IS NO LONGER ANY JUSTICIABLE CONTROVERSY TO SPEAK OF; RATIONALE.— It is well-settled that courts will not determine questions that have become moot and academic because there is no longer any justiciable controversy to speak of. The judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced. In *Gancho-on v. Secretary of Labor and Employment*, the Court ruled: It is a rule of universal application that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue

has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition. Indeed, the main issue of whether the Impeachment Court acted arbitrarily when it issued the assailed subpoena to obtain information concerning the subject foreign currency deposits notwithstanding the confidentiality of such deposits under RA 6426 has been overtaken by events. The supervening conviction of Chief Justice Corona on May 29, 2012, as well as his execution of a waiver against the confidentiality of all his bank accounts, whether in peso or foreign currency, has rendered the present petition moot and academic. On the basis of the foregoing, the Court finds it appropriate to abstain from passing upon the merits of this case where legal relief is no longer needed nor called for.

APPEARANCES OF COUNSEL

Puno and Puno for petitioners.

The Solicitor General and *Office of the Senate Legal Counsel* for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Petitioners Philippine Savings Bank (PSBank) and Pascual M. Garcia III, as President of PSBank, filed a Petition for *Certiorari* and Prohibition seeking to nullity and set aside the Resolution[1] of respondent Senate of the Republic of the Philippines, sitting as an Impeachment Court, which granted the prosecution's requests for subpoena *duces tecum ad testificandum*[2] to PSBank and/or its representatives requiring

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[1] Annex "A" of the Petition. *Rollo*, pp. 38-39.

[2] Case No. 002-2011 entitled, "*In the Matter of the Impeachment of Renato C. Corona as Chief Justice of the Supreme Court, Representatives Niel C. Tupas, et al., other complainants comprising one third (1/3) of the total Members of the House of Representatives, complainants*."

them to testify and produce before the Impeachment Court documents relative to the foreign currency accounts that were alleged to belong to then Suprerpe Court Chief Justice Renato C. Corona.

On November 5, 2012, and during the pendency of this petition, petitioners filed a Motion with Leave of Court to Withdraw the Petition[3] averring that subsequent events have overtaken the petition and that, with the termination of the impeachment proceedings against former Chief Justice Corona, they are no longer faced with the dilemma of either violating Republic Act No. 6426 (RA 6426) or being held in contempt of court for refusing to disclose the details of the subject foreign currency deposits.

It is well-settled that courts will not determine questions that have become moot and academic because there is no longer any justiciable controversy to speak of. The judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.[4] In *Gancho-on v. Secretary of Labor and Employment*,[5] the Court ruled:

> It is a rule of universal application that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition. (Citations omitted)

Indeed, the main issue of whether the Impeachment Court acted arbitrarily when it issued the assailed subpoena to obtain information concerning the subject foreign currency deposits notwithstanding the confidentiality of such deposits under RA

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[3] *Rollo*, pp. 356-361.

[4] *Sales v. Commission on Elections*, G.R. No. 174668, September 12, 2007, 533 SCRA 173, 176-177.

[5] 337 Phil. 654, 658 (1997).

6426 has been overtaken by events. The supervening conviction of Chief Justice Corona on May 29, 2012, as well as his execution of a waiver against the confidentiality of all his bank accounts, whether in peso or foreign currency, has rendered the present petition moot and academic.

On the basis of the foregoing, the Court finds it appropriate to abstain from passing upon the merits of this case where legal relief is no longer needed nor called for.

WHEREFORE, the petition is **DISMISSED** for having become moot and academic and the temporary restraining order issued by the Court on February 9, 2012 is **LIFTED**.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Velasco, Jr., Peralta, and *Reyes, JJ.,* on official leave.

SECOND DIVISION

[G.R. No. 170029. November 21, 2012]

SAMEER OVERSEAS PLACEMENT AGENCY, INC., and RIZALINA LAMSON, *petitioners, vs.* **MARICEL N. BAJARO, PAMELA P. MORILLA, DAISY L. MAGDAONG, LEAH J. TABUJARA, LEA M. CANCINO, MICHIEL D. MELIANG, RAQUEL SUMIGCAY, ROSE R. SARIA, LEONA L. ANGULO and MELODY B. INGAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ISSUES NOT RAISED IN THE PROCEEDINGS BELOW CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.—** At the outset, the Court notes that petitioners are raising before the court *for the first time*, the applicability of the principles of private international law and the labor standards laws of the Republic of China in the proper interpretation of respondents' employment contracts. Records show that petitioners never advanced this issue at the first opportunity before the Labor Arbiter, and even in the subsequent proceedings before the NLRC and the CA. Instead, petitioners' arguments consistently centered on the existence of a valid retrenchment and compliance with the requirements to legally effect the same. It bears stressing that issues not raised in the proceedings below cannot be raised for the first time on appeal. Specifically, points of law, theories and arguments not raised before the appellate court will not be considered by the Court.

2. **LABOR AND SOCIAL LEGISLATION; RECRUITMENT AND PLACEMENT; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT (RA 8042), SECTION 10 THEREOF; IF THE RECRUITMENT AGENCY IS A JURIDICAL BEING, THE CORPORATE OFFICERS AND DIRECTORS SHALL THEMSELVES BE JOINTLY AND SOLIDARILY LIABLE WITH THE CORPORATION FOR ANY CLAIMS AND DAMAGES THAT MAY BE DUE TO THE OVERSEAS WORKERS.—**Indisputably, respondents' illegal dismissal complaint with money claims is anchored on the overseas employment contracts with petitioners and the allegations that they were dismissed without just, valid or authorized cause. With these allegations, Section 10 [of R.A. 8042] clearly applies in this case. As petitioners failed to establish a valid retrenchment, respondents were clearly dismissed without just, valid or authorized cause. Consequently, petitioner Lamzon is jointly and severally liable with petitioner company. To reiterate, Section 10 of R.A. 8042 provides that "[i]f the recruitment/ placement agency is a juridical being, the corporate officers and directors x x x shall themselves be jointly and solidarily liable with the corporation x x x" for any claims and damages that may be due to the overseas workers.

3. ID.; ID.; ID.; MONETARY AWARD, MODIFIED; CLAUSE "OR FOR THREE MONTHS FOR EVERY YEAR OF THE UNEXPIRED TERM, WHICH EVER IS LESS"FOUND IN SECTION 10 OF RA 8042 IS VIOLATIVE OF THE OVERSEAS WORKERS' RIGHTS TO EQUAL PROTECTION AND DUE PROCESS.— [H]owever, the Court finds that a modification of the monetary award in the amount of NT$47,520.00 per respondent – corresponding to three (3) months' worth of salaries – granted by the Labor Arbiter is in order, conformably with the pronouncement in the case of *Serrano v. Gallant Maritime Services and Marlow Navigation Co., Inc. (Serrano case*) where the *Court En Banc* declared unconstitutional, for being violative of the Constitutionally-guaranteed rights to equal protection and due process of the overseas workers, the clause "or for three months for every year of the unexpired term, whichever is less" found in Section 10 of R.A. 8042.

4. ID.; ID.; ID.; ID.; ID.; THE DECLARATION OF THE UNCONSTITUTIONALITY OF THE CLAUSE "OR FOR THREE MONTHS FOR EVERY YEAR OF THE UNEXPIRED TERM, WHICHEVER IS LESS" FOUND IN SECTION 10 OF R.A. 8042 APPLIES RETROACTIVELY.— In *Skippers United Pacific, Inc. and Skippers Maritime Services, Inc. Ltd. v. Doza*, the Court declared that an unconstitutional clause in the law, being inoperative at the outset, confers no rights, imposes no duties and affords no protection. Hence, even if respondents' illegal dismissal occurred sometime in August 2000, the declaration of unconstitutionality found in the *Serrano case* promulgated in March 2009 shall retroactively apply. Since the unexpired portion of respondents' individual two-year contracts is still for 13 months, as they worked in Taiwan for a period of only 11 months, each respondent is therefore entitled to a total amount of NT$205,920.00 or its current equivalent in Philippine Peso, by way of unpaid salaries, in addition to the other monetary awards granted by the Labor Arbiter.

APPEARANCES OF COUNSEL

Gaspar V. Tagalo for petitioners.
Capoquian & Nueva Law Offices for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review is the August 22, 2005 Decision[1] and October 11, 2005 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 87672 which nullified and set aside the March 31, 2004 Decision[3] and September 22, 2004 Resolution[4] of the National Labor Relations Commission (NLRC) and reinstated *in toto* the July 12, 2002 Decision[5] of the Labor Arbiter in NLRC OFW CASE No. (M) 01-07-1366-00.

The Facts

It is undisputed that sometime in 1999,[6] petitioner company Sameer Overseas Placement Agency, Inc. deployed respondents Maricel N. Bajaro (Bajaro), Pamela P. Morilla (Morilla), Daisy L. Magdaong, Leah J. Tabujara, Lea M. Cancino, Michiel D. Meliang, Raquel Sumigcay (Sumigcay), Rose R. Saria, Leona L. Angulo and Melody B. Ingal to Taiwan to work as operators for its foreign principal, Mabuchi Motors Company, Ltd. under individual two-year employment contracts,[7] with a monthly salary of Taiwan Dollars (NT$) 15,840.00 each. Prior to their deployment, each respondent paid petitioner company the amount of ₱47,900.00 as placement fee.

However, after working for only a period of eleven (11) months and before the expiration of the two-year period,

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[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring. *Rollo*, pp. 36-51.

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

[3] Penned by Presiding Commissioner Raul T. Aquino (OFW [M] 01-07-1366-00[CA NO. 030717-02]). *Id.* at 304-314.

[4] *Id.* at 354-363.

[5] Penned by Executive Labor Arbiter Joselito Cruz Villarosa. *Id.* at 222-228.

[6] Per respondents' Employment Contracts. *Id.* at 165-180.

[7] *Id.* at 165-180.

respondents' employment contracts were terminated and they were repatriated to the Philippines. This prompted the filing of a complaint for illegal dismissal against petitioner company and its President and General Manager, individual petitioner Rizalina Lamson,[8] with prayer for the payment of salaries and wages covering the unexpired portion of their employment contracts in lieu of reinstatement, and with allegations of illegal deductions and illegal collection of placement fees. Respondents Bajaro, Morilla and Sumigcay likewise sought reimbursement of the amount they personally expended for their plane tickets for their return flight, alleging that their employment contracts provided for free transportation expenses in going to and from Taiwan. Collectively, respondents prayed for the award of damages as well as attorney's fees.

In defense, petitioners claimed that respondents were validly retrenched due to severe business losses suffered by their foreign principal. They denied the alleged deductions amounting to NT$7,500.00 from petitioners' monthly salaries and that, consequently, petitioners are not entitled to damages and attorney's fees.

The Labor Arbiter's Ruling

In its July 12, 2002 Decision,[9] the Labor Arbiter found respondents to have been illegally dismissed for petitioners' failure to substantiate their defense of a valid retrenchment. Hence, the Labor Arbiter granted respondents' money claims, citing Section 10 of Republic Act (R.A.) No. 8042[10] as then applicable,[11] which provides:

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[8] Also referred to as "Lamzon" in the records.

[9] *Rollo,* pp. 222-228.

[10] Otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995."

[11] On March 8, 2010, Section 7 of R.A. 10022, amended Section 10 of the Migrant Workers Act; See *Skippers United Pacific, Inc. and Skippers Maritime Services, Inc. Ltd. v. Doza*, G.R. No. 175558, February 8, 2012. See also *Serrano v. Gallant Maritime Services and Marlow Navigation, Inc.*, G.R. No. 167614, March 24, 2009, 582 SCRA 254.

> Section 10. *Money claims.* – x x x
>
> The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. *If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation* or partnership for the aforesaid claims and damages.
>
> Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.
>
> Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.
>
> In case of termination of overseas employment *without just, valid or authorized cause* as defined by law or contract, the workers shall be entitled to the *full reimbursement of his placement fee with interest of twelve percent (12%) per annum plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less*. (Emphasis supplied)
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> x x x

Accordingly, petitioners were directed to pay each respondent, jointly and solidarily, the amount of ₱47,900.00 as full reimbursement of their individual placement fees, with an interest of 12% *per annum*; the amount of NT$47,520.00 each, representing three (3) months' worth of their salary amounting to NT$15,840.00; the amount of NT$7,500.00 which had been illegally deducted from respondents' monthly salaries; the amount of NT$6,000.00 each as reimbursement for the transportation expenses of respondents Bajaro, Sumigcay and Morilla in going

home to the Philippines; and attorney's fees of 10% of the total monetary award.

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, all the foregoing premises considered, respondents SAMEER OVERSEAS PLACEMENT AGENCY, INCORPORATED and RIZALINA LAMZON, are hereby ordered jointly and severally to:

(a) pay each complainant an amount equivalent to three (3) months salary which is NT$47,520 or a total of FOUR HUNDRED SEVENTY FIVE THOUSAND TWO HUNDRED TAIWAN DOLLARS (NT$475,200) or its Philippine currency equivalent at the time of payment;

(b) pay each complainant NT$82,500.00 representing the amount that has been illegally deducted from their salaries for a period of eleven (11) months or a total of EIGHT HUNDRED TWENTY FIVE THOUSAND TAIWAN DOLLARS (NT$825,000) or its Philippine currency equivalent at the time of payment;

(c) pay each complainant, Php47,900.00 by way of reimbursement of placement fees or a total of FOUR HUNDRED SEVENTY NINE THOUSAND PESOS (Php479,000.00) plus twelve percent (12%) interest per annum;

(d) pay complainants MARICEL BAJARO; RAQUEL SUMIGCAY and PAMELA MORILLA NT$6,000.00 as and by way of reimbursement to their transportation expenses in going home to the Philippines, or its Philippine currency at the time of payment;

(e) pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

SO ORDERED.

The NLRC's Ruling

On appeal, the NLRC vacated and set aside[12] the Labor Arbiter's Decision upon a finding that all the requirements for a valid retrenchment have been established, thus, the respondents

[12] *Rollo,* pp. 304-314.

were not illegally dismissed. Therefore, it found that the awards of salaries corresponding to the unexpired portion of the contracts and the refund of placement fees to be bereft of any basis in fact and in law. The award for the payment of the salary deductions was also not considered for respondents' failure to substantiate it, and the claim for reimbursement of expenses for the return flight of respondents Bajaro, Sumigcay and Morilla was similarly disallowed, not having been raised as a cause of action in their complaint.

Lastly, the NLRC absolved petitioner Lamson of any personal liability for dearth of evidence showing that she acted in bad faith, following the oft-repeated principle that corporate officers cannot be held jointly and severally liable for the obligations of a corporation arising from employment-related claims.

Respondents sought reconsideration[13] of the NLRC's Decision, which was subsequently denied in the Resolution[14] dated September 22, 2004.

The Court of Appeals' Ruling

Aggrieved, respondents elevated the case *via* petition for *certiorari* before the CA which, in its assailed August 22, 2005 Decision,[15] nullified and set aside the previous issuances of the NLRC and reinstated *in toto* the July 12, 2002 Decision of the Labor Arbiter. The CA concurred with the findings of the Labor Arbiter that petitioners failed to comply with the substantive and procedural requirements to effect a valid retrenchment.

Petitioners' motion for reconsideration was likewise denied in the Resolution[16] dated October 11, 2005.

Issues Before The Court

In this petition for review, petitioners impute reversible error on the part of the CA in nullifying the NLRC issuances and in

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[13] *Id.* at 315-320.

[14] *Id.* at 354-363.

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

[16] *Id*. at 304-314.

reinstating *in toto* the Decision of the Labor Arbiter, as the latter failed to take into consideration the principles of private international law, which form part of the law of the land, as well as the labor standards laws of the Republic of China, in resolving the complaint filed before it. Petitioners also contend that the Labor Arbiter misconstrued and misapplied Section 10 of R.A. 8042.

The Court's Ruling

The petition is bereft of merit.

At the outset, the Court notes that petitioners are raising before the Court *for the first time*, the applicability of the principles of private international law and the labor standards laws of the Republic of China in the proper interpretation of respondents' employment contracts. Records show that petitioners never advanced this issue at the first opportunity before the Labor Arbiter, and even in the subsequent proceedings before the NLRC and the CA. Instead, petitioners' arguments consistently centered on the existence of a valid retrenchment and compliance with the requirements to legally effect the same. It bears stressing that issues not raised in the proceedings below cannot be raised for the first time on appeal.[17] Specifically, points of law, theories and arguments not raised before the appellate court will not be considered by the Court.[18]

The Court, therefore, shall limit the resolution of this case on the sole question of whether the Labor Arbiter's Decision, as reinstated *in toto* by the CA, properly applied and interpreted Section 10 of R.A. 8042, the pertinent portions of which state:

> Sec. 10. *Money Claims.* – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after filing of the complaint, the *claims arising out of an employer-employee*

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[17] *Rubio v. Munar,* G.R. No. 155952, October 4, 2007.

[18] *Garcia v. KJ Commercial and Reynaldo Que*, G.R. No. 196830, February 29, 2012.

relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

x x x x x x x x x

In case of termination of overseas employment *without just, valid or authorized cause* as defined by law or contract, x x x (Emphasis supplied)

Indisputably, respondents' illegal dismissal complaint with money claims is anchored on the overseas employment contracts with petitioners and the allegations that they were dismissed without just, valid or authorized cause. With these allegations, Section 10 afore-quoted clearly applies in this case.[19] As petitioners failed to establish a valid retrenchment, respondents were clearly dismissed without just, valid or authorized cause.

Consequently, petitioner Lamzon is jointly and severally liable with petitioner company. To reiterate, Section 10 of R.A. 8042 provides that "[i]f the recruitment/placement agency is a juridical being, the corporate officers and directors x x x shall themselves be jointly and solidarily liable with the corporation x x x" for any claims and damages that may be due to the overseas workers.

Notwithstanding the foregoing, however, the Court finds that a modification of the monetary award in the amount of NT$47,520.00 per respondent – corresponding to three (3) months' worth of salaries – granted by the Labor Arbiter is in order, conformably with the pronouncement in the case of *Serrano v. Gallant Maritime Services and Marlow Navigation Co. Inc.*[20] (*Serrano case*) where the Court *En Banc* declared unconstitutional, for being violative of the Constitutionally-guaranteed rights to equal protection and due process of the overseas workers, the clause "or for three months for every year of the unexpired term, whichever is less" found in Section 10 of R.A. 8042, which originally reads:

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[19] *International Management Services/Marilyn C. Pascual v. Logarta,* G.R. No. 163657, April 18, 2012.

[20] G.R. No. 167614, March 24, 2009, 582 SCRA 254.

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum plus his salaries for the unexpired portion of his employment contract *or for three (3) months for every year of the unexpired term, whichever is less.*

In *Skippers United Pacific, Inc. and Skippers Maritime Services, Inc. Ltd. v. Doza*,[21] the Court declared that an unconstitutional clause in the law, being inoperative at the outset, confers no rights, imposes no duties and affords no protection. Hence, even if respondents' illegal dismissal occurred sometime in August 2000,[22] the declaration of unconstitutionality found in the *Serrano case* promulgated in March 2009 shall retroactively apply.

Since the unexpired portion of respondents' individual two-year contracts is still for 13 months, as they worked in Taiwan for a period of only 11 months, each respondent is therefore entitled to a total amount of NT$205,920.00[23] or its current equivalent in Philippine Peso, by way of unpaid salaries, in addition to the other monetary awards granted by the Labor Arbiter.

WHEREFORE, the instant petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals reinstating *in toto* the July 12, 2002 Decision of the Labor Arbiter is **AFFIRMED** with the **MODIFICATION** awarding the amount of **NT$205,920.00** or its current equivalent in Philippine Peso to each of the respondents by way of unpaid salaries for the unexpired portion of their employment contracts. The rest of the Decision stands.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

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[21] See *supra note 11*.

[22] Respondents' employment contracts were dated September 4, 1999, and they were repatriated to the Philippines after working in Taiwan for only 11 months, or until August 2000.

[23] NT$15,840.00 [monthly salary] x 13 months [unexpired portion of employment contract].

THIRD DIVISION

[G.R. No. 174077. November 21, 2012]

ELLICE AGRO-INDUSTRIAL CORPORATION, represented by its Chairman of the Board of Directors and President, RAUL E. GALA, *petitioner, vs.* **RODEL T. YOUNG, DELFIN CHAN, JIM WEE and GUIA G. DOMINGO,*** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SUMMONS; PURPOSE; EFFECT OF ABSENCE OF VALID SERVICE OF SUMMONS.— It is a settled rule that jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, any judgment of the court which has no jurisdiction over the person of the defendant is null and void. The purpose of summons is not only to acquire jurisdiction over the person of the defendant, but also to give notice to the defendant that an action has been commenced against it and to afford it an opportunity to be heard on the claim made against it. The requirements of the rule on summons must be strictly followed, otherwise, the trial court will not acquire jurisdiction over the defendant.

2. ID.; ID.; SERVICE OF SUMMONS UPON A PRIVATE DOMESTIC CORPORATION; TO BE EFFECTIVE AND VALID, THE SAME SHOULD BE MADE ON THE PRESIDENT, MANAGER, SECRETARY, CASHIER, AGENT OR ANY OF THE DIRECTORS OF THE CORPORATION; PURPOSE.— Section 13, Rule 14 of the 1964 Rules of Civil Procedure, the applicable rule on service of summons upon a private domestic corporation then, provides: Sec. 13. *Service upon private domestic corporation or partnership.*— If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service

* Pursuant to Section 4 of Rule 45 which states that public respondents need not be impleaded in the petition, "Regional Trial Court of Lucena City, Branch 60" and "Sheriff Roberto R. Ebuna" are deleted from the title of the case.

may be made on the president, manager, secretary, cashier, agent, or any of its directors. Based on the above-quoted provision, for service of summons upon a private domestic corporation, to be effective and valid, should be made on the persons enumerated in the rule. Conversely, service of summons on anyone other than the president, manager, secretary, cashier, agent, or director, is not valid. The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him. In the present case, the 1996 GIS of EAIC, the pertinent document showing EAIC's composition at the time the summons was served upon it, through Domingo, will readily reveal that she was not its president, manager, secretary, cashier, agent or director. Due to this fact, the Court is of the view that her honest belief that she was the authorized corporate secretary was clearly mistaken because she was evidently not the corporate secretary she claimed to be. In view of Domingo's lack of authority to properly represent EAIC, the Court is constrained to rule that there was no valid service of summons binding on it.

3. ID.; ID.; SERVICE OF SUMMONS; THE JURISDICTION OF THE COURT OVER THE PERSON OF THE DEFENDANT CANNOT BE ACQUIRED NOTWITHSTANDING HIS KNOWLEDGE OF THE PENDENCY OF A CASE AGAINST HIM UNLESS HE WAS VALIDLY SERVED WITH SUMMONS.— Granting *arguendo* that EAIC had actual knowledge of the existence of Civil Case No. 96-177 lodged against it, the RTC still failed to validly acquire jurisdiction over EAIC. In *Cesar v. Ricafort-Bautista*, it was held that "x x x jurisdiction of the court over the person of the defendant or respondent cannot be acquired notwithstanding his knowledge of the pendency of a case against him unless he was validly served with summons. Such is the important role a valid service of summons plays in court actions."

4. ID.; ID.; ID.; THE CORPORATION IS NOT DEEMED TO HAVE VOLUNTARILY SUBMITTED ITSELF TO THE JURISDICTION OF THE TRIAL COURT WHERE THE PARTY WHO FILED THE ANSWER WITH COUNTERCLAIM IN ITS BEHALF IS NOT AN OFFICER THEREOF NOR DULY AUTHORIZED BY ANY BOARD RESOLUTION OR SECRETARY'S CERTIFICATE FROM THE CORPORATION.— The Court cannot likewise subscribe to respondents argument

that by filing its answer with counterclaim, through Domingo, with the RTC, EAIC is deemed to have voluntarily submitted itself to the jurisdiction of the RTC. In *Salenga v. Court of Appeals*, the Court stated: A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its bylaws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board. In this case, at the time she filed the Answer with Counterclaim, Domingo was clearly not an officer of EAIC, much less duly authorized by any board resolution or secretary's certificate from EAIC to file the said Answer with Counterclaim in behalf of EAIC. Undoubtedly, Domingo lacked the necessary authority to bind EAIC to Civil Case No. 96-177 before the RTC despite the filing of an Answer with Counterclaim. EAIC cannot be bound or deemed to have voluntarily appeared before the RTC by the act of an unauthorized stranger.

5. ID.; ID.; ID.; THE PROCEEDINGS BEFORE THE TRIAL COURT AND ITS DECISION WERE NULL AND VOID WHERE THE CORPORATION WAS NOT VALIDLY SERVED WITH SUMMONS AND DID NOT VOLUNTARILY APPEAR THEREIN.— In view of the fact that EAIC was not validly served with summons and did not voluntarily appear in Civil Case No. 96-177, the RTC did not validly acquire jurisdiction over the person of EAIC. Consequently, the proceedings had before the RTC and ultimately its November 11, 1999 Decision were null and void. Pursuant to Section 7, Rule 47 of the Rules of Court, a judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void.

APPEARANCES OF COUNSEL

Jacinto Magtanong Wui Jacinto Esguerra & Uy Law Offices for petitioner.

Jocelyn Tan-Lim for R. Young.

Arteche Garrido & Associates for Guia G. Domingo.

D E C I S I O N

MENDOZA, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the July 1, 2003 Decision[1] and the August 8, 2006 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 64421, dismissing the petition and upholding the November 11, 1999 Decision of the Regional Trial Court of Lucena City, Branch 60 *(RTC)*, in Civil Case No. 96-177, entitled "*Rodel T. Young, Delfin Chan and Jim Wee v. Ellice Agro Industrial Corporation, represented by Guia G. Domingo*."

The Facts

On July 24, 1995, Rodel T. Young, Delfin Chan and Jim Wee *(respondents)* and Ellice Agro-Industrial Corporation *(EAIC)*, represented by its alleged corporate secretary and attorney-in-fact, Guia G. Domingo *(Domingo)*, entered into a Contract to Sell, under certain terms and conditions, wherein EAIC agreed to sell to the respondents a 30,000 square-meter portion of a parcel of land located in Lutucan, Sariaya, Quezon and registered under EAIC's name and covered by Transfer Certificate of Title *(TCT)* No. T-157038 in consideration of One Million and Fifty Thousand (₱1,050,000.00) Pesos.

Pursuant to the Contract to Sell,[3] respondents paid EAIC, through Domingo, the aggregate amount of Five Hundred Forty Five Thousand (₱545,000.00) Pesos as partial payment for the acquisition of the subject property. Despite such payment, EAIC failed to deliver to respondents the owner's duplicate certificate of title of the subject property and the corresponding deed of

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[1] *Rollo*, pp. 38-45. Penned by Associate Justice Oswaldo D. Agcaoili with Associate Justice Cancio C. Garcia (former Member of this Court) and Associate Justice Elvi John S. Asuncion, concurring.

[2] *Id.* at 47-49. Penned by Associate Justice Elvi John S. Asuncion with Associate Justice Roberto A. Barrios and Associate Justice Mario L. Guariña III, concurring.

[3] *Id.* at 535-536.

sale as required under the Contract to Sell.

On November 8, 1996, prompted by the failure of EAIC to comply with its obligation, respondents had their Affidavit of Adverse Claim annotated in TCT No. T-157038.[4]

On November 14, 1996, respondents filed a Complaint[5] for specific performance, docketed as Civil Case No. 96-177, against EAIC and Domingo before the RTC.

Consequently, on November 18, 1996, respondents caused the annotation of a Notice of *Lis Pendens* involving Civil Case No. 96-177 in TCT No. T-157038.[6]

The initial attempt to serve the summons and a copy of the complaint and its annexes on EAIC, through Domingo, on Rizal Street, Sariaya, Quezon, was unsuccessful as EAIC could not be located in the said address.

Another attempt was made to serve the *alias* summons on EAIC at 996 Maligaya Street, Singalong, Manila, the residence of Domingo. The second attempt to serve the *alias* summons to Domingo was, this time, successful.

On March 21, 1997, EAIC, represented by Domingo, filed its Answer with Counterclaim.[7]

Meanwhile, respondent Jim Wee *(Wee)* sent Raul E. Gala *(Gala)*, EAIC's Chairman and President, a letter,[8] dated July 9, 1997, seeking a conference with the latter relating to the execution of an absolute deed of sale pursuant to the Contract to Sell entered into between EAIC and respondents.

In response, the Robles Ricafrente Aguirre Sanvicente & Cacho Law Firm, introducing itself to be the counsel of EAIC,

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[4] *Id.* at 361.

[5] *Id.* at 50-53.

[6] *Id.* at 361.

[7] *Id.* at 94-99.

[8] *Id.* at 178.

sent Wee a letter,[9] dated July 18, 1997, informing him of Domingo's lack of authority to represent EAIC.

On the scheduled pre-trial conference on January 27, 1998, neither Domingo nor her counsel appeared. As a result of EAIC's failure to appear in the pre-trial conference, respondents were allowed to present their evidence *ex parte,* pursuant to Section 5, Rule 18[10] of the Rules of Court.

Following the presentation of evidence *ex parte*, the RTC rendered its November 11, 1999 Decision ordering EAIC to deliver the owner's duplicate copy of TCT No. T-157038 and to execute a final deed of sale in favor of respondents.

No motion for reconsideration or notice of appeal was filed by EAIC, hence, the said RTC decision became final and executory on December 8, 1999.[11]

On July 10, 2000 (roughly seven months after the finality of the RTC Decision), EAIC, represented by Gala, filed its Petition for Relief from Judgment[12] under Rule 38 of the Rules of Court of the November 11, 1999 RTC Decision before the same court. The petition for relief from judgment was premised on the alleged fraud committed by Domingo in concealing the existence of both the Contract to Sell and Civil Case No. 96-177 from EAIC.

In its July 12, 2000 Order,[13] the RTC denied the petition for relief from judgment for being clearly filed out of time under Section 3, Rule 38 of the Rules of Court.[14]

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[9] *Id.* at 179.

[10] SEC. 5. *Effect of failure to appear.*– The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. (Underscoring supplied)

[11] *Rollo,* p. 130.

[12] *Id.* at 133-137.

[13] *Id*. at 138. Penned by Judge Stephen C. Cruz.

[14] Section 3. *Time for filing petition; contents and verification*. – A petition provided for in either of the preceding sections of this Rule must

On April 24, 2001, EAIC, represented by Gala, initiated the Petition for Annulment of Judgment[15] under Rule 47 of the Rules of Court of the November 11, 1999 RTC Decision before the CA. The petition was grounded on the RTC's lack of jurisdiction over EAIC and the extrinsic fraud committed by Domingo. EAIC discarded any knowledge of the said sale and the suit filed by respondents against it. According to EAIC, it could not be bound by the assailed RTC Decision pursuant to Section 13, Rule 14[16] of the 1964 Rules of Court which was, the applicable rule then. Domingo was not its President, Manager, Secretary, Cashier, Agent or Director, as evidenced by the General Information Sheets[17] *(GIS)* it filed with the Securities and Exchange Commission *(SEC)*, at the time the summons was served upon her and she did not possess the requisite authorization to represent EAIC in the subject transaction. Furthermore, her misrepresentation that she was EAIC's corporate secretary who was properly authorized to sell and receive payment for the subject property, defrauded EAIC of the potential gains it should have realized from the proceeds of the sale.

In their Answer with Counterclaim[18] filed before the CA, respondents countered that considering EAIC's petition for relief

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be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken, and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. (Underscoring supplied.)

[15] *Rollo*, pp. 146-161.

[16] Sec. 13. *Service upon private domestic corporation or partnership.*— If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors.

[17] *Rollo*, pp. 55-92. Compilation of Ellice Agro-Industrial Corporation's General Information Sheet for the years 1991, 1992, 1994, 1995, 1996, 1997, 1998, and 1999.

[18] *Id.* at 167-171.

from judgment under Rule 38 grounded on extrinsic fraud, had already been rejected with finality, EAIC could not be permitted to invoke the same ground in a petition for annulment of judgment under Rule 47. Further, EAIC could not feign ignorance of Civil Case No. 96-177 because of the November 8, 1996 Adverse Claim and the November 18, 1996 Notice of *Lis Pendens* annotated at the back of TCT No. T-157038. Respondents insisted that the mentioned annotations in TCT No. T-157038 should be deemed constructive notices to the world of the pending litigation referred to therein and, therefore, bound EAIC to Civil Case No. 96-177. Moreover, with the exchange of letters, dated July 9, 1997[19] and July 18, 1997,[20] between Wee and EAIC, through Gala, EAIC was informed of the pending civil case against it.

In its Reply[21] filed before the CA, EAIC explained that the RTC did not touch upon the issue of fraud in the petition for relief from judgment as it was dismissed for being filed out of time. In addition, EAIC claimed that the exchange of letters between Wee and EAIC never stated anything whatsoever of any pending suit between them.

In its July 1, 2003 Decision, the CA dismissed the petition for annulment of judgment. In its decision, the CA ratiocinated:

xxx xxx xxx.

The corporation, at the inception of Civil Case No. 96-177 on November 14, 1996, already had constructive notice of the three (3) businessmen's [herein respondents] adverse claim to a 30,000 square-meter portion of the land covered by TCT No. T-157038 because this claim was duly registered and annotated on the said title even before this date. Moreover, four (4) days after the inception of the civil case, room was provided for on the same title for the annotation of a notice of *lis pendens*.

These constructive notices ought to have spurred the corporation into action by filing an answer in Civil Case No. 96-177 through proper

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[19] *Id.* at 178.

[20] *Id.* at 179.

[21] *Id.* at 184-193.

or legitimate representations, for instance. But the corporation chose to keep quiet, thus, making the trial court and everyone else concerned with said civil case believe that Guia G. Domingo is its proper or legitimate representative. It even appears that she was, after all, a proper or legitimate representative of the corporation because in the decision, dated November 3, 1998, rendered in SEC Cases Nos. 3747 and 4027, the corporation's board headed by Raul [E]. Gala since August 24, 1990 was held to be illegitimate.

Even without the constructive notices, the businessmen [herein respondents], through a letter signed by one of them, apprised the corporation, through Raul E. Gala, of their contract to sell. This was in July, 1997. The letter was duly acknowledged and the parties thereafter even tried to settle among themselves the consideration and conveyance of the 30,000 square-meter portion. When this failed, there was no reason why the corporation could not have proceeded with the pre-trial in Civil Case No. 96-177. It did not.

The corporation's reticence in view of the constructive notices and its then incumbent board's personal knowledge of the case had, in effect, amounted to a waiver of its right to actively participate in the proper disposition of Civil Case No. 96-177, to move for a new trial therein and to appeal from the decision rendered therein. Certainly, these remedies no longer are available, but only the corporation should be faulted for this.

Be that as it may, the corporation had availed of the remedy of relief from the judgment in Civil Case No. 96-177. The fact that it was not able to prove that it was entitled thereto does not mean that it can now avail of the instant remedy.

It would serve no useful purpose then to delve into the issues of jurisdiction and fraud raised in the petition as the petition itself is unavailing under the circumstances.

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EAIC's motion for reconsideration was denied by the CA in its Resolution, dated August 8, 2006.

Hence, this petition for review.

The Issues

Not in conformity with the ruling of the CA, EAIC seeks relief from this Court raising the following errors:

THE COURT OF APPEALS ERRED IN RULING THAT THERE WAS VALID SERVICE OF SUMMONS UPON PETITIONER CORPORATION.

THE COURT OF APPEALS ERRED IN RULING THAT GUIA G. DOMINGO WAS A DIRECTOR OF PETITIONER CORPORATION AT THE TIME SUMMONS WAS SERVED UPON HER AND IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER CAN NO LONGER AVAIL OF THE PRESENT PETITION HAVING EARLIER FILED A PETITION FOR RELIEF FROM JUDGMENT.[22]

The main issue for the Court's consideration is whether the RTC validly acquired jurisdiction over the person of EAIC, defendant in Civil Case No. 96-177.

In their Memorandum,[23] respondents argue that at the time the summons was served upon Domingo, she was acting for and in behalf of EAIC. They further point out that, at any rate, EAIC's filing of its Answer with Counterclaim and the petition for relief from judgment before the trial court constitutes voluntary appearance thereby submitting itself to the jurisdiction of the RTC. Respondents stress that the extrinsic fraud claimed by EAIC is not a valid ground for a petition for annulment of judgment because the latter had already availed of the said ground in a petition from relief from judgment in contravention to Section 2, Rule 47.[24]

In her Memorandum,[25] Domingo argues that EAIC, in filing its Answer with Counterclaim and Petition for Relief from Judgment, had invoked the jurisdiction of the same trial court

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

[23] *Id.* at 514-534.

[24] SEC. 2. *Grounds for annulment.*—The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. (Underscoring supplied.)

[25] *Rollo*, pp. 607-621.

that it now denies. Further, she claims that she acted in utmost good faith in receiving the summons and filing the Answer in Civil Case No. 96-177 for EAIC since she truly believed that she was authorized to do so.

On the other hand, EAIC, in its Memorandum,[26] contends that there was no valid service of summons because Domingo, at the time summons was served, was not its president, manager, secretary, cashier, agent, or director. The GIS filed with the SEC consistently showed that she never held any position with EAIC which could have authorized her to receive summons in behalf of EAIC. The CA erred in considering the Adverse Claim and Notice of *Lis Pendens* annotated in TCT No. T-157038 as constructive notice to EAIC of the pendency of Civil Case No. 96-177 and, therefore, clothed the RTC with jurisdiction over the person of EAIC. Those annotations in the TCT merely serve to apprise third persons of the controversy or pending litigation relating to the subject property but do not place a party under the jurisdiction of the court. Moreover, respondents' duty to prosecute their case diligently includes ensuring that the proper parties are impleaded and properly served with summonses.

The Court's Ruling

The Court finds merit in the petition.

It is a settled rule that jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, any judgment of the court which has no jurisdiction over the person of the defendant is null and void.[27] The purpose of summons is not only to acquire jurisdiction over the person of the defendant, but also to give notice to the defendant that an action has been commenced against it and to afford it an opportunity to be heard on the claim made against

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[26] *Id.* at 474-511.

[27] *Manotoc v. CA*, 530 Phil. 454, 467 (2006).

it. The requirements of the rule on summons must be strictly followed, otherwise, the trial court will not acquire jurisdiction over the defendant.[28]

Section 13, Rule 14 of the 1964 Rules of Civil Procedure, the applicable rule on service of summons upon a private domestic corporation then, provides:

> Sec. 13. *Service upon private domestic corporation or partnership.*— If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors. [Underscoring supplied]

Based on the above-quoted provision, for service of summons upon a private domestic corporation, to be effective and valid, should be made on the persons enumerated in the rule. Conversely, service of summons on anyone other than the president, manager, secretary, cashier, agent, or director, is not valid. The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him.[29]

In the present case, the 1996 GIS[30] of EAIC, the pertinent document showing EAIC's composition at the time the summons was served upon it, through Domingo, will readily reveal that she was not its president, manager, secretary, cashier, agent or director. Due to this fact, the Court is of the view that her honest belief that she was the authorized corporate secretary was clearly mistaken because she was evidently not the corporate secretary she claimed to be. In view of Domingo's lack of authority to properly represent EAIC, the Court is constrained to rule that there was no valid service of summons binding on it.

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[28] *Pioneer International, Ltd. v. Guadiz, Jr.*, G.R. No. 156848, October 11, 2007, 535 SCRA 584, 600.

[29] *B.D. Long Span Builders v. R.S. Ampeloquio Realty Development, Inc.*, G.R. No. 169919, September 11, 2009, 599 SCRA 468, 474.

[30] *Rollo*, pp. 71-75.

Granting *arguendo* that EAIC had actual knowledge of the existence of Civil Case No. 96-177 lodged against it, the RTC still failed to validly acquire jurisdiction over EAIC. In *Cesar v. Ricafort-Bautista*,[31] it was held that "x x x jurisdiction of the court over the person of the defendant or respondent cannot be acquired notwithstanding his knowledge of the pendency of a case against him unless he was validly served with summons. Such is the important role a valid service of summons plays in court actions."

The Court cannot likewise subscribe to respondents argument that by filing its answer with counterclaim, through Domingo, with the RTC, EAIC is deemed to have voluntarily submitted itself to the jurisdiction of the RTC. In *Salenga v. Court of Appeals*,[32] the Court stated:

> A corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its bylaws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board.

In this case, at the time she filed the Answer with Counterclaim, Domingo was clearly not an officer of EAIC, much less duly authorized by any board resolution or secretary's certificate from EAIC to file the said Answer with Counterclaim in behalf of EAIC. Undoubtedly, Domingo lacked the necessary authority to bind EAIC to Civil Case No. 96-177 before the RTC despite the filing of an Answer with Counterclaim. EAIC cannot be bound or deemed to have voluntarily appeared before the RTC by the act of an unauthorized stranger.

Incidentally, Domingo alleged in her Answer with Counterclaim that "Alicia E. Gala is the real owner and possessor of all the real properties registered in the business name and style Ellice-

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[31] 536 Phil. 1037 (2006).

[32] G.R. No. 174941, February 1, 2012, 664 SCRA 635, 656.

Agro Industrial Corporation x x x."[33] In the same pleading, Domingo claimed that she was authorized by Alicia E. Gala, the purported beneficial owner of the subject property, to represent her in Civil Case No. 96-177 by virtue of a General Power of Attorney. In advancing the said allegations, among others, Domingo evidently acted in representation of Alicia E. Gala, not EAIC. Hence, her conduct in the filing of the Answer with Counterclaim cannot and should not be binding to EAIC.

In view of the fact that EAIC was not validly served with summons and did not voluntarily appear in Civil Case No. 96-177, the RTC did not validly acquire jurisdiction over the person of EAIC. Consequently, the proceedings had before the RTC and ultimately its November 11, 1999 Decision were null and void.

Pursuant to Section 7, Rule 47[34] of the Rules of Court, a judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void.

WHEREFORE, the petition is **GRANTED**. The July 1, 2003 Decision and August 8, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 64421, are hereby **REVERSED**. The November 11, 1999 Decision of the Regional Trial Court of Lucena City, Branch 60, in Civil Case No. 96-177, is hereby declared **VACATED** and **SET ASIDE**.

The records of the case is hereby ordered remanded to the Regional Trial Court of Lucena City, Branch 60, for the proper service of summons to the petitioner and other parties, if any, and for other appropriate proceedings.

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[33] *Rollo*, p. 95.

[34] SEC. 7. *Effect of judgment*. – A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175481. November 21, 2012]

DIONISIO F. AUZA, JR., ADESSA F. OTARRA, and ELVIE JEANJAQUET, *petitioners, vs.* **MOL PHILIPPINES, INC. and CESAR G. TIUTAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC); APPELLATE JURISDICTION THEREOF; THE NLRC IS POSSESSED OF POWER TO RECTIFY ANY ABUSE OF DISCRETION COMMITTED BY THE LABOR ARBITER.— To settle the issue of the NLRC's jurisdiction over petitioners' appeal, we quote in part Article 223 of the Labor Code concerning the appellate jurisdiction of the NLRC: ART. 223. APPEAL. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds: (a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter; x x x and Section 2, Rule VI of the NLRC Rules of Procedure which provides: Section 2. *Grounds.* – The appeal may be entertained only on any of the following

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[**] Designated acting member, per Special Order No. 1352, dated November 7, 2012.

[***] Designated acting member, per Special Order No. 1352, dated August 28, 2012.

grounds: (a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter x x x; x x x Clearly, the NLRC is possessed of power to rectify any abuse of discretion committed by the Labor Arbiter. Here, the NLRC, in taking cognizance of petitioners' appeal and in resolving it on the merits, merely exercised such power. This is because the Labor Arbiter, in not admitting petitioners' Position Paper (albeit filed late) and in dismissing petitioners' Complaints for failure to prosecute, acted with grave abuse of discretion x x x.

2. **REMEDIAL LAW; DISMISSAL OF ACTIONS; DISMISSAL OF ACTIONS DUE TO FAULT OF PLAINTIFF; THE FAILURE TO SUBMIT A POSITION PAPER ON TIME IS NOT A GROUND FOR STRIKING OUT THE PAPER FROM THE RECORDS, MUCH LESS FOR DISMISSING A COMPLAINT IN THE CASE OF THE COMPLAINANT.—** [T]he failure to submit a Position Paper on time is not a ground for striking out the paper from the records, much less for dismissing a complaint in the case of the complainant." As mandated by law, the Labor Arbiter is enjoined "to use every reasonable means to ascertain the facts of each case speedily and objectively, without technicalities of law or procedure, all in the interest of due process."

3. **ID.; ID.; ID.; A CASE MAY BE DISMISSED ON THE GROUND OF NON-PROSEQUITUR, IF, UNDER THE CIRCUMSTANCES, THE PLAINTIFF IS CHARGEABLE WITH WANT OF DUE DILIGENCE IN FAILING TO PROCEED WITH REASONABLE PROMPTITUDE; NOT APPLICABLE.—** [T]he Labor Arbiter committed grave error in dismissing the Complaints on the ground of failure to prosecute under Section 3, Rule 17 of the Rules of Court. Under this rule, a case may be dismissed on the ground of *non-prosequitur*, if, under the circumstances, the "plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude." In the case at bench, no negligence can be attributed to petitioners in pursuing their case. The records show that petitioners themselves wrote the Labor Arbiter on July 7, 2004 to request for additional time to submit a Position Paper since their counsel, Atty. Boiser, was frequently out of town and so they had to secure the services of an additional counsel to prepare and file their Position Paper. Unfortunately, the Labor Arbiter refused to recognize the appearance of their new counsel, Atty. Cañete. Under the circumstances, petitioners should be given consideration for

their vigilance in pursuing their causes. As aptly held by the NLRC, the delay in the filing of their Position Paper cannot be interpreted as failure to prosecute on their part. "Failure to prosecute" is akin to lack of interest. Here, petitioners did not sleep on their rights and obligations as party litigants.

4. ID.; RULES AND PROCEDURE; TECHNICALITY SHOULD NOT BE ALLOWED TO STAND IN THE WAY OF EQUITABLY AND COMPLETELY RESOLVING THE RIGHTS AND OBLIGATIONS OF THE PARTIES.— [T]he NLRC did not err in entertaining petitioners' appeal and in considering their Position Paper in resolving the same. It merely liberally applied the rules to prevent a miscarriage of justice in accord with the provisions of the Labor Code. As it is, "[t]echnicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties."

5. ID.; PLEADINGS AND PRACTICES; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING; SUBSEQUENT AND SUBSTANTIAL COMPLIANCE MAY CALL FOR THE RELAXATION OF THE RULES IN ORDER NOT TO FRUSTRATE THE ENDS OF JUSTICE.— True, the verification and certification of non-forum shopping was executed and signed solely by Auza without proof of any authority from his co-petitioners. Thence, in a Minute Resolution dated February 26, 2007, this Court required petitioners to submit such proof of authority. In compliance therewith, petitioners thereafter submitted a Verification and Certification of Non-Forum Shopping this time executed and signed by Auza, Otarra and Jeanjaquet. Ample jurisprudence provides that subsequent and substantial compliance may call for the relaxation of the rules. Indeed, "imperfections of form and technicalities of procedure are to be disregarded, except where substantial rights would otherwise be prejudiced." Due to petitioners' subsequent and substantial compliance, we thus apply the rules liberally in order not to frustrate the ends of justice.

6. ID.; ID.; IT IS FOR THE COURT OF APPEALS TO DETERMINE WHETHER THE DOCUMENTS ATTACHED BY A PARTY ARE SUFFICIENT TO MAKE OUT A *PRIMA FACIE* CASE SINCE THE ACCEPTANCE OF A PETITION AS WELL AS THE GRANT OF DUE COURSE THERETO ARE ADDRESSED TO THE SOUND DISCRETION OF THE APPELLATE COURT.— It is within the CA's determination whether the documents

attached by a petitioner are sufficient to make out a *prima facie* case since the acceptance of a petition as well as the grant of due course thereto are addressed to the sound discretion of the appellate court. The Rules of Court, aside from the judgment, final order or resolution being assailed, do not specify the documents, pleadings or parts of the records that should be appended to the petition but only those that are relevant or pertinent to such judgment, final order or resolution. As such, the CA has discerned to judiciously resolve the merits of the petition based on what have been submitted by the parties. At any rate, the subject Position Paper and Supplemental Position Paper were submitted by petitioners themselves in their Comment to the Petition for *Certiorari* and, hence, had also been brought to the attention of the CA.

7. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RESIGNATION; DEFINED; THE OVERT ACT OF RELINQUISHMENT SHOULD BE COUPLED WITH AN INTENT TO RELINQUISH, WHICH INTENT COULD BE INFERRED FROM THE ACTS OF THE EMPLOYEE BEFORE AND AFTER THE ALLEGED RESIGNATION.— Resignation is the formal pronouncement or relinquishment of an office." The overt act of relinquishment should be coupled with an intent to relinquish, which intent could be inferred from the acts of the employee before and after the alleged resignation. It appears that petitioners, on their own volition, decided to resign from their positions after being informed of the management's decision that the Cebu branch would eventually be manned by a mere skeletal force. As proven by the email correspondences presented, petitioners were fully aware and had, in fact, acknowledged that Cebu branch has been incurring losses and was already unprofitable to operate. Note that there was evidence produced to prove that indeed the Cebu branch's productivity had deteriorated as shown in a Profit and Loss Statement for the years 2001 and 2002. Also, there was a substantial reduction of workforce as all of the Cebu branch staff and personnel, except one, were not retained. On the other hand, petitioners' assertions that the Cebu branch was performing well are not at all substantiated. What they presented was a document entitled "1999 Performance Standards", which only provides for performance objectives but tells nothing about the branch's progress. Likewise, the Cebu Performance Reports submitted which showed outstanding company performance only pertained to the year 1999 and the

first quarter of year 2000. No other financial documents were submitted to show that such progress continued until year 2002.

8. ID.; ID.; ID.; LETTERS OF RESIGNATION CONTAINING EXPRESSIONS OF GRATITUDE CONTRADICT ALLEGATIONS OF FORCED RESIGNATION.— Contrary to their assertions, petitioners were not lured by any misrepresentation by respondents. Instead, they themselves were convinced that their separation was inevitable and for this, they voluntarily resigned. As aptly observed by the CA, no element of force can be deduced from their letters of resignation as the same even contained expressions of gratitude and thus contradicting their allegations that same were prepared by their employer. In *Globe Telecom v. Crisologo*, we held that allegations of coercion are belied by words of gratitude coming from an employee who is just forced to resign.

9. ID.; ID.; ID.; FAILURE TO IMMEDIATELY CONTEST THEIR RESIGNATIONS BUT WAITED FOR MORE THAN A YEAR OR NEARLY 15 MONTHS BEFORE CONTESTING THEM NEGATES THE EMPLOYEES' CLAIM THAT THEY WERE VICTIMS OF DECEIT.— Petitioners aver that right after receiving their separation pay, they found out that the Cebu branch was not closed but merely transferred to a bigger office and staffed by newly hired employees. Notably, however, despite such knowledge, petitioners did not immediately contest their resignations but waited for more than a year or nearly 15 months before contesting them. This negates their claim that they were victims of deceit. Moreover, no adequate proof was presented to show that the planned downsizing of Cebu branch did not take place. Similarly, petitioners' allegations of bad faith on the part of respondents are unsupported by records. No proof whatsoever was advanced to show that there was threat of withholding their separation pay unless their resignation letters were submitted prior to the actual closure of the Cebu branch or that they were subjected to ill treatment and unpalatable working conditions immediately prior to their resignation.

10. ID.; ID.; ID.; ALTHOUGH QUITCLAIMS ARE GENERALLY AGAINST PUBLIC POLICY, VOLUNTARY AGREEMENTS ENTERED INTO AND REPRESENTED BY A REASONABLE SETTLEMENT ARE BINDING ON THE PARTIES WHICH MAY NOT BE LATER DISOWNED SIMPLY BECAUSE OF A CHANGE OF MIND; IT IS ONLY WHERE THERE IS CLEAR PROOF THAT

THE WAIVER WAS WANGLED FROM AN UNSUSPECTING OR GULLIBLE PERSON, OR THE TERMS OF THE SETTLEMENT ARE UNCONSCIONABLE THAT THE LAW WILL STEP IN TO BAIL OUT THE EMPLOYEE.— In addition, it is well to note that Auza and Otarra are managerial employees and not ordinary workers who cannot be easily coerced or intimidated into signing something against their will. As borne out by the records, Auza was the Local Chairman of International Shipping Lines Association for five years, president of their Homeowner's Association and an active member of his community. Otarra, on the other hand, was officer of various church organizations and a college professor at the University of the Visayas. Their standing in society depicts how highly educated and intelligent persons they are as to know fully well the consequences of their acts in executing and signing letters of resignation and quitclaims. Although quitclaims are generally against public policy, voluntary agreements entered into and represented by a reasonable settlement are binding on the parties which may not be later disowned simply because of a change of mind. "It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of the settlement are unconscionable, that the law will step in to bail out the employee." Hence, we uphold the validity of the quitclaims signed by petitioners in exchange for the separation benefits they received from respondents.

APPEARANCES OF COUNSEL

Amorito V. Cañete for petitioners.
Rudegilio D. Tacorda for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"[J]ustice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine."[1] Although we are committed to protect the working class, it behooves us to uphold the rights of management too if

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[1] *Sime Darby Pilipinas, Inc. v. National Labor Relations Commission (2nd Div.),* 351 Phil. 1013, 1020 (1998).

only to serve the interest of fair play. As applied in this case, the employees who voluntarily resigned and executed quitclaims are barred from instituting an action or claim against their employer.

By this Petition for Review on *Certiorari*,[2] petitioners Dionisio F. Auza, Jr. (Auza), Adessa F. Otarra (Otarra) and Elvie Jeanjaquet (Jeanjaquet) assail the August 17, 2006 Decision[3] and November 15, 2006 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 01375, which reversed the July 22, 2005 Decision[5] and November 30, 2005 Resolution[6] of the National Labor Relations Commission (NLRC) and consequently dismissed their Complaints for illegal dismissal against respondents MOL (Mitsui O.S.K Lines) Philippines, Inc. (MOL) and Cesar G. Tiutan (Tiutan), in his capacity as its President.

Factual Antecedents

Respondent MOL is a common carrier engaged in transporting cargoes to and from the different parts of the world. On October 1, 1997, it employed Auza and Jeanjaquet as Cebu's Branch Manager and Administrative Assistant, respectively. It also employed Otarra as its Accounts Officer on November 1, 1997.

On October 14, 2002, Otarra tendered her resignation[7] letter effective November 15, 2002 while Auza and Jeanjaquet submitted their resignation letters[8] on October 30, 2002 to take effect on November 30, 2002. Petitioners were then given their separation pay and the monetary value of leave credits, 13th month pay, MOL cooperative shares and unused dental/optical

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[2] *Rollo*, pp. 26-68.

[3] CA *rollo*, pp. 652-663; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Marlene Gonzales-Sison and Priscilla Baltazar-Padilla.

[4] *Id.* at 730-731.

[5] *Id.* at 59-79; penned by Commissioner Aurelio D. Menzon and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles.

[6] *Id.* at 80-92.

[7] *Id.* at 100.

[8] *Id.* at 96 and 104.

benefits as shown in documents entitled "Remaining Entitlement Computation,"[9] which documents were signed by each of them acknowledging receipt of such benefits. Afterwhich, they executed Release and Quitclaims[10] and then issued Separation Clearances.[11]

In February 2004 or almost 15 months after their severance from employment, petitioners filed separate Complaints[12] for illegal dismissal before the Arbitration Branch of the NLRC against respondents and MOL's Manager for Corporate Services, George Dolorfino. These complaints were later consolidated.

Proceedings before the Labor Arbiter

In an Order[13] dated May 26, 2004, Labor Arbiter Ernesto F. Carreon directed the parties to submit their respective Position Papers within 10 days from receipt of notice. Petitioners' counsel of record, Atty. Narciso C. Boiser (Atty. Boiser), received the same on June 22, 2004.

In their Position Paper,[14] respondents alleged that petitioners were not dismissed but voluntarily resigned from employment. In fact, separation benefits were paid to them for which quitclaims were duly executed. Hence, petitioners are effectively barred from instituting any action or claim in connection with their employment. They likewise posited that petitioners are guilty of laches by estoppel considering that they filed their complaints only after the lapse of 15 months from their severance from employment. To support these allegations, respondents submitted together with the said Position Paper, documentary evidence, affidavit of witnesses and a formal offer of exhibits.

Instead of promptly filing their Position Paper, petitioners, on the other hand, wrote the Labor Arbiter on July 7, 2004

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[9] *Id.* at 97, 101 and 105.

[10] *Id.* at 98, 102 and 106.

[11] *Id.* at 99, 103 and 107.

[12] *Id.* at 93-95.

[13] *Id.* at 152.

[14] *Id.* at 110-126.

requesting for additional time as they were looking for another lawyer because Atty. Boiser was frequently out of town.[15] They were able to secure the services of Atty. Amorito V. Cañete (Atty. Cañete), who filed on July 29, 2004 an Entry of Appearance with Motion for Extension of Time to File Complainants' Position Paper.[16] However, in an Order[17] of even date, the Labor Arbiter refused to recognize Atty. Cañete's appearance without the corresponding withdrawal of appearance of Atty. Boiser. Nevertheless, petitioners were given 10 days from date to submit their Position Paper. The next day, Atty. Boiser filed a Manifestation that Atty. Cañete had been engaged by petitioners as a co-counsel.

Subsequently and notwithstanding the earlier refusal of the Labor Arbiter to recognize the appearance of Atty. Cañete, petitioners filed on August 11, 2004 a verified Position Paper[18] signed by the said counsel. They averred in said pleading that their consent to resign was not voluntarily given but was instead obtained through mistake and fraud. They claimed that they were led to believe that MOL's Cebu branch would be downsized into a mere skeletal force due to alleged low productivity and profitability volume. Pressured into resigning prior to the branch's closure as they might be denied separation pay, petitioners were constrained to resign.

Petitioners further averred that their separation from employment amounts to constructive dismissal due to the shabby treatment they received from Tiutan at the time they were being compelled to quit employment. Aside from Tiutan's incessant imputations that the Cebu branch is overstaffed, manned by incompetent employees, and is heavily losing money, Auza was stripped of his authority to sign checks for the branch's expenditures; his and Otarra's assigned company cars, cellphones and landline phones were recalled; representation expenses were cut-off; and

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[15] See p. 3 of the July 22, 2005 NLRC Decision, *id.* at 64.

[16] *Id.* at 140-141.

[17] *Id.* at 161.

[18] *Id.* at 370-387.

travel and hotel expenses were drastically reduced. These were done to them despite the fact that the Cebu branch had consistently surpassed the performance goal set by the Manila office as shown by documentary evidence submitted. Later, they discovered that the planned downsizing of the Cebu branch was a mere malicious scheme to oust them and to accommodate Tiutan's own people. This is because after they were duped to resign, additional employees were hired by the management as their replacement; they moved to a bigger office; and more telephone lines were installed. In view of their illegal dismissal, petitioners thus prayed for reinstatement plus backwages as well as for damages and attorney's fees.

Petitioners also filed a Supplemental Position Paper[19] to show an itemized computation of backwages due them and to further reiterate that their signatures in the resignation letters and quitclaims were conditioned upon respondents' misrepresentation that the Cebu office will eventually be manned by a skeletal force, which, however, did not take place.

Subsequently, respondents filed a Motion to Expunge and/or Strike Out Position Paper for Complainants Dated August 9, 2004 Filed by Atty. Amorito V. Cañete.[20] They pointed out the belated filing of petitioners' Position Paper and the lack of authority of Atty. Cañete to file and sign the same, among others. The Labor Arbiter granted the Motion in an Order[21] dated November 12, 2004 ratiocinating that a Position Paper must be filed within the inextendible 10-day period as provided under Section 4, Rule V of the NLRC Rules of Procedure. In this case, petitioners' counsel of record, Atty. Boiser, received on June 22, 2004 the May 26, 2004 Order requiring the parties to file position papers within 10 days from receipt thereof. However, petitioners were only able to file their Position Paper on August 11, 2004, way beyond the said 10-day period. And for being filed late, said pleading must be stricken off the records.

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[19] *Id.* at 421-436.

[20] *Id.* at 142-151.

[21] *Id.* at 162-163.

Consequently, the Labor Arbiter dismissed the Complaints without prejudice for failure to prosecute pursuant to Section 3, Rule 17 of the Rules of Court.

Proceedings before the National Labor Relations Commission

Petitioners appealed to the NLRC[22] claiming that the Labor Arbiter defied judicial pronouncements that the failure to submit a Position Paper on time is not a ground for dismissing a complaint. Moreover, considering their dilemma at the time when Atty. Boiser could hardly be reached and the unfortunate non-recognition order by the Labor Arbiter of their new counsel, Atty. Cañete, petitioners prayed for the relaxation of the rules to admit their Position Paper which, they contended, was filed only two days late since they were given an extension of 10 days from July 29, 2004 to file the same in an Order of even date.

In their Reply,[23] respondents countered that petitioners' Position Paper was filed more than 60 days late from receipt by Atty. Boiser (who remained petitioners' counsel of record) of the Labor Arbiter's May 26, 2004 Order. They insisted that this inexcusable delay should not be allowed. The Labor Arbiter should have dismissed the Complaints with prejudice in the first place; *a fortiori*, the NLRC should also dismiss the appeal for want of merit. Moreover, petitioners' appeal deserves outright dismissal as no appeal may be taken from an order dismissing an action without prejudice, the remedy being only to revive or re-file the case with the Labor Arbiter.

In its Decision[24] dated July 22, 2005, the NLRC set aside the Labor Arbiter's ruling that petitioners' Position Paper was filed late. It held that the 10-day period given to petitioners for filing their Position Paper should be reckoned from Atty. Cañete's receipt on August 9, 2004 of the July 29, 2004 Order of the Labor Arbiter. The filing, therefore, of petitioners' Position Paper on August 11, 2004 is well within the allowed period, hence, there was no basis in dismissing the Complaints for failure to prosecute.

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[22] See petitioners' Appeal Memorandum, *id*. at 164-180.

[23] *Id.* at 181-194.

[24] *Id.* at 59-79.

Also, instead of remanding the case to the Labor Arbiter, the NLRC opted to decide the same on the merits, in consonance with its mandate to speedily dispose of cases. In so doing, it found that petitioners' resignation letters and quitclaims are invalid and were signed under duress. The NLRC noted that contrary to the representations made to petitioners, the Cebu branch was not actually closed but merely transferred to another location with a bigger office space and with new employees hired as petitioners' replacements. Further, the NLRC noted that under MOL's employment manual, an employee who voluntarily resigns shall only be entitled to benefits if he/she has rendered 10 years of continuous service. Hence, the grant of benefits to petitioners is questionable considering that each of them rendered only five years of service. It therefore opined that petitioners' receipt of benefits is just part of respondents' plan to secure their resignations.

The NLRC concluded that petitioners were illegally dismissed and thus granted them the relief of reinstatement, full backwages computed in accordance with the computation presented by petitioners in their Supplemental Position Paper, and attorney's fees. For Tiutan's bad faith in pressuring both Auza and Otarra to resign, moral and exemplary damages were likewise awarded to the two. The dispositive portion of the NLRC Decision reads:

> **WHEREFORE,** we find respondents guilty of illegally dismissing complainants consequently they are ordered to reinstate complainants to their positions without loss of seniority rights with full backwages from the time they were illegally dismissed until their actual reinstatement, the backwages are computed as of June 30, 2005 as follows: Dionisio F. Auza, Jr. – ₱2,106,165.90; ₱1,203,705.13 for Adessa F. Otarra and ₱685,027.68 for Elvie Jeanjaquet, subject to further recomputation. In addition, respondents are ordered to pay moral and exemplary damages of ₱500,000.00 to Dionisio F. Auza, Jr. and ₱100,000.00 to Adessa F. Otarra. Further, respondents are ordered to pay complainants equivalent to 10% of the total amount awarded as attorney's fees.
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> **SO ORDERED.**[25]

[25] *Id.* at 78-79.

Both parties filed their respective Motions for Reconsideration.[26] With respect to petitioners, they moved that their entitlement to 27 sacks of rice, which was discussed in the body of the NLRC Decision but omitted in the dispositive portion thereof, be declared. For their part, respondents alleged that the NLRC has no jurisdiction to entertain petitioners' appeal; hence, it usurped the jurisdiction and function of the Labor Arbiter to hear and decide the case which had been dismissed without prejudice. Reiterating this argument, respondents also subsequently filed An Urgent Motion to Dismiss Instant Appeal for Lack of Jurisdiction.[27]

The NLRC, in its Resolution[28] dated November 30, 2005, granted petitioners' motion by awarding 27 sacks of rice to each of them in addition to the monetary awards. On the other hand, it denied respondents' motions by upholding its jurisdiction to entertain petitioners' appeal in line with its authority to correct errors made by the Labor Arbiter and in order to prevent delays in the disposition of labor cases.

Proceedings before the Court of Appeals

A Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction[29] was filed by respondents with the CA. In a Resolution[30] dated January 13, 2006, the CA issued a temporary restraining order to prevent the enforcement of the NLRC Decision of July 22, 2005 upon respondents' posting of a bond. A writ of preliminary injunction[31] was then issued to further restrain the implementation of the assailed Decision.

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[26] *Rollo*, pp. 219-220 and 222-246.

[27] CA *rollo*, pp. 261-265.

[28] *Id.* at 80-92.

[29] *Id.* at 2-58.

[30] *Id.* at 278-279.

[31] *Id.* at 528-531.

On August 17, 2006, the CA rendered its Decision[32] annulling and setting aside the Decision of the NLRC. The CA did not find any element of coercion and force in petitioners' separation from employment but rather upheld the voluntary execution of their resignation letters as gleaned from the tenor thereof. It opined that petitioners were aware of the consequences of their acts in voluntarily resigning and executing quitclaims. Notably, however, the CA did not touch upon the issue raised by respondents regarding the NLRC's lack of jurisdiction. The dispositive portion of the CA's Decision reads:

> **WHEREFORE,** the petition for *certiorari* filed by the petitioners is hereby **GRANTED**. Accordingly, the assailed decision of the public respondent National Labor Relations Commission (NLRC) 4th Division of Cebu City dated 22 July 2005 in NLRC Case No. V-000079-2005 (RAB-VII-02-0342-04 and RAB-VII-02-0418-04) as well as the Resolution of the public respondent Commission dated 30 November 2005 are **REVERSED** and **SET ASIDE**. A new decision is entered dismissing the complaints filed by private respondents for illegal dismissal against petitioners.
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> SO ORDERED.[33]

A motion for reconsideration[34] was filed by the petitioners but the same was denied by the CA in a Resolution[35] dated November 15, 2006.

Hence, this petition.

Issues

Petitioners ascribe upon the CA the following errors:

1. THE HONORABLE COURT OF APPEALS ACTED WITHOUT JURISDICTION AND GRAVELY ERRED WHEN IT REVERSED AND SET ASIDE THE NLRC DECISION RENDERED ON THE BASIS OF FACTUAL FINDINGS

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[32] *Id.* at 652-663.

[33] *Id.* at 662-663.

[34] *Id.* at 664-674.

[35] *Id.* at 73-731.

WHICH WERE NOT CONTROVERTED BY HEREIN PRIVATE RESPONDENTS[;]

2. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE RESPONDENTS CONSTRUCTIVELY DISMISSED PETITIONERS[;]

3. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT PETITIONERS WERE NOT DISMISSED BUT VOLUNTARILY RESIGNED FROM THEIR JOBS[;]

4. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE RELEASES AND QUITCLAIMS WERE INVALID AND THEREFORE NOT A BAR TO THE FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL[;]

5. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONCLUDING THAT THE TENOR OF THE LETTERS OF RESIGNATIONS IS PROOF THAT PETITIONERS WERE NOT FORCED TO RESIGN[;]

6. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT DISMISSING THE PETITION FOR *CERTIORARI* FOR THE FAILURE OF THE PRIVATE RESPONDENTS TO ATTACH THE PETITIONERS' POSITION PAPER AND SUPPLEMENTAL POSITION OR EVEN THE PRO-FORMA COMPLAINTS[;]

7. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT ORDERING THE REINSTATEMENT OF PETITIONERS TO THEIR FORMER POSITIONS WITH FULL BACKWAGES [FROM] THE DATES THEY WERE ILLEGALLY DISMISSED UNTIL THEIR ACTUAL REINSTATEMENT[; and]

8. THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION IN NOT AWARDING DAMAGES AND ATTORNEY'S FEES.[36]

Petitioners insist that they were not given any choice but to resign after respondents informed them of the impending closure of the branch and that they would not receive any separation pay if the closure would precede their resignation. They claim

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

that they had no personal reasons to forego their employment from which they were receiving huge salaries and benefits. Thus, the CA gravely erred in holding that their resignations were voluntarily made and in not dismissing respondents' Petition for *Certiorari* despite their failure to attach thereto petitioners' Position Paper and Supplemental Position Paper.

In their Comment,[37] respondents assert that the CA's finding of petitioners' voluntary resignation from employment is based on substantial evidence and is final and conclusive on this Court. Further, the CA was correct in giving due course to their petition since they have attached all the pleadings and documents required for sufficient compliance with the rules. They counter that it is this instant petition which should be dismissed as its certification of non-forum shopping was signed only by Auza without authority to sign in behalf of the other petitioners. Finally, respondents ask this Court to resolve the issue regarding the NLRC's jurisdiction over petitioners' appeal filed before it.

Our Ruling

This Court finds no merit in the petition.

On Procedural Issues:

The NLRC has jurisdiction to entertain petitioners' appeal filed before it.

To settle the issue of the NLRC's jurisdiction over petitioners' appeal, we quote in part Article 223 of the Labor Code concerning the appellate jurisdiction of the NLRC:

> ART. 223. APPEAL. - Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:
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> (a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
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> x x x x x x x x x

[37] *Id.* at 390-437.

and Section 2, Rule VI of the NLRC Rules of Procedure[38] which provides:

Section 2. *Grounds.* – The appeal may be entertained only on any of the following grounds:

(a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter x x x;

x x x x x x x x x

Clearly, the NLRC is possessed of power to rectify any abuse of discretion committed by the Labor Arbiter. Here, the NLRC, in taking cognizance of petitioners' appeal and in resolving it on the merits, merely exercised such power. This is because the Labor Arbiter, in not admitting petitioners' Position Paper (albeit filed late) and in dismissing petitioners' Complaints for failure to prosecute, acted with grave abuse of discretion as hereinafter explained.

First, "the failure to submit a Position Paper on time is not a ground for striking out the paper from the records, much less for dismissing a complaint in the case of the complainant."[39] As mandated by law, the Labor Arbiter is enjoined "to use every reasonable means to ascertain the facts of each case speedily and objectively, without technicalities of law or procedure, all in the interest of due process."[40]

Next, the Labor Arbiter committed grave error in dismissing the Complaints on the ground of failure to prosecute under Section 3, Rule 17 of the Rules of Court.[41] Under this rule, a case may be dismissed on the ground of *non-prosequitur*, if,

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[38] As amended by Resolution No. 01-12, Series of 2002.

[39] *University of the Immaculate Concepcion v. University of the Immaculate Concepcion Teaching & Non-Teaching Personnel and Employees Union*, 414 Phil. 522, 533 (2001).

[40] *Aldeguer & Co., Inc./Loalde Boutique v. Tomboc*, G.R. No. 147633, July 28, 2008, 560 SCRA 49, 56-57.

[41] SEC 3. *Dismissal due to fault of plaintiff.* – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable

under the circumstances, the "plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude."[42] In the case at bench, no negligence can be attributed to petitioners in pursuing their case. The records show that petitioners themselves wrote the Labor Arbiter on July 7, 2004 to request for additional time to submit a Position Paper since their counsel, Atty. Boiser, was frequently out of town and so they had to secure the services of an additional counsel to prepare and file their Position Paper. Unfortunately, the Labor Arbiter refused to recognize the appearance of their new counsel, Atty. Cañete. Under the circumstances, petitioners should be given consideration for their vigilance in pursuing their causes. As aptly held by the NLRC, the delay in the filing of their Position Paper cannot be interpreted as failure to prosecute on their part. "Failure to prosecute" is akin to lack of interest.[43] Here, petitioners did not sleep on their rights and obligations as party litigants.

In view of these, it is clear that the NLRC did not err in entertaining petitioners' appeal and in considering their Position Paper in resolving the same. It merely liberally applied the rules to prevent a miscarriage of justice in accord with the provisions of the Labor Code. As it is, "[t]echnicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties."[44]

Petitioners' subsequent and substantial compliance with the rules on verification and certification of non-forum shopping

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length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[42] *Producers Bank of the Philippines v. Court of Appeals,* 396 Phil. 497, 505-506 (2000).

[43] *De Knecht v. Court of Appeals,* 352 Phil. 833, 848 (1998).

[44] *ABS-CBN Broadcasting Corporation v. Nazareno,* 534 Phil. 306, 325 (2006).

calls for the relaxation of technical rules.

Respondents assail this Court's authority to entertain the instant petition despite the defective verification and certification of non-forum shopping attached to it.

True, the verification and certification of non-forum shopping was executed and signed solely by Auza without proof of any authority from his co-petitioners. Thence, in a Minute Resolution[45] dated February 26, 2007, this Court required petitioners to submit such proof of authority. In compliance therewith, petitioners thereafter submitted a Verification and Certification of Non-Forum Shopping[46] this time executed and signed by Auza, Otarra and Jeanjaquet.

Ample jurisprudence provides that subsequent and substantial compliance may call for the relaxation of the rules.[47] Indeed, "imperfections of form and technicalities of procedure are to be disregarded, except where substantial rights would otherwise be prejudiced."[48] Due to petitioners' subsequent and substantial compliance, we thus apply the rules liberally in order not to frustrate the ends of justice.

The CA did not err in giving due course to respondents' petition for certiorari despite failure to attach petitioners' Position Paper and Supplemental Position Paper.

Petitioners deplore the CA's refusal to dismiss respondents' Petition for *Certiorari* for deliberately failing to attach a copy of petitioners' Position Paper as well as their Supplemental Position Paper, pleadings which are relevant in rendering a decision.

This contention fails to impress.

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[45] *Rollo*, p. 386.

[46] *Id*. at 470-472.

[47] *Security Bank Corporation v. Indiana Aerospace University*, 500 Phil. 51, 60 (2005).

[48] *The Bases Conversion and Development Authority v. Uy*, 537 Phil. 18, 30 (2006).

It is within the CA's determination whether the documents attached by a petitioner are sufficient to make out a *prima facie* case since the acceptance of a petition as well as the grant of due course thereto are addressed to the sound discretion of the appellate court. The Rules of Court, aside from the judgment, final order or resolution being assailed, do not specify the documents, pleadings or parts of the records that should be appended to the petition but only those that are relevant or pertinent to such judgment, final order or resolution.[49] As such, the CA has discerned to judiciously resolve the merits of the petition based on what have been submitted by the parties. At any rate, the subject Position Paper and Supplemental Position Paper were submitted by petitioners themselves in their Comment to the Petition for *Certiorari* and, hence, had also been brought to the attention of the CA.

On the Substantive Issues:

Petitioners voluntarily resigned from employment.

After a careful scrutiny and review of the records of the case, this Court is inclined to affirm the findings of the CA that petitioners voluntarily resigned from MOL.

"Resignation is the formal pronouncement or relinquishment of an office."[50] The overt act of relinquishment should be coupled with an intent to relinquish, which intent could be inferred from the acts of the employee before and after the alleged resignation.[51]

It appears that petitioners, on their own volition, decided to resign from their positions after being informed of the management's decision that the Cebu branch would eventually be manned by a mere skeletal force. As proven by the email

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[49] *Velez v. Shangri-la's Edsa Plaza Hotel*, 535 Phil. 12, 24-25 (2006).

[50] *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 367.

[51] *San Miguel Properties Philippines, Inc. v. Gucaban*, G.R. No. 153982, July 18, 2011, 654 SCRA 18, 28-29.

correspondences presented, petitioners were fully aware and had, in fact, acknowledged that Cebu branch has been incurring losses and was already unprofitable to operate.[52] Note that there was evidence produced to prove that indeed the Cebu branch's productivity had deteriorated as shown in a Profit and Loss Statement[53] for the years 2001 and 2002. Also, there was a substantial reduction of workforce as all of the Cebu branch staff and personnel, except one, were not retained. On the other hand, petitioners' assertions that the Cebu branch was performing well are not at all substantiated. What they presented was a document entitled "1999 Performance Standards",[54] which only provides for performance objectives but tells nothing about the branch's progress. Likewise, the Cebu Performance Reports[55] submitted which showed outstanding company performance only pertained to the year 1999 and the first quarter of year 2000. No other financial documents were submitted to show that such progress continued until year 2002.

Contrary to their assertions, petitioners were not lured by any misrepresentation by respondents. Instead, they themselves were convinced that their separation was inevitable and for this, they voluntarily resigned. As aptly observed by the CA, no element of force can be deduced from their letters of resignation as the same even contained expressions of gratitude and thus contradicting their allegations that same were prepared by their employer. In *Globe Telecom v. Crisologo*,[56] we held that allegations of coercion are belied by words of gratitude coming from an employee who is just forced to resign.

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[52] Annexes "J","K","L","M","N","O","P" and "Q" of petitioners' Position Paper before the Labor Arbiter, *rollo*, pp. 110-125.

[53] *Id.* at 115-116.

[54] Annex "A" of petitioners' Position Paper before the Labor Arbiter, *id*. at 98-99.

[55] Annexes "D" and "E", *id*. at 104-105.

[56] G.R. No. 174644, August 10, 2007, 529 SCRA 811, 820.

Petitioners aver that right after receiving their separation pay, they found out that the Cebu branch was not closed but merely transferred to a bigger office and staffed by newly hired employees. Notably, however, despite such knowledge, petitioners did not immediately contest their resignations but waited for more than a year or nearly 15 months before contesting them. This negates their claim that they were victims of deceit.[57] Moreover, no adequate proof was presented to show that the planned downsizing of Cebu branch did not take place. Similarly, petitioners' allegations of bad faith on the part of respondents are unsupported by records. No proof whatsoever was advanced to show that there was threat of withholding their separation pay unless their resignation letters were submitted prior to the actual closure of the Cebu branch or that they were subjected to ill treatment and unpalatable working conditions immediately prior to their resignation.

In addition, it is well to note that Auza and Otarra are managerial employees and not ordinary workers who cannot be easily coerced or intimidated into signing something against their will.[58] As borne out by the records, Auza was the Local Chairman of International Shipping Lines Association for five years, president of their Homeowner's Association and an active member of his community. Otarra, on the other hand, was officer of various church organizations and a college professor at the University of the Visayas.[59] Their standing in society depicts how highly educated and intelligent persons they are as to know fully well the consequences of their acts in executing and signing letters of resignation and quitclaims. Although quitclaims are generally against public policy, voluntary agreements entered into and represented by a reasonable settlement are binding on the parties which may not be later disowned simply

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[57] *Shie Jie Corporation v. National Federation of Labor,* 502 Phil. 143, 150 (2005).

[58] *Samaniego v. National Labor Relations Commission,* G.R. No. 93059, June 3, 1991, 198 SCRA 111, 119.

[59] See petitioners' Supplemental Position Paper before the Labor Arbiter, *rollo,* pp.142-143.

because of a change of mind.[60] "It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of the settlement are unconscionable, that the law will step in to bail out the employee."[61] Hence, we uphold the validity of the quitclaims signed by petitioners in exchange for the separation benefits they received from respondents.

All told, the Court affirms the finding of the CA that petitioners were not illegally dismissed from employment but instead voluntarily resigned therefrom.

WHEREFORE, the petition is **DENIED**. The Decision dated August 17, 2006 and Resolution dated November 15, 2006 of the Court of Appeals in CA-G.R. SP No. 01375, are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175792. November 21, 2012]

RUBEN C. MAGTOTO and ARTEMIA MAGTOTO, *petitioners, vs.* **COURT OF APPEALS, and LEONILA DELA CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* NOT A SUBSTITUTE FOR A LOST APPEAL; PETITION FOR

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[60] *Alfaro v. Court of Appeals,* 416 Phil. 310, 319 (2001).

[61] *Asian Alcohol Corporation v. National Labor Relations Commission,* 364 Phil. 912, 933 (1999).

REVIEW ON *CERTIORARI*; PROPER REMEDY FROM THE ADVERSE DECISION OF THE COURT OF APPEALS.— At the outset, it must be pointed out that petitioners' resort to a Petition for *Certiorari* under Rule 65 of the Rules of Court is inappropriate. Petitioners' remedy from the adverse Decision of the CA lies in Rule 45 which is a Petition for Review on *Certiorari*. As such, this petition should have been dismissed outright for being a wrong mode of appeal. Even if the petition is to be treated as filed under Rule 45, the same must still be denied for late filing and there being no reversible error on the part of the CA. Records show that petitioners received a copy of the CA Resolution denying their Motion for Reconsideration on October 30, 2006. They therefore had 15 days or until November 14, 2006 within which to file their Petition for Review on *Certiorari* before this Court. However, they filed their Petition for *Certiorari* on December 29, 2006, after the period to file a Petition for Review on *Certiorari* under Rule 45 had expired. Hence, this Petition for *Certiorari* under Rule 65 was resorted to as a substitute for a lost appeal which is not allowed.

2. ID.; ORDER; DEFAULT ORDER; DEFAULT ORDER ISSUED BY THE REGIONAL TRIAL COURT UPHELD FOR FAILURE OF THE PETITIONERS TO FILE A TIMELY ANSWER DUE TO THEIR OWN FAULT.— We agree with the CA that the RTC correctly declared the spouses Magtoto in default. The records show that after receipt of the summons, the spouses Magtoto thrice requested for extensions of time to file their Answer. The RTC granted these requests. For their final request for extension, the RTC gave the spouses Magtoto until August 2, 2003 within which to file their Answer. But still, no Answer was filed. Instead, *on August 4, 2003, or two days after the deadline for filing their Answer,* the spouses Magtoto filed a Motion to Dismiss the Complaint. Despite its belated filing, the RTC acted on the motion and resolved the same, albeit not in favor of the said spouses. Thereafter, Atty. Canlas, petitioners' former counsel, filed a motion to withdraw his appearance since he could no longer effectively defend spouses Magtoto because he had lost communication with them. After the denial of their Motion to Dismiss on September 11, 2003, petitioners should have filed their Answer within the balance of the period prescribed in Rule 11. Instead, they filed their Answer on June 25, 2004 or nine months after the denial of their Motion to Dismiss or three months after they were declared

in default. This delay is unreasonable as well as unjustified. x x x. In fine the belated filing of the Answer is solely attributable to the spouses Magtoto. They miserably failed to be vigilant in protecting and defending their cause. The RTC thus properly declared them in default.

3. ID.; ID.; ID.; RELIEF FROM ORDER OF DEFAULT; GROUNDS, NOT ESTABLISHED.— [T]he spouses Magtoto are unable to show that their failure to timely file an Answer was due to fraud, accident, mistake or excusable negligence and, more importantly, that they have a meritorious defense pursuant to Section 3(b), Rule 9 of the Rules of Court, *viz*: (b) *Relief from order of default*. – A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence *and* that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. x x x. "Negligence, to be 'excusable,' must be one which ordinary diligence and prudence could not have guarded against." Certainly, this is not the kind of negligence committed by the spouses Magtoto in this case. More significantly, a review of the records does not convince the Court that the spouses Magtoto have a meritorious defense. At most, the allegations in their Answer and the attached Affidavit of Merit, to wit: that the agreed purchase price is only ₱10,000,000.00; that they provided financial support to Leonila for the settlement of estate of the latter's predecessors-in-interest and for the transfer of titles in her name; and that they already paid the total amount of ₱4,500,000.00, are mere allegations not supported by evidence they, at the outset, are supposed to present.

APPEARANCES OF COUNSEL

Buenaventura and Ang Law Firm for petitioners.
Eric V. Mendoza for private respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Petitioners' failure to timely file their Answer was unreasonable and unjustified. The trial court properly declared them in default. We thus sustain the appellate court's ruling dismissing petitioners' appeal for lack of merit.

This Petition for *Certiorari*[1] assails the May 31, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 85286 dismissing for lack of merit the appeal of petitioner spouses Ruben C. Magtoto and Artemia Magtoto (spouses Magtoto) from the November 22, 2004 Decision[3] of the Regional Trial Court (RTC), Branch 58, Angeles City, Pampanga in Civil Case No. 10940. Said RTC Decision ordered the spouses Magtoto to pay respondent Leonila Dela Cruz (Leonila) the amount of ₱9,497,750.00 representing the former's unpaid balance for their purchase of three parcels of land from the latter, and attorney's fees. Likewise assailed is the CA's October 25, 2006 Resolution[4] denying spouses Magtoto's Motion for Reconsideration.

Factual Antecedents

On May 15, 2003, Leonila filed before the RTC a Complaint[5] for Specific Performance with Damages and prayer for a writ of preliminary injunction against the spouses Magtoto.

In said Complaint, Leonila alleged that on January 11, 1999, she sold her three parcels of land situated in Mabalacat, Pampanga to petitioner Ruben C. Magtoto (Ruben) for

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[1] *Rollo*, pp. 3-28.

[2] CA *rollo*, pp. 44-52; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Regalado E. Maambong and Monina Arevalo Zenarosa.

[3] Records, pp. 217-219; penned by Judge Philbert I. Iturralde.

[4] CA *rollo*, p. 70.

[5] Records, pp. 1-5.

₱11,952,750.00.[6] As payment therefor, Ruben issued several postdated checks.[7] After the parties executed the corresponding Deed of Absolute Sale,[8] Leonila delivered the Transfer Certificates of Title (TCTs) of the properties to spouses Magtoto. From then on, the spouses Magtoto exercised acts of dominion over the said properties, enjoyed the use thereof, and transferred their titles in the name of Ruben.

Meanwhile, most of the checks that Ruben issued were dishonored. Out of the total purchase price of ₱11,952,750.00, the spouses Magtoto were only able to pay the amount of ₱2,455,000.00. Despite Leonila's repeated demands, the balance of ₱9,497,750.00 remained unpaid. Hence, the Complaint.

On June 6, 2003, spouses Magtoto were served with summons requiring them to file an Answer within 15 days from notice.[9] The said spouses, however, thrice moved for extensions of time within which to file the same.[10] In an Order[11] dated July 25, 2003, the RTC granted the spouses Magtoto a final extension until August 2, 2003 within which to file their Answer. On *August 4, 2003* or two days after the last day for filing the Answer, the spouses Magtoto instead filed a Motion to Dismiss.[12] In an Order[13] dated September 11, 2003, the RTC denied the Motion to Dismiss for lack of merit.

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[6] *Id.* at 1.

[7] *Id.* at 166-170, Exhibits "C" to "Q".

[8] *Id.* at 163-165, Exhibit "B".

[9] *Id.*, Sheriff's Return dated June 9, 2003, (unpaginated, between pp. 33 and 34), and Summons, (at 34).

[10] *Id.*, Urgent Motion for Extension of Time to File Answer and/or Any Responsive Pleading dated June 23, 2003, (at 36); Entry of Appearance with Urgent Motion for Time to File Answer and/or Any Responsive Pleading dated July 7, 2003, (at 45); Final Motion for Extension of Time to File Answer and/or Any Responsive Pleading dated July 23, 2003, (at 57).

[11] *Id.* at 61.

[12] *Id.* at 64-66.

[13] *Id.* at 80.

On September 25, 2003, Atty. Noel T. Canlas (Atty. Canlas) filed an *Ex-Parte* Motion to Withdraw Appearance as counsel for petitioners.[14] The motion was set for hearing on October 9, 2003[15] but Atty. Canlas failed to appear.

On January 23, 2004, Leonila filed a Motion to Declare Defendants in Default and to Render Judgment Based on the Complaint.[16] Citing Section 4, Rule 16 of the Rules of Court, Leonila argued that after the denial of their Motion to Dismiss, spouses Magtoto should have filed their Answer within the reglementary period. However, despite the lapse of more than three months from receipt of notice of denial of their Motion to Dismiss, the spouses Magtoto still failed to file their Answer. Leonila also cautioned the spouses Magtoto that their counsel's withdrawal of appearance does not justify their failure to file an Answer.[17]

The motion to declare petitioners in default was heard by the RTC on March 18, 2004. During said hearing, Ruben was present. The court *a quo* noted that despite the spouses Magtoto's counsel's withdrawal of appearance as early as September 25, 2003, they have not yet engaged the services of another counsel.[18] The RTC thus deemed the motion submitted for resolution.[19] Eventually, the RTC declared the spouses Magtoto in default on March 23, 2004.[20] Leonila's presentation of evidence *ex parte*[21] and formal offer of evidence followed.[22]

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[14] *Id.* at 85-86.

[15] *Id.* at 89.

[16] *Id.* at 102-104.

[17] *Id.* at 102.

[18] *Id.* at 123.

[19] *Id.*

[20] *Id.* at 127.

[21] TSN dated June 4, 2004, as incorporated in the records, unpaginated, between p. 131 and p. 132.

[22] Records, pp. 159-160.

On June 25, 2004 or almost three months after they were declared in default, the spouses Magtoto, through their new counsel, filed an Omnibus Motion to Lift Order of Default and to Admit Attached Answer,[23] and their Answer.[24] The RTC, however, denied the said motion,[25] *viz*:

x x x x x x x x x

From the sequence of events, there is no showing of fraud, accident, mistake or inexcusable negligence to warrant the grant of the very much belated Omnibus Motion to Lift Order of Default and admission of the Attached Answer filed by defendants.

Defendants[']' period to file a responsive pleading had long expired on August 2, 2003 and it took them more than ten (10) months before filing their [r]esponsive pleading which has long been overtaken by plaintiff's Motion to Declare them in Default as early as March 23, 2004. The Court believes that the Omnibus Motion to Lift Order of Default is fatally flawed not only that it was filed more than two (2) months from their receipt of the Order declaring them in default (April 1, 2004) but for the reason that the Omnibus Motion was not accompanied by an Affidavit of Merit stating therein that their failure to [a]nswer was due to fraud, accident, mistake or excusable negligence and that they have a good and meritorious defense as required in Rule 9, Section 3 (b) of the 1997 Rules of Civil Procedure. x x x

WHEREFORE, for lack of merit, the Omnibus Motion to Lift Order of Default and to Admit Attached Answer is DENIED.

x x x x x x x x x

SO ORDERED.[26]

The spouses Magtoto moved for reconsideration but the same was likewise denied by the said court.[27]

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[23] *Id.* at 138-140.

[24] *Id.* at 141-146.

[25] *Id.* at 190-191.

[26] *Id.* at 191.

[27] *Id.* at 216.

Ruling of the Regional Trial Court

On November 22, 2004, the RTC issued its Decision[28] finding that the spouses Magtoto failed to comply with their obligation to pay the full amount of ₱11,952,750.00 for the purchase of the three parcels of land and ordering them to pay the balance thereof. The dispositive portion of the said Decision reads:

> WHEREFORE, foregoing premises considered, judgment is rendered in favor of plaintiff [Leonila] and against defendants [spouses Magtoto] who are ordered:
>
> 1. to pay plaintiff the amount of ₱9,497,750.00 representing the unpaid balance of the purchase price of the three (3) parcels of land with interest at the rate of 6% per annum commencing from the time judicial demand was made until full payment thereof;
>
> 2. to pay the amount equivalent to 10% of the total amount due as reasonable attorney's fees;
>
> 3. to pay the costs of this suit.
>
> SO ORDERED.[29]

The spouses Magtoto timely filed a Notice of Appeal[30] which was given due course by the RTC.[31]

Ruling of the Court of Appeals

Before the CA, spouses Magtoto averred that the trial court erred when it denied their Omnibus Motion to lift the order of default and to admit their Answer;[32] that they have sufficiently explained the reason behind their failure to timely file their Answer;[33] that they failed to secure the services of a new counsel because the RTC did not act on the motion for withdrawal

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[28] *Id.* at 217-219.

[29] *Id.* at 219.

[30] *Id.* at 220-221.

[31] *Id.* at 228.

[32] CA *rollo*, pp. 6-34 at 24.

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

of appearance of their former counsel;[34] that Leonila was partly to blame for the delay in filing their Answer since the Complaint was initially dismissed for her lack of interest to prosecute;[35] and that the RTC erred in denying their right to present evidence based on technicality.[36]

As earlier mentioned, the CA dismissed the appeal for being bereft of merit in its Decision[37] of May 31, 2006. It ratiocinated, thus:

> Records on hand reveal that even prior to the initial dismissal of the complaint, [spouses Magtoto] were already in delay. It must be noted that instead of filing an answer, [spouses Magtoto's] counsel, on September 25, 2003, lodged a motion to withdraw appearance because he has lost contact with his clients despite reasonable efforts to communicate with them. Thus, the principal cause of the delay is no other than the [spouses Magtoto].
>
> In addition to this, it bears stressing that while the withdrawal of appearance was communicated to the trial court on 25 September 2003; it was only on 12 December 200[3], or after more that three (3) months, that the court dismissed the *Complaint.*
>
> To the mind of this Court, the period of three (3) months is more than sufficient for the [spouses Magtoto] to be able to hire a lawyer. *x x x* [T]he Court cannot help but conclude that [spouses Magtoto] were not earnest in finding a counsel. It smacks [of] bad faith and clearly abuses the liberality of the trial court. Simply put, [spouses Magtoto] are guilty of gross negligence.
>
> Not only that. It must be further noted that despite of [sic] the reinstatement of the Complaint on 19 February 2004, it was only on 25 June 200[4], or after the lapse of another four (4) months, that [spouses Magtoto] proffered their answer. x x x
>
> As to the argument of [spouses Magtoto] that cases must be decided in [sic] the merits rather than on technicality, suffice it to state that:

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[34] *Id.* at 29-31.

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

[36] *Id.* at 32.

[37] *Id.* at 44-52.

x x x x x x x x x

In the case at bar, [spouses Magtoto] simply failed to provide persuasive reasons to warrant the relaxation of the rule. x x x [38]

Their Motion for Reconsideration[39] having been denied by the CA in its Resolution[40] dated October 25, 2006, the spouses Magtoto are now before this Court by way of this Petition for *Certiorari*.

Issues

The spouses Magtoto ascribe upon the CA the following errors:

I.

WHETHER X X X THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF ITS JURISDICTION WHEN IT ERRONEOUSLY HEAPED ALL THE BLAME UPON THE PETITIONERS FOR THE SUPPOSED DELAY IN THE FILING OF THEIR ANSWER BEFORE THE COURT *A QUO* WHEN THE HONORABLE TRIAL COURT AND THE PRIVATE RESPONDENT HAVE THEIR MORE THAN SUFFICIENT SHARE OF THE FAULT THEMSELVES.

II.

WHETHER X X X THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF ITS JURISDICTION WHEN IT ERRONEOUSLY ACCUSED THE PETITIONERS OF DELAYING THE PROCEEDINGS FOR AVAILING OF THEIR RIGHT TO FILE A MOTION TO DISMISS[,] A RIGHT CLEARLY PROVIDED UNDER THE RULES OF COURT.[41]

Our Ruling

The petition lacks merit.

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[38] *Id.* at 50-52,

[39] *Id.* at 56-65.

[40] *Id.* at 70.

[41] *Rollo*, p. 16.

Petitioners availed of the wrong remedy.

At the outset, it must be pointed out that petitioners' resort to a Petition for *Certiorari* under Rule 65 of the Rules of Court is inappropriate. Petitioners' remedy from the adverse Decision of the CA lies in Rule 45 which is a Petition for Review on *Certiorari*. As such, this petition should have been dismissed outright for being a wrong mode of appeal. Even if the petition is to be treated as filed under Rule 45, the same must still be denied for late filing and there being no reversible error on the part of the CA. Records show that petitioners received a copy of the CA Resolution denying their Motion for Reconsideration on October 30, 2006.[42] They therefore had 15 days or until November 14, 2006 within which to file their Petition for Review on *Certiorari* before this Court. However, they filed their Petition for *Certiorari* on December 29, 2006,[43] after the period to file a Petition for Review on *Certiorari* under Rule 45 had expired. Hence, this Petition for *Certiorari* under Rule 65 was resorted to as a substitute for a lost appeal which is not allowed.

The spouses Magtoto's failure to file a timely Answer was due to their own fault; the RTC correctly declared them in default.

We agree with the CA that the RTC correctly declared the spouses Magtoto in default. The records show that after receipt of the summons, the spouses Magtoto thrice requested for extensions of time to file their Answer. The RTC granted these requests. For their final request for extension, the RTC gave the spouses Magtoto until August 2, 2003 within which to file their Answer. But still, no Answer was filed. Instead, *on August 4, 2003, or two days after the deadline for filing their Answer,* the spouses Magtoto filed a Motion to Dismiss the Complaint. Despite its belated filing, the RTC acted on the motion and resolved the same, albeit not in favor of the said

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[42] *Id.* at 5.

[43] *Id.* at 3.

spouses. Thereafter, Atty. Canlas, petitioners' former counsel, filed a motion to withdraw his appearance since he could no longer effectively defend spouses Magtoto because he had lost communication with them.

After the denial of their Motion to Dismiss on September 11, 2003, petitioners should have filed their Answer within the balance of the period prescribed in Rule 11.[44] Instead, they filed their Answer on June 25, 2004 or nine months after the denial of their Motion to Dismiss or three months after they were declared in default. This delay is unreasonable as well as unjustified.

In an attempt to pass the blame on the RTC for their failure to timely file an Answer, the spouses Magtoto aver that it took them a while to secure the services of a new counsel because they were waiting for the RTC to rule on Atty. Canlas's motion for withdrawal of appearance and for its advice for them to retain a new counsel.

We are not persuaded. On the contrary, we find the allegations of spouses Magtoto as part of their desperate efforts to attribute negligence to everybody else but themselves. It is worth reiterating that the RTC gave spouses Magtoto until August 2, 2003 within which to file their Answer. They did not file their Answer despite the deadline. Notably, it was only on September 25, 2003 that Atty. Canlas moved to withdraw his appearance. Clearly, even before Atty. Canlas moved for the withdrawal

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[44] Section 1 of Rule 11 pertinently provides:

Section 1. *Answer to the complaint*. - The defendant shall file his answer to the complaint within fifteen (15) days after service of summons, unless a different period is fixed by the court.

On the other hand, Section 4, Rule 16 of the Rules of Court provides:

Section 4. *Time to plead*. - If the motion [to dismiss] is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended pleading, unless the court provides a longer period.

of his appearance, the period within which spouses Magtoto should have filed their Answer had already expired. This means that as early as that time, they had already compromised their case. Hence, they cannot shift the blame to the RTC for not resolving Atty. Canlas' motion to withdraw. Besides, said withdrawal was not automatic as it was set for hearing on October 9, 2003.[45] Atty. Canlas however was absent during said hearing.

Moreover, if the spouses Magtoto were indeed keen in protecting their cause, they should have manifested before the RTC that Atty. Canlas' motion for withdrawal remains pending for resolution. Interestingly, only Ruben continued to attend the hearings on Leonila's motions but did not engage the services of a new lawyer. In fact, during the hearing on March 18, 2004, the RTC noted the failure of the spouses Magtoto to secure the services of a new counsel. Yet, the said spouses still chose not to do anything. It was only long after the issuance of the order of default and the completion of Leonila's presentation of evidence *ex parte* and formal offer of evidence that the spouses Magtoto, through their new counsel, filed an Omnibus Motion to Lift Order of Default and to Admit attached Answer and their Answer.

Neither could the spouses Magtoto blame Atty. Canlas for not drafting the Answer. Atty. Canlas needed to confer with them in order to formulate their counter-arguments and to rebut the charges brought forward by Leonila in her Complaint. However, the spouses Magtoto failed to make themselves available to Atty. Canlas who could not reach them despite earnest efforts exerted. They did not even bother to offer any explanation as to why they stopped communicating with Atty. Canlas.

Similarly, petitioners should not blame Leonila for their failure to timely file their Answer. Indeed, on December 12, 2003, the RTC initially dismissed the case due to Leonila's lack of interest to prosecute.[46] However, by this time, petitioners were

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[45] Records, p. 89.

[46] *Id.* at 97.

already in delay in filing their Answer. Recall that their Motion to Dismiss was denied as early as September 11, 2003. Atty. Canlas received the notice of denial on September 17, 2003.[47] Hence, by December 12, 2003, the prescriptive period for filing the Answer had definitely expired.

It has not also escaped our notice that as early as January 23, 2003 when Leonila moved to declare petitioners in default, she already intimated that petitioners' reglementary period to file an Answer had already lapsed. At the same time, she reminded petitioners not to use their counsel's withdrawal as justification for not filing their Answer. Still, petitioners did nothing to remedy their situation. When Leonila's motion to declare petitioners in default was heard on March 18, 2004, the RTC reminded Ruben in open court that after their counsel's withdrawal of appearance on September 25, 2003, they have not yet engaged the services of a new lawyer. Again, petitioners did nothing. It was only on June 25, 2004, or after a lapse of considerable time that they engaged the services of a new counsel and filed their Answer.

In fine, the belated filing of the Answer is solely attributable to the spouses Magtoto. They miserably failed to be vigilant in protecting and defending their cause. The RTC thus properly declared them in default.

The spouses Magtoto failed to show that their failure to file a timely Answer was due to fraud, accident, mistake or excusable negligence and that they have a meritorious defense.

Furthermore, the spouses Magtoto are unable to show that their failure to timely file an Answer was due to fraud, accident, mistake or excusable negligence and, more importantly, that they have a meritorious defense pursuant to Section 3(b), Rule 9 of the Rules of Court, *viz*:

(b) *Relief from order of default.* – A party declared in default may at any time after notice thereof and before judgment file a motion

[47] *Id.,* dorsal portion of p. 80.

under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence *and* that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

x x x x x x x x x (Emphasis supplied.)

"Negligence, to be 'excusable,' must be one which ordinary diligence and prudence could not have guarded against."[48] Certainly, this is not the kind of negligence committed by the spouses Magtoto in this case. More significantly, a review of the records does not convince the Court that the spouses Magtoto have a meritorious defense. At most, the allegations in their Answer[49] and the attached Affidavit of Merit,[50] to wit: that the agreed purchase price is only ₱10,000,000.00; that they provided financial support to Leonila for the settlement of estate of the latter's predecessors-in-interest and for the transfer of titles in her name; and that they already paid the total amount of ₱4,500,000.00, are mere allegations not supported by evidence they, at the outset, are supposed to present.

All told, we find no reversible error much less grave abuse of discretion on the part of the CA in rendering its assailed Decision and Resolution.

WHEREFORE, the petition is **DISMISSED**. The May 31, 2006 Decision and the October 25, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 85286, are **AFFIRMED**.

SO ORDERED.

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

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[48] *Gold Line Transit, Inc. v. Ramos*, 415 Phil. 492, 503 (2001).

[49] Records, pp. 141-145.

[50] *Id.* at 151-153.

SECOND DIVISION

[G.R. No. 176834. November 21, 2012]

GOTESCO PROPERTIES, INC., *petitioner, vs.* **SPOUSES EDNA and ALBERTO MORAL,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; CLIENT IS BOUND BY THE ACTS, EVEN MISTAKES, OF HIS COUNSEL IN THE REALM OF PROCEDURAL TECHNIQUE; EXCEPTIONS; NOT PRESENT.— The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. The basis is the tenet that an act performed by counsel within the scope of a "general or implied authority" is regarded as an act of the client. While the application of this general rule certainly depends upon the surrounding circumstances of a given case, there are exceptions recognized by this Court: "(1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require." The present case does not fall under the said exceptions.

2. ID.; ID.; ID.; ID.; ID.; TO PROPERLY CLAIM GROSS NEGLIGENCE ON THE PART OF THE COUNSEL, THE PETITIONER MUST SHOW THAT THE COUNSEL WAS GUILTY OF NOTHING SHORT OF A CLEAR ABANDONMENT OF THE CLIENT'S CAUSE.— In *Amil v. Court of Appeals*, the Court held that "to fall within the exceptional circumstance relied upon x x x, it must be shown that the negligence of counsel must be so gross that the client is deprived of his day in court. Thus, []where a party was given the opportunity to defend [its] interests in due course, [it] cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process." To properly claim gross negligence on the part of the counsel, the petitioner must show that the counsel was guilty of nothing short of a clear abandonment of the client's cause.

3. ID.; ID.; ID.; ID.; THE NEGLIGENCE OF THE COUNSEL WAS NOT SO GROSS AS TO DEPRIVE PETITIONER OF DUE PROCESS OF LAW; WHERE OPPORTUNITY TO BE HEARD, EITHER THROUGH ORAL ARGUMENTS OR PLEADINGS, IS ACCORDED, THERE IS NO DENIAL OF DUE PROCESS.— As may be gleaned from the facts, it cannot be said that Atty. Ungson's negligence was so gross as to deprive Gotesco of due process of law. Atty. Ungson filed the required pleadings, exhausted the available remedies and presented the necessary evidence while the case was pending before the RTC and the CA. Both the RTC and the CA gave due course to the pleadings filed by Gotesco, through Atty. Ungson. The CA even accepted the late filing of its Appellant's Brief. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.

4. ID.; ID.; ID.; ID.; THE COUNSEL'S POSTPONEMENT AND FAILURE TO APPEAR AT THE PRESENTATION OF EVIDENCE *EX PARTE* WITHOUT JUSTIFIABLE CAUSE CONSTITUTES SIMPLE NEGLIGENCE.— In *Producers Bank of the Philippines v. Court of Appeals,* the Court found that the counsel was guilty of simple negligence due to his: (1) late arrival in the hearing resulting to the dismissal of the case for lack of interest to prosecute; and (2) failure to file a timely notice of appeal. In this case, Atty. Ungson's negligence was his postponement and failure to appear at the presentation of evidence *ex parte* without justifiable cause. Adopting similar principles laid down by jurisprudence, we find that Atty. Ungson merely committed simple negligence. Since this is not a case where the negligence of counsel is one that is so gross, palpable, pervasive and reckless which is the type of negligence that deprives a party of his or her day in court, the Court need no longer concern itself with the merits of petitioner's causes of action nor consider the propriety of the dismissal of the case by the trial court for lack of interest to prosecute.

5. ID.; ID.; ID.; ID.; A PARTY IS BOUND BY THE DECISIONS OF HIS COUNSEL REGARDING THE CONDUCT OF THE CASE, ESPECIALLY WHERE THE FORMER DOES NOT COMPLAIN AGAINST THE MANNER IN WHICH THE LATTER HANDLED THE CASE.— Moreover, Gotesco was not without fault. Gotesco never complained against the manner in which its counsel had handled the case, until late in the day. Gotesco

still hired Atty. Ungson before the CA after his supposed blunders before the RTC. One is bound by the decisions of one's counsel regarding the conduct of the case, especially where the former does not complain against the manner in which the latter handled the case. To give due course to Gotesco's stance would enable every party to render inutile any adverse order or decision through the simple expedient of alleging gross negligence on the part of its counsel.

APPEARANCES OF COUNSEL

Pacheco Law Office for petitioner.
Public Attorney's Office for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition for review on *certiorari*[1] seeks to reverse the Court of Appeals' (CA) Decision[2] dated 14 March 2006 and its Resolution[3] dated 18 January 2007 in CA-G.R. CV No. 79570. The CA affirmed the Order[4] dated 21 November 2002 of the Regional Trial Court (RTC) of Kalookan City, Branch 122, in Civil Case No. C-19584 dismissing the case for failure to prosecute.

The Facts

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

Petitioner Gotesco Properties, Inc. (Gotesco), a private domestic corporation, owns the Evergreen Executive Village

[1] Under Rule 45 of the 1997 Rules of Civil Procedure, raffled to *ponente* on 6 August 2012.

[2] *Rollo*, pp. 37-44. Penned by Associate Justice Vicente Q. Roxas with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring.

[3] *Id.* at 54.

[4] *Id.* at 75. Penned by Judge Edmundo T. Acuña.

located in Barrio Bagumbong, Kalookan City. On 17 June 1993, respondent spouses Edna and Alberto Moral (Spouses Moral) executed a Reservation-Application Contract with Gotesco to buy a subdivision house and lot located in Phase I, Block 38, Lot 15 of Evergreen Executive Village for ₱481,450.00. On the same day, Spouses Moral paid the stipulated down payment of ₱56,450.00. Spouses Moral and Gotesco agreed that the balance would be paid through a Unified Housing Lending Program Scheme by Rural Bank of Parañaque. The Rural Bank of Parañaque approved the loan. In the meantime, Spouses Moral entered the subject property and introduced improvements on it.

On 27 November 1997, Gotesco demanded payment of the unpaid balance from Spouses Moral. Subsequently, Gotesco sent several demand letters, dated 20 February 1998, 12 March 1998, 18 September 1998, and 7 April 1999. On 19 February 2001, Gotesco, through its counsel Atty. Agerico M. Ungson (Atty. Ungson), filed a Complaint for Sum of Money[5] against Spouses Moral before the RTC of Kalookan City, Branch 122, docketed as Civil Case No. C-19584. On 28 May 2001, summons was served upon Spouses Moral.

On 7 August 2001, Gotesco moved to declare Spouses Moral in default for failure to file their answer within the reglementary period. However, on 11 September 2001, Spouses Moral filed an Answer. On 24 September 2001, the RTC declared Spouses Moral in default. On 13 November 2001, Spouses Moral filed a Motion for Reconsideration to the Order of Default and to Admit Defendants' Answer. In an Order dated 29 April 2002, the RTC denied the motion on the ground that there was unreasonable delay in Spouses Moral's filing of an answer.

On 13 June 2002, Gotesco moved to set its presentation of evidence *ex parte*. The RTC granted Gotesco's motion and set the reception of evidence on 5 September 2002. On the said date, Atty. Ungson moved to reset the reception of evidence to 21 November 2002.

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[5] *Id.* at 60-62.

On 21 November 2002, Atty. Ungson failed to appear despite notice. On the same day, the RTC issued an Order dismissing the case for failure of Gotesco to prosecute, to wit:

> When this case was called for hearing, Atty. Ungson failed to appear despite notice.
>
> It appearing from the record that the defendants had already been declared in default, as per [O]rder dated September 24, 2001 but up to the present, Atty. Ungson never presented his evidence *ex[]parte*.
>
> For failure to prosecute, let this case be, as it is hereby DISMISSED.
>
> x x x x x x x x x[6]

On 22 January 2003, Gotesco filed a Motion for Reconsideration explaining that Atty. Ungson suffered from acute diarrhea and that he requested his wife to call the RTC but its telephone line was unavailable. On the other hand, Spouses Moral submitted a Manifestation seeking to affirm the Order of dismissal of the case. In its Order dated 22 May 2003, the RTC affirmed its 21 November 2002 Order. The RTC ruled that Gotesco has not adequately explained its failure to prosecute and it did not show any compelling reason to disregard strict compliance with the rules. Thereafter, Gotesco filed an appeal to the CA.

The Ruling of the Court of Appeals

In a Resolution[7] dated 4 March 2004, the CA dismissed Gotesco's appeal due to the late filing of its Appellant's Brief for 25 days. On 22 March 2004, Atty. Ungson filed a Motion for Reconsideration. In its Resolution[8] dated 14 October 2004, the CA granted the motion. The CA found that the Notice to file an Appellant's Brief was received by an unauthorized person and Atty. Ungson exerted extra efforts in verifying the existence of the said notice. Nevertheless, in its Decision dated 14 March 2006, the CA dismissed the appeal and affirmed the Order of the RTC. The dispositive portion of the CA decision reads:

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[6] *Id.* at 78.

[7] *Id.* at 102.

[8] *Id.* at 132-135.

WHEREFORE, premises considered, appeal is hereby **DISMISSED** and the November 21, 2002 Order of the Regional Trial Court (RTC) of Kalookan City, Branch 122, in Civil Case No. C-19584, is hereby **AFFIRMED.**

SO ORDERED.[9] (Emphasis in the original)

In ruling in favor of Spouses Moral, the CA held in part:

In the present case, Gotesco was given several opportunities to present evidence but it failed to do so and in effect failed to present its star witness, who was to testify on its evidence. In fact, on the September 5, 2002 hearing, the postponement of the presentation of Gotesco's evidence was on motion of plaintiff-appellant Gotesco's counsel.

The RTC was being consistent in avoiding delay as prayed for by plaintiff-appellant Gotesco which moved for presentation of evidence *ex parte* when defendant-appellees were absent, and so to be fair, when it was plaintiff-appellant Gotesco and counsel absent, the trial court dismissed the case.[10]

On 5 July 2006, Gotesco, through its new counsel Pacheco Law Office, filed a Motion for Reconsideration on the ground that Atty. Ungson was grossly negligent in representing Gotesco. In its Resolution dated 18 January 2007, the CA denied the motion. Hence, this appeal.

The Issue

Gotesco seeks a reversal based on the sole issue it raised for the first time in its Motion for Reconsideration before the CA, to wit:

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN LAW WHEN IT RULED IN FAVOR OF THE RESPONDENTS, WHEN IT BOUND THE PETITIONER HEREIN TO THE NEGLIGENCE OF IT[S] FORMER COUNSEL THEREBY DEPRIVING HEREIN PETITIONER [OF] SUBSTANTIAL JUSTICE BY

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[9] *Id.* at 44.

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

NOT GIVING PETITIONER ITS DAY IN COURT.[11]

The Ruling of the Court

The petition has no merit.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique.[12] The basis is the tenet that an act performed by counsel within the scope of a "general or implied authority" is regarded as an act of the client.[13] While the application of this general rule certainly depends upon the surrounding circumstances of a given case, there are exceptions recognized by this Court: "(1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require."[14]

The present case does not fall under the said exceptions. In *Amil v. Court of Appeals*,[15] the Court held that "to fall within the exceptional circumstance relied upon x x x, it must be shown that the negligence of counsel must be so gross that the client is deprived of his day in court. Thus, []where a party was given the opportunity to defend [its] interests in due course, [it] cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process." To properly claim gross negligence on the part of the counsel, the petitioner must show that the counsel was guilty of nothing short of a clear abandonment of the client's cause.[16]

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[11] *Id.* at 29.

[12] *Producers Bank of the Philippines v. Court of Appeals*, 430 Phil. 812 (2002).

[13] *Air Phils. Corp. v. Int'l. Business Aviation Services Phils., Inc.*, 481 Phil. 366 (2004).

[14] *Id.*, citing *Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank*, 442 Phil. 55 (2002).

[15] *Amil v. Court of Appeals*, 374 Phil. 659 (1999).

[16] *Sofio v. Valenzuela*, G.R. No. 157810, 15 February 2012, 666 SCRA 55.

In the present case, Gotesco, through Atty. Ungson, moved to declare Spouses Moral in default upon the latter's failure to file an answer. After RTC granted the motion, Gotesco moved to set the presentation of evidence *ex parte* on 5 September 2002 although it moved to reset to 21 November 2002. Because Atty. Ungson failed to appear and present evidence on the said date, the RTC dismissed the case for failure to prosecute. Gotesco, thereafter, filed a Motion for Reconsideration explaining Atty. Ungson's failure to appear. When the motion was denied, Gotesco, still through Atty. Ungson, filed an appeal with the CA. The CA initially dismissed the appeal for Atty. Ungson's belated filing of Appellant's Brief. But upon Motion for Reconsideration, the CA admitted Gotesco's Appellant's Brief considering that the Notice to file an Appellant's Brief was received by an unathorized person and Atty. Ungson exerted "extra effort" in verifying the said Notice, to quote:

> x x x the extra effort exerted by herein plaintiff-appellant's counsel [Atty. Ungson] in verifying as to the existence of the said notice to file brief through his clerk as well as the fact that he immediately submitted the requisite brief upon learning about the said notice would clearly negate the impression that the former really intended to violate, much less disregard, the existing appellate procedural rules.
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> x x x x x x x x x [17]

As may be gleaned from the facts, it cannot be said that Atty. Ungson's negligence was so gross as to deprive Gotesco of due process of law. Atty. Ungson filed the required pleadings, exhausted the available remedies and presented the necessary evidence while the case was pending before the RTC and the CA. Both the RTC and the CA gave due course to the pleadings filed by Gotesco, through Atty. Ungson. The CA even accepted the late filing of its Appellant's Brief. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.[18]

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[17] *Rollo,* p. 135.

[18] *Supra* note 12, citing *Salonga v. Court of Appeals*, 336 Phil. 514 (1997).

In *Air Philippines Corp. v. International Business Aviation Services Philippines, Inc.*,[19] the Court found petitioner's counsel guilty of simple, not gross, negligence when the counsel: (1) filed at least three motions to extend the filing of petitioner's Answer; (2) did not appear during the scheduled pre-trials; and (3) failed to file petitioner's pre-trial Brief, even after the filing of several motions to extend the date for filing. In not finding gross negligence, the Court reasoned out that there was neither "total abandonment or disregard of petitioner's case nor a showing of conscious indifference to or utter disregard of consequences."[20]

In *Producers Bank of the Philippines v. Court of Appeals*,[21] the Court found that the counsel was guilty of simple negligence due to his: (1) late arrival in the hearing resulting to the dismissal of the case for lack of interest to prosecute; and (2) failure to file a timely notice of appeal.

In this case, Atty. Ungson's negligence was his postponement and failure to appear at the presentation of evidence *ex parte* without justifiable cause. Adopting similar principles laid down by jurisprudence, we find that Atty. Ungson merely committed simple negligence.

Since this is not a case where the negligence of counsel is one that is so gross, palpable, pervasive and reckless which is the type of negligence that deprives a party of his or her day in court, the Court need no longer concern itself with the merits of petitioner's causes of action nor consider the propriety of the dismissal of the case by the trial court for lack of interest to prosecute.[22]

Moreover, Gotesco was not without fault. Gotesco never complained against the manner in which its counsel had handled

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[19] *Supra* note 13.

[20] *Id.*, citing *Marinduque Iron Mines Agents, Inc. v. Workmen's Compensation Commission*, 99 Phil. 480 (1956).

[21] *Supra* note 12.

[22] *Supra* note 12.

the case, until late in the day. Gotesco still hired Atty. Ungson before the CA after his supposed blunders before the RTC. One is bound by the decisions of one's counsel regarding the conduct of the case, especially where the former does not complain against the manner in which the latter handled the case.[23] To give due course to Gotesco's stance would enable every party to render inutile any adverse order or decision through the simple expedient of alleging gross negligence on the part of its counsel.[24]

WHEREFORE, we *DENY* the petition. We **AFFIRM** the Decision dated 14 March 2006 and Resolution dated 18 January 2007 of the Court of Appeals in CA-G.R. CV No. 79570.

SO ORDERED.

Brion, Abad,[*] *Perez,* and *Perlas-Bernabe, JJ.*, concur.

SECOND DIVISION

[G.R. No. 179754. November 21, 2012]

JOAQUIN G. CHUNG, JR., PAZ ROYERAS-SOLER, and MANSUETO MACEDA, *petitioners, vs.* **JACK DANIEL MONDRAGON, (deceased), substituted by his sisters namely: TEOTIMA M. BOURBON, EMMA M. MILLAN, EUGENIA M. RAMA and ROSARIO M. CABALLES; CLARINDA REGIS-SCHMITZ and MARIA LINA MALMISA,** *respondents.*

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[23] *Del Mar v. Court of Appeals,* 429 Phil. 19 (2002), citing *Tenebro v. Court of Appeals,* 341 Phil. 83 (1997).

[24] *Supra* note 12.

[*] Designated additional member per Raffle dated 19 November 2012.

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; IN MAKING INDICTMENT THAT THE TRIAL COURT'S DECISION FAILS TO EXPRESS CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED, THE DEMURRING PARTY SHOULD NOT MISTAKE BREVITY FOR LEVITY.—** The constitutional requirement that every decision must state distinctly and clearly the factual and legal bases therefor should indeed be the primordial concern of courts and judges. Be that as it may, there should not be a mechanical reliance on this constitutional provision. **The courts and judges should be allowed to synthesize and to simplify their decisions considering that at present, courts are harassed by crowded dockets and time constraints**. Thus, the Court held in *Del Mundo v. Court of Appeals*: **It is understandable that courts with heavy dockets and time constraints, often find themselves with little to spare in the preparation of decisions to the extent most desirable. We have thus pointed out that judges might learn to synthesize and to simplify their pronouncements**. Nevertheless, concisely written such as they may be, decisions must still distinctly and clearly express at least in minimum essence its factual and legal bases. The Court finds in this case no breach of the constitutional mandate that decisions must express clearly and distinctly the facts and the law on which they are based. The trial court's Decision is complete, clear, and concise. Petitioners should be reminded that in making their indictment that the trial court's Decision fails to express clearly and distinctly the facts and the law on which it is based, they should not mistake brevity for levity.

2. **CIVIL LAW; PROPERTY AND OWNERSHIP; QUIETING OF TITLE; THE PLAINTIFF MUST SHOW THAT HE HAS A LEGAL OR AT LEAST AN EQUITABLE TITLE OVER THE REAL PROPERTY IN DISPUTE, AND THAT SOME DEED OR PROCEEDING BECLOUDS ITS VALIDITY OR EFFICACY.—** The issues in a case for quieting of title are fairly simple; the plaintiff need to prove only two things, namely: "(1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) that the deed, claim, encumbrance or proceeding claimed to be casting a cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

Stated differently, the plaintiff must show that he has a legal or at least an equitable title over the real property in dispute, and that some deed or proceeding beclouds its validity or efficacy."

3. **ID.; ID.; ID.; ID.; A MERE REPRESENTATIVE HAS NO BETTER RIGHT.—** Add to this is the fact that petitioners are not in possession of the land. A different view would have been taken if they were. Indeed, not even the fact that their sister Teofila Maceda's name appears in OCT No. 22447 could warrant a different conclusion. Her name appears therein only as a representative of Andrea's heirs. As mere representative, she could have no better right.

4. **ID.; ID.; ID.; REMEDIES AVAILABLE TO PETITIONERS.—** Petitioners cannot, on the pretext of maintaining a suit for quieting of title, have themselves declared as Andrea's heirs so that they may claim a share in the land. If they truly believe that they are entitled to a share in the land, they may avail of the remedies afforded to excluded heirs under the Rules of Court, or sue for the annulment of OCT No. 22447 and seek the issuance of new titles in their name, or recover damages in the event prescription has set in.

APPEARANCES OF COUNSEL

Joaquin G. Chung, Jr. for petitioners.
Paterno A. Gonzalez for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

In making the indictment that a court's decision fails in the fundamental mandate that no decision shall be rendered without expressing therein clearly and distinctly the facts and the law on which it is based, the demurring party should not mistake brevity for levity.

This Petition for Review on *Certiorari*[1] assails 1) the November 23, 2006 Decision[2] of the Court of Appeals (CA)

[1] *Rollo*, pp. 3-26.

[2] *Id.* at 27-39; penned by Associate Justice Priscilla Baltazar-Padilla

in CA-G.R. CV No. 79615, which affirmed the May 19, 2003 Decision[3] of the Regional Trial Court (RTC), Br. 24, Maasin City, Southern Leyte in Civil Case No. R-3248, which in turn dismissed the herein petitioners' Complaint for quieting of title, and 2) the September 2, 2007 CA Resolution[4] denying reconsideration thereof.

Factual Antecedents

Petitioners Joaquin G. Chung, Jr., Paz Royeras-Soler, and Mansueto Maceda are descendants of Rafael Mondragon (Rafael) by his first wife, Eleuteria Calunia (Eleuteria), while respondent Jack Daniel Mondragon[5] (Jack Daniel) is Rafael's descendant by his second wife, Andrea Baldos (Andrea).

Original Certificate of Title (OCT) No. 22447[6] is registered in the name of "*Heirs of Andrea Baldos represented by Teofila G. Maceda*" and covers 16,177 square meters of land in Macrohon, Southern Leyte (the land).

Petitioners claim that from 1921 up to 2000, Rafael appeared as owner of the land in its tax declaration, and that a free patent was issued in 1987 in the name of Andrea's heirs upon application of Teofila G. Maceda (Teofila), who is petitioners' sister.

On the other hand, respondents claim that Andrea is the exclusive owner of the land, having inherited the same from

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and concurred in by Associate Justices Isaias P. Dicdican and Romeo F. Barza.

[3] Records, pp. 563-567; penned by Judge Bethany G. Kapili.

[4] *Rollo*, pp. 40-41; penned by Associate Justice Priscilla Baltazar-Padilla and concurred in by Associate Justices Isaias P. Dicdican and Antonio L. Villamor.

[5] Respondent Jack Daniel Mondragon passed away on February 14, 2009, and is herein substituted by his heirs – his sisters Teotima M. Bourbon, Emma M. Millan, Eugenia M. Rama and Rosario M. Caballes – per Resolution of the Court dated October 19, 2011 granting the motion for substitution filed by respondents' counsel (*Id*. at 168).

[6] Records, pp. 71-72.

her father Blas Baldos. They add that during Andrea's lifetime, she was in lawful, peaceful and continuous possession thereof in the concept of owner; that in 1954, Andrea conveyed a portion thereof to one Crispina Gloria de Cano via a document written in the vernacular wherein she categorically stated that she inherited the land from her father and she was the true and exclusive owner of the land; that after Andrea died in 1955, her son Fortunato Mondragon took over, paying taxes thereon religiously; and when Fortunato died, his son Jack Daniel (herein respondent) came into possession and enjoyment thereof.

On August 18, 2000, Jack Daniel sold a 1,500-square meter portion of the land to his co-respondent Clarinda Regis-Schmitz (Regis-Schmitz).

On the claim that Jack Daniel had no right to sell a portion of the land and that the sale to Regis-Schmitz created a cloud upon their title, petitioners filed Civil Case No. R-3248, with a prayer that Jack Daniel be declared without right to sell the land or a portion thereof; that their rights and those belonging to the legitimate heirs of Rafael and Eleuteria be declared valid and binding against the whole world; that the respondents be restrained from creating a cloud upon OCT No. 22447; and that Jack Daniel's sale to Regis-Schmitz be declared null and void.

After respondents filed their Answer, petitioners moved for judgment on the pleadings. In an October 16, 2002 Order,[7] the trial court denied the motion. Notably, during proceedings taken on the motion, petitioners made an admission in open court that respondent Jack Daniel is Andrea's grandson and heir.[8]

At the pre-trial conference, it was mutually agreed by the parties that the sole issue to be resolved is whether Jack Daniel possessed the right to dispose a portion of the land.[9]

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[7] CA *rollo*, pp. 135-136.

[8] *Id.*

[9] Records, p. 301.

Ruling of the Regional Trial Court

After trial, the court *a quo* rendered its May 19, 2003 Decision[10] dismissing the case. It held that with the admission that Jack Daniel is an heir of Andrea, he being the latter's grandson and therefore her heir, he is thus a co-owner of the land which forms part of Andrea's estate, and thus possesses the right to dispose of his undivided share therein. The trial court held that petitioners' remedy was to seek partition of the land in order to obtain title to determinate portions thereof.

Ruling of the Court of Appeals

Petitioners appealed the dismissal, claiming that the trial court's Decision violated the constitutional requirement that no decision shall be rendered without expressing therein clearly and distinctly the facts and the law on which it is based.[11] They continued to question Jack Daniel's sale to Regis-Schmitz, who they claim was married to a foreign national and thus disqualified from purchasing a portion of the land; the non-registration of the sale; the alleged false claim on the deed of sale by Jack Daniel that he is the exclusive owner of the land; and the lack of authority of the notary public who notarized the sale.

The respondents countered that the sole issue that required resolution was, as circumscribed by the trial court, the capacity of Jack Daniel to dispose of a portion of the land, and nothing more.

The CA sustained the trial court. It held that petitioners were bound by the agreement during pre-trial and by the pre-trial order to limit the determination of the case to the sole issue of whether Jack Daniel possessed the capacity to dispose a portion of the land. Since they did not object to the trial court's pre-trial order, petitioners are bound to abide by the

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[10] *Id.* at 563-567.

[11] Constitution, Article VIII, Section 14:

Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

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same. It concluded that the other issues which were not related to Jack Daniel's capacity to dispose deserved no consideration, citing the pronouncement in *Philippine Ports Authority v. City of Iloilo*[12] that "the determination of issues at a pre-trial conference bars the consideration of other questions on appeal."

The CA further ruled that contrary to petitioners' submission, Civil Case No. R-3248 was decided on the merits, as the trial court squarely addressed the issues and the evidence; that it having been discovered through petitioners' own admission in court that Jack Daniel was a co-heir, and thus co-owner, of the land, all questions relative to his capacity to convey a portion thereof have therefore been resolved in the affirmative.

On the other hand, the CA noted that while Jack Daniel is admittedly a direct descendant of Rafael by his second wife Andrea, petitioners do not appear to be her heirs and instead are descendants of Rafael by his first wife Eleuteria – which thus puts their claimed title to the land in doubt; and that although OCT No. 22447 cites Teofila, petitioners' sister, it includes her in the title merely as the purported "representative" of Andrea's heirs and does not indicate her as an owner of the land. Finally, the CA observed that it was Jack Daniel, and not the petitioners, who occupied the land. Nevertheless, it affirmed the trial court's Decision.

Issues

The instant petition now raises the following issues for resolution:

1. NON-COMPLIANCE WITH RULE VIII, SEC. 14, CONSTITUTION AND RULE 36 TO DECLARE THE DECISION NULL AND VOID.
2. MISAPPREHENSION OF [SIC] TO THE TRUE AWARDEE OF OCT NO. 22447 TANTAMOUNT TO LACK OF JURISDICTION [OVER] THE CASE.
3. FAILURE TO ACQUIRE JURISDICTION OVER THE PERSON OF RESPONDENT CLARINDA REGIS SCHMITZ.

[12] 453 Phil. 927, 938 (2003).

4. FAILURE TO DECLARE THE ORDER DENYING THE MOTION FOR JUDGMENT ON THE PLEADINGS AND DECISION AS NULL AND VOID FOR FAILING TO ESTABLISH THE CONDITIONS *SINE QUA NON* TO SUPPORT THE ORDER AND DECISION OF THE TRIAL COURT TO DISMISS THE CASE.

5. WHETHER X X X ATTY. PATERNO A. GONZALEZ WAS A DULY AUTHORIZED NOTARY PUBLIC; PURPORTED COPY OF APPOINTMENT BEARS NO COURT SEAL, AS COURT EVIDENCE.[13]

Petitioners' Arguments

In their Petition, the petitioners, speaking through their counsel and co-petitioner Chung, persistently argue, as they did in the CA, that the trial court's Decision violated the constitutional requirement that no decision shall be rendered without expressing therein clearly and distinctly the facts and the law on which it is based. They claim that it is not true that Andrea is the owner of the land; that Jack Daniel's sale to Regis-Schmitz is null and void because she is disqualified from owning land in the Philippines; that he had no right to sell the said portion, and the sale deprived them of their supposed legitime; that their admission made in open court to the effect that Jack Daniel is an heir of Andrea cannot supplant a declaration of heirship that may be issued by a proper testate or intestate court; that the claim that Andrea is the true and lawful owner of the land is false; that when their motion for judgment on the pleadings was denied, their judicial admission that Jack Daniel was Andrea's grandson and heir was expunged; and that Jack Daniel's deed of sale with Regis-Schmitz was a falsity for lack of authority of the notarizing officer.

Petitioners likewise argue that the trial court did not acquire jurisdiction over the person of Regis-Schmitz because her counsel did not possess the appropriate authority to represent her.

Petitioners thus pray that the CA Decision be set aside; that the Court quiet title to OCT No. 22447; that the sale by Jack

[13] *Rollo*, p. 8.

Daniel to Regis-Schmitz be declared null and void; and that the Court award them ₱50,000.00 moral damages, ₱10,000.00 exemplary damages, and ₱30,000.00 attorney's fees.

Respondents' Arguments

Respondents point out a defective verification in the Petition, and add that petitioners continue to raise irrelevant issues – such as the capacity of Regis-Schmitz to acquire a portion of the land and the commission of the notary public – which the CA properly disregarded. They point out that the CA is correct in its observation that petitioners apparently do not possess the required title to maintain a suit for quieting of title, they being strangers to OCT No. 22447 as they proceed from Eleuteria, Rafael's first wife, and not his second wife Andrea, who in fact owns the land and in whose name it is titled.

Respondents echo the trial court and the CA's common pronouncement that on account of petitioners' admission that Jack Daniel is an heir of Andrea, this makes him a co-owner of the land, and as such, he possessed the capacity to dispose of his undivided share to Regis-Schmitz. This admission, they argue, thus settled the lone issue in Civil Case No. R-3248 of whether Jack Daniel may validly dispose of a portion of the land.

On the question of the notary public's commission, respondents argue that they have adduced sufficient evidence to refute petitioners' claim that the notary public, Atty. Paterno Gonzalez, possessed the authority to notarize documents at the time. They direct the Court's attention to the appointment issued by Executive Judge Fernando Campilan, Jr., the testimony of the latter's clerk of court confirming the issuance of the notarial commission, and Atty. Gonzalez's oath of office as notary during the period in question.

Finally, on the issue that the trial court did not acquire jurisdiction over the person of Regis-Schmitz, respondents point to the fact that since Regis-Schmitz appointed Jack Daniel as her attorney-in-fact to represent her in Civil Case No. R-3248, no authority from her was required in order that Jack Daniel's counsel may represent her.

Our Ruling

The petition lacks merit.

The constitutional requirement that every decision must state distinctly and clearly the factual and legal bases therefor should indeed be the primordial concern of courts and judges. Be that as it may, there should not be a mechanical reliance on this constitutional provision. **The courts and judges should be allowed to synthesize and to simplify their decisions considering that at present, courts are harassed by crowded dockets and time constraints**. Thus, the Court held in *Del Mundo v. Court of Appeals*:

> **It is understandable that courts with heavy dockets and time constraints, often find themselves with little to spare in the preparation of decisions to the extent most desirable. We have thus pointed out that judges might learn to synthesize and to simplify their pronouncements**. Nevertheless, concisely written such as they may be, decisions must still distinctly and clearly express at least in minimum essence its factual and legal bases.[14] (Emphasis supplied)

The Court finds in this case no breach of the constitutional mandate that decisions must express clearly and distinctly the facts and the law on which they are based. The trial court's Decision is complete, clear, and concise. Petitioners should be reminded that in making their indictment that the trial court's Decision fails to express clearly and distinctly the facts and the law on which it is based, they should not mistake brevity for levity.

The issues in a case for quieting of title are fairly simple; the plaintiff need to prove only two things, namely: "(1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) that the deed, claim, encumbrance or proceeding claimed to be casting a cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. Stated differently, the plaintiff must show that he has a legal or at least an equitable title over the real property

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[14] *People v. Sadiosa*, 352 Phil. 700, 712 (1998).

in dispute, and that some deed or proceeding beclouds its validity or efficacy."[15]

This case does not involve complex issues that require extensive disquisition. Quite the contrary, it could have been resolved on a simple motion to dismiss. The trial court apparently was satisfied that the first requisite, possession by petitioners of a legal or equitable title to the land, was complied with; it concluded that petitioners held equitable title, being descendants of Rafael, albeit by his first marriage to Eleuteria. The trial court *assumed* that although the land was titled in the name of "*Heirs of Andrea Baldos represented by Teofila G. Maceda*", Rafael had a share therein on account of his marriage to Andrea. From this assumption, the trial court then concluded that petitioners must at least have a right to Rafael's share in the land, which right grants them the equitable title required to maintain a suit for quieting of title. This assumption, nevertheless, is decidedly erroneous.

It is evident from the title that the land belongs to no other than the heirs of Andrea Baldos, Rafael's second wife. The land could not have belonged to Rafael, because he is not even named in OCT No. 22447. With greater reason may it be said that the land could not belong to petitioners, who are Rafael's children by his first wife Eleuteria. Unless Eleuteria and Andrea were related by blood – such fact is not borne out by the record – they could not be heirs to each other. And if indeed Eleuteria and Andrea were blood relatives, then petitioners would have so revealed at the very first opportunity. Moreover, the fact that Rafael died ahead of Andrea, and that he is not even named in the title, give the impression that the land belonged solely to the heirs of Andrea, to the exclusion of Rafael. If this were not true, then the title should have as registered owners the "*Heirs of Rafael and Andrea Mondragon*", in which case the petitioners certainly would possess equitable title, they being descendants-heirs of Rafael. Yet OCT No. 22447 is not so written.

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[15] *Lucasan v. Philippine Deposit Insurance Corporation*, G.R. No. 176929, July 4, 2008, 557 SCRA 306, 314.

Add to this is the fact that petitioners are not in possession of the land. A different view would have been taken if they were. Indeed, not even the fact that their sister Teofila Maceda's name appears in OCT No. 22447 could warrant a different conclusion. Her name appears therein only as a representative of Andrea's heirs. As mere representative, she could have no better right.[16]

On the basis of the foregoing considerations, Civil Case No. R-3248 deserved no greater treatment than dismissal. Petitioners do not possess legal or equitable title to the land, such that the only recourse left for the trial court was to dismiss the case. Thus said, although they both arrived at the correct conclusion, the trial court and the CA did so by an erroneous appreciation of the facts and evidence.

Petitioners cannot, on the pretext of maintaining a suit for quieting of title, have themselves declared as Andrea's heirs so that they may claim a share in the land. If they truly believe that they are entitled to a share in the land, they may avail of the remedies afforded to excluded heirs under the Rules of Court, or sue for the annulment of OCT No. 22447 and seek the issuance of new titles in their name, or recover damages in the event prescription has set in.[17]

With these findings, the Court finds no need to consider the parties' other arguments, founded as they are on the erroneous pronouncements of the trial court and the CA.

WHEREFORE, premises considered, the Petition is **DENIED**. Civil Case No. R-3248 is accordingly **DISMISSED**.

SO ORDERED.

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

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[16] See *Corpus v. Corpus*, 232 Phil. 21, 31 (1987).

[17] See *Philippine Economic Zone Authority v. Fernandez*, 411 Phil. 107, 120-121 (2001).

SECOND DIVISION

[G.R. No. 180076. November 21, 2012]

DIONISIO MANANQUIL, LAUDENCIA MANANQUIL-VILLAMOR, ESTANISLAO MANANQUIL, and DIANITA MANANQUIL-RABINO, represented by OTILLO RABINO, *petitioners, vs.* **ROBERTO MOICO,** *respondent.*[*]

SYLLABUS

1. CIVIL LAW; PROPERTY AND OWNERSHIP; QUIETING OF TITLE; INDISPENSABLE REQUISITES TO PROSPER.— An action for quieting of title is essentially a common law remedy grounded on equity. The competent court is tasked to determine the respective rights of the complainant and other claimants, not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best. But "for an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy."

2. ID.; ID.; ID.; THE PLAINTIFFS MUST POSSESS THE REQUISITE INTEREST TO MAINTAIN SUIT.— Contrary to petitioners' stand, the issue relating to the grant of rights, title or award by the NHA determines whether the case for quieting of title may be maintained. If the petitioners are legitimate successors

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[*] Per the Court's October 15, 2008 Resolution, the names of Eulogio Francisco Maypa, Eulogio Baltazar Maypa and Brenda Luminugue, were deleted as party respondents in the instant case. (Rollo, unpaginated, between pp. 110 and 111.)

to or beneficiaries of Iluminardo upon his death – under the certificate of title, award, or grant, or under the special law or specific terms of the NHA program/project – then they possess the requisite interest to maintain suit; if not, then Civil Case No. 2741-MN must necessarily be dismissed. From the evidence adduced below, it appears that the petitioners have failed to show their qualifications or right to succeed Iluminardo in his rights under the NHA program/project. They failed to present any title, award, grant, document or certification from the NHA or proper government agency which would show that Iluminardo and Prescilla have become the registered owners/beneficiaries/ awardees of Lots 18 and 19, or that petitioners are qualified successors or beneficiaries under the Dagat-Dagatan program/ project, taking over Iluminardo's rights after his death. They did not call to the witness stand competent witnesses from the NHA who can attest to their rights as successors to or beneficiaries of Lots 18 and 19. They failed to present proof, at the very least, of the specific law, provisions, or terms that govern the Tondo Dagat-Dagatan Foreshore Development Project which would indicate a modicum of interest on their part. For this reason, their rights or interest in the property could not be established.

3. ID.; ID.; ID.; REQUIRED PROOF TO ESTABLISH RIGHTS OR INTEREST TO THE SUBJECT PROPERTY; PROOF OF HEIRSHIP ALONE DOES NOT SUFFICE.— It was erroneous, however, for the CA to assume that Iluminardo and Prescilla may have violated the conditions of the NHA grant under the Tondo Dagat-Dagatan Foreshore Development Project by transferring their rights prior to the issuance of a title or certificate awarding Lots 18 and 19 to them. In the absence of proof, a ruling to this effect is speculative. Instead, in resolving the case, the trial court – and the CA on appeal – should have required proof that petitioners had, either: 1) a certificate of title, award, or grant from the proper agency (NHA or otherwise) in the name of their predecessor Iluminardo, or, in the absence thereof, 2) a right to succeed to Iluminardo's rights to Lots 18 and 19, not only as his heirs, but also as qualified legitimate successors/beneficiaries under the Tondo Dagat-Dagatan Foreshore Development Project terms and conditions as taken over by the NHA. Petitioners should have shown, to the satisfaction of the courts, that under the NHA program/project governing the grant of Lots 18 and 19, they are entitled and

qualified to succeed or substitute for Iluminardo in his rights upon his death. As earlier stated, this takes the form of evidence – apart from proof of heirship, of course – of the specific law, regulation or terms covering the program/project which allows for a substitution or succession of rights in case of death; the certificate of title, award or grant itself; or the testimony of competent witnesses from the NHA. Proof of heirship alone does not suffice; the Mananquils must prove to the satisfaction of the courts that they have a right to succeed Iluminardo under the law or terms of the NHA project, and are not disqualified by non-payment, prohibition, lack of qualifications, or otherwise.

APPEARANCES OF COUNSEL

YF Lim & Associates Law Office for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In order that an action for quieting of title may prosper, it is essential that the plaintiff must have legal or equitable title to, or interest in, the property which is the subject-matter of the action. Legal title denotes registered ownership, while equitable title means beneficial ownership. In the absence of such legal or equitable title, or interest, there is no cloud to be prevented or removed.

This Petition for Review on *Certiorari*[1] assails the March 13, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 81229, which reversed and set aside the January 2, 2001 Decision[3] of the Malabon Regional Trial Court, Branch 74 in Civil Case No. 2741-MN, thus dismissing the said civil case for quieting of title.

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[1] *Id.* at 8-25.

[2] *Id.* at 59-71; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Mariflor P. Punzalan Castillo.

[3] *Id.* at 47-57; penned by Acting Presiding Judge Felisberto C. Gonzales.

Factual Antecedents

Lots 18 and 19 in Dagat-Dagatan, Navotas form part of the land previously expropriated by the National Housing Authority (NHA) and placed under its Tondo Dagat-Dagatan Foreshore Development Project – where occupants, applicants or beneficiaries may purchase lots on installment basis. In October 1984, Lot 18 was awarded to spouses Iluminardo and Prescilla Mananquil under a Conditional Contract to Sell. Lot 19, on the other hand, was sold to Prescilla in February 1980 by its occupant.

In 1991, Iluminardo and Prescilla died without issue, but it turned out that Prescilla had a child by a previous marriage – namely Eulogio Francisco Maypa (Eulogio). After the spouses' death, Iluminardo's supposed heirs (Mananquil heirs) – his brothers and sisters and herein petitioners Dionisio and Estanislao Mananquil (Estanislao), Laudencia Mananquil-Villamor (Laudencia), and Dianita Mananquil-Rabino (Dianita) – executed an Extrajudicial Settlement Among Heirs and adjudicated ownership over Lots 18 and 19 in favor of Dianita. They took possession of Lots 18 and 19 and leased them out to third parties.

Sometime later, the Mananquil heirs discovered that in 1997, Eulogio and two others, Eulogio Baltazar Maypa and Brenda Luminugue, on the claim that they are surviving heirs of Iluminardo and Prescilla, had executed an Extrajudicial Settlement of Estate with Waiver of Rights and Sale, and a Deed of Absolute Sale in favor of Roberto Moico (Moico).

In May 1997, Moico began evicting the Mananquils' tenants and demolishing the structures they built on Lots 18 and 19. In June, the Mananquils instituted Civil Case No. 2741-MN for quieting of title and injunctive relief.

Ruling of the Regional Trial Court

The trial court issued a temporary restraining order, thus suspending eviction and demolition. After trial on the merits, a Decision was rendered in favor of the Mananquils. The dispositive portion thereof reads:

WHEREFORE, premises considered, judgment is hereby

rendered:

1. Ordering that a permanent injunction be issued enjoining defendant Roberto Moico to refrain from threatening the tenants and destroying the improvements standing on the subject properties and from filing the ejectment suits against the tenants;

2. Ordering the Extrajudicial Settlement of Estate with Waiver of Rights and Sale and the Deed of Absolute Sale dated January 9, 1997 cancelled for having no force and effect;

3. Declaring plaintiffs to be rightfully entitled to the subject properties and the Extrajudicial Settlement of Heirs of the plaintiffs to be valid and enforceable;

4. Ordering defendants to pay jointly and severally the plaintiffs the following, to wit:

a. ₱50,000.00 as moral damages;
b. ₱50,000.00 as exemplary damages;
c. ₱50,000.00 for and as attorney's fees; and
d. Costs of suit.

SO ORDERED.[4]

Ruling of the Court of Appeals

Moico appealed to the CA, which reversed the trial court. It held that the petitioners have failed to show that Iluminardo and Prescilla have –

x x x perfected their grant/award from the NHA so as to secure a firm, perfect and confirmed title over the subject lots. It must be stressed that the Conditional Contract to Sell that covers Lot No. 18 stipulates several terms and conditions before a grantee of the NHA may legally acquire perfect title over the land, and there should be no mistake that the same stipulations hold true with respect to Lot No. 19. Inter alia, the more vital contractual conditions, are: (a) payment in installment of the price for a specified period, (b) personal use of and benefit to the land by the grantee, and (c) explicit prohibition from selling, assigning, encumbering, mortgaging, leasing, or sub-leasing the property awarded x x x.[5]

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[4] *Id.* at 57.

[5] *Id.* at 67.

The CA noted that Lots 18 and 19 must still belong to the NHA, in the absence of proof that Iluminardo and Prescilla have completed installment payments thereon, or were awarded titles to the lots. And if the couple disposed of these lots even before title could be issued in their name, then they may have been guilty of violating conditions of the government grant, thus disqualifying them from the NHA program. Consequently, there is no right in respect to these properties that the Mananquils may succeed to. If this is the case, then no suit for quieting of title could prosper, for lack of legal or equitable title to or interest in Lots 18 and 19.

Issues

The present recourse thus raises the following issues for the Court's resolution:

I

THE COURT OF APPEALS GRAVELY ERRED IN PASSING UPON AN ISSUE NOT BEING ASSIGNED AS ERROR IN THE APPELLANTS' BRIEF OF PRIVATE RESPONDENTS AND NOT TOUCHED UPON DURING THE TRIAL IN THE COURT *A QUO* PARTICULARLY THE ALLEGED VIOLATION OF THE SPOUSES ILUMINARDO AND PRESCILLA MANANQUIL OF THE CONDITIONAL CONTRACT TO SELL PURPORTEDLY COVERING THE PROPERTIES IN QUESTION, TO SUIT ITS RATIONALIZATION IN ITS QUESTIONED DECISION JUSTIFYING THE REVERSAL OF THE DECISION OF THE COURT *A QUO*.

II

THE COURT OF APPEALS ALSO COMMITTED A GRIEVOUS ERROR IN CONSTRUING THE PROVISIONS OF ARTICLES 476 AND 477 OF THE CIVIL CODE AGAINST PETITIONERS NOTWITHSTANDING THE POSITIVE CIRCUMSTANCES OBTAINING IN THIS CASE POINTING TO THE PROPRIETY OF THE CAUSE OF ACTION FOR QUIETING OF TITLE.[6]

Petitioners' Arguments

Petitioners argue that the CA cannot touch upon matters not raised as issues in the trial court, stressing that the NHA did not even intervene during the proceedings below to ventilate

[6] *Id.* at 17.

issues relating to the rights of the parties to Lots 18 and 19 under the Tondo Dagat-Dagatan Foreshore Development Project. Petitioners claim that since the issue of violation of the terms of the grant may be resolved in a separate forum between the Mananquils and the NHA, it was improper for the CA to have pre-empted the issue.

On quieting of title, petitioners advance the view that since they are the legal heirs of Iluminardo Mananquil, then they possess the requisite legal or equitable title or interest in Lots 18 and 19, which thus permits them to pursue Civil Case No. 2741-MN; whatever rights Iluminardo had over the lots were transmitted to them from the moment of his death, per Article 777 of the Civil Code. And among these rights are the rights to continue with the amortizations covering Lots 18 and 19, as well as to use and occupy the same; their interest as successors-in-interest, though imperfect, is enough to warrant the filing of a case for quieting of title to protect these rights.

Respondent Moico's Arguments

Moico, on the other hand, argues that because the issue relating to Iluminardo and Prescilla's possible violation of the terms and conditions of the NHA grant is closely related to the issue of ownership and possession over Lots 18 and 19, then the CA possessed jurisdiction to pass upon it.

Moico supports the CA view that petitioners failed to prove their title or interest in the subject properties, just as he has proved below that it was his predecessor, Eulogio, who paid all obligations relative to Lots 18 and 19 due and owing to the NHA, for which reason the NHA released and cleared the lots and thus paved the way for their proper transfer to him.

Our Ruling

The petition lacks merit.

An action for quieting of title is essentially a common law remedy grounded on equity. The competent court is tasked to determine the respective rights of the complainant and other claimants, not only to place things in their proper place, to make

the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best. But "for an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy."[7]

Contrary to petitioners' stand, the issue relating to the grant of rights, title or award by the NHA determines whether the case for quieting of title may be maintained. If the petitioners are legitimate successors to or beneficiaries of Iluminardo upon his death – under the certificate of title, award, or grant, or under the special law or specific terms of the NHA program/ project – then they possess the requisite interest to maintain suit; if not, then Civil Case No. 2741-MN must necessarily be dismissed.

From the evidence adduced below, it appears that the petitioners have failed to show their qualifications or right to succeed Iluminardo in his rights under the NHA program/project. They failed to present any title, award, grant, document or certification from the NHA or proper government agency which would show that Iluminardo and Prescilla have become the registered owners/beneficiaries/ awardees of Lots 18 and 19, or that petitioners are qualified successors or beneficiaries under the Dagat-Dagatan program/project, taking over Iluminardo's rights after his death. They did not call to the witness stand competent witnesses from the NHA who can attest to their rights as successors to or beneficiaries of Lots 18 and 19. They failed to present proof, at the very least, of the specific law, provisions, or terms that

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[7] *Eland Philippines, Inc. v. Garcia*, G.R. No. 173289, February 17, 2010, 613 SCRA 66, 92, citing *Baricuatro, Jr. v. Court of Appeals*, 382 Phil. 15, 25 (2000).

govern the Tondo Dagat-Dagatan Foreshore Development Project which would indicate a modicum of interest on their part. For this reason, their rights or interest in the property could not be established.

It was erroneous, however, for the CA to assume that Iluminardo and Prescilla may have violated the conditions of the NHA grant under the Tondo Dagat-Dagatan Foreshore Development Project by transferring their rights prior to the issuance of a title or certificate awarding Lots 18 and 19 to them. In the absence of proof, a ruling to this effect is speculative. Instead, in resolving the case, the trial court – and the CA on appeal – should have required proof that petitioners had, either: 1) a certificate of title, award, or grant from the proper agency (NHA or otherwise) in the name of their predecessor Iluminardo, or, in the absence thereof, 2) a right to succeed to Iluminardo's rights to Lots 18 and 19, not only as his heirs, but also as qualified legitimate successors/beneficiaries under the Tondo Dagat-Dagatan Foreshore Development Project terms and conditions as taken over by the NHA.[8] Petitioners should have shown, to the satisfaction of the courts, that under the NHA program/project governing the grant of Lots 18 and 19, they are entitled and qualified to succeed or substitute for Iluminardo in his rights upon his death. As earlier stated, this takes the form of evidence – apart from proof of heirship, of course – of the specific law, regulation or terms covering the program/project which allows for a substitution or succession of rights in case of death; the certificate of title, award or grant itself; or the testimony of competent witnesses from the NHA.

Proof of heirship alone does not suffice; the Mananquils must prove to the satisfaction of the courts that they have a right to succeed Iluminardo under the law or terms of the NHA project, and are not disqualified by non-payment, prohibition, lack of qualifications, or otherwise.

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[8] In *Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007, 530 SCRA 235, 297, the Court ruled that under Presidential Decree No. 757, the NHA succeeded the Tondo Foreshore Development Authority.

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit. The March 13, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 81229 is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Perez, Mendoza,[**] and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 182475. November 21, 2012]

LENN MORALES, *petitioner, vs.* **METROPOLITAN BANK AND TRUST COMPANY,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; REDUNDANCY; EXPLAINED; REQUISITES TO BE VALID.— One of the authorized causes for the dismissal of an employee, redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A position is redundant when it is superfluous, and superfluity of a position or positions could be the result of a number of factors, such as the overhiring of workers, a decrease in the volume of business or the dropping of a particular line or service previously manufactured or undertaken by the enterprise. Time and again, it has been ruled that an employer has no legal obligation to keep more employees than are necessary for the operation of its business. For the

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[**] Per raffle dated October 17, 2012.

implementation of a redundancy program to be valid, however, the employer must comply with the following requisites: (1) written notice served on both the employees and the DOLE at least one month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one month pay for every year of service; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.

2. ID.; ID.; ID.; ID.; ID.; THE EMPLOYER SHOULD ADOPT A FAIR AND REASONABLE CRITERIA IN THE IMPLEMENTATION OF A REDUNDANCY PROGRAM; FACTORS TO CONSIDER.— In implementing a redundancy program, it has been ruled that the employer is required to adopt a fair and reasonable criteria, taking into consideration such factors as (a) preferred status; (b) efficiency; and (c) seniority, among others. Consistent with this principle, Metrobank established that, as a direct result of the adoption of the HRP, it was determined that the volume of transactions in Visayas Region III required the further reduction of its eight-man reserve pool by two employees. As these employees had no permanent place of assignment and merely acted as relievers whenever temporary vacancies arise in other branches, they were the most logical candidates for inclusion in the SSP. Already lacking preferred status in Metrobank's hierarchy of positions, Morales was included in the SSP because of his poor work performance which reportedly caused complaints from the branches where he was temporarily assigned as reliever. To our mind, the foregoing circumstances contradict Morales' claim that he was arbitrarily singled out for termination by Metrobank which, having validly determined the surplus in its manpower complement, appears to have appropriately identified him as a candidate for the SSP on account of his work attitude.

3. ID.; ID.; ID.; ID.; ID.; WHILE IT IS TRUE THAT MANAGEMENT MAY NOT, UNDER THE GUISE OF INVOKING ITS PREROGATIVE, EASE OUT EMPLOYEES AND DEFEAT THEIR CONSTTITUTIONAL RIGHT TO SECURITY OF TENURE, THE WISDOM AND SOUNDNESS OF SUCH CHARACTERIZATION OR DECISION IS NOT SUBJECT TO

DISCRETIONARY REVIEW UNLESS A VIOLATION OF LAW OR ARBITRARY OR MALICIOUS ACTION IS SHOWN.— Given Morales' previous record of not reporting for work for one whole week without prior leave of absence while assigned as reliever in its Borongan, Samar Branch, we find that Metrobank cannot be faulted for including him in the list of employees covered by the SSP. The rule is settled that "the determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable for being redundant is an exercise of business judgment of the employer." "While it is true that management may not, under the guise of invoking its prerogative, ease out employees and defeat their constitutional right to security of tenure," the wisdom and soundness of such characterization or decision is not subject to discretionary review unless a violation of law or arbitrary or malicious action is shown. Against Morales' bare assertion that he was arbitrarily and maliciously terminated from service, Metrobank was able to establish that its action was based on the fair application of a criterion established in connection with the implementation of a well-thought redundancy program. For these reasons, we find that the CA cannot be faulted for upholding the NLRC's finding that Morales' termination pursuant to the SSP was valid.

4. ID.; ID.; ID.; ID.; ID.; NOTICE REQUIREMENT, PURPOSE THEREOF; NOTICE REQUIREMENT COMPLIED WITH IN CASE AT BAR.— Morales next insists that Metrobank failed to comply in good faith with the notice requirement under Article 283 of the *Labor Code* which allows the employer to terminate the employment of any employee due to redundancy by serving a written notice on the worker and the DOLE at least one (1) month before the intended date thereof. Intended to enable the employee to prepare himself for the legal battle to protect his tenure of employment and to find other means of employment and ease the impact of the loss of his job and his income, said notice requirement is also designed to allow the DOLE to ascertain the verity of the cause for the termination. As correctly determined by the CA, Metrobank's compliance with this requirement is evident from its service of the 27 August 2003 notice of termination upon Morales on the same date, effective 1 October 2003 or 30 days after the date of said notice. On 29 August 2003, Metrobank similarly served the DOLE with an *Establishment Termination Report*, together with a list of

the 43 employees about to be terminated on the ground of redundancy, effective 1 October 2003.

5. REMEDIAL LAW; APPEALS; POINTS OF LAW, THEORIES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE COURT OF APPEALS NEED NOT, AND ORDINARILY WILL NOT, BE CONSIDERED BY THE SUPREME COURT.— Neither are we inclined to entertain Morales' belated argument that the real cause for his termination was retrenchment to prevent losses and that Metrobank failed to establish the requirements therefor. For one, said theory contradicts Morales' claim that he was dismissed from employment for personal reasons, in a manner amounting to constructive dismissal. For another, not having been raised before the Labor Arbiter, the NLRC and the CA, it stands to reason that Morales' theory of termination to preserve the viability of Metrobank's business cannot be entertained for the first time in connection with the petition at bench. Consistent with the principle that issues not raised *a quo* cannot be raised for the first time on appeal, points of law, theories and arguments not brought to the attention of the CA need not – and ordinarily will not – be considered by this Court. For a reviewing court to allow otherwise would be offensive to the basic rules of fair play, justice and due process.

6. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; QUITCLAIMS AND RELEASES; DIRE NECESSITY IS NOT AN ACCEPTABLE GROUND FOR ANNULLING THE RELEASE WHEN IT IS NOT SHOWN THAT THE EMPLOYEE HAS BEEN FORCED TO EXECUTE IT; NOT ALL QUITCLAIMS ARE *PER SE* INVALID OR AGAINST PUBLIC POLICY; EXCEPTIONS; NOT PRESENT.— Morales, finally, argues that the CA erred in upholding the validity of the 10 November 2003 *Release, Waiver and Quitclaim* which he supposedly signed out dire economic necessity. While "it may be accepted as ground to annul [a] quitclaim if the consideration is unconscionably low and the employee was tricked into accepting it, [dire necessity is not, however,] an acceptable ground for annulling the release when it is not shown that the employee has been forced to execute it." Not having sufficiently proved that he was forced to sign said *Release, Waiver and Quitclaim*, Morales cannot expediently argue that quitclaims are looked upon with disfavor

> and considered ineffective to bar claims for the full measure of a worker's legal rights. This Court has held that not all quitclaims are *per se* invalid or against public policy, except (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their face. These two instances are not present in this case.

APPEARANCES OF COUNSEL

Palomino Hidalgo Laboga & Lastrilla Law Offices for petitioner.

Laguesma Magsalin Consulta and Gastardo for respondent.

D E C I S I O N

PEREZ, *J.*:

Filed pursuant to Rule 45 of the *1997 Rules on Civil Procedure*, the Petition for Review on *Certiorari* at bench primarily assails the Decision[1] dated 20 September 2007 rendered by the then Nineteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 02405,[2] the dispositive portion of which states:

> WHEREFORE, the petition for *certiorari* filed by [Morales] is hereby xxx DENIED for lack of merit. Accordingly, the assailed decision and resolution of the NLRC dated June 28, 2006 and September 15, 2006, are hereby UPHELD respectively.
>
> SO ORDERED.[3]

The facts are not in dispute.

Sometime in August 1992, petitioner Lenn ***Morales*** was hired by Solidbank as Teller for its Rizal Avenue Branch in Tacloban

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[1] Penned by Court of Appeals Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Priscilla Baltazar-Padilla and Stephen C. Cruz.

[2] CA *rollo*, 20 September 2007 Decision in CA-G.R. SP No. 02405, pp. 307-317.

[3] *Id*. at 317.

City. With said bank's merger with respondent Metropolitan Bank & Trust Company (***Metrobank***) in September 2000, the latter, as surviving entity, absorbed Morales and assigned him to its Customer Service Relations-Reserve Pool (CSR-RP) which was composed of employees who, with no permanent places of assignment, acted as relievers whenever temporary vacancies arise in other branches. Designated as reliever for Metrobank's Main Branch in Tacloban City, Morales was likewise assigned to work in the same capacity for the bank's other Visayas Region III branches. From a job with a grade four rank, Morales was subsequently promoted in April 2003[4] to the position of Customer Service Representative (CSR), with a job grade 6 rank and a gross monthly salary of ₱16,250.00. It was while occupying the latter position that Morales was informed by Federico ***Mariano***, the Senior Manager of Metrobank's Tacloban City Main Branch, that he was covered by the bank's Special Separation Program (SSP) and that, in accordance therewith, his employment was going to be terminated on the ground of redundancy.[5]

On 27 August 2003, Morales was furnished a copy of a memorandum of the same date informing him that, after a review of its organizational structure, Metrobank had found his services redundant and will consider him separated effective 1 October 2003. Assured that his termination was through no fault of his own but mainly due to business exigencies and developments in the banking industry, Morales was notified that he shall be paid the following: (a) a redundancy premium/separation pay, on top of his entitlements under the bank's retirement plan; (b) proportionate 13th month pay; (c) cash conversion of his outstanding vacation and sick leave credits; and, if applicable, (d) the return of his Provident Fund contributions; and, (e) cash surrender value of his Insurance.[6] Having signed a form on

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[4] Stated as April 2004 in p. 5 of Morales' Rule 65 Petition for *Certiorari* dated 19 December 2006.

[5] CA *rollo*, pp. 4-5, 122 and 308.

[6] Metrobank's 27 August 2003 Memorandum, *id*. at 174.

the same day signifying his unqualified and unconditional acceptance of Metrobank's decision to terminate his employment,[7] Morales executed on 10 November 2003 a *Release, Waiver and Quitclaim* acknowledging receipt of the sum of ₱158,496.95 as full payment of his monetary entitlements.[8]

On 20 February 2004, Morales filed against Metrobank a complaint for illegal dismissal, separation pay, backwages, moral and exemplary damages as well as attorney's fees.[9] Together with a similar complaint filed by one Raymundo ***Piczon***, Morales' complaint was docketed as NLRC RAB Case No. 2-0046-04 before the Regional Arbitration Branch No. VIII of the National Labor Relations Commission (NLRC). In support of his complaint, Morales alleged that, despite being an organic member of the Rizal Avenue Branch, he was assigned to Metrobank's Zamora St. Branch in view of his having signed a petition against the driver of the armored car who was eventually dismissed. With his actions suddenly closely watched and blown out of proportion, Morales claimed that he started receiving directives for him to explain his unauthorized absences and out of town allowances which, far from being infractions, were simply the results of miscommunication. Arbitrarily singled out for termination, he was supposedly forced to sign the *Release, Waiver and Quitclaim* by Mariano who embarrassed him by announcing that his services had already been terminated and that he was no longer required to report for work.[10]

In its position paper, Metrobank averred that it had adopted the SSP since 1995 as a way of addressing worsening economic conditions and stiff competition with strategies designed to make its operations efficient but cost-effective. Towards said end, it claimed to have embarked on a major component of SSP called the Headcount Rationalization Program (HRP) which,

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[7] Morales' 27 August 2003 Letter, *id*. at 176.

[8] Morales' 10 November 2003 Release, Waiver and Quitclaim, *id*. at 178-179 .

[9] Morales' 18 February 2004 Complaint, *id*. at 79.

[10] *Id.* at 30-33.

taking into consideration the volume of its transactions *vis-à-vis* the massive computerization and automation of its operating systems, targeted the reduction of its existing workforce by 10% by the end of 2003. Having created and/or consolidated branches, centralized loan processing and adopted a branch headcount reduction scheme, Metrobank asserted that it identified 291 positions as superfluous, utilizing as criteria such factors as performance, work attitude and cost. Among the areas where the HRP was conducted was Visayas Region III which was directed to reduce the manpower of its 13 branches spread out in three provinces by 15 employees. Affected was its eight-man reserve pool which was composed of former Solidbank employees who acted as relievers whenever temporary vacancies occurred in the Region's branches.[11]

Metrobank further asserted that the volume of the Region's transactions required only six employees in the reserve pool, thereby rendering two positions superfluous. As a member of the reserve pool, Morales allegedly had a record of unauthorized absences as well as complaints for undesirable and unprofessional conduct from various Branch Heads. In view of the absence of redeployment opportunities for him, Metrobank claimed Morales was included in the SSP and was eventually considered for termination on the ground of redundancy. Aside from the fact that Morales was duly informed of the management's decision more than one month ahead of his actual severance from service, Metrobank claimed to have served the Department of Labor and Employment (DOLE) the required Establishment Termination Report on 29 August 2003. Likewise accorded the separation benefits included in the SSP, Morales supposedly expressed his unqualified and unconditional acceptance of his termination and, upon receipt of his monetary entitlements, voluntarily executed the aforesaid *Release, Waiver and Quitclaim*. Claiming good faith in the implementation of its redundancy program, Metrobank prayed for the dismissal of Morales' complaint for lack of merit.[12]

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[11] Metrobank's 24 September 2004 Position Paper, *id*. at 112-148.

[12] *Id*.

On 11 November 2005, Executive Labor Arbiter Jesselito Latoja rendered a decision finding Morales' termination from service illegal on the ground that his promotion in April 2003 contradicted Metrobank's claim that his poor work performance contributed to his inclusion in the SSP. Brushing aside the *Release, Waiver and Quitclaim* for having been prepared by Metrobank, the Labor Arbiter ruled that Morales was entitled to reinstatement without loss of seniority rights, backwages assessed at ₱390,005.00 at the time of the rendition of the decision, 13th month pay in the sum of ₱32,500.50, quarterly bonus in the sum of ₱130,002.00 and CBA signing bonus in the sum of ₱120,000.00. On the ground that Morales' dismissal from service was tainted with bad faith and malice, the Labor Arbiter likewise held Metrobank liable to pay said employee ₱100,000.00 in moral damages, ₱100,000.00 in exemplary damages and attorney's fees which, at 10% of the total award, was computed at ₱87,250.65. From the grand total of ₱959,757.15 in monetary awards, the Labor Arbiter decreed the deduction of the sum of ₱158,496.95 which Morales had acknowledged to have received by way of separation benefits.[13]

On appeal, the foregoing decision was reversed and set aside in the 20 July 2006 Decision rendered by the Fourth Division of the NLRC in NLRC Case No. V-000200-2006. Finding that Metrobank validly implemented the HRP on a nationwide scale in connection with the SSP, the NLRC ruled that Morales termination in accordance therewith belied the latter's claim that he was arbitrarily singled out for dismissal from service. Given that the reserve pool in Visayas Region III was overstaffed, Morales was legitimately terminated in view of his poor work performance and negative attitude which, at one point, gravely jeopardized the operations of the branch to which he was temporarily assigned. Applying the general rule that the characterization of an employee's services as redundant is a management prerogative which should not be interfered with absent showing of abuse, the NLRC also upheld the validity of the *Release, Waiver and Quitclaim* on the ground that the

[13] Labor Arbiter's 11 November 2005 Decision, *id*. at 15-25.

₱158,496.95 Morales received represented a reasonable settlement of his claims.[14] Morales' motion for reconsideration of the decision was denied for lack of merit in the NLRC's Resolution dated 15 September 2006.[15]

Aggrieved, Morales filed the Rule 65 Petition for *Certiorari* docketed before the CA Cebu City Station as CA-G.R. SP No. 02405, on the ground that the NLRC gravely abused its discretion in reversing the Labor Arbiter's decision. Maintaining that Metrobank's claim of redundancy was belied by its hiring of one Abigail Perez as replacement for his position, Morales also argued that Metrobank did not comply with the notice requirement for a termination of employment on the ground of redundancy.[16] On 20 September 2007, however, the CA's Nineteenth Division rendered the herein assailed decision, denying the foregoing petition for lack of merit. Upholding the validity of Morales' termination from employment, the CA discounted the grave abuse of discretion imputed against the NLRC for ruling that Metrobank's redundancy program legitimately entailed reduction of its workforce to make it more responsive to the actual demands and necessities of its business. Considering that Abigail Perez was hired as a clerk on a permanent status for the bank's Ormoc Branch, the CA also ruled that said employee could not be considered as Morales' replacement. Finding that Metrobank complied with the notice requirement under Article 283 of the *Labor Code*, the CA ultimately sustained the validity of the *Release, Waiver and Quitclaim* executed by Morales.[17]

Dissatisfied, Morales filed the Rule 45 petition for review at bench,[18] seeking the reversal of the CA's 20 September 2007 Decision on the following grounds:

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[14] NLRC's 20 July 2006 Decision, *id*. at 27-50.

[15] NLRC's 15 September 2006 Resolution, *id.* at 64-65.

[16] Morales' 19 December 2006 Petition for *Certiorari*, *id*. at 3-12.

[17] CA's 20 September 2007 Decision, *id*. at 307-317.

[18] *Rollo*, G.R. No. 182475, Morales' 16 April 2008 Petition for Review on *Certiorari*, pp. 3-17.

(a)

THE COURT OF APPEALS ERRONEOUSLY UPHELD THE DISMISSAL OF HEREIN PETITIONER ON AUTHORIZED CAUSE OF REDUNDANCY WHICH WAS MADE KNOWN TO PETITIONER ON [THE] SAME DATE HE WAS INFORMED HE [WAS] NO LONGER REQUIRED TO REPORT FOR OFFICE AND WITHOUT SUBJECTING OTHER SIMILARLY SITUATED EMPLOYEES OF THE SAME POSITION AND RESPONSIBILITIES TO THE STANDARD OF TERMINATION ON REDUNDANCY

(b)

THE COURT OF APPEALS ERRONEOUSLY UPHELD THE DISMISSAL OF HEREIN PETITIONER THOUGH THE DISMISSAL IS TAINTED WITH ARBITRARINESS AND BAD FAITH AS FOUND BY THE LABOR ARBITER AS THE HEREIN PETITIONER WAS EVEN PROMOTED FIVE MONTHS BEFORE HIS TERMINATION CONTRARY TO THE CRITERIA IN THE SSP OR HRP ON NON-PROMOTION WITHIN THE PERIOD OF FIVE YEARS

(c)

THE COURT OF APPEALS ERRONEOUSLY UPHELD THE DISMISSAL ON AMBIVALENT AND EQUIVOCAL PROGRAMS WHICH ON ANALYSIS ARE ACTUALLY RETRENCHMENT PROGRAM[S] AND THE REQUISITES FOR VALID TERMINATION BY RETRENCHMENT NOT HAVING BEEN COMPLIED WITH

(d)

THE COURT OF APPEALS ERRONEOUSLY UPHELD THE VALIDITY OF THE QUITCLAIM ALTHOUH IT [IS] APPARENT THAT THE PETITIONER WAS COMPELLED TO ACCEDE TO IT BY ECONOMIC REASONS.[19]

We find the petition bereft of merit.

One of the authorized causes for the dismissal of an employee,[20] redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to

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[19] *Id*. at 9.

[20] *Dole Philippines, Inc. v. National Labor Relations Commission*, 417 Phil. 428, 439 (2001).

meet the demands of the business enterprise.[21] A position is redundant when it is superfluous, and superfluity of a position or positions could be the result of a number of factors, such as the overhiring of workers, a decrease in the volume of business or the dropping of a particular line or service previously manufactured or undertaken by the enterprise.[22] Time and again, it has been ruled that an employer has no legal obligation to keep more employees than are necessary for the operation of its business.[23] For the implementation of a redundancy program to be valid, however, the employer must comply with the following requisites: (1) written notice served on both the employees and the DOLE at least one month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one month pay for every year of service; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[24]

Contrary to the first and second errors Morales imputes against the CA, our perusal of the record shows that Metrobank has more than amply proven compliance with the third and fourth of the above-enumerated requisites for the validity of his termination from service on the ground of redundancy. Under the SSP which Metrobank adopted in 1995, employees who voluntarily gave up their employment were paid the amount of separation pay they were entitled under the law and a premium equivalent to 50%-75% of their salaries. It appears that employees "whose work evaluation showed consistent poor performance and/or those who had not been promoted for five

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[21] *Soriano, Jr. v. National Labor Relations Commission*, G.R. No. 165594, 23 April 2007, 521 SCRA 526, 543.

[22] *Edge Apparel, Inc. v. NLRC*, 349 Phil. 972, 982 (1998) citing *American Home Assurance Co. v. NLRC*, 328 Phil. 606, 618 (1996).

[23] *Almodiel v. National Labor Relations Commission*, G.R. No. 100641, 14 June 1993, 223 SCRA 341, 348.

[24] *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, G.R. No. 170464, 12 July 2010, 624 SCRA 705, 718.

years" were also considered primary candidates for optional separation from service.[25] In order to meet the challenges of the business and to make its operations efficient and cost effective, however, it was shown that Metrobank further conducted a bank-wide operational review and study which resulted in the adoption in March 2003 of the HRP, a major component of the SSP which was designed to reduce its workforce by 10%. Entailing various initiatives like conversion of regular branches into mini-branches, consolidation of branches, centralization of loans processing and branch headcount reduction, the HRP yielded 291 employees who could no longer be redeployed, fifteen (15) of whom belonged to Visayas Region III.[26]

In implementing a redundancy program, it has been ruled that the employer is required to adopt a fair and reasonable criteria, taking into consideration such factors as (a) preferred status; (b) efficiency; and (c) seniority,[27] among others. Consistent with this principle, Metrobank established that, as a direct result of the adoption of the HRP, it was determined that the volume of transactions in Visayas Region III required the further reduction of its eight-man reserve pool by two employees.[28] As these employees had no permanent place of assignment and merely acted as relievers whenever temporary vacancies arise in other branches, they were the most logical candidates for inclusion in the SSP. Already lacking preferred status in Metrobank's hierarchy of positions, Morales was included in the SSP because of his poor work performance which reportedly caused complaints from the branches where he was temporarily assigned as reliever.[29] To our mind, the

[25] CA *rollo*, CA-G.R. SP No. 02405, 26 July 2004 Affidavit of Ricardo Villanueva, Metrobank's Head of Employee Relations and Benefits Division, Human Resources Management Group (HRMG), pp. 152-153.

[26] 26 July 2004 Affidavit of Crisostomo De Guzman, Metrobank's Head of Organization, Planning and Placements Division-HRMG, *id.* at 149-151.

[27] *Lopez Sugar Corp. v. Franco*, 497 Phil. 806, 819 (2005).

[28] CA *rollo*, CA-G.R. SP No. 02405, 27 July 2004 Affidavit of Federico Mariano, Metrobank's Head of its Tacloban-Main Branch, pp. 154-157.

[29] *Id.*

foregoing circumstances contradict Morales' claim that he was arbitrarily singled out for termination by Metrobank which, having validly determined the surplus in its manpower complement, appears to have appropriately identified him as a candidate for the SSP on account of his work attitude.

As evidence of the bad faith which supposedly attended his termination from service, Morales argues that his promotion in April 2003 should have excluded him from the coverage of the SSP. Aside from the fact that his promotion rendered his position less cost-effective, however, Morales loses sight of the fact that it was precisely his work performance subsequent to his promotion which was cited by Metrobank as reason for his inclusion in the SSP. In his 19 May 2003 Memorandum, R.D. ***Barrientos***, the Branch Manager of Metrobank's Baybay Branch, reported that Morales caused delay in the processing of over-the-counter transactions on a busy Monday when he was absent himself without an approved leave. Since it was Morales' third absence while he was assigned at said branch as reliever of an employee who was on maternity leave, Barrientos even requested for another reliever on the ground that the risk of losing clients as a consequence of Morales' unpredictability which was inimical to the bank's interest.[30] Despite being advised against being absent from work on Mondays and Fridays in view of the expected volume of transactions on said days,[31] it appears, however, that Morales obstinately went ahead with his planned absence and simply apprised a colleague and the branch security guard of his decision not to report for work on 19 May 2003.[32]

Given Morales' previous record of not reporting for work for one whole week without prior leave of absence while assigned as reliever in its Borongan, Samar Branch,[33] we find that Metrobank cannot be faulted for including him in the list of

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[30] Barrientos' 19 May 2003 Memorandum, *id*. at 160.

[31] CTY Banez' 30 May 2003 E-mail, *id*. at 163.

[32] Morales' 29 May 2003 Memorandum, *id*. at 162.

[33] *Id*. at 155; 168.

employees covered by the SSP. The rule is settled that "the determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable for being redundant is an exercise of business judgment of the employer."[34] "While it is true that management may not, under the guise of invoking its prerogative, ease out employees and defeat their constitutional right to security of tenure,"[35] the wisdom and soundness of such characterization or decision is not subject to discretionary review unless a violation of law or arbitrary or malicious action is shown.[36] Against Morales' bare assertion that he was arbitrarily and maliciously terminated from service, Metrobank was able to establish that its action was based on the fair application of a criterion established in connection with the implementation of a well-thought redundancy program. For these reasons, we find that the CA cannot be faulted for upholding the NLRC's finding that Morales' termination pursuant to the SSP was valid.

Morales next insists that Metrobank failed to comply in good faith with the notice requirement under Article 283 of the *Labor Code* which allows the employer to terminate the employment of any employee due to redundancy by serving a written notice on the worker and the DOLE at least one (1) month before the intended date thereof. Intended to enable the employee to prepare himself for the legal battle to protect his tenure of employment and to find other means of employment and ease the impact of the loss of his job and his income,[37] said notice requirement is also designed to allow the DOLE to ascertain the verity of the cause for the termination.[38] As correctly

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[34] *AMA Computer College, Inc. v. Garcia*, G.R. No. 166703, 14 April 2008, 551 SCRA 254, 264.

[35] *Santos v. Court of Appeals*, 413 Phil. 41, 56 (2001).

[36] *Smart Communications, Inc. v. Astorga*, G.R. Nos. 148132, 151079 & 151372, 28 January 2008, 542 SCRA 434, 448.

[37] *Serrano v. NLRC*, 380 Phil. 416, 458-459 (2000).

[38] *International Hardware, Inc. v. NLRC (Third Division)*, 257 Phil. 261, 264 (1989).

determined by the CA, Metrobank's compliance with this requirement is evident from its service of the 27 August 2003 notice of termination upon Morales on the same date, effective 1 October 2003 or 30 days after the date of said notice.[39] On 29 August 2003, Metrobank similarly served the DOLE with an *Establishment Termination Report*, together with a list of the 43 employees about to be terminated on the ground of redundancy, effective 1 October 2003.[40]

By and of themselves, the notices of termination Metrobank served to the DOLE and Morales one month before their intended effectivity date significantly belie the latter's claim that he was told not to report for work anymore immediately upon receipt thereof. As proof of the bad faith and malice which supposedly attended his separation from service, Morales asserted that Mariano caused him great embarrassment by announcing that he was no longer required to report for work, within hearing distance of his colleagues. For one who claims to have been immediately terminated from employment, however, Morales quite distinctly indicated in his 18 February 2004 complaint that he was dismissed on 30 September 2003.[41] Reckoned from the service of notice of termination upon Morales on 27 August 2003, said admitted date of dismissal clearly confirms Metrobank's compliance with the above-discussed one-month prior notice that the law requires for severance from service on the ground of redundancy.

Neither are we inclined to entertain Morales' belated argument that the real cause for his termination was retrenchment to prevent losses and that Metrobank failed to establish the requirements therefor. For one, said theory contradicts Morales' claim that he was dismissed from employment for personal reasons, in a manner amounting to constructive dismissal. For another, not having been raised before the Labor Arbiter, the

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[39] CA *rollo*, CA-G.R. SP No. 02405, Metrobank's 27 August 2003 Memorandum, p. 164.

[40] *Id.* at 181-183.

[41] *Id.* at 79.

NLRC and the CA, it stands to reason that Morales' theory of termination to preserve the viability of Metrobank's business cannot be entertained for the first time in connection with the petition at bench. Consistent with the principle that issues not raised *a quo* cannot be raised for the first time on appeal,[42] points of law, theories and arguments not brought to the attention of the CA need not – and ordinarily will not – be considered by this Court.[43] For a reviewing court to allow otherwise would be offensive to the basic rules of fair play, justice and due process.[44]

Morales, finally, argues that the CA erred in upholding the validity of the 10 November 2003 *Release, Waiver and Quitclaim* which he supposedly signed out dire economic necessity. While "it may be accepted as ground to annul [a] quitclaim if the consideration is unconscionably low and the employee was tricked into accepting it, [dire necessity is not, however,] an acceptable ground for annulling the release when it is not shown that the employee has been forced to execute it."[45] Not having sufficiently proved that he was forced to sign said *Release, Waiver and Quitclaim*, Morales cannot expediently argue that quitclaims are looked upon with disfavor and considered ineffective to bar claims for the full measure of a worker's legal rights. This Court has held that not all quitclaims are *per se* invalid or against public policy, except (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their face.[46] These two instances are not present in this case.

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[42] *R.P. Dinglasan v. Construction, Inc. v. Atienza*, G.R. No. 156104, 29 June 2004, 433 SCRA 263, 271.

[43] *Tolosa v. NLRC*, 449 Phil. 271, 284 (2003).

[44] *Romago Electric Co., Inc. v. Court of Appeals*, 388 Phil. 964, 977 (2000).

[45] *Coats Manila Bay, Inc. v. Ortega*, G.R. No. 172628, 13 February 2009, 579 SCRA 300, 312.

[46] *Lacuesta v. Ateneo de Manila University*, G.R. No. 152777, 9 December 2005, 477 SCRA 217, 226, citing *Bogo Medellin Sugarcane Planters Asso., Inc. v. NLRC*, 357 Phil. 110, 126 (1998).

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.

SO ORDERED.

Carpio(Senior Associate Justice, Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 185386. November 21, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERNABE ANESLAG *y* ANDRADE, MENDA[*] ANESLAG *y* NECOLAY (acquitted), MAE ELARMO *y* NECOLAY (acquitted), and JOCELYN CONCEPCION *y* LAO,[**]** *accused.*

BERNABE ANESLAG *y* ANDRADE and JOCELYN CONCEPCION *y* LAO, *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); SECTION 21 OF THE IMPLEMENTING RULES; CHAIN OF CUSTODY RULE; NON-COMPLIANCE WITH THE PROCEDURES FOR THE HANDLING OF SEIZED OR CONFISCATED ILLEGAL DRUGS DOES NOT NECESSARILY RENDER THE ARREST ILLEGAL OR THE ITEMS SEIZED INADMISSIBLE; WHAT IS ESSENTIAL IS THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED WHICH WOULD BE UTILIZED IN THE DETERMINATION OF THE GUILT OR INNOCENCE OF THE ACCUSED.— Section 21(1),

[*] Also spelled as Minda in some parts of the records.

[**] Also known as Jocelyn Concepcion Lao.

Article II of R.A. No. 9165 provides the procedure for the handling of seized or confiscated illegal drugs*:* x x x. However, non-compliance with Section 21 does not necessarily render the arrest illegal or the items seized inadmissible. What is essential is that the integrity and evidentiary value of the seized items are preserved which would be utilized in the determination of the guilt or innocence of the accused. Thus, Section 21, Article II of the Implementing Rules of R.A. No. 9165 provides – x x x. ***Provided, further,*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**. x x x.

2. ID.; ID.; ID.; ID.; CHAIN OF CUSTODY, DEFINED.— Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, defines the chain of custody — b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody made in the course of safekeeping and use in court as evidence, and the final disposition.

3. ID.; ID.; ID.; ID.; RATIONALE OF THE CHAIN OF CUSTODY RULE; AN UNBROKEN LINK IN THE CHAIN OF CUSTODY ESTABLISHED IN CASE AT BAR.— In *Malillin v. People*, we explained the rationale of the chain of custody rule in this wise - Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the

fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. In the case at bar, while the procedure under Section 21(1), Article II of R.A. No. 9165 was not strictly complied with, we find that the integrity and the evidentiary value of the seized *shabu* was duly preserved consistent with the chain of custody rule. x x x. The prosecution's evidence sufficiently established an unbroken link in the chain of custody which precluded the alteration, substitution or tampering of the subject *shabu* packs.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR OR TRIVIAL INCONSISTENCIES SERVE TO STRENGTHEN RATHER THAN DESTROY THE CREDIBILITY OF THE WITNESSES AS THEY ERASE DOUBTS THAT THE SAID TESTIMONIES HAD BEEN COACHED OR REHEARSED.— Appellants further advert to the alleged inconsistent, conflicting and incredible testimonies of the prosecution witnesses. x x x. We have examined the testimonies of the prosecution witnesses and we find that the 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.

5. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS

DRUGS; APPLICATION OF FLUORESCENT POWDER TO THE BUY-BUST MONEY TO PROVE THE COMMISSION OF THE OFFENSE IS NOT REQUIRED.— Neither law nor jurisprudence requires that the police must apply fluorescent powder to the buy-bust money to prove the commission of the offense. The same holds true for the conduct of finger print examination on the money used in the buy-bust operation. What is crucial is that the prosecution proves, as in this case, the delivery of the prohibited drugs to the poseur-buyer and the presentation of the confiscated drugs before the court.

6. ID.; ID.; ID.; IN A BUY-BUST OPERATION, THE POLICE OPERATIVES ARE NOT REQUIRED TO SECURE A SEARCH WARRANT BECAUSE THE VIOLATOR IS CAUGHT IN *FLAGRANTE DELICTO* AND THE POLICE OFFICERS, IN THE COURSE OF THE OPERATION, ARE NOT ONLY AUTHORIZED BUT DUTY BOUND TO APPREHEND THE VIOLATOR AND TO SEARCH HIM FOR ANYTHING THAT MAY HAVE BEEN PART OF OR USED IN THE COMMISSION OF THE CRIME.— [A]nent appellants' contention that the police operatives should have first secured a search warrant, we agree with the observation of the trial court that it would have been impracticable to secure such a search warrant because appellants were not residing in the agreed meeting place (*i.e.*, Room 65 of Patria Pension) at the time of the surveillance. The surveillance was conducted for the mere purpose of determining the respective roles and positions of the police operatives in anticipation of the buying transaction which was to happen there three days later. More important, in a buy-bust operation, the police operatives are not required to secure a search warrant because the violator is caught *in flagrante delicto* and the police officers, in the course of the operation, are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.

7. ID.; ID.; ID.; ELEMENTS; PROVED BEYOND REASONABLE DOUBT IN CASE AT BAR.— All in all, we find that the prosecution was able to prove beyond reasonable doubt the elements of the crime of illegal sale of *shabu*: (1) the identity of the buyer and seller, the object and consideration; and (2) the delivery of the drug sold and its payment. Hence, the conviction of appellants was proper.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

In the prosecution of the crime of illegal sale of dangerous drugs, the prosecution must prove that the chain of custody rule was complied with.

This is an appeal from the August 27, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00172, which affirmed the May 7, 2005 Decision[2] of the Regional Trial Court (RTC) of Iligan City, Branch 6 in Criminal Case No. 06-10093 finding appellants Bernabe Aneslag and Jocelyn Concepcion guilty of violating Republic Act (R.A.) No. 9165 (or the "Comprehensive Dangerous Drugs Act of 2002").

Factual Antecedents

On April 2, 2003, an Information[3] for illegal sale of methamphetamine hydrochloride (or *shabu*) was filed against Menda Aneslag (Menda), Mae Elarmo (Mae), appellant Bernabe Aneslag (Bernabe) and appellant Jocelyn Concepcion (Jocelyn) with the RTC of Iligan City, *viz*:

That on or about March 30, 2003, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other, without any authority of law, did then and there willfully, unlawfully and feloniously sell and deliver six (6) plastic sachets containing approximately 240 grams of Methamphetamine

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[1] CA *rollo*, pp. 163-189; penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Edgardo A. Camello and Jane Aurora C. Lantion.

[2] Records, pp. 171-181; penned by Judge Valerio M. Salazar.

[3] *Id.* at 1.

Hydrochloride, a dangerous drug commonly known as *Shabu*.

Contrary to and in violation of Sec. 5 in relation with Sec. 26 of Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.[4]

The case was raffled to Branch 6 and docketed as Criminal Case No. 06-10093. On May 22, 2003, the accused were arraigned and all of them pleaded not guilty.[5] Thereafter, trial ensued.

Version of the Prosecution

The prosecution presented the testimonies of SPO2 George Salo (SPO2 Salo), SPO2 Edgardo Englatiera (SPO2 Englatiera) and P/Sr. Insp. Aileen Bernido (P/Sr. Insp. Bernido). The evidence for the prosecution, as summarized in the trial court's May 7, 2005 Decision, tends to establish the following:

In 2003, P/Supt. Rolando Abutay was the Regional Director of the PDEA based in Cagayan de Oro City. SPO2 Edgardo Englatierra was and still is the Team Leader of the PDEA in Iligan City. His members include SPO2 George Salo and SPO2 Diosdado Cabahug.

Three days prior to March 30, 2003, Supt. Abutay called by phone Officer Englatierra that there was an expected arrival of *shabu* in Iligan City and to watch Room 65 of the Patria Pension at Laya St., Iligan City.

In the early morning of March 30, 2003, Supt. Abutay arrived in Iligan City with his civilian asset (CA). He conducted a briefing at the PDEA office in Tipanoy, Iligan City. Present were Officers Englatierra, Salo, Cabahug and the CA. He informed [them] that there was going to be a "meet" at Room 65 of Patria Pension. He designated Officer George Salo and his CA to act as poseur buyers. He instructed Officer Salo and his C[A] to check-in at Room 65 of Patria Pension. He assigned himself and Officers Englatierra and Cabahug as the back-up team. He gave to Officer Salo two 500-peso bills to be used as part of the buy-bust money. They caused the two x x x 500-peso bills to be [photocopied] and authenticated at the Office of the City Prosecutor of Iligan City, Exh. A. Then they prepared a boodle money

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[4] *Id.*

[5] *Id.* at 39.

consisting of one genuine 500-peso bill on top, fake money at the middle and one genuine 500-peso bill at the bottom. After that Officer Salo and the CA went to the Patria Pension with the boodle money. They checked in at Rm 65 at about 11:00 a.m. The back-up team stayed at the office.

At about 4:30 p.m., Supt. Abutay and Officers Englatierra and Cabahug left the PDEA office. They went directly to the Patria Pension and checked in at Rm 64 across the corridor from Rm 65. A little later, the CA entered Rm 64 and handed to them the key to Rm 65.

At about 7:00 p.m., Officer Salo and the CA were inside Rm 65. The CA received a call on his celphone. After the call, the CA told Officer Salo that someone will check if they had the money. Several minutes later, they heard a knock at the door. They saw a woman they did not know but later learned that she was Mae Elarmo. They invited her inside. Upon entering the room, she asked if they had the money. Officer Salo showed to her the boodle money. She simply looked at the bundle and made a call with her celphone. Sometime later, they heard another knock at the door. The CA opened the door and a man and a woman entered the room. The man asked where is the money. Officer Salo showed to him the bundle of money. He looked at the bundle and introduced himself as Bernabe Aneslag. The female companion did not say anything. They learned later that she was Minda Aneslag. After Bernabe Aneslag looked at the bundle of money, he made a call on his celphone. A minute or two later, there was knock at the door. The CA opened the door. A woman, who was holding a Ferragamo bag colored red, Exh. F, entered the room. They learned later that her name is Jocelyn Concepcion *y* Lao. Bernabe told her to give the bag to Officer Salo. She handed it to Officer Salo, who received it. He opened the zipper and looked inside. He found two big packs and four smaller packs of *shabu*. Then Bernabe Aneslag asked for the money. Officer Salo handed to him the bundle of money. After Bernabe Aneslag received the money, the CA pressed his celphone to give the signal to Supt. Abutay that the transaction was completed.

When Supt. Abutay received the signal, he said let's go. They went out of Rm 64, opened the door to Rm 65 with the key and rushed in. They found inside the room Bernabe Aneslag, Minda Aneslag, Jocelyn Concepcion and Mae Elarmo. They introduced themselves as police officers, arrested them and informed them of their rights. Officer Englatierra took possession of the boodle money from Bernabe Aneslag while Officer Salo took possession of the red bag and the

shabu. They brought them to Pol[i]ce Precinct No. 01 for recording purposes and then took them to the PDEA office in Tipanoy, Iligan City. At the office, Officer Salo marked the two big bags as "GRS-1" and "GRS-2". He also marked the four smaller packs as "GS-1, GS-2, GS-3 and GS-4" respectively. GRS or GS represent[s] his initials. Thereafter, a Request for Laboratory Examination was prepared, Exh. B. The following day, Officer Salo delivered the request and the six packs of *shabu* to the PNP Provincial Crime Laboratory at Tipanoy, Iligan City. The specimens were originally examined by P/Insp. Mary Leocy Jabonillo-Mag-abo, Forensic Chemical Officer of the said laboratory. After her examination, she delivered the specimens to the Office of the City Prosecutor. However, when this case was called for hearing on July 18, 2003, the court was informed that Insp. Mag-abo was not available because she was sent to the Philippine Public Safety College, Makati City to undergo training in Public Safety Advance Course for a period of four (4) months. To avoid further delay, the court issued an order directing the PDEA, Iligan City, to arrange for another laboratory examination of the specimens at the PNP Regional Crime Laboratory, Cagayan de Oro City, Exh. C. On July 21, 2003, Officer Salo retrieved the specimens from the Office of the City Prosecutor, Iligan City and signed a receipt therefor, Exh. B-2. On July 23, 2003, SPO2 Diosdado Cabahug of the PDEA, Iligan City handcarried the specimens, the Request for Laboratory Examination, Exh. B, the receipt signed by Officer Salo, Exh. B-2 and the Order of this court, Exh. C, to the PNP Regional Crime Laboratory, Camp Evangelista, Cagayan de Oro City. PO3 Paltinga, receiving clerk of the Regional Crime Laboratory, [received] the specimens and the documents, Exh. C-1. Officer Paltinga turned over the specimen and documents to P/Sr. Insp. Aileen Undag Bernido, Forensic Chemical Officer. Insp. Bernido immediately performed the required laboratory examination of the specimens in three steps, namely: the physical test, color or screening test and the confirmatory test.

The first step, which is the physical test consists of the ocular inspection and weighing. When she received the specimens, they were inside a closed brown letter envelope, Exh. E-6. She wrote on the surface of the envelope the markings "D-419-03 AUB" representing the dangerous drugs number she assigned to it and her initials. Then she opened the envelope and found inside it two (2) big packs and four (4) smaller packs containing white crystalline substance. She found the packs were marked "GRS-1" and "GRS-2" for the two big packs and "GS-1", "GS-2", "GS-3" and "GS-4" respectively for the four small packs. Both ends of each pack were

tape-sealed. She opened the packs and weighed the contents of each pack individually. The packs weighed as follows: GRS-1 = 96.4 grams, GRS-2 = 97.2 grams, GS-1, GS-2, GS-3 and GS-4 weighed 4.1 gamrs (sic) each. The total weight was 210 grams. After weighing each pack, she removed a representative sample and proceeded to the color test and confirmatory test. Thus, she followed the following procedure: First, she marked [the] surface of the pack already marked GRS-1 with the dangerous drugs number and her initials "D-419-03 AUB". Then she opened it and weighed the contents. After that, she removed a representative sample. She returned the remaining contents into the original pack and resealed it with a masking tape. She wrote on the masking tape her identification mark "D-419-03 A1 AUB". Then she proceeded to the color test by applying on the representative sample a Simons reagent. The results gave a blue color indicating the presence of methamphetamine hydrochloride or *shabu*. She continued with the confirmatory test using a Thin Layer Chromatography. The results confirmed the findings of the color or screening test. She followed exactly the same procedure for the succeeding packs. Each pack was accordingly given her own identification markings, as follows: GRS-2 was marked "D-419-03 A2 AUB", GS-1 was marked "D-419-03 A3 AUB", GS-2 was marked "D-419-03 A4 AUB", GS-3 was marked "D-419-03 A5 AUB" and GS-4 was marked "D-419-03 A6 AUB". Each of the packs gave positive result for the presence of *shabu*. She prepared Chemistry Report No. D-419-03 (re-exam), Exh. "D" which embodies her findings and conclusion that "Specimens A1 to A6 contain Methamphetamine Hydrochloride, a dangerous drug".[6]

Version of the Defense

The defense presented the testimonies of Mae, appellant Bernabe and appellant Jocelyn. The evidence for the defense, as summarized in the trial court's May 7, 2005 Decision, tends to establish the following:

Mae Elarmo is 20 years old, single, jobless and a resident of Alubijid, Misamis Oriental. She is a niece of co-accused Menda Aneslag. Accused Bernabe Aneslag is the husband of Menda. She calls him Uncle Boy. In March 2003, she resided with the spouses Aneslag at P-02 Buruun, Iligan City.

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[6] *Id.* at 171-174.

At about 7 to 7:30 p.m., March 30, 2003, Mae, Bernabe, Menda and Joy Lao aka Jocelyn Concepcion were having dinner at an ala carte restaurant somewhere in Iligan City. She could not pinpoint the exact location. They were having the (sic) dinner on the invitation of Joy Lao. During the dinner, her Uncle Boy instructed her to go to room 65 of Patria Pension and find out if a woman named Loren and a male companion were there. He gave her the fare. She rode on a PU car and went to Patria Pension. On arrival, she went directly to Rm 65. She knocked at the door and it was opened by the woman, named Loren. She asked me who are you. Mae replied Uncle Boy sent her. Loren invited her in and asked where was Uncle Boy. She replied she left him behind. Loren asked "Do you have the thing now?" Mae replied "What thing". Loren said "You do not know" and Mae replied "No". Loren had a male companion, who was about 30 years old, short, of white complexion, with a short haircut and of medium build. Loren was tall, white and also about 30 years old. About thirty minutes later, Bernabe Aneslag, Menda Aneslag and Joy Lao arrived at Rm 65. When they were already inside the room, the door was suddenly kicked open. Col. Abutay and companions entered. They pointed guns to them as Col. Abutay declared "Do not move, this is a buy-bust operation". They handcuffed Mae, Bernabe, Menda and Joy and frisked them. They confiscated from Mae her wallet with ₱800.00, from Bernabe his watch and wallet, from Menda her celphone, necklace and wallet and from Joy her money. At this time, Loren and her male companion already left. Then Col. Abutay called on his celphone saying "Come here now". A few minutes later, Officers Englatierra and Cabahug entered the room. They were taken downstairs and Mae saw George Salo for the first time at the front desk. They were taken on board a jeep driven by Officer Cabahug to the Police Precinct 01. After that, they were brought to the PDEA office in Cagayan de Oro City. The next day, they were taken back to Iligan City.

She denied that Officer George Salo was in Rm 65 with Loren. She denied the testimony of Officer Salo that the boodle money was shown to her. She also denied that her Uncle Boy counted the money. Finally, she declared that the owner of the *shabu* was Joy Lao.

Bernabe Aneslag is 52 years old, married and a resident of P-02 Buruun, Iligan City. Menda Aneslag is his wife. Mae Elarmo is the niece of Menda. He is the caretaker of the Videogram business of Jocelyn Concepcion Lao.

At about 6:00 p.m., March 30, 2003, Bernabe, Menda, and Mae were at Cocogroove, Iligan City. They walked towards the jeepney terminal for Buruun at Roxas Avenue in front of Jollibee in order to take a passenger jeepney for home. They walked along Quezon Avenue until they reached Roxas Avenue, then turned right along Roxas until they reached the terminal. They were about to board a passenger jeepney when Mae told Bernabe that Joy was there. Joy was at the opposite side of Roxas Avenue near the Dr. Uy Hospital. Bernabe told Mae to call Joy. Mae crossed the street and approached Joy. Then Joy and Mae crossed back and approached Bernabe and Menda. Joy invited them to dinner. They accepted. They walked to the JoArt Restaurant. They did not ride on a taxi. Joy was holding a red bag. While they were eating, Joy gave to Bernabe a piece of paper with the words Rm 65 Patria Pension and some names written on it. Joy asked Bernabe to send Mae to Patria Pension, find Rm 65 and look for the persons whose names were written on the piece of paper. He instructed Mae accordingly. Joy gave Mae the fare for a PU car. Mae left. About fifteen minutes later, Joy told them that they will follow Mae. They rode on a PU car for Patria Pension. On arrival, Bernabe, Menda and Joy went directly to Rm 65. Bernabe knocked at the door. A woman opened it. He entered followed by Menda and Joy. Bernabe saw Mae talking to a man he did not know. That man was not SPO2 George Salo. Barely a minute or two after they entered, the door was kicked open and Col. Abutay with two companions entered the room. Col. Abutay said this is a buy-bust. The companions of Col. Abutay frisked Bernabe, Menda, Joy and Mae and confiscated their personal belongings such as wallets, money, jewelry and celphones. Then SPO2 Englatierra and SPO2 Salo entered the room. They were handcuffed and brought to Police Precinct No. 01 where they made a list of the *shabu*. About an hour later, they were brought to Cagayan de Oro City and detained overnight at the PDEA office. The following morning, they were taken back to Iligan City. He declared that the man inside Rm 65 when they entered was not Office George Salo.

Accused Jocelyn Concepcion *y* Lao testified that she is Jocelyn Concepcion Lao. She is 38 years old, married, businesswoman and a resident of P-5A, Behind Village, Bgy. Ma. Cristina, Iligan City. She knows the spouses Bernabe and Menda Aneslag because they were former neighbors in Canawai, Iligan City. She operates Videogram machines and a Videoke Bar.

At about 7:00 p.m., March 30, 2003, she was standing along Roxas Avenue, Iligan City in front of Dr. Uy Hospital. She was waiting for transportation in order to go home. While waiting, a taxi stopped in front of her. Menda Aneslag called her from inside the taxi saying "Joy, where are you going?" She replied she was going home. Menda invited her to have dinner with them. She accepted and entered the taxi. Menda was with Bernabe Aneslag and Mae Elarmo. They proceeded on board the taxi to the JoArt Barbeque Restaurant nearby. They ordered dinner. While they were eating Bernabe and Menda talked to each other. Bernabe told Menda to remain in the restaurant with Joy because he was going somewhere. Menda refused to remain behind. When Menda insisted on going out with Bernabe, the latter talked to Mae. Bernabe told Mae to go ahead to Patria Pension and proceed to Rm 65. After Mae left, they continued with their dinner. After several minutes, Bernabe received a text message and a voice call on his celphone. When Bernabe received the message, he told Menda to stay behind with Joy because he will follow Mae. Menda refused to stay. She insisted to go with Bernabe. Joy paid for their dinner and the three of them rode on a taxi for Patria Pension. On arrival, Bernabe immediately alighted and left Menda and Joy inside the taxi. He entered Patria Pension. Menda immediately followed. Joy paid the taxi fare and also followed because the red bag of Menda was left behind. When she entered Patria Pension, she saw Bernabe and Menda going upstairs. She followed and caught up with them right at the door of Room 65. She noticed that Menda was angry and had an exchange of words with Bernabe because she suspected that Bernabe and Mae had a relationship. Bernabe knocked at the door. The door was opened and they entered. Then a woman closed the door. She saw a male person and Mae in the room. Just then, the door was forced open and Col. Abutay and companions entered. They introduced themselves as PDEA agents. Then the companions of Col. Abutay frisked them and took possession of the red bag she was holding as well as their personal belongings. Col. Abutay directed the man and woman to leave the room. After they left, Col. Abutay made a call on his celphone. After the call, Officers Englatierra and Cabahug entered the room. They took them to the police station where Col. Abutay showed to her the red bag containing *shabu*. That night they were taken to Cagayan de Oro City. The next day, they were brought back to Iligan City.[7]

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[7] *Id.* at 174-176.

Regional Trial Court's Ruling

On May 7, 2005, the RTC rendered a Decision finding appellants Bernabe and Jocelyn guilty of illegal sale of *shabu*, *viz*:

> **WHEREFORE,** the court finds the accused BERNABE ANESLAG and JOCELYN CONCEPCION *y* Lao *aka* JOCELYN CONCOPCION (sic) LAO GUILTY beyond reasonable doubt as principals of violation of Section 5, Article II of R.A. No. 9165 and hereby imposes upon each of them the penalty of LIFE IMPRISONMENT and FINE of Five Hundred Thousand (Php 500,000.00) Pesos without subsidiary imprisonment in case of insolvency.
>
> The court finds the accused Menda Aneslag and Mae Elarmo NOT GUILTY by reason of reasonable doubt.
>
> The six (6) packs of *shabu* weighing 210 grams are confiscated in favor of the government to be disposed of pursuant to Sec. 21 of R.A. No. 9165.
>
> The accused Bernabe Aneslag and Jocelyn Concepcion have been under preventive detention since April 1, 2003 until the present. The period of such preventive detention shall be credited in full in favor of the accused in the service of their respective sentences.
>
> The City Warden is directed to discharge from his custody the persons of Menda Aneslag and Mae Elarmo unless there are other legal grounds for their continued detention.
>
> SO ORDERED.[8]

The trial court held that the prosecution was able to establish all the essential elements of the crime charged. The buyers were SPO2 Salo and the civilian asset while the sellers were appellants Bernabe and Jocelyn in the presence of Mae and Menda. The object of the transaction was six packs of *shabu*. After appellant Bernabe received the boodle money, appellant Jocelyn delivered the *shabu* contained in a red bag to SPO2 Salo. The six packs were tested positive for *shabu* as per the laboratory examination by the forensic chemist, P/Sr. Insp. Bernido.

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[8] *Id.* at 180-181.

The trial court found the testimonies of the appellants to be conflicting and a case of finger-pointing. In contrast, the version of the prosecution showed a logical, consistent and smooth flow of events leading to the arrest of appellants. Thus, the trial court held that the version of the prosecution was more credible. However, with respect to Mae and Menda, the trial court rendered a judgment of acquittal because it was not sufficiently established that the two were in conspiracy with the appellants. Reasonable doubt existed owing to the fact that Mae and Menda appeared to be merely a messenger and a companion, respectively, of appellant Bernabe.

Court of Appeal's Ruling

On August 27, 2008, the CA rendered the assailed Decision affirming the aforesaid judgment of conviction, *viz*:

> WHEREFORE, the decision of the court *a quo* is hereby AFFIRMED *in toto*.[9]

In affirming the conviction of the appellants, the CA ruled that: (1) the purported inconsistencies between the testimonies of the prosecution witnesses are trivial and/or reconcilable, (2) the police operatives in the buy-bust operation did not need to secure a search warrant because the appellants were caught *in flagrante delicto*, (3) the use of fluorescent powder and fingerprinting are not indispensable in buy-bust operations, (4) the presentation of the marked money is, likewise, not indispensable in buy-bust operations, (5) the presentation of the confidential informant is not required, (6) the use of thin layer chromatography to ascertain the purity of the *shabu* is not necessary, (7) the case passes the chain of custody test because from the time of seizure up to the time of laboratory examination the *shabu* was in the possession of SPO2 Salo, and (8) the minor discrepancy in the weight of the *shabu* can be attributed to the weighing scale used by the police officers.

Hence, this appeal.

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[9] CA *rollo*, p. 189.

Issue

Whether the CA gravely erred in convicting appellants of the crime charged despite the failure of the prosecution to prove their guilt beyond reasonable doubt.[10]

Our Ruling

We affirm the findings of the appellate court.

The chain of custody rule was duly complied with.

Appellants argue that the prosecution failed to establish the chain of custody of the seized *shabu* and the identity of the substance subjected to laboratory examination. They claim that the Information alleged the sale of 240 grams of *shabu* while the trial court found that only 210 grams were sold, thus, a substantial 30-gram discrepancy existed. In addition, the police officers did not immediately mark the seized items and no certificate of inventory was prepared and no photographs taken in accordance with Section 2 of Dangerous Drugs Board Regulation No. 1.

We disagree.

Section 21(1), Article II of R.A. No. 9165 provides the procedure for the handling of seized or confiscated illegal drugs*:*

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized,

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[10] *Id* at p. 88.

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; x x x

However, non-compliance with Section 21 does not necessarily render the arrest illegal or the items seized inadmissible.[11] What is essential is that the integrity and evidentiary value of the seized items are preserved which would be utilized in the determination of the guilt or innocence of the accused.[12] Thus, Section 21, Article II of the Implementing Rules of R.A. No. 9165 provides -

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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 evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void**

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[11] *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

[12] *Id.* at 843.

and invalid such seizures of and custody over said items. x x x (Emphasis supplied.)

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, defines the chain of custody —

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody made in the course of safekeeping and use in court as evidence, and the final disposition.

In *Malillin v. People*,[13] we explained the rationale of the chain of custody rule in this wise -

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what

[13] G.R. No. 172953, April 30**,** 2008, 553 SCRA 619.

the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[14]

In the case at bar, while the procedure under Section 21(1), Article II of R.A. No. 9165 was not strictly complied with, we find that the integrity and the evidentiary value of the seized *shabu* was duly preserved consistent with the chain of custody rule. As correctly observed by the appellate court, from the time of the arrest of the appellants and the confiscation of the subject *shabu* packs until their turnover for laboratory examination, SPO2 Salo was in sole possession thereof. During his testimony, he identified the subject *shabu* packs and the markings that he had previously made thereon, *viz*:

Q: And you said this backup team entered Room 65?
A: Yes sir.

Q: Once they were already in Rm. 65 what did you do?
A: They were the one's [sic] who arrested and informed them of their rights.

Q: After the accused were already apprised of their rights by your companions, what happened to the *shabu* subject of the case?
A: We brought the accused and the *shabu* to Police Station 1.

Q: Who was in possession of the *shabu*?
A: Me sir.

Q: From the time of the arrest until the time these people were brought to the Police Station?
A: It was me sir.

x x x x x x x x x

[14] *Id.* at 631-633.

Q: Were you able to bring all the accused and the specimens to the police station?

A: Yes sir at Police Station 1.

Q: When they were already at the police station 1, what did you do?
A: The blotter was made and we made an inventory of the *shabu* that was confiscated.

Q: Was there any Certificate of Inventory made?
A: We do not have a certificate of inventory but we do have logbook.

Q: Were there pictures taken at the time of the inventory?

ATTY. JAVIER:

Objection Your Honor leading.

COURT:

Witness may answer.

A: I cannot remember sir but we have brought with us a camera.

Q: After these persons were brought to the Police Station together with the specimens from the Police Station where did you proceed?
A: We proceeded to Tipanoy our office.

Q: From the police station 1 to your office at Camp Tomas Cabili, Tipanoy, Iligan City, who was in possession of the *shabu*?
A: It was me sir.

x x x x x x x x x

Q: Upon arrival at Tipanoy being the possessor of these *shabu*, what did you do with the *shabu*?
A: I made a counter sign.

Q: I am showing to you again these six specimen contained in bigger and smaller packs, will you please point x x x to the court your counter sign which you said you placed on this specimen?
A: This GRS-1 sir.

Q: What does GRS mean?
A: George Rito Salo sir my initial.

PROS. ALBULARIO:
GRS-1 for the first pack of *shabu*, GRS-2 for the second bigger pack and GS-1 for the smaller packs.

Q: Are you telling this court that you gave x x x different markings to the big packs and different markings to the smaller packs?
A: Yes sir.

Q: What does GS-1 stands [sic] for?
A: George Salo sir

Q: How about GS-2?
A: The same sir also in GS-3 & GS-4.

Q: After placing these markings, what did you do with these specimens?
A: We delivered it to the crime laboratory located at Camp Tomas Cabili, Tipanoy, Iligan City.

Q: When you delivered the same specimen to the PNP Crime Laboratory at Camp Tomas Cabili, Tipanoy, Iligan City, who personally brought those *shabu*?
A: It was me sir.[15]

Subsequently, when this case was called for hearing, P/Sr. Insp. Mary Leocy Jabonillo Mag-abo (P/Sr. Insp. Mag-abo), the forensic chemist from the PNP Crime Laboratory of Iligan City who conducted the examination on the subject *shabu* packs, was unavailable because she had to undergo training in Makati City.[16] Thus, the trial court issued an order for the conduct of another examination on the subject *shabu* packs by a forensic chemist in Cagayan de Oro City in order to expedite the proceedings.[17] Consequently, the subject *shabu* packs were turned over to SPO2 Salo, as evidenced by an acknowledgement receipt,[18] and thereafter delivered to the PNP Crime Laboratory of Cagayan de Oro City where the said packs were received by PNCO PO3 Paltinca[19] who, in turn, forwarded the same to

[15] TSN, February 2, 2004, pp. 27-31.

[16] Records, p. 105.

[17] *Id.*

[18] *Id.* at 104.

[19] TSN, July 31, 2003, p. 11.

P/Sr. Insp. Bernido, the examiner assigned to this case.[20] The chemistry report[21] and testimony of P/Sr. Insp. Bernido corroborated the testimony of SPO2 Salo relative to the markings the latter made on the packs of *shabu* (*i.e.*, GRS-1 and GRS-2 for the bigger packs, and GS-1, GS-2, GS-3, and GS-4 for the smaller packs)[22] as well as the number and size of the *shabu* packs (*i.e.*, two big packs and four smaller packs).[23] P/Sr. Insp. Bernido identified the *shabu* packs in court as well as the separate markings she made thereon; she further testified that the six packs tested positive for *shabu*.

Based on the foregoing, we find that the chain of custody rule was complied with. The prosecution's evidence sufficiently established an unbroken link in the chain of custody which precluded the alteration, substitution or tampering of the subject *shabu* packs.

Anent appellants' claim that the total weight of the *shabu* packs as alleged in the Information, *i.e.*, 240 grams,[24] varies substantially from the total weight as determined by the forensic chemist, *i.e.*, 210 grams, we find the same insufficient to overcome the previous finding that the integrity and evidentiary value of the confiscated *shabu* was duly preserved. As noted by the appellate court, there are a host of possible reasons for the variance such as the difference in the accuracy of the weighing scales used by the police operatives *vis-à-vis* the forensic chemist. We also note that: (1) as previously narrated, the subject *shabu* packs were twice tested by two different forensic chemists in order to expedite the proceedings as per the order of the trial court so that representative samples of the *shabu* were taken from the aforesaid packs by the first forensic chemist (P/Sr. Insp. Mag-abo) which could have affected the total weight

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[20] *Id.* at 13.

[21] Records, p. 106.

[22] TSN, July 31, 2003, p. 14.

[23] *Id.* at 19-23.

[24] Records, p. 1.

as determined by the second forensic chemist (P/Sr. Insp. Bernido), and (2) P/Sr. Insp. Bernido testified that when she weighed each pack of *shabu*, the same was done without the packaging material thereof[25] which could have, likewise, affected the total weight of the *shabu*.

Appellants further advert to the alleged inconsistent, conflicting and incredible testimonies of the prosecution witnesses. According to appellants, SPO2 Salo testified that appellant Jocelyn handed to him (SPO2 Salo) a red bag containing six packs of *shabu* while SPO2 Englatiera testified that the said bag was in front of Mae and that SPO2 Salo told him (SPO2 Englatiera) that the bag was taken from Mae. Furthermore, the prosecution witnesses testified that SPO2 Salo and the civilian asset were inside Room 65 while police officers Abutay, Englatiera and Cabahug were in Room 64. However, paragraph 4 of the joint affidavit executed by police officers Salo, Englatiera and Cabahug before the city prosecutor stated that they were posted facing the area where the transaction is to be conducted and had a clear view of the operation.

The contention is untenable.

We have examined the testimonies of the prosecution witnesses and we find that the 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.[26]

Anent the matter of who was holding the red bag containing the *shabu* before it was confiscated by the police operatives, the trial court found more credible the testimony of SPO2 Salo that the said bag was given to him (SPO2 Salo) by appellant Jocelyn after he paid for the *shabu* with boodle money. We cannot fault the trial court for making this finding because SPO2 Salo was the one present during the buying transaction. SPO2 Englatiera arrived only after the pre-arranged signal (as to the

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[25] TSN, July 31, 2003, p. 43.

[26] *People v. Diaz*, 331 Phil. 240, 251-252 (1996).

completion of the sale of the *shabu*) was given to him, along with the other members of the backup team, who then entered the room and arrested the appellants. SPO2 Englatiera's testimony, therefore, on this matter is hearsay.

Anent appellants' claim of inconsistency between the joint affidavit executed by the police officers, namely, Salo, Englatiera and Cabahug *vis-à-vis* the testimonies of police officers Salo and Englatiera in open court, we find the same to be misleading because appellants quoted only a portion of the said affidavit. An examination of the whole joint affidavit reveals that the same is consistent with the testimonies of police officers Salo and Englatiera in open court. Specifically, the joint affidavit states that "while in the area[,] we (referring to Salo, Englatiera, Cabahug) posted ourselves fronting the place of [the] buying transaction [where] we had a clear view of the progress of the operation."[27] However, the succeeding paragraphs of the joint affidavit narrated the ensuing events as well as the individual roles of SPO2 Salo and the confidential agent, as poseur buyers, and police officers Englatiera and Cabahug, as part of the backup team, which is consistent with the testimonies of police officers Salo and Englatiera in open court.[28]

Finally, appellants contend that appellant Bernabe was not subjected to ultra-violet powder examination or finger printing

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[27] Records, p. 2.

[28] The Joint Affidavit pertinently stated:

That I[,] SPO2 GEORGE R[.] SALO[,] was tasked as a poseur buyer, while the other acted as back-up, that I together with our Confidential Agent check-in [sic] room 65 of the aforementioned place, having transaction with a certain woman identified as MAE. The transaction was [sic] took place inside the said room to buy *SHABU* worth 282,000.00 on March 30, 2003 more or less 7:00 P.M. As the transaction went to [sic] SPO2 GEORGE R[.] SALO presented to MAE th[e] boodle money worth 282,000.00 of which only 1,000.00 is the real money while the rest are boodle money[.] [A]fter checking the money[,] MAE called her companion using cellphone in [sic] which minutes later two persons arrived in above-mentioned identified only [as] Bernabe and Menda. The two checking the money again and one of them called another companion using cellphone. Few minutes leater [sic] a woman identified only as Joy arrived at Room 65 bringing her red bag with suspected *SHABU* place[d] inside the said place [sic]. (*Id*.)

casting doubt as to whether he was the one who allegedly received and counted the boodle money. They also question the reliability of the Thin Layer Chromatography used by the forensic chemist in determining the presence of *shabu* in the six packs seized from appellants. Moreover, appellants argue that the police officers should have first secured a search warrant given that they conducted a surveillance of the place three days prior to the buy-bust operation.

The contentions are, likewise, untenable.

Neither law nor jurisprudence requires that the police must apply fluorescent powder to the buy-bust money to prove the commission of the offense.[29] The same holds true for the conduct of finger print examination on the money used in the buy-bust operation. What is crucial is that the prosecution proves, as in this case, the delivery of the prohibited drugs to the poseur-buyer and the presentation of the confiscated drugs before the court.[30]

Anent the claim that the Thin Layer Chromatography used by the forensic chemist in determining the presence of *shabu* in the six packs is unreliable, we find the same to be unsubstantiated. Except for their bare allegation, the defense did not present clear and convincing evidence to prove that the findings of the forensic chemist were erroneous.

Lastly, anent appellants' contention that the police operatives should have first secured a search warrant, we agree with the observation of the trial court that it would have been impracticable to secure such a search warrant because appellants were not residing in the agreed meeting place (*i.e.*, Room 65 of Patria Pension) at the time of the surveillance. The surveillance was conducted for the mere purpose of determining the respective roles and positions of the police operatives in anticipation of the buying transaction which was to happen there three days later. More important, in a buy-bust operation, the police

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[29] *People v. So*, 421 Phil. 929, 943 (2001).

[30] *Id.*

operatives are not required to secure a search warrant because the violator is caught *in flagrante delicto* and the police officers, in the course of the operation, are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.[31]

All in all, we find that the prosecution was able to prove beyond reasonable doubt the elements of the crime of illegal sale of *shabu*: (1) the identity of the buyer and seller, the object and consideration; and (2) the delivery of the drug sold and its payment.[32] Hence, the conviction of appellants was proper.

WHEREFORE, the appeal is **DISMISSED**. The August 27, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00172 is **AFFIRMED**.

No costs.

SO ORDERED.

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

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[31] *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

[32] *People v. Tan*, 432 Phil. 171, 183 (2002).

THIRD DIVISION

[G.R. No. 192076. November 21, 2012]

MICHELLE T. TUASON, *petitioner, vs.* **BANK OF COMMERCE, RAUL B. DE MESA and MARIO J. PADILLA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYER AND EMPLOYEE RELATIONSHIP; TRANSFERS OR REASSIGNMENTS; TRANSFERS OR REASSIGNMENTS *PER SE* ARE VALID AND FALL WITHIN THE AMBIT OF MANAGEMENT PREROGATIVES, BUT THE EXERCISE OF THESE RIGHTS MUST REMAIN WITHIN THE BOUNDARIES OF JUSTICE AND FAIR PLAY.— Even though transfers or reassignments *per se* are indeed valid and fall within the ambit of management prerogatives, the exercise of these rights must remain within the boundaries of justice and fair play. Thus, the Court has previously held that. While it is true that an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, layoff of workers and the discipline, dismissal and recall of workers, and this right to transfer employees forms part of management prerogatives, the employee's transfer should not be unreasonable, nor inconvenient, nor prejudicial to him. It should not involve a demotion in rank or diminution of his salaries, benefits and other privileges, as to constitute constructive dismissal.

2. ID.; TERMINATION OF EMPLOYMENT; TEST OF CONSTRUCTIVE DISMISSAL; PRESENT.— [B]OC totally shied away from owning up the attempts to convince Tuason to resign. There was no offer or even mention of a transfer or reassignment until July 26, 2007. By this time, it was too late. BOC had hired Estrada to head the PMG. Estrada had assumed the functions of the post and taken over her office on July 16, 2007. This all happened while Tuason was on leave, without a formal or official communication or advice if she was fired, transferred or reassigned. Worse, at the time that this was happening, Tuason

went to the office upon Uranza's several directives. At the office, she saw for herself the flyers boldly announcing the appointment and assumption of Estrada to the very same position that she was still occupying. Still, what was more embarrassing and painful for Tuason was when she saw Estrada already occupying her office and meeting with her subordinate officers and staff. This is clearly a case of constructive dismissal. Like Tuason, any reasonable person similarly situated would have felt compelled to give up her post as she was, in fact, stripped of it considering that someone else was already discharging her functions and occupying her office. Thus, in *Dimagan v. Dacworks United, Inc.*, the Court held, The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. Constructive dismissal is therefore a dismissal in disguise. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.

3. ID.; ID.; ID.; THE RIGHT OF MANAGEMENT TO TRANSFER ITS EMPLOYEES AS PART OF MANAGEMENT PREROGATIVE CANNOT BE EXERCISED WITH UNBRIDLED AND GRAVE ABUSE OF DISCRETION.— Contrary to the CA's summation, on July 16, 2007, when Estrada assumed Tuason's position and functions, there was still no new appointment or assignment clearly and categorically offered to her that she "adamantly refused." At this point, Tuason was on leave, eagerly awaiting the approval of the same by BOC. Without any official or formal communication that she had been replaced by Estrada, she still intended to return to her old position after her leave of absence. Unfortunately there was no more position to go back to as Estrada had already taken over. Simply put, she was just left in the cold, left to find out that she had been replaced. Worst, she was left without any option or choice. Undoubtedly, she was constructively dismissed. With her future uncertain, she should not be faulted for filing this case for constructive dismissal as any reasonable person would have done so. With this, the assailed CA decision must be discarded and the NLRC decision revived. The Court is fully aware of the right of management to transfer its employees as part of management prerogative. But like all rights, the same cannot be exercised with unbridled discretion. The

managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic element of justice and fair play.

APPEARANCES OF COUNSEL

Ernesto L. Pineda for petitioner.
Rodrigo Berenguer & Guno for respondents.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review on *Certiorari* under Rule 45 seeks to vacate, reverse and set aside the March 31, 2010 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 111956, reversing the April 30, 2009 Decision[2] and October 27, 2009 Resolution[3] of the National Labor Relations Commission *(NLRC)* which earlier ruled in favor of the petitioner.

The Facts:

Petitioner Michelle T. Tuason *(Tuason)* was hired by respondent Bank of Commerce *(BOC)* on January 1, 2002 to head the Marketing Department of its Property Management Group *(PMG)* with the rank of Assistant Vice President. On May 2, 2002, she was designated the officer-in-charge of the whole PMG. On January 2, 2003, she was officially appointed as the head of PMG. Tuason's duties included developing and proposing ways of disposing BOC's real and acquired properties and assets *(ROPOA)*, "in the soonest possible time with the least possible cost, and with the best possible price."[4]

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[1] *Rollo*, pp. 45-55. Penned by Associate Justice Stephen C. Cruz with Associate Justice Bienvenido L. Reyes (now Associate Justice of the Supreme Court) and Associate Justice Celia C. Librea-Leagogo, concurring.

[2] *Id.* at 57-64.

[3] *Id.* at 65-66.

[4] *Id.* at 46.

Tuason's problems started on February 28, 2005 when she was administratively charged with irregularities regarding the sale of ROPOA properties to a certain Ana Liza Cuizon. On September 9, 2005, through its committee on Fraud, Shortages, and Overages, BOC found Tuason to have violated its Code of Discipline on Work Performance, and imposed on her a 30-day suspension. Then, in 2006, BOC gave her a sixty-three (63%) percent overall performance rating.[5]

On July 5, 2007, Tuason wrote a letter to her sector head, Mario Padilla *(Padilla)*. In that letter, she referred to the latter's previous phone call requesting her to resign and manifested that she had no intention of resigning as she described herself as very much happy with her work. In the same letter, however, she made known her being stressed and uncomfortable with the situation and "in order to diffuse the otherwise tensed situation" requested for a leave of absence from July 6-17, 2007, as paid vacation leave, and from July 18 to August 17, 2007, as leave without pay.[6]

On July 6, 2007, the head of BOC's Human Resources Management and Development Group (HRMDG), Susan R. Alcala-Uranza *(Uranza)*, informed Tuason that her request for leave of absence was disapproved. Instead, she advised Tuason to go back to work and report to BOC's EVP Arturo Manuel *(Manuel)*. Another letter[7] was sent to Tuason on July 13, 2007 reiterating the directive to report for work on July 16, 2007. This time though, she was asked to report to Padilla.[8]

On July 16, 2007, Tuason wrote Uranza, pointing out that she did go to the office on July 9, 2007 and that she even met with her (Uranza) and Manuel. The said meeting ended with talks on her supposed "graceful exit" from BOC's PMG. She likewise pointed out that in addition to receiving a second return to work order for July 16, 2007, she also received a BOC-wide

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[5] *Id.*

[6] *Id.* at 25.

[7] *Id.* at 257.

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

flyer welcoming a new PMG Head effective also on July 16, 2007. For Tuason, these developments were contrary to the earlier planned "graceful exit" and were causing her stress and anxiety. For this reason, Tuason reiterated her request to continue her leave.[9]

On July 18, 2007, Tuason sent another letter to Uranza inquiring about the status of her employment as she was effectively relieved of her position with the designation of another person to head PMG. The following day, Tuason sent a similar letter manifesting her desire to continue her leave as she awaited BOC's answer to the query regarding her status.[10]

On July 26, 2007, Uranza informed Tuason that her application for leave from July 6, 2007 to August 17, 2007 was finally approved but she was to report to Padilla on August 20, 2007 to discuss her "new assignment." When Tuason failed to report for work, on August 23, 2007, Uranza sent a letter informing the former to get in touch with Padilla otherwise she would be deemed to have lost interest in her employment.[11]

On August 24, 2007, Tuason informed Uranza that she was confused by the five letters sent by BOC. In any event, she had already filed a case for constructive dismissal against it. In reply, Uranza wrote that BOC had not taken any definitive steps against her and that her non-reporting for work would be considered unauthorized leave of absence.[12]

The Labor Arbiter *(LA)* dismissed Tuason's complaint for lack of merit.[13] On appeal, the National Labor Relations Commission *(NLRC)* found that there was constructive dismissal and, thus, reversed and set aside the LA's decision.[14] The NLRC decision reads:

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[9] *Id.* at 26-27.

[10] *Id.* at 47.

[11] *Id.* at 48; 259 and 260.

[12] *Id.* at 48; 261-262.

[13] *Id.* at 116.

[14] *Id.* at 63.

WHEREFORE, premises considered, the appeal filed by complainant is GRANTED. The Decision of Labor Arbiter Jovencio Ll. Mayor, Jr. dated January 31, 2008 is REVERSED and SET ASIDE, and a NEW ONE is rendered finding that complainant have been constructively dismissed by respondents. Accordingly, respondents are hereby ordered, jointly and severally, to pay complainant the following:

1. Separation pay computed from January 1, 2002 (date of employment) up to the finality of the Decision; and

2. Full backwages inclusive of allowances and other benefits computed from July 16, 2007 (date of dismissal) up to the finality of the Decision;

All other claims are DISMISSED for lack of merit.

SO ORDERED.[15]

With the denial of its motion for reconsideration, BOC went to the CA via Rule 65. This time, the CA found that Tuason's reassignment was a valid exercise of management prerogative on the part of BOC thereby reversing and setting aside the NLRC's decision and further upholding that of the LA's.[16] The CA decision[17] reads:

WHEREFORE, the petition is hereby **GRANTED**. The assailed Decision dated April 30, 2009 and the Resolution dated October 27, 2009, respectively, promulgated by the National Labor Relations Commission (First Division) in NLRC NCR CASE NO. 08-08774-07; NLRC LAC NO. 03-00-1058-08 are hereby **REVERSED and SET ASIDE**. Accordingly, the Decision of the Labor Arbiter dated January 31, 2008 is **REINSTATED**.

SO ORDERED.

Before this Court, Tuason raises this lone issue for consideration:

The basic issue to consider is whether or not the pressure exerted upon petitioner (Tuason) to resign without reason, as well as the

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[15] *Id.* at 63-64.

[16] *Id.* at 54-55.

[17] *Id.*

belated feigned transfer of petitioner to another assignment constitutes constructive dismissal.

Foremost in the assailed CA decision is its finding that there was no evidence to prove Tuason's "barren" claim that she was asked to resign.[18]

The Court finds Itself unable to agree.

Had the CA rigorously and thoroughly examined the records at hand, as it claimed it did,[19] it would have found otherwise. BOC, acting through Padilla, was consistently exerting pressure on Tuason to resign as early as June 19, 2007. This was documented in the **July 5, 2007** Office Memo[20] of Tuason addressed and sent to Padilla, a copy of which was sent to Uranza. The letter chronicled the exchanges between Padilla and Tuason regarding her employment with BOC. Tuason first mentioned that Padilla had already hired someone to head the PMG. Then she said that she had been asked to resign without any explanation as to why. Save for the offer of consultancy work after her resignation, she was never offered a transfer or movement within BOC. The above-mentioned developments being stressful on her, Tuason then wrote that she would be filing for a leave of absence in order to diffuse the situation.

> However, due to the stressful and uncomfortable working environment this situation has caused me, I am filing for a leave of absence as follows: July 6-17, 2007 as paid vacation leave, July 18-August 17, 2007 as leave without pay, in order to diffuse the otherwise tense situation. We can then discuss the situation when I report back to work on August 20, 2007. x x x.[21]

The probative/ evidentiary value of this Memo was, in turn, considered and discussed by the NLRC in its decision in this wise:

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[18] *Id.* at 51.

[19] *Id.* at 51.

[20] *Id.* at 291.

[21] *Id.*

In the case at bar, we are persuaded that complainant was indeed asked to resign by respondent Padilla as respondents opted to keep silent by not replying to complainant's memorandum dated July 5, 2007 addressed to respondent Padilla, depicting the act of respondent Padilla in requiring complainant to file her courtesy resignation and have a graceful exit to save face and avoid embarrassment due to the hiring of Maximo V. Estrada as her replacement. Considering respondent's continued silence on the said memo, there can be no other conclusion that can be drawn therefrom, except that the contents of the said memo are true and actually transpired. Stated otherwise, we view such silence as respondent Padilla's undoubted admission of the contents of the said memo. As such, by requiring complainant to resign from her position without respondents offering any valid reason therefor only reveals and confirms the fact that respondents' offer of complainant's reassignment to the Business Segment, which came after when she refused to resign, was a mere afterthought to cover up respondents' disdainful treatment towards complainant.[22]

The Court notes that in the exhaustive exchanges of memos and letters between Tuason and BOC, this was one instance that it chose not to refute, reply or even offer some clarification over this serious charge of Tuason.

After this July 5, 2007 memo of Tuason, Uranza wrote her a letter the next day, **July 6, 2007**,[23] but the letter only touched on her application for leave which was disallowed with the directive to report to Manuel.

> We were requested by your immediate supervisor, Mr. Mario J. Padilla/ EVP, to reiterate that your leave of absence, which you applied for to start on July 6, was disapproved.[24]

Uranza wrote another letter to Tuason on **July 13, 2007** reiterating the "disapproval" of her leave application. This time though, she was asked to report to Padilla.[25] What was clear

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[22] *Id.* at 61-62.

[23] All dates with double underscoring refer to the letters from Uranza/ BOC.

[24] *Rollo*, p. 292.

[25] *Id.* at 293.

in these two letters of Uranza was that her leave application was denied and that there had been no mention at all of any new assignment for her.

Next, the **July 16, 2007** letter of Tuason to Uranza recounted anew the meeting between her, Uranza and Manuel held on July 9, 2007. After sharing her plight with Uranza and Manuel, the two offered to spare her the embarrassment by allowing her not to return for the turnover of her responsibilities to her "replacement."[26] Tuason also mentioned getting hold of a BOC wide memo/news announcement heralding the "new PMG Head effective Monday, July 16."[27] These developments clearly intensified the pressure to resign. Ironically, her replacement was scheduled to take over the PMG on July 16, 2007, the very same day that she was directed to report back to work. Up to this point, there was still no mention of any transfer or reassignment being offered to her.

On **July 18, 2007**, Tuason reported for work. She personally saw the flyers announcing the appointment of Maximo V. Estrada *(Estrada)* as the new head of PMG posted in the elevators and the common areas of the office. And when she got to her office, Estrada was occupying it and having a meeting with her officers and staff. This was documented in another letter addressed and sent to Uranza on even date. As BOC never formally informed her that she had been replaced, she also sought clarification in that letter regarding her employment status.[28]

The following day, **July 19, 2007**, Tuason wrote Uranza again. Aside from the repeat of her narration about her replacement, she again mentioned her request to continue her leave while awaiting BOC's position on her status.[29]

In response, Uranza wrote a letter on **July 20, 2007.** She informed Tuason that her request for leave had been formally

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[26] *Id.* at 294.

[27] *Id.* at 295.

[28] *Id.* at 296.

[29] *Id.* at 297.

endorsed to Padilla. In the same letter, Uranza clarified that Tuason did not strictly comply with her July 13, 2007 directives. First, Tuason came to the office only on July 18. Second, Tuason only went to Uranza and did not report to Padilla. Thus, Uranza again directed Tuason to report to Padilla the "soonest, so he can discuss his plans" for her.[30] Again, there was no mention of any transfer or reassignment.

On **July 26, 2007**, Uranza wrote another letter to Tuason. According to Uranza, Padilla agreed to consider Tuason's absences from July 6 to July 19, 2007 as "paid vacation leave" while her leave from July 20 to August 17, 2007 would be "leave without pay." The Court takes note that this was almost the same proposal found in Tuason's July 5, 2007 memo. Back to the July 26, 2007 letter, Uranza then enjoined Tuason to report to Padilla on August 20, 2007 to discuss her "assignment in the Business Segment."[31] It was the first time that a new assignment in the Business Segment was mentioned. Significantly, a good ten days had lapsed from the day Estrada took over and replaced Tuason as head of PMG to the time that BOC mentioned about an assignment in the Business Segment. This could only mean that she had been replaced or booted out of her position before any transfer or even the suggestion of a transfer was made or offered to her.

After Tuason failed to report for work on August 21, 2007,[32] Uranza sent another letter to her on **August 23, 2007**. Aside from mentioning her now approved leave application, Uranza reminded Tuason once again to report to or at least communicate with Padilla by August 28, 2007, otherwise, BOC would consider her failure to do so as loss of interest to work with BOC. Expectedly, Tuason replied to this letter the following day, **August 24, 2007**, and in her letter, she expressed her confusion in the contradicting letters of BOC. First, she pointed out the

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[30] *Id.* at 298.

[31] *Id.* at 299.

[32] August 20, 2007 was declared a special non-working holiday; *id*. at 300.

disapproval and then the endorsement and eventual approval of her application for leave by Padilla. Next, she mentioned about the directive to return to work while a new PMG head was already occupying her office. She then added that Padilla, Manuel or Uranza never offered her any new assignment or any other position in BOC. Finally, she told her (Uranza) that she had already filed a case for constructive dismissal.[33] BOC, through Uranza, replied to this on **August 29, 2007**. Uranza said that they found Tuason's reaction to their attempt to place her in a new assignment regrettable. She pointed out, however, that BOC had "not taken any definite action against (her), to date."[34]

This cannot be any farther from the truth. The exchange of memos and letters above readily shows that Tuason's July 5, 2007 memo spoke the truth. BOC wanted her out. They sought her resignation. When this was not forthcoming, and instead of offering her some viable options or alternatives for her exit, BOC simply proceeded to install Estrada as the head of PMG. BOC's act of hiring Estrada and having him take over the position of Tuason on July 16, 2007 was certainly a definitive act, categorical and complete in itself, to effectively oust her from her post.

Next, the CA held that Tuason's reassignment to BOC's Business Segment was a valid exercise of management prerogative.[35] It also added that BOC never dismissed her and that it was she who "adamantly refused to accept her new appointment in the Business Segment."[36]

Again, the Court cannot agree.

Even though transfers or reassignments per se are indeed valid and fall within the ambit of management prerogatives, the exercise of these rights must remain within the boundaries

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[33] *Id.* at 301.

[34] *Id.* at 302.

[35] *Id.* at 52.

[36] *Id.* at 54.

of justice and fair play. Thus, the Court has previously held that

> While it is true that an employer is free to regulate, according to his own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, layoff of workers and the discipline, dismissal and recall of workers, and this right to transfer employees forms part of management prerogatives, the employee's transfer should not be unreasonable, nor inconvenient, nor prejudicial to him. It should not involve a demotion in rank or diminution of his salaries, benefits and other privileges, as to constitute constructive dismissal.[37]

In this case, BOC submitted that in 2005, Tuason was administratively charged and eventually meted out a 30-day suspension. This, however, happened two years earlier. Besides, she had paid her dues for that infraction. She was suspended. BOC then mentioned that in 2006, Tuason got a poor 63% performance rating. Unfortunately for BOC, it failed to present or establish any connection that it was taking proper steps to either transfer/reassign or sever Tuason's services altogether because of this dismal rating.

Instead, BOC totally shied away from owning up the attempts to convince Tuason to resign. There was no offer or even mention of a transfer or reassignment until July 26, 2007. By this time, it was too late. BOC had hired Estrada to head the PMG. Estrada had assumed the functions of the post and taken over her office on July 16, 2007. This all happened while Tuason was on leave, without a formal or official communication or advice if she was fired, transferred or reassigned. Worse, at the time that this was happening, Tuason went to the office upon Uranza's several directives. At the office, she saw for herself the flyers boldly announcing the appointment and assumption of Estrada to the very same position that she was still occupying. Still, what was more embarrassing and painful for Tuason was when

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[37] *Philippine Industrial Security Agency Corporation v. Percival Aguinaldo*, 499 Phil. 215, 223 (2005).

she saw Estrada already occupying her office and meeting with her subordinate officers and staff.

This is clearly a case of constructive dismissal. Like Tuason, any reasonable person similarly situated would have felt compelled to give up her post as she was, in fact, stripped of it considering that someone else was already discharging her functions and occupying her office. Thus, in *Dimagan v. Dacworks United, Inc.*, the Court held,

> The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. Constructive dismissal is therefore a dismissal in disguise. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.[38]

Contrary to the CA's summation, on July 16, 2007, when Estrada assumed Tuason's position and functions, there was still no new appointment or assignment clearly and categorically offered to her that she "adamantly refused." At this point, Tuason was on leave, eagerly awaiting the approval of the same by BOC. Without any official or formal communication that she had been replaced by Estrada, she still intended to return to her old position after her leave of absence. Unfortunately there was no more position to go back to as Estrada had already taken over. Simply put, she was just left in the cold, left to find out that she had been replaced. Worst, she was left without any option or choice. Undoubtedly, she was constructively dismissed. With her future uncertain, she should not be faulted for filing this case for constructive dismissal as any reasonable person would have done so. With this, the assailed CA decision must be discarded and the NLRC decision revived.

The Court is fully aware of the right of management to transfer its employees as part of management prerogative. But like all rights, the same cannot be exercised with unbridled discretion. The managerial

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[38] *Dimagan v. Dacworks United, Inc.*, G.R. No. 191053, November 28, 2011, 661 SCRA 438.

prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic element of justice and fair play.[39]

WHEREFORE, the petition is **GRANTED**. The March 31, 2010 Decision of the Court of Appeals, in CA-G.R. SP No. 111956, is **REVERSED** and **SET ASIDE**. In its place, the April 30, 2009 NLRC Decision, in NLRC NCR Case No. 08-08774-2007, is **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192108. November 21, 2012]

SPOUSES SOCRATES SY AND CELY SY, *petitioners, vs.* **ANDOK'S LITSON CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; WHAT CONSTITUTES A VALID GROUND TO EXCUSE LITIGANTS AND THEIR COUNSELS FROM APPEARING AT THE PRE-TRIAL IS SUBJECT TO THE SOUND DISCRETION OF A

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[39] *Philippine Industrial Security Agency Corporation v. Percival Aguinaldo, supra* note 35.

[*] Designated acting member, per Special Order No. 1352, dated November 7, 2012.

[**] Designated acting member, per Special Order No. 1229, dated August 28, 2012.

JUDGE; SUSTAINED IN CASE AT BAR.— Section 4, Rule 18 of the Rules of Court requires the parties and their counsel to appear at pre-trial, x x x Section 5 of the same rule states the consequences of failure to appear during pre-trial. x x x What constitutes a valid ground to excuse litigants and their counsels from appearing at the pre-trial under Section 4, Rule 18 of the Rules of Court is subject to the sound discretion of a judge. Such discretion was shown by the trial court, which was correct in putting into effect the consequence of petitioners' non-appearance at the pre-trial. While Sy filed an Urgent Motion to Reset Pre-trial, she cannot assume that her motion would be automatically granted. As found by the Court of Appeals, the denial of petitioners' motion for postponement is dictated by the motion itself x x x We cannot allow petitioners to argue that their right to due process has been infringed. In *The Philippine American Life & General Insurance Company v. Enario*, we reiterated that the essence of due process is to be found in the reasonable opportunity to be heard and to submit any evidence one may have in support of one's defense. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can present its side or defend its interest in due course, there is no denial of procedural due process.

2. **CIVIL LAW; CONTRACT OF LEASE ; NON-COMPLIANCE WITH THE RECIPROCAL OBLIGATIONS; OPTIONAL REMEDIES, AVAILABLE TO AGGRIEVED PARTY.—** Article 1191 of the Civil Code provides that the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. A lease contract is a reciprocal contract. By signing the lease agreement, the lessor grants possession over his/her property to the lessee for a period of time in exchange for rental payment. Indeed, rescission is statutorily recognized in a contract of lease. x x x **Art. 1659.** If the lessor or the lessee should not comply with the obligations set forth in articles 1654 and 1657, x x x The aggrieved party is given the option to ask for: (1) the rescission of the contract; (2) rescission and indemnification for damages; or (3) only indemnification for damages, allowing the contract to remain in force.

3. **ID.; ID.; FAILURE TO RENDER THE PREMISES FIT FOR THE USE INTENDED AND TO MAINTAIN THE LESSEE IN THE**

PEACEFUL AND ADEQUATE ENJOYMENT OF THE LEASE; EXEMPLIFIED IN CASE AT BAR.— While Andok's had complied with all its obligations as a lessee, the lessor failed to render the premises fit for the use intended and to maintain the lessee in the peaceful and adequate enjoyment of the lease. x x x Sy's disregard of Andok's repeated demands for the billboard lessee to finish the construction is a violation of her obligation to maintain the lessee in peaceful and adequate enjoyment of the lease. The delay in the construction had obviously caused disruption in respondent's business as it could not immediately commence its business operations despite prompt payment of rent. The attendant circumstances show substantial breach. The delay in the construction prevented Andok's from using the leased premises for its business outlet. On top of the failure of Sy to address the delay in the billboard construction, she also failed to resolve or explain the unpaid electricity bills. Sy resorted to a blanket denial without however producing any proof that the said bill had been settled. These incidents refer to the fundamentals of the contract for the lease of Sy's premises. She failed to comply with the obligations that have arisen upon Andok's payment of the amount equivalent to eight months of the monthly rentals.

4. ID.; DAMAGES; AWARD OF LEGAL INTEREST, WHEN PROPER.— Anent the imposition of legal interest, the Court of Appeals is correct in stating that the award of damages was warranted under the facts of the case and the imposition of legal interest was necessary consequence thereof. We find applicable the pertinent guidelines provided in *Eastern Shipping Lines, Inc. v. Court of Appeals*, x x x Accordingly, legal interest at the rate of 6% per annum on the amounts awarded starts to run from 24 July 2008, when the trial court rendered judgment. From the time this judgment becomes final and executory, the interest rate shall be 12% per annum on the judgment amount and the interest earned up to that date, until the judgment is wholly satisfied.

APPEARANCES OF COUNSEL

Rico B. Bolongaita for petitioners.
Nitorreda Nasser & Layusa for respondent.

D E C I S I O N

PEREZ, *J.*:

Assailed in this Petition for Review on *Certiorari* is the Decision[1] of the Court of Appeals dated 20 January 2010 in CA-G.R. CV No. 91942, as well as the Resolution[2] dated 29 April 2010, denying the motion for reconsideration.

This is a case for rescission of contract filed by the lessee, now respondent, against the lessors, now the petitioners.

Petitioner Cely Sy (Sy) is the registered owner of a 316 square-meter lot located at 1940 Felix Huertas Street, Sta. Cruz, Manila. Respondent Andok's Litson Corporation (Andok's) is engaged in the business of selling grilled chicken and pork with outlets all over the Philippines. On 5 July 2005, Sy and Andok's entered into a 5-year lease contract covering the parcel of land owned by Sy. Monthly rental was fixed at ₱60,000.00, exclusive of taxes, for the first 2 years and ₱66,000.00 for the third, fourth and fifth year with 10% escalation every year beginning on the fourth year.[3] Per contract, the lessee shall, upon signing the contract, pay four (4) months of advance deposit amounting to ₱240,000.00 and a security deposit equivalent to four (4) months of rental in the amount of ₱240,000.00. Accordingly, Andok's issued a check to Sy for ₱480,000.00.

Andok's alleged that while in the process of applying for electrical connection on the improvements to be constructed on Sy's land, it was discovered that Sy has an unpaid Manila Electric Company (MERALCO) bill amounting to ₱400,000.00. Andok's presented a system-generated statement from MERALCO.[4] Andok's further complained that construction

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[1] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Estela M. Perlas-Bernabe (now Supreme Court Associate Justice) and Priscilla J. Baltazar-Padilla, concurring. *Rollo*, pp. 33-45.

[2] *Id.* at 46-47.

[3] *Id.* at 34.

[4] Records, p. 71.

for the improvement it intended for the leased premises could not proceed because another tenant, Mediapool, Inc. incurred delay in the construction of a billboard structure also within the leased premises. In its letter dated 25 August 2005, Andok's first informed Sy about the delay in the construction of the billboard structure on a portion of its leased property. Three more letters of the same tenor were sent to Sy but the demands fell on deaf ears. Consequently, Andok's suffered damages in the total amount of ₱627,000.00 which comprises the advance rental and deposit, cost of money, mobilization cost for the construction of improvement over leased premises, and unrealized income. The complaint for rescission was filed on 13 February 2008, three years after continued inaction on the request to have the billboard construction expedited.

In her Answer, Sy stated that she has faithfully complied with all the terms and conditions of the lease contract and denied incurring an outstanding electricity bill.[5]

On 14 April 2008, Andok's filed a motion to set the case for pre-trial.

The Regional Trial Court of Manila (RTC) sent a Notice of Pre-trial Conference to the parties on 28 April 2008 informing them that a pre-trial conference is set on 26 May 2008.

On 23 May 2008, an Urgent Motion to Reset Pre-Trial Conference was filed by Sy's counsel on the allegation that on the pre-trial date, he has to attend a hearing on another branch of the RTC in Manila.

During the pre-trial conference, Sy and her counsel failed to appear. Sy's urgent motion was denied, and the RTC allowed Andok's to present its evidence *ex-parte*.

No motion for reconsideration was filed on the trial court's order allowing *ex-parte* presentation of evidence. Thus, on the 2 June 2008 hearing, Andok's presented *ex-parte* the testimony of its General Manager, Teodoro Calaunan, detailing the breach of contract committed by Sy.

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

On 24 July 2008, the trial court rendered a decision favoring Andok's, to wit:

> WHEREFORE, consistent with Section 5, Rule 18 of the 1997 Rules of Civil Procedure, judgment is hereby rendered in favor of the plaintiff, ordering the defendants to pay to the plaintiff (1) ₱480,000.00 with legal rate of interest from March 11, 2006, (2) ₱1,350.00 for the comprehensive insurance on the leased portion of the realty, and (3) ₱4,873.00 as contractors tax.
>
> For lack of merit, defendants' counterclaim is hereby dismissed.[6]

On appeal, Sy decried deprivation of her right to present evidence resulting in a default judgment against her. Sy denied that there was a breach on the lease contract.

On 20 January 2010, the Court of Appeals dismissed the appeal and affirmed the ruling of the RTC.

The appellate court held that the trial court correctly allowed the presentation of evidence *ex-parte* as there was no valid reason for the urgent motion for postponement of the pre-trial filed by Sy. The appellate court found that Sy repeatedly failed to comply with her obligation under the lease contract despite repeated demands. The appellate court awarded damages for breach of contract.

After the denial of Sy's motion for reconsideration, she filed the instant petition raising the following grounds:

-A-

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS IN AFFIRMING THE TRIAL COURT'S JUDGMENT FAILED TO NOTICE THAT THE DEFAULT JUDGMENT STRAYED FROM JUDICIAL PRECEDENT AND POLICY, AND AMOUNTED TO AN INFRINGEMENT OF THE RIGHT TO DUE PROCESS OF THE SPOUSES SY.

-B-

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS IN AFFIRMING THE TRIAL COURT'S DEFAULT

[6] *Rollo,* p. 58.

JUDGMENT FAILED TO APPRECIATE THAT THE RESPONDENT ITSELF CONTRACTUALLY ASSUMED THE RISK OF DELAY, AND THUS ANY DELAY COULD NOT BE A GROUND FOR THE RESOLUTION OR ANNULMENT OF THE CONTRACT OF LEASE.

-C-

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS ALLOWED A DEPARTURE FROM JUDICIAL PRECEDENT WHEN IT SUSTAINED THE TRIAL COURT'S IMPOSITION OF LEGAL INTEREST ON THE MONETARY AWARD IN RESPONDENT'S FAVOR.[7]

The affirmance by the Court of Appeals of the judgment of the trial court is correct.

Section 4, Rule 18 of the Rules of Court requires the parties and their counsel to appear at pre-trial, thus:

Section 4. Appearance of parties. – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Section 5 of the same rule states the consequences of failure to appear during pre-trial, thus:

Section 5. Effect of failure to appear. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex-parte* and the court to render judgment on the basis thereof.

What constitutes a valid ground to excuse litigants and their counsels from appearing at the pre-trial under Section 4, Rule 18 of the Rules of Court is subject to the sound discretion of

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

a judge.[8] Such discretion was shown by the trial court, which was correct in putting into effect the consequence of petitioners' non-appearance at the pre-trial. While Sy filed an Urgent Motion to Reset Pre-trial, she cannot assume that her motion would be automatically granted. As found by the Court of Appeals, the denial of petitioners' motion for postponement is dictated by the motion itself:

> A perusal of the Urgent Motion to Reset Pre-Trial Conference discloses that other than the allegation that counsel will attend a hearing in another branch of the same court in Manila, yet, it failed to substantiate its claim. It did not state the case number nor attach the Calendar of Hearing or such other pertinent proof to appraise the court that indeed counsel was predisposed.[9]

We cannot allow petitioners to argue that their right to due process has been infringed.

In *The Philippine American Life & General Insurance Company v. Enario*,[10] we reiterated that the essence of due process is to be found in the reasonable opportunity to be heard and to submit any evidence one may have in support of one's defense. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can present its side or defend its interest in due course, there is no denial of procedural due process.

We next deal with the central issue of rescission.

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[8] *Spouses Khonghun v. United Coconut Planters Bank*, 529 Phil. 311, 316 (2006) citing *Fountainhead International Philippines, Inc. v. Court of Appeals*, 271 Phil. 831, 836-837 (1991).

[9] CA *rollo*, p. 62.

[10] G.R. No. 182075, 15 September 2010, 630 SCRA 607, 620 citing *Air Philippines Corporation v. International Business Aviation Services Philippines, Inc.*, 481 Phil. 366, 386 (2004); *Villa Rhecar Bus v. De la Cruz*, 241 Phil. 14, 18 (1988); *Mutuc v. Court of Appeals*, 268 Phil. 37, 43 (1990) citing *Yap Say v. Intermediate Appellate Court*, 242 Phil. 802, 804-805 (1988); *Richards v. Atty. Asoy*, 236 Phil. 48, 53 (1987); *Tajonera v. Lamaroza*, 196 Phil. 553, 563-564 (1981).

Article 1191 of the Civil Code provides that the power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

A lease contract is a reciprocal contract. By signing the lease agreement, the lessor grants possession over his/her property to the lessee for a period of time in exchange for rental payment.

Indeed, rescission is statutorily recognized in a contract of lease. Article 1659 of the Civil Code provides:

Art. 1659. If the lessor or the lessee should not comply with the obligations set forth in articles 1654 and 1657, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force.

Article 1659 outlines the remedies for non-compliance with the reciprocal obligations in a lease contract, which obligations are cited in Articles 1654 and 1657:

Article 1654. The lessor is obliged:

(1) To deliver the thing which is the object of the contract in such a conditions as to render it fit for the use intended;

(2) To make on the same during the lease all the necessary repairs in order to keep it suitable for the use to which it has been devoted, unless there is a stipulation to the contrary;

(3) To maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract.

Article 1657. The lessee is obliged:

(1) To pay the price of the lease according to the terms stipulated;

(2) To use the thing leased as a diligent father of a family, devoting it to the use stipulated; and in the absence of stipulation, to that which may be inferred from the nature of the thing leased, according to the custom of the place;

(3) To pay the expenses for the deed of lease. (Boldfacing supplied).

The aggrieved party is given the option to ask for: (1) the rescission of the contract; (2) rescission and indemnification for damages; or (3) only indemnification for damages, allowing the contract to remain in force.[11]

While Andok's had complied with all its obligations as a lessee, the lessor failed to render the premises fit for the use intended and to maintain the lessee in the peaceful and adequate enjoyment of the lease.

The case of *CMS Investments and Management Corporation v. Intermediate Appellate Court*[12] quoted *Manresa's* comment on the lessor's obligation to maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract, in this wise:

> The lessor must see that the enjoyment is not interrupted or disturbed, either by others' acts x x x or by his own. By his own acts, because, being the person principally obligated by the contract, he would openly violate it if, in going back on his agreement, he should attempt to render ineffective in practice the right in the thing he had granted to the lessee; and by others' acts, because he must guarantee the right he created, for he is obliged to give warranty in the manner we have set forth in our commentary on article 1553, and, in this sense, it is incumbent upon him to protect the lessee in the latters' peaceful enjoyment.[13]

Andok's paid a total of ₱480,000.00 as advance deposit for four (4) months and security deposit equivalent to four (4) months. However, the construction of its outlet store was hindered by two incidents — the unpaid MERALCO bills and the unfinished construction of a billboard structure directly above the leased property.

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[11] *Lopez v. Umale-Cosme*, G.R. No. 171891, 24 February 2009, 580 SCRA 190, 195; *Wee v. De Castro*, G.R. No. 176405, 20 August 2008, 562 SCRA 695, 710; *Chua v. Victorio*, G.R. No. 157568, 18 May 2004, 428 SCRA 447, 453.

[12] 223 Phil. 294 (1985).

[13] *Id.* at 303 citing *Goldstein v. Roces*, 34 Phil. 562, 564 (1916).

Sy argues that per contract, Andok's had assumed the risk of delay by allowing MediaPool, Inc. to construct a billboard structure on a portion of the leased premises. We reproduce the pertinent provision for brevity:

> 10. That the LESSEE shall allow persons who will construct, inspect, maintain and repair all billboard structures to be set up and constructed on the portion of the parcel of land excluded from this contract, only upon approval of written request to LESSEE AND LESSOR from the billboard LESSEE to avoid disruption of business operations of Andok's Litson Corporation and its affiliates.[14]

True, Andok's agreed to allow MediaPool, Inc. to construct a billboard structure but it was conditioned on Andok's and the lessor's approval to avoid disruption of its business operation. Sy is thus cognizant of the fact that the said billboard structure construction might disrupt, as it already did, the intended construction of respondent's outlet. It is thereby understood that the construction of a billboard should be done within a period of time that is reasonable and sufficient so as not to disrupt the business operations of respondent. In this case, Andok's had agreed to several extensions for MediaPool, Inc. to finish its billboard construction. It had sent a total of four (4) letters in a span of 8 months, all of which were merely ignored. Indeed, the indifference demonstrated by Sy leaves no doubt that she has reneged on her obligation.

Sy's disregard of Andok's repeated demands for the billboard lessee to finish the construction is a violation of her obligation to maintain the lessee in peaceful and adequate enjoyment of the lease. The delay in the construction had obviously caused disruption in respondent's business as it could not immediately commence its business operations despite prompt payment of rent.

The attendant circumstances show substantial breach. The delay in the construction prevented Andok's from using the leased premises for its business outlet. On top of the failure

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[14] *Rollo,* p. 54.

of Sy to address the delay in the billboard construction, she also failed to resolve or explain the unpaid electricity bills. Sy resorted to a blanket denial without however producing any proof that the said bill had been settled. These incidents refer to the fundamentals of the contract for the lease of Sy's premises. She failed to comply with the obligations that have arisen upon Andok's payment of the amount equivalent to eight months of the monthly rentals.

Anent the imposition of legal interest, the Court of Appeals is correct in stating that the award of damages was warranted under the facts of the case and the imposition of legal interest was necessary consequence thereof. We find applicable the pertinent guidelines provided in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[15] thus:

> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, 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.[16]

Accordingly, legal interest at the rate of 6% per annum on the amounts awarded starts to run from 24 July 2008, when

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[15] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[16] *Id.* at 96-97.

the trial court rendered judgment. From the time this judgment becomes final and executory, the interest rate shall be 12% per annum on the judgment amount and the interest earned up to that date, until the judgment is wholly satisfied.

WHEREFORE, the petition is **DENIED**. The 20 January 2010 Decision of the Court of Appeals in CA-G.R. CV No. 91942, affirming the 24 July 2008 Decision of the RTC, Branch 17, Manila, is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Abad,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 192294. November 21, 2012]

GREAT WHITE SHARK ENTERPRISES, INC., *petitioner, vs.* **DANILO M. CARALDE, JR.,** *respondent.*

SYLLABUS

COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE (REPUBLIC ACT NO. 8293); TRADEMARK; THE BENCHMARK OF REGISTRABILITY THEREOF IS DISTINCTIVENESS; DOMINANCY TEST AND HOLISTIC OR TOTALITY TEST, DISTINGUISHED.— A trademark device is susceptible to registration if it is crafted fancifully or arbitrarily

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[*] Per raffle dated 19 November 2012.

and is capable of identifying and distinguishing the goods of one manufacturer or seller from those of another. Apart from its commercial utility, the benchmark of trademark registrability is distinctiveness. Thus, a generic figure, as that of a shark in this case if employed and designed in a distinctive manner, can be a registrable trademark device, subject to the provisions of the IP Code. Corollarily, Section 123.1(d) of the IP Code provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to the same or closely related goods or services, or has a near resemblance to such mark as to likely deceive or cause confusion. In determining similarity and likelihood of confusion, case law has developed the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the ordinary purchaser, and gives more consideration to the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments. In contrast, the Holistic or Totality Test considers the entirety of the marks as applied to the products, including the labels and packaging, and focuses not only on the predominant words but also on the other features appearing on both labels to determine whether one is confusingly similar to the other as to mislead the ordinary purchaser. The "**ordinary purchaser**" refers to one "accustomed to buy, and therefore *to some extent familiar* with, the goods in question."

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Sapalo Velez Bundang & Bulilan for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the December 14, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 105787, which reversed and set aside the October 6, 2008 Decision[2] of the Director General of the Intellectual Property Office (IPO), and directed him to grant the application for the mark "SHARK & LOGO" filed by respondent Danilo M. Caralde, Jr. (Caralde).

The Factual Antecedents

On July 31, 2002, Caralde filed before the Bureau of Legal Affairs (BLA), IPO a trademark application seeking to register the mark "SHARK & LOGO" for his manufactured goods under Class 25, such as slippers, shoes and sandals. Petitioner Great White Shark Enterprises, Inc. (Great White Shark), a foreign corporation domiciled in Florida, USA, opposed[3] the application claiming to be the owner of the mark consisting of a representation of a shark in color, known as "GREG NORMAN LOGO" (associated with apparel worn and promoted by Australian golfer Greg Norman). It alleged that, being a world famous mark which is pending registration before the BLA since February 19, 2002,[4] the confusing similarity between the two (2) marks is likely to deceive or confuse the purchasing public into believing that Caralde's goods are produced by or originated from it, or are under its sponsorship, to its damage and prejudice.

In his Answer,[5] Caralde explained that the subject marks are distinctively different from one another and easily

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison, concurring. *Rollo*, pp. 35-52.

[2] Penned by Director General Adrian S. Cristobal, Jr. *Id*. at 406-413.

[3] Notice of Opposition. *Id*. at 57-62.

[4] *Id.* at 58.

[5] *Id.* at 64-68.

distinguishable. When compared, the only similarity in the marks is in the word "shark" alone, differing in other factors such as appearance, style, shape, size, format, color, ideas counted by marks, and even in the goods carried by the parties.

Pending the *inter partes* proceedings, Great White Shark's trademark application was granted and it was issued Certificate of Registration No. 4-2002-001478 on October 23, 2006 for clothing, headgear and footwear, including socks, shoes and its components.[6]

The Ruling of the BLA Director

On June 14, 2007, the BLA Director rendered a Decision[7] rejecting Caralde's application, ratiocinating, as follows:

> Prominent in both competing marks is the illustration of a shark. The dominant feature in opposer's mark is the illustration of a shark drawn plainly. On the other hand, the dominant feature in respondent's mark is a depiction of shark shaded darkly, with its body designed in a way to contain the letters "A" and "R" with the tail suggestive of the letter "K." Admittedly, there are some differences between the competing marks. Respondent's mark contains additional features which are absent in opposer's mark. Their dominant features, *i.e.*, that of an illustration of a shark, however, are of such degree that the overall impression it create [*sic*] is that the two competing marks are at least strikingly similar to each another [*sic*], hence, the likelihood of confusion of goods is likely to occur. x x x
>
> Moreover, the goods of the competing marks falls [*sic*] under the same Class 25. Opposer's mark GREG NORMAN LOGO, which was applied for registration on February 19, 2002, pertains to clothing apparel particularly hats, shirts and pants. Respondent, on the other hand, later applied for the registration of the mark SHARK & LOGO on July 3, 2002 (*should be July 31, 2002*) for footwear products particularly slippers, shoes, sandals. Clearly, the goods to which the parties use their marks belong to the same class and are related to each other."[8] (Italics ours)

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[6] *Id.* at 406.

[7] Penned by Director Estrellita Beltran-Abelardo. *Id.* at 295-305.

[8] *Id.* at 302-303.

The BLA Director, however, found no merit in Great White Shark's claim that its mark was famous and well-known for insufficiency of evidence.

The Ruling of the IPO Director General

On appeal, the IPO Director General affirmed[9] the final rejection of Caralde's application, ruling that the competing marks are indeed confusingly similar. Great White Shark's mark is used in clothing and footwear, among others, while Caralde's mark is used on similar goods like shoes and slippers. Moreover, Great White Shark was first in applying for registration of the mark on February 19, 2002, followed by Caralde on July 31, 2002. Furthermore, Great White Shark's mark consisted of an illustration of a shark while Caralde's mark had a composite figure forming a silhouette of a shark. Thus, as to content, word, sound and meaning, both marks are similar, barring the registration of Caralde's mark under Section 123.1(d) of Republic Act No. 8293, otherwise known as the Intellectual Property Code (IP Code). Nonetheless, while Great White Shark submitted evidence of the registration of its mark in several other countries, the IPO Director General considered its mark as not well-known for failing to meet the other criteria laid down under Rule 102[10] of the Rules and Regulations on Trademarks, Service Marks, Trade Names and Marked or

[9] *Id.* at 406-413.

[10] RULE 102. *Criteria in determining whether a mark is well-known*. – In determining whether a mark is well-known, the following criteria or any combination thereof, may be taken into account:

(a) the duration, extent and geographical area of any use of the mark, in particular, the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;

(b) the market share, in the Philippines and in other countries, of the goods and/or services to which the mark applies;

(c) the degree of the inherent or acquired distinction of the mark;

(d) the quality-image or reputation acquired by the mark;

(e) the extent by which the mark has been registered in the world;

(f) the exclusivity of registration attained by the mark in the world;

(g) the extent to which the mark has been used in the world;

Stamped Containers.

The Ruling of the Court of Appeals

However, on petition for review, the CA reversed and set aside the foregoing Decision and directed the IPO to grant Caralde's application for registration of the mark "SHARK & LOGO." The CA found no confusing similarity between the subject marks notwithstanding that both contained the shape of a shark as their dominant feature. It observed that Caralde's mark is more fanciful and colorful, and contains several elements which are easily distinguishable from that of the Great White Shark's mark. It further opined that considering their price disparity, there is no likelihood of confusion as they travel in different channels of trade.[11]

Issues Before The Court

THE COURT OF APPEALS ERRED IN RULING THAT THE RESPONDENT'S MARK SUBJECT OF THE APPLICATION BEING OPPOSED BY THE PETITIONER IS NOT CONFUSINGLY SIMILAR TO PETITIONER'S REGISTERED MARK.

THE COURT OF APPEALS ERRED IN RULING THAT THE COST OF GOODS COULD NEGATE LIKELIHOOD OF CON[F]USION.

THE COURT OF APPEALS ERRED IN REVERSING THE PREVIOUS RESOLUTIONS OF THE DIRECTOR GENERAL AND THE BLA.[12]

(h) the exclusivity of use attained by the mark in the world;

(i) the commercial value attributed to the mark in the world;

(j) the record of successful protection of the rights in the mark;

(k) the outcome of litigations dealing with the issue of whether the mark is a well-known mark; and

(l) the presence or absence of identical or similar marks validly registered for or used on identical or similar goods or services owned by persons other than the person claiming that his mark is a well-known mark.

[11] *Rollo*, pp. 35-52.

[12] *Id.* at 19.

The Court's Ruling

In the instant petition for review on *certiorari*, Great White Shark maintains that the two (2) competing marks are confusingly similar in appearance, shape and color scheme because of the dominant feature of a shark which is likely to deceive or cause confusion to the purchasing public, suggesting an intention on Caralde's part to pass-off his goods as that of Great White Shark and to ride on its goodwill. This, notwithstanding the price difference, targets market and channels of trade between the competing products. Hence, the CA erred in reversing the rulings of the IPO Director General and the BLA Director who are the experts in the implementation of the IP Code.

The petition lacks merit.

A trademark device is susceptible to registration if it is crafted fancifully or arbitrarily and is capable of identifying and distinguishing the goods of one manufacturer or seller from those of another. Apart from its commercial utility, the benchmark of trademark registrability is distinctiveness.[13] Thus, a generic figure, as that of a shark in this case, if employed and designed in a distinctive manner, can be a registrable trademark device, subject to the provisions of the IP Code.

Corollarily, Section 123.1(d) of the IP Code provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to the same or closely related goods or services, or has a near resemblance to such mark as to likely deceive or cause confusion.

In determining similarity and likelihood of confusion, case law has developed the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the ordinary purchaser, and gives more consideration to the aural and visual

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[13] See *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, G.R. No. 143993, August 18, 2004, 437 SCRA 10, 26.

impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments. In contrast, the Holistic or Totality Test considers the entirety of the marks as applied to the products, including the labels and packaging, and focuses not only on the predominant words but also on the other features appearing on both labels to determine whether one is confusingly similar to the other[14] as to mislead the ordinary purchaser. The "**ordinary purchaser**" refers to one "accustomed to buy, and therefore *to some extent familiar* with, the goods in question."[15]

Irrespective of both tests, the Court finds no confusing similarity between the subject marks. While both marks use the shape of a shark, the Court noted *distinct* visual and aural differences between them. In Great White Shark's "GREG NORMAN LOGO," there is an outline of a shark formed with the use of green, yellow, blue and red[16] lines/strokes, to wit:

In contrast, the shark in Caralde's "SHARK & LOGO" mark[17] is illustrated in ***letters*** outlined in the form of a shark with the

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[14] *Berris Agricultural Co., Inc. v. Abyadang*, G.R. No. 183404, October 13, 2010, 633 SCRA 196, 209-210.

[15] *Dermaline, Inc. v. Myra Pharmaceuticals, Inc.*, G.R. No. 190065, August 16, 2010, 628 SCRA 356, 365, citing *Philip Morris, Inc. v. Fortune Tobacco Corporation*, 493 SCRA 333, 359 (2006).

[16] *Rollo*, p. 49.

[17] *Id.* at 187.

letter "S" forming the head, the letter "H" forming the fins, the letters "A" and "R" forming the body, and the letter "K" forming the tail. In addition, the latter mark includes several more elements such as the word "SHARK" in a different font underneath the shark outline, layers of waves, and a tree on the right side, and liberally used the color blue with some parts in red, yellow, green and white.[18] The whole design is enclosed in an elliptical shape with two linings, thus:

As may be gleaned from the foregoing, the *visual* dissimilarities between the two (2) marks are evident and significant, negating the possibility of confusion in the minds of the ordinary purchaser, especially considering the distinct *aural* difference between the marks.

Finally, there being no confusing similarity between the subject marks, the matter of whether Great White Shark's mark has gained recognition and acquired goodwill becomes unnecessary.[19]

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[18] *Id.* at 49.

[19] Under Section 131.3 of the IP Code, the owner of a well-known mark may oppose the registration, petition the cancellation of registration or sue for unfair competition against an *identical or confusingly similar mark*,

Besides, both the BLA Director and the IPO Director General have ruled that Great White Shark failed to meet the criteria under Rule 102 of the Rules and Regulations on Trademarks, Service Marks, Trade Names and Marked or Stamped Containers to establish that its mark is well-known, and the latter failed to show otherwise.

WHEREFORE, the Court resolves to **DENY** the instant petition and **AFFIRM** the assailed December 14, 2009 Decision of the Court of Appeals (CA) for failure to show that the CA committed reversible error in setting aside the Decision of the IPO Director General and allowing the registration of the mark "SHARK & LOGO" by respondent Danilo M. Caralde, Jr.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 192486. November 21, 2012]

RUPERTA CANO *VDA. DE* VIRAY and JESUS CARLO GERARD VIRAY, *petitioners, vs.* **SPOUSES JOSE USI and AMELITA USI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PARTITION, DEFINED; NOT APPLICABLE IN CASE AT BAR.— Partition, in general, is the separation, division, and assignment of a thing held in common by those to whom it may belong. **Contrary to the finding of the CA, the subdivision agreements forged by**

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without prejudice to availing himself of other remedies provided for under the law. (Italics supplied)

Mendoza and her alleged co-owners were not for the partition of *pro-indiviso* shares of co-owners of Lot 733 but were actually conveyances, disguised as partitions, of portions of Lot 733 specifically Lots 733-A and 733-B, and portions of the subsequent subdivision of Lot 733-C. x x x A scrutiny of the records with a fine-tooth[ed] comb likewise fails to substantially show a partition of Lot 733 by its co-owners. While the 1st and 2nd SAs purport to be deeds of partition by and among co-owners of the lot/s covered thereby, partition as a fact is belied by the evidence extant on record.

2. CIVIL LAW; SALES; DOUBLE SALE SITUATION; REQUISITES; NOT SATISFIED IN CASE AT BAR.— A double sale situation, which would call, if necessary, the application of Art. 1544 of the Civil Code, arises when, as jurisprudence teaches, the following requisites concur: (a) The two (or more) sales transactions must constitute valid sales; (b) The two (or more) sales transactions must pertain to exactly the same subject matter; (c) The two (or more) buyers at odds over the rightful ownership of the subject matter must each represent conflicting interests; and (d) The two (or more) buyers at odds over the rightful ownership of the subject matter must each have bought from the very same seller. From the facts, there is no valid sale from Mendoza to respondents Usi. The parties did not execute a valid deed of sale conveying and transferring the lots in question to respondents. What they rely on are two subdivision agreements which do not explicitly chronicle the transfer of said lots to them. Under the 1st SA, all that can be read is the declaration that respondents, together with others, are the "sole and exclusive owners" of the lots subject of said agreement. Per the 2nd SA, it simply replicates the statement in the 1st SA that respondents are "sole and exclusive undivided co-owners" with the other parties. While respondents may claim that the SAs of 1990 and 1991 are convenient conveying vehicles Mendoza resorted to in disposing portions of Lot 733 under the Galang Plan, the Court finds that said SAs are not valid legal conveyances of the subject lots due to non-existent prestations pursuant to Article 1305 which prescribes "a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." The third element of cause of the obligation which is established under Art. 1318 of the Civil Code is likewise visibly absent from the two SAs. The transfer of title to respondents

based on said SAs is flawed, irregular, null and void. Thus the two SAs are not "sales transactions" nor "valid sales" under Art. 1544 of the Civil Code and, hence, the first essential element under said legal provision was not satisfied.

3. ID.; PROPERTY; OWNERSHIP; RECOVERY OF POSSESSION OF REAL PROPERTY; THREE KINDS OF ACTIONS, DISTINGUISHED.— Notably, the Sps. Viray and *Vda. de* Viray, after peremptorily prevailing in their cases supportive of their claim of ownership and possession of Lots 733-A and 733-F (Fajardo Plan), cannot now be deprived of their rights by the expediency of the Sps. Usi maintaining, as here, an *accion publiciana* and/or *accion reivindicatoria*, two of the three kinds of actions to recover possession of real property. The third, *accion interdictal*, comprises two distinct causes of action, namely forcible entry and unlawful detainer, the issue in both cases being limited to the right to physical possession or possession *de facto*, independently of any claim of ownership that either party may set forth in his or her pleadings, albeit the court has the competence to delve into and resolve the issue of ownership but only to address the issue of priority of possession. Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand to vacate following the expiration of the right to possess, in case of unlawful detainer. When the dispossession or unlawful deprivation has lasted more than one year, one may avail himself of *accion publiciana* to determine the better right of possession, or possession *de jure*, of realty independently of title. On the other hand, *accion reivindicatoria* is an action to recover ownership which necessarily includes recovery of possession.

4. REMEDIAL LAW; JUDGMENTS; PRINCIPLE OF *RES JUDICATA*; CONSTRUED.— [I]t is a hornbook rule that once a judgment becomes final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment. Any attempt to reopen a closed case would offend the principle of *res judicata*. x x x The doctrine of *res judicata* is a basic postulate to the end that controversies and issues

once decided on the merits by a court of competent jurisdiction shall remain in repose. It is simply unfortunate that the RTC, in Civil Case No. 01-1118(M), did not apply the doctrine of *res judicata* to the instant case, despite petitioners, as respondents below, had raised that ground both in their motion to dismiss and answer to the underlying petition.

5. ID; ID; ID; BAR BY PRIOR JUDGMENT; ELEMENTS.— *Res judicata* embraces two concepts or principles, the first is designated as "bar by prior judgment" and the other, "conclusiveness of judgment." x x x *Res judicata* operates as bar by prior judgment if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and second action, identity of parties, of subject matter and of causes of action.

APPEARANCES OF COUNSEL

Espenilla-Duque Manansala-Sicat Law Offices for peitioners.

Felicisimo Chavez Ilagan for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Petitioners have availed of Rule 45 to assail and nullify the Decision[1] dated July 24, 2009, as effectively reiterated in a Resolution[2] of June 2, 2010, both rendered by the Court of Appeals (CA) in CA-G.R. CV No. 90344, setting aside the

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[1] *Rollo*, pp. 29-47. Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court) and concurred in by Associate Justices Monina Arevalo-Zeñarosa (now retired) and Priscilla J. Baltazar-Padilla.

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

Decision[3] dated June 21, 2007 of the Regional Trial Court (RTC), Branch 55 in Macabebe, Pampanga, in Civil Case No. 01-1118(M), an *accion publiciana/reivindicatoria*, which respondents commenced with, but eventually dismissed by, that court.

The Facts

At the core of the present controversy are several parcels of land which form part of what was once Lot No. 733, Cad-305-D, Masantol Cadastre (Lot 733 hereinafter), registered in the name of Ellen P. Mendoza (Mendoza), married to Moses Mendoza, under Transfer Certificate of Title No. (TCT) 141-RP of the Registry of Deeds of Pampanga. With an area of 9,137 square meters, more or less, Lot 733 is located in Brgy. Bebe Anac, Masantol, Pampanga.

On April 28, 1986, Geodetic Engineer Abdon G. Fajardo prepared a subdivision plan[4] (Fajardo Plan, for short) for Lot 733, in which Lot 733 was divided into six (6) smaller parcels of differing size dimensions, designated as: Lot 733-A, Lot 733-B, Lot 733-C, Lot 733-D, Lot 733-E, and Lot 733-F consisting of 336, 465, 3,445, 683, 677 and 3,501 square meters, respectively.

The following day, April 29, 1986, Mendoza executed two separate deeds of absolute sale, the first, transferring Lot 733-F to Jesus Carlo Gerard Viray (Jesus Viray),[5] and the second deed conveying Lot 733-A to spouses Avelino Viray and Margarita Masangcay (Sps. Viray).[6] The names McDwight Mendoza, Mendoza's son, and one Ernesto Bustos appear in both notarized deeds as instrumental witnesses. As of that time, the Fajardo Plan has not been officially approved by the Land Management Bureau (LMB), formerly the Bureau of Lands. And at no time in the course of the controversy did the spouses

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[3] Records, pp. 593-602. Penned by Judge Ma. Josephine M. Rosario-Mercado.

[4] *Id.* at 553.

[5] *Id.* at 234.

[6] *Id.* at 93.

Viray and Jesus Viray, as purchasers of Lots 733-A and 733-F, respectively, cause the annotations of the conveying deeds of sale on TCT 141-RP.

Herein petitioner, Ruperta Cano *Vda. de* Viray (*Vda. de* Viray), is the surviving spouse of Jesus Viray, who died in April 1992.

As of April 29, 1986, the dispositions made on and/or the ownership profile of the subdivided lots appearing under the Fajardo Plan are as follows:

Lot No.	Area	Conveyances by Mendoza
Lot 733-A	366 square meters	Sold to Sps. Avelino and Margarita Viray
Lot 733-B	465 square meters	Unsold
Lot 733-C	3,445 square meters	Unsold
Lot 733-D	683 square meters	Proposed Road
Lot 733-E	677 square meters	Unsold
Lot 733-F	3,501 square meters	Sold to Jesus Viray

The aforementioned conveyances notwithstanding, Mendoza, Emerenciana M. *Vda. de* Mallari (*Vda. de* Mallari) and respondent spouses Jose Usi and Amelita T. Usi (Sps. Usi or the Usis), as purported co-owners of Lot 733, executed on August 20, 1990 a Subdivision Agreement,[7] or the 1st subdivision agreement (1st SA). Pursuant to this agreement which adopted, as base of reference, the LMB-approved subdivision plan prepared by Geodetic Engineer Alfeo S. Galang (Galang Plan), Lot 733 was subdivided into three lots, *i.e.*, Lots A to C, with the following area coverage: Lots 733-A, 465 square meters, 733-B, 494 square meters, and 733-C, 6,838 square meters. In its pertinent parts, the 1st SA reads:

That the above-parties are the **sole and exclusive owners** of a certain parcel of land situated in the Bo. of Bebe Anac, Masantol,

[7] *Id.* at 235.

Pampanga, which is known as Lot No. 733 under TCT No. 141 R.P. of the Registry of Deeds of Pampanga, under Psd-No. 03-10-025242;

That for the convenience of the parties hereto that the existing community of the said Lot be terminated and their **respective share be determined** by proper adjudication;

That the parties hereto agreed to subdivided (sic) the above-mentioned property by Geodetic Engineer Alfeo S. Galang, as per tracing cloth and blue print copy of plan Psd-03-025242 and technical description duly approved by the Bureau of Lands, hereto Attached and made internal part of this instrument in the followin[g] manner:

Lot 733-A - - - - - - - To Emerencia M. *Vda*. Mallari;

Lot 733-B - - - - - - - To Sps. Jose B. Usi and Amelita B. Usi;

Lot 733-C - - - - - - - To Ellen P. Mendoza[8] (Emphasis added.)

TCT 141-RP would eventually be canceled and, in lieu thereof, three derivative titles were issued to the following, as indicated: TCT 1584-RP for Lot 733-A to Mallari; TCT 1585-RP[9] for Lot 733-B to Sps. Usi; and TCT 1586-RP for Lot 733-C to Mendoza.

On April 5, 1991, Mendoza, McDwight P. Mendoza, Bismark P. Mendoza, Beverly P. Mendoza, Georgenia P. Mendoza, Sps. Alejandro Lacap and Juanita U. Lacap, Sps. Nestor Coronel and Herminia Balingit, Sps. Bacani and Martha Balingit, Sps. Ruperto and Josefina Jordan, and Sps. Jose and Amelita Usi executed another Subdivision Agreement[10] (2nd SA) covering and under which the 8,148-sq. m. Lot 733-C was further subdivided into 13 smaller lots (Lot 733-C-1 to Lot 733-C-13 inclusive). The subdivision plan[11] for Lot 733-C, as likewise prepared by Engr. Galang on October 13, 1990, was officially approved by the LMB on March 1, 1991.

The 2nd SA partly reads:

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[8] *Id.*

[9] *Id.* at 9.

[10] *Id.* at 236.

[11] *Id.* at 480.

1. That we are the **sole and exclusive undivided co-owners** of a parcel of land situated at Barrio Putat and Arabia, Bebe Anac, Masantol, Pampanga, identified as Lot No. 733-C of Psd-No. 03-041669, containing an area of 8,148 sq. meters and covered by T.C.T. No. 1586 R.P. of the Register of Deeds of Pampanga;

2. That it is for the benefit and best interest of the parties herein that the [sic] their co-ownership relation over the above-mentioned parcel of land be terminated and their respective share over the co-ownership be allotted [sic] to them;

Wherefore, by virtue of the foregoing premises, we have agreed, as we hereby agree to subdivide our said parcel of land x x x.[12] (Emphasis added.)

Consequent to the subdivision of Lot 733-C in line with the Galang Plan and its subsequent partition and distribution to the respective allotees pursuant to the 2nd SA, the following individuals appeared as owners of the subdivided units as indicated in the table below:

Lot No.	Land area	Partitioned to:
Lot 733-C-1	200 square meters	**Sps. Jose and Amelita Usi**
Lot 733-C-2	1,000 square meters	Sps. Alejandro & Juanita Lacap
Lot 733-C-3	300 square meters	Sps. Nestor & Herminia Coronel
Lot 733-C-4	500 square meters	Sps. Nestor & Herminia Coronel and Sps. Bacani & Martha Balingit
Lot 733-C-5	400 square meters	Sps. Ruperto & Josefina Jordan
Lot 733-C-6	500 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
Lot 733-C-7	220 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
Lot 733-C-8	1,000 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza

[12] *Id.*

Lot 733-C-9	500 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
Lot 733-C-10	1,000 square meters	**Sps. Jose and Amelita Usi**
Lot 733-C-11	668 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
Lot 733-C-12	550 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
[Lot 733-C-13]	[1,310 square meters]	[Allotted for a proposed road]

In net effect, the two subdivision agreements paved the way for the issuance, under the Sps. Usi's name, of TCT Nos. 1585-RP,[13] 2092-RP,[14] and 2101-RP,[15] covering Lots 733-B, 733-C-1 and 733-C-10, respectively.

On the other hand, the subdivision of Lot 733, per the Galang Plan, and the two subdivision agreements concluded based on that plan, virtually resulted in the loss of the identity of what under the Fajardo Plan were Lot 733-A and Lot 733-F. The Sps. Viray and the late Jesus Viray, to recall, purchased Lot 733-A and Lot 733-F, respectively, from Mendoza.

Then came the ocular inspection and survey[16] conducted on Lot 733, as an undivided whole, by Geodetic Engr. Angelito

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[13] *Id.* at 9.

[14] *Id.* at 11a.

[15] *Id.* at 23.

[16] *Id.* at 238-239; Survey Report dated June 28, 1999. A Sketch Plan was likewise done, *id*. at 557. The Survey Report presents the following findings:

1. That Lot 733-A with an area of 336 SQ. M. as appearing in the plan marked annex "B" presented by the plaintiff [*Vda. de* Viray] is within Lot 733-B, Psd-03-025242 with an area of 494 SQ. M. and covered by TCT No. 1585-R.P. in the name of SPS. Jose B. Usi and Amelita T. Usi.

2. That Lot 733-F with an area of 3,501 SQ. M. also appearing in the plan marked annex "B" presented by the plaintiff is almost identical to

Nicdao of the LMB. Some highlights of his findings:

(a) Lot 733-A of the Fajardo Plan with an area of 336 square meters that Sps. Viray bought is within Lot 733-B (Galang Plan) allotted under 1st SA to Sps. Jose and Amelita Usi; and

(b) Lot 733-F of the Fajardo Plan with an area of 3,501 square meters is almost identical to the combined area of Lots 733-C-8 to 733-C-12 awarded to Ellen Mendoza and her children—McDwight, Bismark, Beverly and Georgenia, and a portion (1,000 square meters) of Lot 733-C-10 of the Galang Plan awarded to Sps. Jose and Amelita Usi.

As to be expected, the foregoing overlapping transactions involving the same property or portions thereof spawned several suits and counter- suits featuring, in particular, herein petitioners and respondents, *viz*:

(a) A suit for *Annulment of Deed of Absolute Sale* filed before the RTC, Branch 55 in Macabebe, Pampanga, docketed as Civil Case No. 88-0265-M, in which the Usis and Mendoza, as plaintiffs, assailed the validity and sought the annulment of the deed of absolute sale executed by Mendoza on April 29, 1986 conveying Lot 733-A (Fajardo Plan) to defendants Sps. Viray.

(b) A similar suit for *Annulment of Deed of Absolute Sale* commenced by Mendoza against Jesus Viray before RTC-Br. 55 in Macabebe, Pampanga, docketed as Civil Case No. 88-0283-M, entitled *Ellen P. Mendoza v. Jesus Carlo Gerard Viray*, also seeking to nullify the April 29, 1986 Deed of Absolute Sale conveying Lot 733-F (Fajardo Plan) to Jesus Viray and to declare the plaintiff as entitled to its possession.

Lot 733-C-8 to Lot 733-C-12 Psd 03-041699 which is presented by the defendant [Sps. Usi] and portion of Lot 733-C-10 with an area of 1,000 SQ. M. and covered by TCT No. 2101-R.P. is within Lot 733-F. (Attached sketch plan and approved plan.)

3. And Lot 733-C-1 Psd-03-041699 covered by TCT No. 2092-R.P. is the residential area of SPS. Jose B. Usi and Amelita T. Usi, as well as Lot 733-B Psd-03-024242, covered by TCT No. 1585-R.P. is the area for commercial purposes and Lot 733-C-10 Psd-03-041699 covered by TCT No. 2101-R.P. used for hollow blocks making.

The adverted Civil Case Nos. 88-0265-M and 88-0283-M were jointly tried by RTC-Br. 55, which, on August 1, 1989, rendered a Joint Decision[17] finding for the Sps. Viray and Jesus Viray, as defendants, and accordingly dismissing the separate complaints to annul the deeds of sale subject of the joint cases.

On appeal, the CA, in CA-G.R. CV Nos. 24981-82, and later this Court, in its Decision of December 11, 1995, in **G.R. No. 122287** in effect affirmed *in toto* the RTC dismissal decision.[18] The Court, via its Resolution of April 17, 1998, would eventually deny with finality[19] Mendoza and the Usis' motion for reconsideration of the aforesaid December 11, 1995 Decision.

(c) A forcible entry case filed on November 19, 1991 by the late Jesus Viray against the Sps. Usi before the Municipal Circuit Trial Court (MCTC) in Macabebe, Pampanga, docketed as Civil Case No. 91 (13), entitled *Jesus Carlo Gerard Viray v. Spouses Jose Usi and Emelita Tolentino*, to eject the Usis from Lot 733-F (Fajardo Plan).

On July 29, 1998, the MCTC rendered a Decision[20] in favor of Jesus Viray, the dispositive portion of which pertinently reads:

> WHEREFORE, premises considered, judgment is hereby rendered for the plaintiff [the late petitioner Jesus Viray], and accordingly, the defendants [Sps. Usi] and any other persons claiming under them are hereby ordered to vacate the subject premises, Lot 733-F embraced in T.C.T. No. 141-R.P., Register of Deeds Pampanga, and Lot 733-A, both situated at Bebe Anac, Masantol, Pampanga and to remove at their own expense, all structures or improvements they built and introduced thereon.
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> Defendants are likewise sentenced to pay plaintiff the amount of THREE HUNDRED (₱300.00) PESOS per month from November 19,

[17] *Id.* at 158-173. Penned by Judge Reynaldo V. Roura.

[18] *Id.* at 174-182. Penned by Associate Justice Buenaventura J. Guerrero and concurred in by Associate Justices Cesar D. Francisco and Bernardo Ll. Salas.

[19] *Id.* at 183.

[20] *Id.* at 17-23. Penned by Judge Valentino B. Nogoy.

1991, until they vacate the premises, as reasonable compensation for the use and occupation thereof x x x.

x x x x x x x x x

SO ORDERED.[21]

The Decision eventually became final and executory, the Usis having opted not to appeal it.

(d) A *Petition for Annulment of the MCTC's [July 29, 1998] Decision* filed by the Sps. Usi before the RTC, docketed as Civil Case No. 99-0914M, entitled *Sps. Jose & Amelita Usi v. Hon. Pres. Judge MCTC, Macabebe, Pampanga, the Court Sheriff, MCTC, Macabebe, Pampanga and Ruperta Cano Vda. de Viray*, which decision placed Jesus Viray's widow, Ruperta, in possession of Lot 733-F of the Fajardo Plan.

As may be noted, the spouses Usi, instead of appealing from the July 29, 1998 MCTC Decision in Civil Case No. 91 (13), sought, after its finality, its annulment before the RTC. By Decision[22] dated June 29, 2000, the RTC dismissed the petition to annul. The Usis' appeal to the CA, docketed as CA-G.R. CV No. 67945, merited the same dismissal action.[23] And finally, in **G.R. No. 154538** (*Spouses Jose and Amelita Usi v. Ruperta Cano Vda. de Viray*), the Court denied, on February 12, 2003, Sps. Usi's petition for review of the CA's Decision. The denial became final on April 8, 2003 and an Entry of Judgment[24] issued in due course.

(e) A *Petition for Accion Publiciana/ Reivindicatoria* [25] instituted on December 12, 2001 by Sps. Usi against the late Jesus Viray, as substituted by *Vda. de* Viray, *et al.*, before

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[21] Id. at 23.

[22] *Id.* at 282-284. Penned by Judge Reynaldo V. Roura.

[23] *Id.* at 285-290. Penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Eubulo G. Verzola and Bernardo P. Abesamis.

[24] *Rollo*, pp. 49-50.

[25] *Id.* at 2-8, dated December 1, 2001.

the RTC in Macabebe, Pampanga, docketed as Civil Case No. 01-1118(M), involving Lots 733-B, 733-C-1 and 733-C-10 (Galang Plan) covered by TCT Nos. 1585-RP, 2092-RP and 2101-RP.

The execution of the July 29, 1998 MCTC Decision in Civil Case No. 91 (13), as the Sps. Usi asserted in their petition, would oust them from their own in fee simple lots even though the dispositive portion of said forcible entry Decision mentioned Lots 733-A and 733-F (Fajardo Plan) and not Lots 733-B, 733-C-1 and 733-C-10 (Galang Plan) which are registered in their names per TCT Nos. 1585-RP, 2092-RP and 2101-RP.

In time, *Vda. de* Viray moved for the dismissal[26] of these *publiciana/ reivindicatoria* actions on grounds, among others, of *litis pendentia* and *res judicata*, on account of (1) the Sps. Usi's appeal, then pending before the CA, from the dismissal by the RTC of Civil Case No. 99-0914M;[27] and (2) the August 1, 1989 RTC Decision in Civil Case Nos. 88-0265-M and 88-0283-M, as effectively affirmed by the CA, and finally by the Court in **G.R. No. 122287.** This motion to dismiss would, however, be denied by the RTC through an Order[28] of March 8, 2002, compelling *Vda. de* Viray to file an answer,[29] again invoking in defense the doctrine of *res judicata*. Sps. Usi's Reply to Answer[30] contained an averment that their titles over the subject lots are the best evidence of their ownership.

(f) An action for *Cancellation of Titles or Surrender of Original Titles with Damages*[31] commenced by *Vda. de* Viray, *et al.*, against the Sps. Usi, Mendoza and eight others before the RTC, Branch 54 in Macabebe, Pampanga, docketed as

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[26] Records, pp. 36-41, dated January 3, 2002.

[27] The petition instituted by the Usis before the RTC to annul the decision of the MCTC's in Civil Case No. 91 (13), a suit for forcible entry.

[28] Records, pp. 69-70.

[29] *Id.* at 143-151, dated March 29, 2003.

[30] *Id.* at 308-311, dated May 5, 2003.

[31] *Id.* at 266-274, dated July 1, 2002.

Civil Case No. (02)-1164(M), seeking the cancellation of TCT Nos. 3614-R.P., 2099-R.P., 2101-R.P., 7502-R.P. and 2103-R.P. covering Lots 733-C-8 to 733-C-12 as subdivided under the 2nd SA of April 5, 1991 which taken together is basically identical to Lot 733-F (Fajardo Plan) sold to Jesus Viray.

To recap, the six (6) cases thus filed involving portions of Lot 733 and their status are:

Civil Case No.	The Parties	Action/Suit for	Subject Lot(s)	Disposition
88-0265-M	Sps. Usi v. Sps. Viray	Annulment of Deed of Absolute Sale	733-A (Fajardo Plan)	Decision in favor of Sps. Viray. Decision is now final.
88-0283-M	Mendoza v. Jesus Viray	Annulment of Deed of Absolute Sale	733-F (Fajardo Plan)	Decision in favor of Sps. Viray. Subject of CA-G.R. CV Nos. 24981-82 – denied. Subject of G.R. No. 122287 – petition denied.
91 (13)	Jesus Viray v. Sps. Usi	Forcible Entry	733-F (Fajardo Plan)	Judgment in favor of Viray. No appeal.
99-0914M	Sps. Usi v. *Vda. de* Viray	Petition for Annulment of MCTC Decision in CC No. 91(13)	733-F (Fajardo Plan)	RTC dismissed petition. CA-G.R. CV No. 67945 – appeal dismissed. G.R. No. 154538 – petition denied.

(02)-1164(M)	*Vda. de* Viray v. Mendoza, *et al.*	Cancellation of Titles before RTC, Br. 55, Pampanga	Lots 733-C-8 to 733-C-12 (Lot 733-F (Fajardo Plan)	Pending before the RTC.
01-1118(M)	Sps. Usi v. *Vda. de* Viray	Petition for *Accion Publiciana* and *Reivindicatoria*	733-B, 733-C-1 and 733-C-10 (Galang Plan)	Petition dismissed. CA-G.R. CV No. 90344 – reversed RTC Decision. Subject of instant case, G.R. No. 192486

In sum, of the six (6) cases referred to above, the first four (4) have been terminated and the main issue/s therein peremptorily resolved. To a precise point, the matter of the validity of the April 29, 1986 deeds of absolute sale conveying Lots 733-A and 733-F under the Fajardo Plan to Sps. Viray and *Vda. de* Viray (vice Jesus Viray), respectively, is no longer a contentious issue by force of the Court's Decision in **G.R. No. 122287** effectively upholding the dismissal of the twin complaints to nullify the deeds aforementioned. Likewise, the issue of who has the better possessory right independent of title over the disputed lots has been resolved in favor of *Vda. de* Viray and the Sps. Viray and against the Usis and veritably put to rest by virtue of the Court's final, affirmatory Decision in **G.R. No. 154538**.

Only two cases of the original six revolving around Lot 733 remained unresolved. The first refers to the petition for review of the decision of the CA in CA-G.R. CV No. 90344 which, in turn, is an appeal from the decision of the RTC in Civil Case No. 01-1118(M), a *Petition for Accion Publiciana/ Reivindicatoria and Damages*, and the second is Civil Case No. (02)-1164(M) for *Cancellation of Titles or Surrender of Original Titles with Damages.* The first case is subject of the present recourse, while the second is, per records, still pending

before the RTC, Branch 54 in Macabebe, Pampanga, its resolution doubtless on hold in light of the instant petition.

In the meantime, the Sps. Usi have remained in possession of what in the Galang Plan are designated as Lots 733-B, 733-C-1 and 733-C-10.

The Ruling of the RTC in Civil Case No. 01-1118(M)

As may be recalled, on June 21, 2007 in Civil Case No. 01-1118(M), the Macabebe, Pampanga RTC rendered judgment dismissing the petition of the Sps. Usi[32] for *Accion Publiciana*/ *Reivindicatoria*. In its dismissal action, the RTC held that the Sps. Usi failed to establish by preponderance of evidence to support their claim of title, possession and ownership over the lots subject of their petition.

Following the denial of their motion for reconsideration per the RTC's Order[33] of September 25, 2007, the Sps. Usi interposed an appeal before the CA, docketed as CA-G.R. CV No. 90344.

The Ruling of the CA

On July 24, 2009, the CA rendered the assailed decision, reversing and setting aside the appealed June 21, 2007 RTC decision. The *fallo* of the CA decision reads:

WHEREFORE, the instant appeal is GRANTED and the assailed Decision of the Regional Trial Court, REVERSED and SET ASIDE. Judgment is hereby rendered declaring as legal and valid, the right of ownership of petitioner-appellant [respondents herein] spouses Jose Usi and Amelita T. Usi over Lot Nos. 733-B, 733-C-1 and 733-C-10 covered by TCT Nos. 1585-R.P., 2092-R.P, and 2101-R.P., respectively. Consequently, respondents-appellees [herein petitioners] are hereby ordered to cease and desist from further committing acts of dispossession or from disturbing possession and ownership of petitioners-appellants of the said property as herein described and specified. Claims for damages, however, are hereby denied x x x.

[32] *Id.* at 602.

[33] *Id.* at 631-634.

SO ORDERED.

The CA predicated its ruling on the interplay of the following premises and findings: (a) the validity of the two (2) duly notarized subdivision agreements, or the 1st SA and 2nd SA, which the LMB later approved; (b) the subdivisions of Lot 733 on the basis of the Galang Plan actually partook the nature of the partition of the shares of its co-owners; (c) what Mendoza conveyed through the April 29, 1986 deeds of absolute sale is only her ideal, abstract or *pro-indiviso* share of Lot 733 of which she had full ownership, the conveyance or sale subject to the eventual delineation and partition of her share; (d) *Vda. de* Viray has not shown that fraud surrounded the execution of the partition of Lot 733 through the subdivision agreements of August 20, 1990 and April 5, 1991; (e) the certificates of title of the Sps. Usi constitute indefeasible proof of their ownership of Lots 733-B, 733-C-1 and 733-C-10; (f) said certificate entitled the Sps. Usi to take possession thereof, the right to possess being merely an attribute of ownership; (g) *Vda. de* Viray can only go after the partitioned shares of Mendoza in Lot 733; and (h) the issue of possessory right has been mooted by the judgment of ownership in favor of the Sps. Usi over Lots 733-B, 733-C-1 and 733-C-10.

Vda. de Viray sought but was denied reconsideration per the assailed June 2, 2010 CA Resolution.

Hence, We have this petition.

The Issue

WHETHER OR NOT THE COURT *A QUO* GRAVELY AND SERIOUSLY ERRED IN REVERSING AND SETTING ASIDE THE DECISION OF THE [RTC] DISMISSING RESPONDENTS' PETITION.[34]

The Court's Ruling

In the main, the issue tendered in this proceeding boils down to the question of whether the two (2) subdivision agreements

[34] *Rollo,* p. 8.

dated August 20, 1990 and April 5, 1991, respectively, partake of a *bona fide* and legally binding partition contracts or arrangements among co-owners that validly effectuated the transfer of the subject lots to respondent spouses Usi. Intertwined with the main issue is the correlative question bearing on the validity of the deeds of absolute sale upon which the petitioners hinged their claim of ownership and right of possession over said lots.

The Court rules in favor of petitioners.

Petitioners contend first off that the CA erred in its holding that the partitions of Lot 733 and later of the divided unit Lot 733-C following the Galang Plan were actually the partitions of the *pro-indiviso* shares of its co-owners effectively conveying to them their respective specific shares in the property.

We agree with petitioners.

First, the CA's holding aforestated is neither supported by, nor deducible from, the evidentiary facts on record. He who alleges must prove it. Respondents have the burden to substantiate the *factum probandum* of their complaint or the ultimate fact which is their claimed ownership over the lots in question. They were, however, unsuccessful in adducing the *factum probans* or the evidentiary facts by which the *factum probandum* or ultimate fact can be established. As shall be discussed shortly, facts and circumstances obtain arguing against the claimed co-ownership over Lot 733.

Second, the earlier sale of Lot 733-A and Lot 733-F (Fajardo Plan) on April 29, 1986 was valid and effective conveyances of said portions of Lot 733. The subsequent transfers to the Sps. Usi of substantially the same portions of Lot 733 accomplished through the subdivision agreements constitute in effect double sales of those portions. This aberration was brought to light by the results of the adverted survey conducted sometime in June 22, 1999 of Engr. Nicdao of the LMB.

Third, even granting *arguendo* that the subject subdivision agreements were in fact but partitions of the *pro-indiviso* shares of co-owners, said agreements would still be infirm, for the

Sps. Viray and *Vda. de* Viray (vice Jesus Viray) were excluded from the transaction. Like *Vda. de* Mallari, Sps. Viray and Jesus Viray had validly acquired and, hence, owned portions of Lot 733 and are themselves co-owners of Lot 733.

And *last*, over and above the foregoing considerations, the instant petition must be resolved in favor of petitioners, the underlying reinvindicatory and possessory actions in Civil Case No. 01-1118 (M) being barred by the application of the *res judicata* principle. What is more, the issue of superior possessory rights of petitioner *Vda. de* Viray over Lot 733-F (Fajardo Plan) has been laid to rest with finality in Civil Case No. 91 (13). Besides, Sps. Usi's action to assail the final and executory July 29, 1998 MCTC Decision in Civil Case No. 91 (13) has been denied with finality in **G.R. No. 154538**.

The subdivision agreements not partition of co-owners

Partition, in general, is the separation, division, and assignment of a thing held in common by those to whom it may belong.[35]

Contrary to the finding of the CA, the subdivision agreements forged by Mendoza and her alleged co-owners were not for the partition of *pro-indiviso* shares of co-owners of Lot 733 but were actually conveyances, disguised as partitions, of portions of Lot 733 specifically Lots 733-A and 733-B, and portions of the subsequent subdivision of Lot 733-C.

Notably, after a full-blown trial in Civil Case No. 01-1118 (M) wherein the spouses Usi merged an *accion publiciana* with an *accion reivindicatoria* in one petition, the RTC held that Sps. Usi failed to prove their case. However, in CA G.R. CV No. 90344, an appeal from said RTC decision, the CA, while acknowledging the existence of the April 29, 1986 deeds of absolute sale, nonetheless accorded validity to the August 20, 1990 and April 5, 1991 subdivision agreements. This is

[35] *Heirs of Cesar Marasigan v. Marasigan*, G.R. No. 156078, March 14, 2008, 548 SCRA 409, 445; citing *Noceda v. Court of Appeals*, G.R. No. 119730, September 2, 1999, 313 SCRA 504, 517 and *Cruz v. Court of Appeals*, G.R. No. 122904, April 15, 2005, 456 SCRA 165, 171.

incorrect. The CA held that the two (2) subdivision agreements, as notarized, enjoy the presumption of regularity and effectuated the property transfers covered thereby, obviously glossing over the *mala fides* attendant the execution of the two subdivision agreements. It cannot be overemphasized enough that the two (2) deeds of absolute sale over portions of substantially the same parcel of land antedated the subdivision agreements in question and their execution acknowledged too before a notary public.

The appellate court found and so declared the subdivision agreements valid without so much as explaining, let alone substantiating, its determination. The CA never elucidated how the Sps. Usi became, in the first place co-owners, with Mendoza over Lot 733. On its face, TCT 141-RP covering Lot 733 was in the name of spouses Ellen and Moses Mendoza only. Then too, the CA did not explain how under the 2nd SA the Sps. Usi, the Sps. Lacap, the Sps. Balingit and the Sps. Jordan became co-owners with Mendoza over Lot 733-C, when Mendoza, under the 1st SA, virtually represented herself as the sole owner of Lot 733-C.

A scrutiny of the records with a fine-toothed comb likewise fails to substantially show a partition of Lot 733 by its co-owners. While the 1st and 2nd SAs purport to be deeds of partition by and among co-owners of the lot/s covered thereby, partition as a fact is belied by the evidence extant on record. Consider:

It is undisputed that TCT 141 RP covering Lot 733 was originally in the name of Ellen P. Mendoza and husband, Moses.[36] The joint decision of the RTC in Civil Case Nos. 88-0265 and 88-0283-M narrated how the couple came to own Lot 733,

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[36] Records, p. 165. The August 1, 1989 Joint Decision (Civil Case Nos. 88-0265-M and 88-0283-M), p. 8 reads:

x x x. That Lot 733, Cad 305-D registered and described under TCT No. 141-R (Exhibit "E") is **admitted** by both parties as a conjugal property of Spouses Moses G. Mendoza and Ellen Mendoza (Exhs. "C" and "D" – plaintiffs, "1" and "2" – defendants) and the land described in the Deeds of Absolute Sale (Exhs. "A" and "B") are portions of Lot 733. x x x (Emphasis supplied.)

thus: "Lot 733 was acquired by Spouses Moses Mendoza and Ellen Mendoza and Spouses Pacifico Bustos and Maria Roman from Donato Lacap for ₱5,000.00 (Exh. "1") in 1977. After two years, Spouses Pacifico Bustos and Maria Roman sold one-half *pro-indiviso* portion of Lot 733 to spouses Moses Mendoza and Ellen Mendoza for ₱6,000.00 (Exh. "2") and the acquisition cost of the whole lot is only ₱8,500.00 and x x x."[37]

Mendoza and the Sps. Usi, in their separate complaints for annulment of deeds of sale, docketed as Civil Case Nos. 88-0265 and 88-0283-M of the Macabebe, Pampanga RTC, alleged that Moses Mendoza authorized Atty. Venancio Viray to sell the subject lot for at least PhP 200 per square meter, and that after his (Moses') death on April 5, 1986, Lot 733 was included in the proceedings for the settlement of his estate docketed as Sp. Proc. Case No. 86-0040-M of the RTC, Branch 55 in Macabebe, Pampanga. The events thus alleged by Mendoza and the Usis can be gleaned from the final and executory joint decision in Civil Case Nos. 88-0265-M and 88-0283-M which petitioner *Vda. de* Viray attached as Annex "5" in her Answer with Counterclaim[38] to the Usis' petition for *accion publicana/ reivindicatoria*. Said Joint Decision amply shows, in gist, the allegations[39] of both the Sps. Usi and Mendoza in Civil Case Nos. 88-0265-M and 88-0283-M asserting said facts. And

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[37] *Id.* at 166.

[38] *Id.* at 143-151, dated March 29, 2003.

[39] *Id.* at 158-162. The August 1, 1989 Joint Decision in Civil Case Nos. 88-0265-M and 88-0283-M shows:

JOINT DECISION

These are actions for Annulment of Deed of Sale with Damages filed by plaintiffs spouses Jose and Amelita Usi and Ellen P. Mendoza against the Spouses Avelino Viray and Margarita Masangcay in Civil Case No. 88-0265-M, and for Annulment of Deed of Sale, Recovery of Possession with Damages filed by Ellen P. Mendoza against Jesus Carlo Gerard Viray and spouses Venancio Viray and Cecilia Viray in Civil Case No. 88-0283-M.

The plaintiffs in Civil Case No. 88-0265-M [Sps. Usi and Mendoza] claim that on April 29, 1986, the defendants made it appear that plaintiff, Ellen P. Mendoza sold to them (defendants), a parcel of land, Lot No. 733-A being a portion of Lot 733, Cad-305-D, situated in Bebe Anac, Masantol, Pampanga, in consideration of the sum of SIX THOUSAND (₱6,000.00) PESOS by

way of Deed of Absolute Sale executed before Notary Public Venancio Viray of Masantol, Pampanga and registered in his Notarial Book as Doc. No. 269; Page No. 54; Book No. I; series of 1986. Plaintiff Ellen Mendoza further alleged that she has no knowledge or information whatsoever about the due execution of the Deed of Sale aforementioned and does not remember having executed any contract with the defendants nor seen them; that the signature appearing in the document is a forged and falsified signature and if ever that is her signature it was placed there thru fraud, trick and other device, but certainly not intended for the transfer or sale of her conjugal share in the estate of her late husband Moses Mendoza for the reason that the estate has not been settled and partitioned by her co-heirs, the settlement of which is still pending before this Court; that said Deed of Sale is now being made as basis for the possession in an Unlawful Detainer in the Municipal Circuit Trial Court of Macabebe-Masantol, Pampanga; that Atty. Venancio Viray before whom the alleged Deed of Absolute Sale was executed and notarized is related to the defendants in the first degree and that prior to the death of Moses Mendoza, (previous owner of the lot in question), Atty. Viray was their family lawyer and was appointed by the deceased Moses Mendoza as an exclusive agent to sell the property described as Lot No. 733 Cad-305-D of which the land in question is a portion, for a price not less than ₱200.00 per square meter; that to give more proofs of deception and forgery committed by defendants and Notary Public Atty. Venancio Viray at the time when he was still the family lawyer, the Res. Cert. No. 113574 issued on April 28, 1986 at Masantol, Pampanga allegedly exhibited by plaintiff Ellen P. Mendoza is likewise a forgery and a falsified residence certificate because the real and true residence certificate of Ellen Mendoza was taken in San Fernando, Pampanga; that plaintiff spouses Jose Usi and Amelita Usi and Atty. Venancio Viray executed and entered into a temporary deed of sale respecting a portion of said lot in question on March 25, 1984, when Atty. Venancio Viray representing himself to the spouses Jose Usi and Amelita Usi to be with power and authority to sell said lot from said owner Moses Mendoza, accepted by way of down payment from said plaintiffs-spouses the sum of ₱30,000.00 at ₱500.00 per square meter of that said portion of the said parcel of land with an area of 308 square meters and from the time when the owner Moses Mendoza died on April 5, 1986 up to the present, the corresponding Deed of Sale in favor of the plaintiffs have [sic] not been executed by Atty. Venancio Viray nor returned the down payment of ₱30,000.00; that after the execution of the temporary deed (Annex "B"), plaintiffs constructed their hardware store on the said lot subject of the deed; on November 28, 1985, Atty. Venancio Viray filed an Unlawful Detainer case before the MCTC of Macabebe-Masantol against plaintiffs-spouses Jose Usi and Amelita Usi which case was dismissed by Hon. Nicanor D. Guevara, Presiding Judge of said Court on October 22, 1986; that plaintiff Ellen Mendoza has executed a Deed of Absolute Sale in favor of plaintiff spouses Jose and

these assertions, made in their complaints, are judicial admissions under Sec. 4,[40] Rule 129 of the Rules of Court.

Amelita Usi pertaining to the lot in question and confirmation of the said deed of sale is still pending approval by this Court.

The plaintiff [sic] prayed that the subject Deed of Absolute Sale be declared null and void and the defendants be ordered to pay them ₱20,000.00 as moral damages and ₱10,000.00 as exemplary damages, plus ₱10,000.00 attorney's fees and to pay the costs of this suit.

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The plaintiff in Civil Case No. 88-0283-M [Mendoza] alleges that defendant Jesus Gerard Carlo Viray is a minor and is being named defendant in said complaint through his parents Vanancio M. Viray and Cecilia N. Viray, husband and wife, Filipinos and residents of Poblacion, Masantol, Pampanga; that one of the claims filed against the estate of Moses Mendoza in Sp. Proc. Case No. 86-0040(M), is the claim of defendants by virtue of a Deed of Absolute Sale allegedly executed by the plaintiff on April 29, 1986 at Masantol, Pampanga, in favor of the defendant Jesus Carlo Gerard N. Viray for the sum of Twenty-Five Thousant (₱25,000.00) Pesos over a parcel of land being a portion of Lot No. 733, Cad-305-D, situated in Bebe Anac, Masantol, Pampanga, which is a portion of her conjugal share in said lot and executed before Notary Public Venancio Viray (his natural father); that plaintiff has no knowledge whatsoever about the execution of the deed of sale aforementioned and does not remember having executed any contract of sale with the defendant for the sale of the said parcel of land, which belongs to the intestate estate of her deceased husband, Moses Mendoza, the settlement of which is still pending; that the signature of Ellen Mendoza on the alleged deed of sale is a forgery and falsified signature and if ever that is the signature of plaintiff it was never intended for a deed of absolute sale of the lot described in the document or was placed in said document thru fraud, trick and other device, but certainly not intended for the transfer or sale of her conjugal share in the estate; that Atty. Venancio Viray before whom the alleged deed of absolute sale was executed and notarized is the natural father of the alleged vendee and prior to the death of Moses G. Mendoza previous owner of the lot allegedly sold, Atty. Viray was their family lawyer and was appointed by the deceased Moses Mendoza as exclusive agent to sell Lot No. 733 for a price not less than ₱200.00 per square meter and the over price shall be his commission; that the alleged consideration of ₱25,000.00 is simulated and fictitious and without any consideration, for the vendee-defendant never paid plaintiff-vendor any amount; that the residence certificate allegedly exhibited by plaintiff before Notary Public Atty. Venancio Viray, who at the time it was allegedly executed was their family lawyer, is likewise a forgery and a fictitious residence certificate because her (plaintiff's) true residence certificate for 1986 was taken by her in San Fernando, Pampanga which was duly executed and signed by her, not the residence certificate No. 11305754

Unlike *Vda. d*e Mallari who, per *Vda. de* Viray's own admission, purchased the 416-square meter portion of Lot 733 on February 14, 1984, thus constituting her (*Vda. de* Mallari) as co-owner of Mendoza to the extent of said area purchased,[41] **the Sps. Usi have not been shown to be co-owners with Mendoza**. There is simply nothing in the records to demonstrate how the Sps. Usi became co-owners of Lot 733 before or after the death of Moses Mendoza. Elsewise put, no evidence had been adduced to show how the alleged interest of the Sps. Usi, as co-owner, came about, except for the bare assertions in the 1st and 2nd SAs that they co-owned Lot 733 and Lot 733-C (Galang Plan).

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issued on April 28, 1986 at Masantol, Pampanga which is not signed and incomplete; that the forgery and deception was perpetrated by Atty. Viray as a father and Notary Public who notarized the deed of sale by making it appear that his son-vendee is of legal age when in truth he is still a minor and, therefore, cannot yet give consent to a contract of sale which is a bilateral contract, therefore, there being no consent on both the vendee and the vendor, the deed of absolute sale allegedly executed by the plaintiff and defendant Jesus Carlo Gerard Nunga Viray is null and void from the beginning; that when the deed of absolute sale was allegedly executed on April 29, 1986, the estate of Moses G. Mendoza has not yet been settled and still pending settlement before this Court; that notwithstanding repeated demands, the defendants failed and refused and still fail and refuse to return the possession of the land subject of the complaint x x x.

The plaintiff prayed that the subject Deed of Absolute Sale dated April 29, 1986 be declared null and void and the defendants be ordered to vacate the land in question and declare possession thereof to the plaintiff, and to pay the plaintiff such unpaid rental for the use and occupation of the subject land in the amount of ₱1,500.00 per month, plus actual damage incurred by virtue of the excavation of the land in the amount of ₱10,000.00; ₱20,000.00 as moral damages; ₱5,000.00 as exemplary damages and ₱10,000.00 as attorney's fees.

[40] SEC. 4. *Judicial admissions*. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[41] Records, p. 166. The August 1, 1989 Joint Decision (Civil Case Nos. 88-0265-M and 88-0283-M), p. 9 reads:

x x x Subsequently, on February 14, 1984, spouses Moses Mendoza and Ellen Mendoza sold a portion (416 square meters) to Emerencia M. *Vda. de* Mallari and the corresponding Deed of Sale was registered with the Office of the Register of Deeds of Pampanga and annotated at the face of the title (TCT No. 141-R). Therefore, Emerencia *Vda. de* Mallari is a co-owner to the extent of 416 square meters. (Emphasis supplied.)

It is fairly clear that Lot 733, even from the fact alone of its being registered under the name of the late Moses Mendoza and Ellen Mendoza, formed part of the couple's conjugal property at the time Moses' demise on April 5, 1986. Equally clear, too, is that *Vda. de* Mallari became a co-owner of Lot 733 by virtue of the purchase of its 416-square meter portion on February 14, 1984, during the lifetime of Moses. Be that as it may and given that the Sps. Usi have not been shown to be co-owners of Mendoza and *Vda. de* Mallari prior to the sale by Mendoza on April 29, 1986 of Lots 733-A and 733-F (Fajardo Plan) to the Sps. Viray and Jesus Viray, respectively, then the execution of the 1st SA on August 20, 1990 could not have been a partition by co-owners of Lot 733. The same could be said of the 2nd SA of April 5, 1991 *vis-à-vis* Lot 733-C, for the records are similarly completely bereft of any evidence to show on how the purported participating co-owners, namely Sps. Usi, the Sps. Lacap, the Sps. Balingit and the Sps. Jordan became co-owners with Mendoza and her children, *i.e.*, McDwight, Bismark, Beverly and Georgenia.

The April 29, 1986 Deeds of Absolute Sale of Lot 733-A and Lot 733-F are Valid

It must be noted that the RTC, in its decision in Civil Case Nos. 88-0265-M and 88-0283-M, upheld the validity of the separate April 29, 1986 deeds of absolute sale of Lots 733-A and 733-F (Fajardo Plan). The combined area of Lot 733-A (366 sq. m.) and Lot 733-F (3,501) is less than one half of the total area coverage of Lot 733 (9,137). The sale of one-half portion of the conjugal property is valid as a sale. It cannot be gainsaid then that the deeds, executed as they were by the property owner, were sufficient to transfer title and ownership over the portions covered thereby. And the aforesaid RTC decision had become final and executory as far back as December 11, 1995 when the Court, in **G.R. No. 122287**, in effect, affirmed the RTC decision. Likewise, the MCTC's decision in Civil Case No. 91 (13) for forcible entry, declaring *Vda. de* Viray, as successor-in-interest of Jesus Viray, as entitled to the physical possession, or possession *de facto*, of Lot 733-F (Fajardo Plan), and the RTC's decision in Civil Case No. 99-0914M, disposing of the belated appeal of the MCTC decision in the forcible

entry case, have become final and executory on February 12, 2003 under **G.R. No. 154538**.

In light of the convergence of the foregoing disposed-of cases, there can be no question as to the ownership of the Sps. Viray and *Vda. de* Viray (vice Jesus Viray) over the specified and delineated portions of Lot 733 which they purchased for value from Mendoza. And Mendoza, as vendor, was bound to transfer the ownership of and deliver, as well as warrant, the thing which is the object of the sale.[42]

In the instant case, the April 29, 1986 deeds of absolute sale indeed included the technical description of that part of Lot 733 subject of the transactions, thus clearly identifying the portions (Lots 733-A and 733-F under the Fajardo Plan) sold by Mendoza to the Sps. Viray and *Vda. de* Viray (vice Jesus Viray). Hence, there can be no mistaking as to the identity of said lots.

The deeds in question were, to reiterate, not only valid but constitute prior conveyances of the disputed portions of Lot 733. Accordingly, the subsequent conveyances in 1990 and 1991 to the Sps. Usi through transfer contracts, styled as subdivision agreements, resulted, in effect, in a double sale situation involving substantially the same portions of Lot 733.

The survey report of LMB surveyor, Engr. Nicdao, would support a finding of double sale. His report, as earlier indicated, contained the following key findings: (1) Lot 733-A (Fajardo Plan) with an area of 336 square meters thus sold to the Sps. Viray is within Lot 733-B (Galang Plan), the part assigned to Sps. Usi under the division; and (2) Lot 733-F (Fajardo Plan) with an area of 3,501 square meters is almost identical to the combined area of Lots 733-C-8 to 733-C-12 awarded to Ellen Mendoza and her children, McDwight, Bismark, Beverly and Georgenia, and a portion (1,000 square meters) of Lot 733-C-10 (Galang Plan) adjudicated to Sps. Usi.

A double sale situation, which would call, if necessary, the application of Art. 1544 of the Civil Code, arises when, as

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[42] *Asset Privatization Trust v. T.J. Enterprises*, G.R. No. 167195, May 8, 2009, 587 SCRA 481, 488; citing CIVIL CODE, Art. 1495.

jurisprudence teaches, the following requisites concur:

(a) The two (or more) sales transactions must constitute valid sales;
(b) The two (or more) sales transactions must pertain to exactly the same subject matter;
(c) The two (or more) buyers at odds over the rightful ownership of the subject matter must each represent conflicting interests; and
(d) The two (or more) buyers at odds over the rightful ownership of the subject matter must each have bought from the very same seller. [43]

From the facts, there is no valid sale from Mendoza to respondents Usi. The parties did not execute a valid deed of sale conveying and transferring the lots in question to respondents. What they rely on are two subdivision agreements which do not explicitly chronicle the transfer of said lots to them. Under the 1st SA, all that can be read is the declaration that respondents, together with others, are the "sole and exclusive owners" of the lots subject of said agreement. Per the 2nd SA, it simply replicates the statement in the 1st SA that respondents are "sole and exclusive undivided co-owners" with the other parties. While respondents may claim that the SAs of 1990 and 1991 are convenient conveying vehicles Mendoza resorted to in disposing portions of Lot 733 under the Galang Plan, the Court finds that said SAs are not valid legal conveyances of the subject lots due to non-existent prestations pursuant to Article 1305 which prescribes "a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." The third element of cause of the obligation which is established under Art. 1318 of the Civil Code is likewise visibly absent from the two SAs. The transfer of title to respondents based on said SAs is flawed, irregular, null and void. Thus the two SAs are not "sales transactions" nor "valid sales" under Art. 1544 of the Civil Code and, hence, the first essential element under said legal provision was not satisfied.

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[43] *Mactan-Cebu International Airport Authority v. Tirol*, G.R. No. 171535, June 5, 2009, 588 SCRA 635, 644; citing *Cheng v. Genato*, G.R. No. 129760, December 29, 1998, 300 SCRA 722, 739-740.

Given the above perspective, the Sps. Viray and *Vda. de* Viray (vice Jesus Viray) have, as against the Sps. Usi, superior rights over Lot 733-A and Lot 733-F (Fajardo Plan) or portions thereof.

***Res Judicata* Applies**

Notably, the Sps. Viray and *Vda. de* Viray, after peremptorily prevailing in their cases supportive of their claim of ownership and possession of Lots 733-A and 733-F (Fajardo Plan), cannot now be deprived of their rights by the expediency of the Sps. Usi maintaining, as here, an *accion publiciana* and/or *accion reivindicatoria*, two of the three kinds of actions to recover possession of real property. The third, *accion interdictal*, comprises two distinct causes of action, namely forcible entry and unlawful detainer,[44] the issue in both cases being limited to the right to physical possession or possession *de facto*, independently of any claim of ownership that either party may set forth in his or her pleadings,[45] albeit the court has the competence to delve into and resolve the issue of ownership but only to address the issue of priority of possession.[46] Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand to vacate following the expiration of the right to possess, in case of unlawful detainer.[47]

When the dispossession or unlawful deprivation has lasted more than one year, one may avail himself of *accion publiciana* to determine the better right of possession, or possession *de jure*, of realty independently of title. On the other hand, *accion reivindicatoria* is an action to recover ownership which necessarily includes recovery of possession.[48]

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[44] *Javier v. Veridiano II*, G.R. No. L-48050, October 10, 1994, 237 SCRA 565, 572.

[45] *Presco v. Court of Appeals*, G.R. No. 82215, December 10, 1990, 192 SCRA 232, 238.

[46] *De Luna v. Court of Appeals*, G.R. No. 94490, August 6, 1992, 212 SCRA 276, 279.

[47] *Javier v. Veridiano II*, *supra* note 44.

[48] *Bokingo v. Court of Appeals*, G.R. No. 161739, May 4, 2006, 489

Now then, it is a hornbook rule that once a judgment becomes final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.[49] Any attempt to reopen a closed case would offend the principle of *res judicata*.

Res judicata embraces two concepts or principles, the first is designated as "bar by prior judgment" and the other, "conclusiveness of judgment." *Tiongson v. Court of Appeals*[50] describes the effects of *res judicata*, as a bar by prior judgment, in the following manner:

> There is no question that where as between the first case where the judgment is rendered and the second where such judgment is invoked, there is identity of parties, subject matter and cause of action, the judgment on the merits in the first case constitutes an absolute bar to the subsequent action not only as to every matter which was offered and received to sustain or defeat the claim or demand, but also as to any other admissible matter which might have been offered for that purpose and to all matters that could have been adjudged in that case. x x x

Res judicata operates as bar by prior judgment if the following requisites concur: (1) the former judgment or order must be

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SCRA 521, 532; citing *Ganila v. Court of Appeals*, G.R. No. 150755, June 28, 2005, 461 SCRA 435, 445.

[49] *Vios v. Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, 578 SCRA 129, 143-144; citing *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-BALAIS v. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 155651, July 28, 2005, 464 SCRA 507, 513-514. See also *Dacanay v. Yrastorza, Sr.*, G.R. No. 150664, September 3, 2009, 598 SCRA 20, 25; citing *Ram's Studio and Photographic Equipment, Inc. v. Court of Appeals*, G.R. No. 134888, December 1, 2000, 346 SCRA 691; and *Obieta v. Cheok*, G.R. No. 170072, September 3, 2009, 598 SCRA 86, 91; citing *Coloso v. Garilao*, G.R. No. 129165, October 30, 2006, 506 SCRA 25, 50.

[50] No. L-35059, February 27, 1973, 49 SCRA 429, 434-435.

final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and second action, identity of parties, of subject matter and of causes of action.[51] All the requisites are present in the instant case.

The better right to possess and the right of ownership of *Vda. de* Viray (vice Jose Viray) and the Sps. Viray over the disputed parcels of land cannot, by force of the *res judicata* doctrine, be re-litigated thru actions to recover possession and vindicate ownership filed by the Sps. Usi. The Court, in **G.R. No. 122287** (*Ellen P. Mendoza and Jose and Amelita Usi v. Spouses Avelino Viray and Margarita Masangcay and Jesus Carlo Gerard Viray*), has in effect determined that the conveyances and necessarily the transfers of ownership made to the Sps. Viray and *Vda. de* Viray (vice Jose Viray) on April 29, 1986 were valid. This determination operates as a bar to the Usis reivindicatory action to assail the April 29, 1986 conveyances and precludes the relitigation between the same parties of the settled issue of ownership and possession arising from ownership. It may be that the spouses Usi did not directly seek the recovery of title or possession of the property in question in their action for annulment of the deed of sale. But it cannot be gainsaid that said action is closely intertwined with the issue of ownership, and affects the title, of the lot covered by the deed. The prevalent doctrine, to borrow from *Fortune Motors, (Phils.), Inc. v. Court of Appeals*,[52] "is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property."

And lest it be overlooked, the Court, in **G.R. No. 154538** (*Spouses Jose and Amelita Usi v. Ruperta Cano Vda. de Viray*), again in effect ruled with finality that petitioner *Vda.*

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[51] *Agustin v. Delos Santos*, G.R. No. 168139, January 20, 2009, 576 SCRA 576, 586 (citations omitted).

[52] G.R. No. 76431, October 16, 1989, 178 SCRA 564, 568.

de Viray has a better possessory right over Lot 733-F (Fajardo Plan). Thus, the Court's decision in **G.R. No. 122287** juxtaposed with that in **G.R. No. 154538** would suffice to bar the Sps. Usi's *accion publiciana*, as the spouses had invoked all along their ownership over the disputed Lot 733-F as basis to defeat any claim of the right of possession. While an *accion reivindicatoria* is not barred by a judgment in an ejectment case, such judgment constitutes a bar to the institution of the *accion publiciana*, because the matter of possession between the same parties has become *res judicata* and cannot be delved into in a new action.[53]

The doctrine of *res judicata* is a basic postulate to the end that controversies and issues once decided on the merits by a court of competent jurisdiction shall remain in repose. It is simply unfortunate that the RTC, in Civil Case No. 01-1118(M), did not apply the doctrine of *res judicata* to the instant case, despite petitioners, as respondents below, had raised that ground both in their motion to dismiss and answer to the underlying petition.

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision dated July 24, 2009 and Resolution dated June 2, 2010 of the Court of Appeals in CA-G.R. CV No. 90344 are **REVERSED** and **SET ASIDE**. The Decision dated June 21, 2007 in Civil Case No. 01-1118(M) of the RTC, Branch 55 in Macabebe, Pampanga is accordingly **REINSTATED**.

Costs against respondents.

SO ORDERED.

Bersamin,[*] *Abad, Perez,*[**] and *Mendoza, JJ.*, concur.

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[53] 2 Tolentino, *CIVIL CODE OF THE PHILIPPINES* 227; citing *Del Rosario v. Celosia*, 26 Phil. 404 (1913).

[*] Acting member per Special Order No. 1352-A dated November 7, 2012.

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

THIRD DIVISION

[G.R. No. 196877. November 21, 2012]

ELOISA R. NARCISO, *petitioner, vs.* **ESTELITA P. GARCIA,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; DEFAULT; DECLARATION OF; NOT PROPER IN CASE AT BAR.— Section 3, Rule 9 of the Rules of Court provides that a defending party may be declared in default upon motion of the claiming party with notice to the defending party, and proof of failure to file an answer within the time allowed for it. x x x Here, however, defendant Narciso filed a motion to dismiss plaintiff Garcia's complaint against her before filing an answer. Section 1, Rule 16 allows her this remedy. As a consequence of the motion to dismiss that defendant Narciso filed, the running of the period during which the rules required her to file her answer was deemed suspended. When the trial court denied her motion to dismiss, therefore, she had the balance of her period for filing an answer under Section 4, Rule 16 within which to file the same but in no case less than five days, computed from her receipt of the notice of denial of her motion to dismiss. x x x Narciso had the right to file a motion for reconsideration of the trial court's order denying her motion to dismiss. No rule prohibits the filing of such a motion for reconsideration. Only after the trial court shall have denied it does Narciso become bound to file her answer to Garcia's complaint. And only if she did not do so was Garcia entitled to have her declared in default.

APPEARANCES OF COUNSEL

Villanueva De leon Hipolito Tuazon Imbong Law Offices for petitioner.

Noel C. Quioc for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the propriety of declaring a defendant in default when the time for filing the answer has not yet elapsed.

The Facts and the Case

Plaintiff Estelita P. Garcia (respondent in this case) filed a complaint for damages against defendant Eloisa R. Narciso (petitioner) before the Regional Trial Court (RTC) of San Fernando, Pampanga. Narciso filed a motion to dismiss the complaint, alleging that the RTC had no jurisdiction over the subject matter of the complaint since it averred facts constitutive of forcible entry. Narciso also assailed the venue as improperly laid since the acts Garcia complained of were committed in Angeles City.

Plaintiff Garcia opposed the motion to dismiss and at the same time sought to have defendant Narciso declared in default. Garcia cited the Supreme Court's administrative circular that discouraged the filing of a motion to dismiss in lieu of answer. Since the time to file an answer had already elapsed, said Garcia, she was entitled to have Narciso declared in default.

The RTC set the two motions for hearing on November 5, 2004 at which hearing it deemed the incidents submitted for resolution. On November 30, 2004, the RTC denied Narciso's motion to dismiss and, as a consequence, declared her in default for failing to file an answer.

On December 22, 2004 defendant Narciso filed a motion for reconsideration of the orders denying her motion to dismiss and declaring her in default for failing to file an answer, which motion Garcia opposed. In her opposition, the latter also sought to present her evidence *ex parte*. Meantime, the presiding judge, Pedro M. Sunga, retired and Judge Divina Luz Aquino-Simbulan replaced him as acting judge of the concerned RTC branch.

Judge Simbulan referred the case for mediation on June 23, 2005. When mediation failed, on August 1, 2005 the trial court

set the case for judicial dispute resolution (JDR) as component of pre-trial, presided over by Judge Maria Amifaith S. Fider-Reyes. Since the JDR also failed, the case was re-raffled for pre-trial proper and trial to Branch 44, presided over by Judge Esperanza Paglinawan-Rozario.

On March 26, 2007, having noted that the court had not yet acted on Narciso's motion for reconsideration of the orders denying her motion to dismiss and declaring her in default, the trial court set the case for hearing and required the parties to submit their respective written manifestations to the court.

On August 24, 2007 the trial court denied Narciso's motion for reconsideration. It ruled that since she had already been declared in default as early as November 30, 2004 and since she had not filed any motion to lift the order of default within the allowable time, Narciso could no longer assail such default order.

On September 3, 2007 Narciso filed a motion to lift the order of default against her. She claimed that the protracted resolution of her motion for reconsideration and the referral of the case for mediation prevented her from filing an answer. She also pointed out that she filed a case for ejectment against Garcia and succeeded in obtaining a decision against the latter.

On April 8, 2008 the trial court denied Narciso's motion. She filed a motion for reconsideration of this order but the court also denied the same on October 13, 2008, prompting Narciso to file a petition for *certiorari* before the Court of Appeals (CA). On December 8, 2010[1] the CA denied her petition and affirmed the RTC's order. The CA held that, while a motion to lift order of default may be filed at any time after notice and before judgment, Narciso needed to allege facts constituting fraud, accident, mistake, or excusable negligence that prevented her from answering the complaint. She also needed to show a meritorious defense or that something would be gained by having the order of default set aside.[2] For the

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[1] Penned by Associate Justice Jose C. Reyes, Jr. with the concurrence of Justices Antonio L. Villamor and Samuel H. Gaerlan, *rollo*, pp. 20-28.

[2] RULES OF COURT, Rule 9, Section 3(b).

CA, petitioner failed to do these things. It denied Narciso's motion for reconsideration of its decision on April 11, 2011.[3]

Claiming that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction, Narciso filed the present petition for *certiorari* with prayer for the issuance of a temporary restraining order (TRO) and injunction. In a Resolution dated June 8, 2011 the Court issued a TRO in the case, enjoining the RTC from proceeding with its hearing until further orders.[4]

The Issue Presented

The sole issue presented in this case is whether or not the CA gravely abused its discretion in affirming the order of default that the RTC issued against petitioner Narciso.

The Court's Ruling

Section 3, Rule 9 of the Rules of Court provides that a defending party may be declared in default upon motion of the claiming party with notice to the defending party, and proof of failure to file an answer within the time allowed for it. Thus:

> SEC. 3. *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. x x x

Here, however, defendant Narciso filed a motion to dismiss plaintiff Garcia's complaint against her before filing an answer. Section 1, Rule 16 allows her this remedy. Thus:

> SEC. 1. *Grounds.* — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds: x x x.

As a consequence of the motion to dismiss that defendant Narciso filed, the running of the period during which the rules required her to file her answer was deemed suspended. When

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[3] *Rollo*, p. 29.

[4] *Id.* at 762.

the trial court denied her motion to dismiss, therefore, she had the balance of her period for filing an answer under Section 4, Rule 16 within which to file the same but in no case less than five days, computed from her receipt of the notice of denial of her motion to dismiss. Thus:

> SEC. 4. *Time to plead*. — If the motion is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended pleading, unless the court provides a longer period.

But apart from opposing defendant's motion to dismiss, plaintiff Garcia asked the trial court to declare Narciso in default for not filing an answer, altogether disregarding the suspension of the running of the period for filing such an answer during the pendency of the motion to dismiss that she filed in the case. Consequently, when the trial court granted Garcia's prayer and simultaneously denied Narciso's motion to dismiss and declared her in default, it committed serious error. Narciso was not yet in default when the trial court denied her motion to dismiss. She still had at least five days within which to file her answer to the complaint.

What is more, Narciso had the right to file a motion for reconsideration of the trial court's order denying her motion to dismiss. No rule prohibits the filing of such a motion for reconsideration. Only after the trial court shall have denied it does Narciso become bound to file her answer to Garcia's complaint. And only if she did not do so was Garcia entitled to have her declared in default. Unfortunately, the CA failed to see this point.

WHEREFORE, the Court **ANNULS and SETS ASIDE** the Decision of the Court of Appeals dated December 8, 2010 and Resolution dated April 11, 2011 in CA-G.R. SP 106425, **LIFTS** the order of default that the Regional Trial Court of San Fernando, Pampanga, Branch 44, entered against petitioner Eloisa Narciso,

and **DIRECTS** that court to allow her to file her answer to the complaint and proceed to hear the case with dispatch. The court **DISSOLVES** the temporary restraining order that it issued on June 8, 2011 to enable the trial court to resume proceedings in the case.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 197598. November 21, 2012]

MIRANT (PHILIPPINES) CORPORATION, *petitioner, vs.* **DANILO A. SARIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts. "For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them[,] which we find to be the situation in this case.

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[*] Designated Acting Member in lieu of Associate Justice Diosdado M. Peralta, per Special Order 1352 dated November 7, 2012.

[**] Designated Acting Member, per Special Order 1299 dated August 28, 2012.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; WILLFUL DISOBEDIENCE OF LAWFUL DIRECTIVE CONSTITUTES A VALID CAUSE FOR TERMINATION OF EMPLOYMENT; REQUISITES; PRESENT IN CASE AT BAR.— Under the law, the burden of proving that the termination of a worker's employment was for a valid or authorized cause rests on the employer. In this case, the company was able to prove that Sario's dismissal was for a valid cause. Through his repeated violations of the company's 2002 and 2004 Procurement Manuals, Sario committed a serious misconduct or willful disobedience of the lawful directives or orders of his employer, constituting a just cause for termination of employment. x x x Based on the facts, the law and jurisprudence, Sario deserves to be dismissed for willful disobedience. In *Gold City Integrated Port Services, Inc. v. NLRC,* the Court stressed that willful disobedience of an employee contemplates the concurrence of at least two requisites: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; and the order violated must have been reasonable, lawful and made known to the employee, and must pertain to the duties which he had been engaged to discharge. We find the two requisites present in this case. Sario's repeated violations of the company's 2002 and 2004 Procurement Manuals – lawful orders in themselves as they provide the **dos** and, necessarily, the **don'ts** of a procurement officer – constitute willful disobedience. He committed the repeated violations because he knew or was confident that he would not get caught since his actions were being approved, as he claims, by his superiors, evidencing wrongful or perverse intent. While the Constitution urges the moderation of the sanction that may be applied to an employee where a penalty less punitive would suffice, as the Court pronounced in *Marival Trading, Inc. v. NLRC,* cited by the CA, we do not believe that such a moderation is proper in this case. Sario has become unfit to remain in employment. A contrary view would be oppressive to the employer. "**The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer."**

APPEARANCES OF COUNSEL

Villaraza Cruz Marcelo & Anganco CVCLAW Center for petitioner.

Wilfred F. Neis for respondent.

D E C I S I O N

BRION, *J.*:

This is a petition for review on *certiorari*[1] assailing the decision[2] dated March 29, 2011 and the resolution[3] dated July 11, 2011 of the Court of Appeals (*CA*) in CA-G.R. SP No. 112975.

The Antecedents

On December 7, 2005, respondent Danilo A. Sario filed a complaint[4] for illegal dismissal, backwages, damages and attorney's fees against the petitioner, Mirant (Philippines) Corporation (*company*), and its officers, namely: Ronald Harris, President; Thomas J. Sliman, Jr., Executive Vice-President for Operations; and Alejandro Lito Aprieto, Officer-in-Charge, Materials Management Department (*MMD*). The company owns shares in Mirant Sual Corporation and Mirant Pagbilao Corporation which operate power stations in the provinces of Pangasinan and Quezon. Sario worked for the company as procurement officer from March 1998 to October 2005. As procurement officer, he was tasked to:

a. Perform the entire purchasing process of a Station's set of materials, parts, equipment, and/or project;

b. Receive Purchase Requisition Form ("PRF") assignments

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[1] *Rollo*, pp. 10-64; filed under Rule 45 of the Rules of Court.

[2] *Id.* at 72-91; penned by Associate Justice Amy C. Lazaro-Javier, and concurred in by Associate Justices Rebecca de Guia-Salvador and Sesinando E. Villon.

[3] *Id.* at 93.

[4] *Id.* at 459-460.

through the Q4 system (Q4 PR downloading process);

c. Identify vendors/suppliers to be invited and set bid periods and deadlines for bid submission. Coordinate technical issues with end-users and prepare Request for Quotation ("RFQ") packages. Send RFQs to vendors and initiate RFQ confirmation status. Resolve commercial issues with vendors (RFQ process);

d. Receive quotes/bids. Review tenders and resolve commercial issues with vendors. Perform Tender Analysis Summary revisions when necessary;

e. Secure and evaluate justification for single tender transactions in accordance with the MMD manual. Coordinate price, payment and delivery terms with vendor (Single tender process);

f. Prepare Purchase Orders ("PO"). Check if approval of PO is according to limits of authority. Monitor PO status. If necessary, prepare Tender Analysis Addendum ("TAA") and PO revisions. Keep PO status in Q4 updated (PO processing); and

g. Coordinate vendor performance with plant end-user. Provide information on vendor performance to be used in the vendor performance evaluation. Resolve disputes arising out of vendor deliveries between end-user and vendor. Recommend appropriate sanctions for vendor infractions (Vendor management).[5]

Allegedly, at the time material to the case, the company discovered that some of its employees had been involved in the rampant practice of favoring certain suppliers, thereby seriously impairing transparency in its procurement process and compromising the quality of purchased materials. To curb the practice, the company issued the 2002 MMD Policies and Procedures Manual (*2002 Procurement Manual*)[6] for the guidance of its employees and officers in soliciting bid quotations

[5] *Id.* at 13-14.

[6] *Id.* at 150-179.

and proposals from vendors, suppliers and contractors. The 2002 Procurement Manual was duly disseminated and it became effective in January 2002. It was disseminated through seminars.

The 2002 Procurement Manual was replaced by the 2004 Procurement Policies and Procedures Manual (*2004 Procurement Manual*)[7] which was disseminated and which became effective on August 31, 2004. Again, seminars were conducted and a proficiency examination was administered to familiarize the company buyers/procurement officers and the team leaders with the 2004 Procurement Manual. Sario took the proficiency examination on September 28, 2004.

On September 8, 2005, Sario received a Show Cause Notice[8] from the company, advising him that based on an internal audit, he was found to have committed the following violations:

1. Non-compliance with the Minimum Bid/Quotation Requirements[;]

x x x x x x x x x

2. Non-compliance with the Single Tender Justification Requirement[;]

x x x x x x x x x

3. No Evidence of Independent Approval of the PRF[;]

x x x x x x x x x

4. No Evidence of Authorized Recommendation or Approval of the PO[;]

x x x x x x x x x

5. PO not Awarded to the lowest Bidder[; and]

x x x x x x x x x

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[7] *Id.* at 180-229.

[8] *Id.* at 242-245.

6. No TAS Attached[.]

Sario was given ten (10) days, or until September 18, 2005, to explain why no disciplinary action should be taken against him for the violations. He was also notified that an investigation would be conducted on the matter. He was placed on preventive suspension pending the investigation. He submitted his written explanation on September 17, 2005,[9] through his lawyer, Angel H. Gatmaitan.

At the administrative hearing on October 6, 2005, Sario argued that he could not be faulted for not complying with the 2004 Procurement Manual because it was never properly disseminated (rolled out) and neither did he take the proficiency examination on the manual. He admitted, however, that he failed to comply with the procurement procedures laid out in the manual due to his desire to meet the quota imposed by his supervisors.

On October 25, 2005, Sliman sent Sario a letter[10] informing him of the termination of his employment for his failure to comply with the standard operating procedures/instructions; for his serious misconduct or willful disobedience of the lawful orders of the company in connection with his work; and for his gross and habitual neglect of his duties. The company found Sario liable for his failure to comply with the 2002 and 2004 Procurement Manuals, especially his unabated practice of sending Requests for Quotation (*RFQs*) to suppliers who have a history of not responding to requests or of not sending quotes. The practice, the company lamented, resulted in the issuance of purchase orders to the lone bidders.

Sario, on the other hand, argued before the Labor Arbiter that he was a mere rank-and-file employee with no discretion in the procurement of materials; his work was merely recommendatory as it was subject to the approval of his supervisor and other company officers. He pointed out that the show cause notice to him was the first and only communication from

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[9] *Id.* at 438-456.

[10] *Id.* at 457-458.

the company calling his attention to his alleged infractions. He stressed that at any rate, he should have been meted a lighter penalty, such as suspension, considering his length of service with the company, without a derogatory record.

The Compulsory Arbitration Rulings

In a decision dated November 28, 2006,[11] Labor Arbiter Arden S. Anni declared Sario to have been illegally dismissed. Consequently, he ordered: (1) Sario's immediate reinstatement without loss of seniority rights and other privileges; and (2) the company, Sliman and Aprieto, jointly and severally, to pay Sario back wages, moral damages of Two Hundred Thousand Pesos (₱200,000.00), exemplary damages of One Hundred Thousand Pesos (₱100,000.00) and 10% of the total monetary award as attorney's fees. Labor Arbiter Anni absolved Harris from liability.

Labor Arbiter Anni stressed that the 2002 and 2004 Procurement Manuals have no commensurate penalties for any breach of their provisions and that Sario's dismissal was neither due to fraud nor willful breach of the trust reposed on him by his employer. He noted that there was nothing on record to support the company's contention that Sario, as procurement officer, exercised sufficient discretion so as not to be bound by what his superiors required him to do. In any event, Labor Arbiter Anni found Sario's dismissal too harsh a penalty, considering his almost eight years of service, without a derogatory record, with the company.

The respondents appealed to the National Labor Relations Commission (*NLRC*). On June 30, 2009, the NLRC reversed the labor arbiter's ruling[12] and dismissed the complaint for lack of merit. It found that Sario was dismissed on valid grounds and was afforded due process. The labor tribunal was not convinced by Sario's defense that if he indeed violated the company's procurement procedures, the resulting transactions were nevertheless approved by his superiors, thereby negating

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[11] *Id.* at 605-618.

[12] *Id.* at 735-747.

his liability. It emphasized that by the nature of his job, Sario was at the forefront of the company's procurement program and it was incumbent upon him to exercise care in the performance of his duties. He cannot, therefore, shield himself from liability with the argument that his actions bore the approval of his superiors.

Sario moved for reconsideration, but the NLRC denied the motion in a resolution rendered on November 27, 2009.[13] He then sought relief from the CA, through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision

In its decision of March 29, 2011,[14] the CA granted the petition. It set aside the NLRC rulings and reinstated the Labor Arbiter's decision, with modifications. It deleted the award of moral and exemplary damages, and absolved Harris, Sliman and Aprieto from liability in the case. Like the Labor Arbiter, it found the penalty of dismissal meted on Sario too harsh.

The appellate court opined that while Sario appeared to be passing the blame on his superiors, it recognized some merit in his stance. It stressed that Sario's supervisors and managers should have seen his mistakes and corrected them at the earliest opportunity; they should have provided checks and balances to ensure strict compliance with the company's procedures, but they failed in that respect.

The company moved for partial reconsideration, but the CA denied the motion; hence, the present recourse.

The Petition

The company prays that the petition be granted, contending that the CA gravely erred when it reversed the NLRC's decision of June 30, 2009[15] and reinstated the labor arbiter's ruling that Sario was illegally dismissed. It insists, on the contrary, that

[13] *Id.* at 775-776.

[14] *Supra* note 2.

[15] *Supra* note 12.

Sario was validly dismissed for having committed repeated violations of the company's 2002 and 2004 Procurement Manuals (27 times), especially his unabated practice of sending RFQs to non-responding suppliers. The violations, it adds, are indicative of a bigger scheme to compromise the company's bidding process.

The company submits that its 2002 and 2004 Procurement Manuals were intended to eliminate corrupt practices in its MMD and to ensure transparency in its procurement activities. Sario's repeated violations of the 2002 and 2004 Procurement Manuals effectively emasculated their objectives and unduly compromised the interests of the company and those dealing with it. It thus posits that there is sufficient basis to consider Sario's disregard of the 2002 and 2004 Procurement Manuals as a willful disobedience to the company's lawful orders, which is a just cause for his dismissal under Article 282 of the Labor Code.

The company disputes the CA's finding that Sario exercised no discretion in his work and that his actions were, in any event, subject to the approval of his superiors. It points out that Sario's duties involved the procurement of materials at the most economical cost, and ensuring their timely, safe and expeditious delivery; observing the highest ethical standards, and adhering to the company's policies and sound business practice. He was also tasked to identify the vendors/suppliers to be invited, to set bid periods and deadlines for bid submission, to send RFQs, to initiate RFQ confirmation status, and to resolve commercial issues with vendors. All these tasks, the company posits, require the exercise of discretion.

The company insists that Sario cannot be allowed to escape the consequences of his transgressions. It maintains that the alleged shortcomings of Sario's superiors with respect to his violations do not make the violations right. Also, the violations were not a mere mistake; they formed a pattern of a deliberate disregard of the 2002 and 2004 Procurement Manuals as they were committed not just on a single day, but within a period covering January 2004 to May 2005.

Lastly, the company avers that Sario made a false assertion during the administrative investigation when he denied that he took the proficiency examination pertaining to the 2004 Procurement Manual when, in fact, he took the examination in September 2004. This falsehood, the company asserts, compounds the several infractions he had committed.

The Case for Sario

In compliance with the Court's directive,[16] Sario filed his Comment[17]on June 8, 2012, praying for a denial of the petition on the following grounds: (1) the petition raises no genuine question of law, but only questions of fact, in violation of the Rules of Court;[18] and (2) the CA committed no reversible error in its assailed decision as it was supported by more than substantial evidence.

With respect to the procedural issue, Sario contends that the petition abounds with factual issues rather than with any clear and distinct question of law; with the petition's narration of his violations,[19] the Court is being asked to "review the factual issues" already passed upon by the CA. In a Reply[20] dated June 22, 2012, the company denied that the petition raises only questions of fact and not of law.

On the merits of the case, Sario maintains that the CA decision "was not concocted out of thin air"[21] as it was shored up by more than substantial evidence that he was illegally dismissed. He posits that the appellate court committed no error in holding that his dismissal was too harsh a penalty for his mistakes, considering that he was not even reprimanded nor warned of his infractions and, while the company claims that he violated

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[16] *Rollo*, p. 866; Resolution dated September 5, 2011.

[17] *Id.* at 885-898.

[18] Section 1, Rule 45.

[19] *Supra* note 1, at 36-40.

[20] *Rollo*, pp. 902-911.

[21] *Supra* note 17, at 895(3).

the 2002 Procurement Manual, he was punished only after the 2004 Procurement Manual took effect.

The Court's Ruling

The procedural question

Is the petition dismissible because it raises only questions of fact and not of law as Sario claims? **The records indicate otherwise.** The facts are largely not in dispute. From the labor arbiter to the NLRC and then to the CA, the discussions centered on Sario's violations of the company's 2002 and 2004 Procurement Manuals, violations which provided the cause for his dismissal. Sario himself did not deny the violations. As the company argues, the petition focuses on the error the CA committed in the application of the law on the set of violations committed by Sario, which constitutes willful violations of the company's lawful orders.

There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts. "For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them[,]"[22] which we find to be the situation in this case. In any event, even if we were to consider that the petition raises only factual issues, we still find it necessary to review the case, in view of the divergence of the factual findings between the CA and the NLRC.[23] Based on these divergent factual findings, the NLRC found that Sario had been validly dismissed, while the CA declared illegal the termination of his employment.

The merits of the case

We find the petition meritorious.

Under the law, the burden of proving that the termination of a worker's employment was for a valid or authorized cause

[22] *Tamondong v. Court of Appeals*, 486 Phil. 729, 739 (2004).

[23] *Globe Telecom v. Crisologo*, G.R. No. 174644, August 10, 2007, 529 SCRA 811, 817-818.

rests on the employer.[24] In this case, the company was able to prove that Sario's dismissal was for a valid cause. Through his repeated violations of the company's 2002 and 2004 Procurement Manuals, Sario committed a serious misconduct or willful disobedience of the lawful directives or orders of his employer, constituting a just cause for termination of employment.[25]

Sario was not an ordinary rank-and-file employee. He was a procurement officer. While he did not occupy a high position in the company hierarchy, the nature of his work made him, as the company avers, a vital cog in its procurement program. The effectiveness of the program depended in no small measure on the people running it, *i.e.,* from the lowliest employee to the highest official. Sario was one of these people and he was occupying, not a lowly but, a middle position. This position carries with it responsibilities which only he can, and should, answer for.

As the records show, Sario failed to faithfully discharge his duties as procurement officer. These duties[26] placed him at the early but critical stage of the company's procurement process. The very first one in the list of his duties at once suggests the heavy responsibility he had to bear and the sensitiveness of his functions, considering that he had to "[p]erform the entire purchasing process of a Station's set of materials, parts, equipment, and/or project[.]"[27] Flowing from this catch-all statement, Sario's activities consisted of (1) receiving purchase requisition form assignments; (2) identifying the vendors/suppliers to be invited, setting bid periods and deadlines for bid submission, including the RFQ process – coordinating critical issues with end-users and preparing the RFQ package, sending RFQs to vendors and initiating RFQ confirmation status, and resolving commercial issues with vendors; (3) receiving quotes/bids, reviewing tenders and performing tender analysis summary when

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[24] LABOR CODE, Article 277(b).

[25] *Id*., Article 282(a).

[26] *Supra* note 2, pp. 73-74.

[27] *Id.* at 73.

necessary; (4) securing and evaluating justification for single tender transactions, and coordinating price, payment and delivery terms with vendors; (5) preparing purchase orders and checking of approval of purchase orders in accordance with the limits of authority; and (6) coordinating vendor performance evaluation, resolving disputes between end-users and vendors, and recommending appropriate sanctions for infractions committed by the vendors.

Over a span of almost one-and-a-half years, from January 2004 to May 2005 (not two years as the company claims), Sario committed 27 violations of the 2002 and 2004 Procurement Manuals in critical areas of the procurement process, in particular, non-compliance with the minimum bid/quotation requirements, non-compliance with the single tender justification requirement, failure to provide proof of approval of the purchase requisition form, failure to provide proof of authorized recommendation of the purchase order, failure to award purchase order to the lowest bidder, and no tender analysis summary.[28]

We understand the company's serious concerns over Sario's repeated violations of the 2002 and 2004 Procurement Manuals. Indeed, these violations cannot but compromise the integrity of the company's procurement process. A prime concern is "Sario's unabated practice of sending RFQs to non-responding suppliers,"[29] instead of "to other accredited suppliers who could respond to xxx said request[.]"[30] It submits that in so doing, Sario did not comply with the minimum bid/quotation requirements for the purchase orders, not to mention that he also favored certain suppliers over the others. In such a case, it points out, the bidding process becomes a farce; it defeats the real purpose of bidding, which is to secure the best possible price.

Given the critical and sensitive role Sario played in the company's procurement program, we appreciate why the company has employed all legal means to terminate his services.

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[28] *Supra* note 8.

[29] *Supra* note 1, at 53.

[30] *Ibid.*

Sario's continued employment has become inimical to its business interests which rely critically on the effectiveness and integrity of its procurement procedure. We can, therefore, also understand why it had to issue the 2002 and 2004 Procurement Manuals – to ensure that the procedure is not compromised. To be sure, the company has the prerogative to issue the 2002 and 2004 Procurement Manuals.

As the NLRC aptly noted, "the issuance of the 2002 and 2004 Procurement Manuals was a reasonable and valid exercise of management prerogative xxx to curb the rampant practice of some unscrupulous employees to favor some suppliers over the others in the award of Purchase Orders[.]"[31] "Any employee may be dismissed for violation of a reasonable company rule or regulation for the conduct of the latter's business[.]"[32]

Sario's transgressions cannot be mitigated by the supposed approval of his actions by his superiors

Like the labor arbiter, the CA spared Sario from being separated from the service on the ground that the penalty of dismissal is too harsh for him or is disproportionate to his infractions. It faulted the company for not even reprimanding or warning Sario of his mistakes. It also blamed his superiors, who approved his actions, for their failure to detect his mistakes and to correct them at the earliest opportunity.

We disagree. Sario has to account for his own actions. The circumstance that his recommendations were approved by his superiors does not erase the fact that he repeatedly violated the 2002 and 2004 Procurement Manuals. He was well aware of his duties and their parameters, based on the 2002 and 2004 Procurement Manuals. He committed the violations for one-and-a-half years. These repeated violations can only

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[31] *Id.* at 61.

[32] Cesario A. Azucena, Jr., *The Labor Code with Comments and Cases*, Volume II, Sixth Edition, 2007, p. 731, last paragraph, citing *Soco v. Mercantile Corporation of Davao*, Nos. 53364-65, March 16, 1987, 148 SCRA 526.

indicate a willful disobedience to reasonable company rules and regulations.

We thus find no basis for the CA's ruling which, in effect, condoned Sario's grave infractions against the company. To our mind, this is a reversible error.

Based on the facts, the law and jurisprudence, Sario deserves to be dismissed for willful disobedience. In *Gold City Integrated Port Services, Inc. v. NLRC,*[33] the Court stressed that willful disobedience of an employee contemplates the concurrence of at least two requisites: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; and the order violated must have been reasonable, lawful and made known to the employee, and must pertain to the duties which he had been engaged to discharge. We find the two requisites present in this case.

Sario's repeated violations of the company's 2002 and 2004 Procurement Manuals – lawful orders in themselves as they provide the **dos** and, necessarily, the **don'ts** of a procurement officer – constitute willful disobedience. He committed the repeated violations because he knew or was confident that he would not get caught since his actions were being approved, as he claims, by his superiors, evidencing wrongful or perverse intent. While the Constitution urges the moderation of the sanction that may be applied to an employee where a penalty less punitive would suffice, as the Court pronounced in *Marival Trading, Inc. v. NLRC,*[34] cited by the CA, we do not believe that such a moderation is proper in this case. Sario has become unfit to remain in employment. A contrary view would be oppressive to the employer. "**The law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer.**"[35]

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[33] G.R. No. 86000, September 21, 1990, 189 SCRA 811, 816-817.

[34] G.R. No. 169600, June 26, 2007, 525 SCRA 708, 730-731.

[35] *Colgate Palmolive Phils., Inc. v. Hon. Ople,* 246 Phil. 331, 338 (1988).

WHEREFORE, premises considered, the petition is **GRANTED**. The appealed decision and resolution of the Court of Appeals are **SET ASIDE**. The complaint is **DISMISSED** for lack of merit.

SO ORDERED.

Del Castillo, Villarama, Jr.,[*] *Perez,* and *Mendoza,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 199875. November 21, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN ISLA *Y* ROSSELL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXEMPTING CIRCUMSTANCES; IMBECILE OR INSANE PERSON; THE TESTIMONY OR PROOF OF AN ACCUSED'S INSANITY MUST RELATE TO THE TIME IMMEDIATELY PRECEDING OR SIMULTANEOUS WITH THE COMMISSION OF THE OFFENSE WITH WHICH HE IS CHARGED; CASE AT BAR.— Article 12 of the Revised Penal Code *(RPC)* provides for one of the circumstances which will exempt one from criminal liability which is when the perpetrator of the act was an imbecile or insane, unless the latter has acted during a lucid interval. This circumstance, however, is not easily available to an accused as a successful defense. Insanity is the exception rather than the rule in the human condition. Under Article 800 of the Civil

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[*] Designated as Additional Member per Raffle dated November 19, 2012.

[**] Designated as Additional Member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 1359 dated November 13, 2012.

Code, the presumption is that every human is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence. It is in the nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty because of insanity. The testimony or proof of an accused's insanity must, however, relate to the time immediately preceding or simultaneous with the commission of the offense with which he is charged. x x x In the case of *People vs. Rafanan, Jr.*, this Court has held that the defense of insanity may be accepted as an exempting circumstance on the test of cognition, which requires a complete deprivation of intelligence, not only of the will, in committing the criminal act. Thus, when the accused in said case, threatened the victim with death in case she reported her ravishment indicated that he was aware of the reprehensible moral depravity of that assault and that he was not deprived of intelligence. If Isla had become insane after the commission of the crime, such fact does not alter the situation and the Court's ruling is the same. His defense still fails considering that he was not insane during the commission of the acts charged. Any problem regarding his present mental condition should be dealt with administratively.

2. **ID.; ID.; RAPE; WHEN THE STABBING TOOK PLACE AFTER THE CONSUMMATION OF THE RAPE ACT, THE CRIMES ARE SEPARATE CRIMES OF RAPE AND HOMICIDE.—** The second stabbing took place after consummation of the rape act. According to AAA, after her defilement, she noticed the knife bloodied and she tried to wrest it from him. In their struggle, she was stabbed under her lower left breast but she was able to force Isla to drop the knife. At this point, Isla was able to escape through the backdoor. This second stabbing is a separate and distinct offense as it was not a necessary means to commit the rape. It was intended to do away with her life. Thus, it has been written, "Where a girl was raped and then strangled to death, the crimes are the separate crimes of rape and homicide, not complex."

3. **ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; THE ATTACK SHOULD BE MADE SWIFTLY, DELIBERATELY, UNEXPECTEDLY, AND WITHOUT WARNING; NOT ESTABLISHED IN CASE AT BAR.—** For treachery to exist "the offender commits any of the crimes against persons,

employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make." It is important in ascertaining the existence of treachery that it be proven that the attack was made swiftly, deliberately, unexpectedly, and without a warning, thus affording the unsuspecting victim no chance to resist or escape the attack. In the case at bench, Isla's attack was not sudden, swift, deliberate and without warning. He stabbed AAA during the course of the struggle. Thus, the prosecution failed to show that the stabbing was so calculated as not to afford AAA the chance to evade the attack.

4. ID.; ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS; NOT PRESENT IN CASE AT BAR.— [T]he attack was not with evident premeditation. The elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) overt act/acts manifestly indicating that the accused clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of his acts. These circumstances were not obtaining in the case at bench. An examination of the facts would reveal that there was no sufficient time that elapsed for Isla to decide to commit the crime and reflect on its consequences. Moreover, there was no showing that he performed other overt acts to show that he was determined to commit murder. The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment. When Isla stabbed AAA the second time, it was more of a reaction to the possibility of his being disarmed by his victim rather than a well-planned attack to kill her.

5. ID.; ID.; FRUSTRATED HOMICIDE; IMPOSABLE PENALTY.— The crime charged should have been frustrated homicide only. Consequently the penalty should be changed. Under Article 249 of the RPC, the imposable penalty for one found guilty of Homicide is *reclusion temporal*, whose duration is from twelve (12) years and one (1) day to twenty (20) years. Considering that the crime is frustrated, Article 250 in relation to Article 50 of the RPC provides that the penalty next lower in degree of

the penalty prescribed by law for the consummated felony should be imposed. Thus, the penalty should only be *prision mayor*, the duration of which is from six (6) years to twelve (12) years. Considering that there are neither aggravating nor mitigating circumstances, Article 64 of the RPC provides that the penalty should be in its medium period which is eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the minimum term should be within the range of *prision correccional*, the penalty next lower in degree. Hence, for the crime of frustrated homicide, Isla should suffer the indeterminate penalty ranging from four (4) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

6. ID.; CIVIL LIABILITY; WHEN EXEMPLARY, MORAL, AND TEMPERATE DAMAGES SHOULD BE AWARDED.— With respect to the civil aspect, he should also be made to pay AAA the amount of ₱30,000.00 as exemplary damages in addition to the civil indemnity *ex delicto* and moral damages awarded. Said award is in consonance with prevailing jurisprudence on simple rape wherein exemplary damages are awarded in order to set a public example and to protect hapless individuals from sexual molestation. In lieu of the award of ₱10,000.00 as actual damages, an award of temperate damages should be given instead. The Court has consistently held that in order for one to be entitled to actual damages, the claim must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages but there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts. x x x Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss. An award of ₱8,000.00 as temperate damages is, to the Court's mind, just.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the December 17, 2010 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR No. 28761, which affirmed the April 26, 2004 Decision[2] of the Regional Trial Court, Branch 98, Quezon City *(RTC)*, finding the accused guilty beyond reasonable doubt of the crimes of Rape and Frustrated Murder.

On July 25, 1997, two separate Informations for Frustrated Murder and Rape were filed before the *RTC*, docketed as Criminal Case Nos. Q-97-72078 and Q-97-72079, respectively. These informations read:

Criminal Case No. Q-97-72078

The undersigned accuses EDWIN ISLA *Y* ROSSELL of the crime of Frustrated Murder, committed as follows:

That on or about the 21st day of July, 1997, in Quezon City, Philippines, the said accused, with intent to kill, with treachery and with evident premeditation, with abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of AAA[3] by then and there stabbing her with a kitchen knife, hitting her twice below the chest, thereby inflicting upon said AAA serious and mortal wounds, the offender thus performing all the acts of execution which would produce death, which, however, was not produced by reason of cause independent of the will of the perpetrator, that is, the timely medical intervention, to the damage and prejudice of the said offended party.

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[1] *Rollo*, pp. 2-13. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justice Celia C. Librea-Leagogo and Associate Justice Michael P. Elbinias.

[2] CA *rollo*, pp. 281-290. Penned by Judge Evelyn Corpus-Cabochan.

[3] The name of the victim, her personal circumstances and other information which tend to establish or compromise her identity are not disclosed to protect her privacy. Fictitious initials are used instead. (*People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419; *People v. Gardon*, G.R. No. 169872, September 27, 2006, 503 SCRA 757).

CONTRARY TO LAW.[4]

Criminal Case No. Q-97-72079

The undersigned accuses EDWIN ISLA *Y* ROSSELL, of the crime of Rape, committed as follows:

That on or about the 21st day of July, 1997, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously undress her and put himself on top of her, and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW. [5]

Evidence for the Prosecution

During the trial, the prosecution presented three (3) witnesses; namely: complainant AAA; Dr. Ma. Cristina Freyra *(Dr. Freyra)*, the chief of the medico-legal division of the Philippine National Police *(PNP)* Crime Laboratory; and Dr. Reynaldo Perez *(Dr. Perez)* of the East Avenue Medical Center, AAA's attending physician.

According to AAA's account, on July 21, 1997, at around 3:00 o'clock in the afternoon, she was inside her rented house together with her two (2) children, aged 1 ½ years old and 9 months old, respectively. She then noticed that accused Edwin Isla *(Isla)* was standing by the door of her kitchen. He asked her what time her landlady would be arriving and she answered that she had no idea. Thereafter, she opened the door of the kitchen, hoping that passersby would see him inside the house. After fifteen (15) minutes, she was startled when he suddenly poked a knife on her neck and pulled her inside the bedroom. By this time, she noticed that she had already closed the window and the door of the living room. She pleaded and begged for mercy but to no avail. She was warned not to shout or resist otherwise she would be stabbed.

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[4] CA *rollo*, p. 6.

[5] *Id.* at 8.

Inside the bedroom, she was made to lie down on the floor because there was no bed. Isla placed himself on top of her and then he removed her upper clothing. He raised her bra, exposing her breasts and then kissed them. Eventually, he made her spread her legs and had carnal knowledge with her. While he was committing the dastardly act, she noticed a knife pointed at her. She also informed the trial court that during the whole ordeal, her children were present and witnessed everything.

When Isla stood up after raping her, she noticed that the knife he was holding was already bloodstained. At this point, she found out that she was stabbed with the knife. She tried to take hold of the knife while shouting for help. In response, Isla struck her the second time, this time, under her lower left breast. She also sustained a wound on her palm while trying to disarm him. Then the knife fell to the floor. It was at this moment that she was able to get hold of it and she threw it outside through a broken window in the room. Thereafter, Isla scampered out of the house through the backdoor.

In a little while, a neighbor came knocking at the door and was able to see AAA's condition. She was taken to the East Avenue Medical Center *(EAMC)* for medical attention and was confined there for five (5) days.

At the hospital, Dr. Freyra conducted an examination on AAA upon the request of the station commander of the PNP Lagro Police Station. Based on her findings, AAA sustained eleven (11) body injuries, two (2) of which were stab wounds, six (6) incised wounds and two (2) contusions. The stab wounds required medical attendance of not less than 30 days. An examination of AAA's sexual organ showed congestions and abrasion in the labia minora and yielded negative result on the presence of spermatozoa.

AAA's attending physician, Dr. Perez, on the other hand, testified that she had multiple stab wounds on the left side of the chest. Her chest x-ray result disclosed an accumulation of blood in the thorax which required him to conduct a procedure to drain the blood. He concluded that the stab wounds were

severe and fatal which could have led to AAA's death had it not been for the timely medical attendance.

Evidence for the Defense

For the defense, accused Edwin Isla was presented together with two (2) psychiatric doctors who examined him.

Isla never denied that he raped AAA on July 21, 1997. Invoking the defense of insanity, he testified that before the incident, he and AAA had an illicit relationship for about two months until they broke up. He had to use a knife to be able to have sexual intercourse with her. It was the first time that he and AAA had sex. After raping her, he admitted stabbing AAA twice, first on her left breast and then on her lower right breast "for reason he cannot understand."[6] He also punched her several times when she attempted to grab the knife from him.

As to Isla's claim of insanity, Dr. Juan Villacorta *(Dr. Villacorta)* and Dr. Mary Gomez *(Dr. Gomez*) of the National Center for Mental Health *(NCMH)* were presented as qualified expert witnesses.

Dr. Villacorta testified that Isla was suffering from a major depressive disorder with psychotic features; that he manifested psychosis on account of his hallucinations, poor impulse control, poor judgment, and low frustration tolerance; and that he exhibited such behavioral pattern immediately prior to being jailed. Dr. Villacorta, however, could not say with definite certainty whether or not Isla was suffering from such mental disorder on July 21, 1997 as there was no examination conducted on Isla on the said date.[7]

To corroborate Dr. Villacorta's findings, Dr. Gomez was presented. After a thorough interview and psychiatric testing on Isla, she likewise observed that *Isla* was suffering from a major depressive disorder which impaired his mental faculties. She said that his psychosis could have been existing prior to or about July 21, 1997 but again, like Dr. Villacorta, she opined

[6] *Id.* at 286.

[7] *Rollo*, p. 8

that such finding could not be conclusive because of lack of information from other informants during that time.[8]

Ruling of the RTC

On April 26, 2004, the *RTC* convicted Isla of the crimes of rape and frustrated murder. It did not give credence to his defense of insanity because it noted that Isla committed the crimes charged during a lucid interval. He knew that what he was doing was unlawful. There was no indication that he was deprived of reason or discernment and freedom of will when he committed all the acts attending the commission of the crime. The RTC gave no weight to the assertion of the defense that, based on the evaluations made by the doctors from NCMH, Isla was suffering from psychosis since 1992. It was of the impression that there was nothing in the testimony of these expert witnesses that Isla was suffering from psychosis long before the incident.[9] On this note, his condition could not be equated with imbecility; hence, he could not be exempt from criminal liability. Thus, the RTC ruled in this wise:

WHEREFORE, premises considered, judgment in these cases is hereby rendered as follows:

1. In Criminal Case No. Q-97-72079, the Court finds accused Edwin Isla *y* Rosell GUILTY beyond reasonable doubt of the crime of RAPE as defined and penalized under Art. 335 of the Revised Penal Code, and hereby SENTENCES him to suffer the penalty of *reclusion perpetua* and to indemnify complainant AAA the amount of Php50,000.00 as civil indemnity *ex delicto*, the amount of Php50,000.00 as moral damages, and to pay the cause of suit.

2. In Criminal Case No. Q-97-72078, the Court finds accused Edwin Isla *y* Rosell GUILTY beyond reasonable doubt of the crime of Frustrated Murder and hereby SENTENCES him to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* as minimum to seventeen (17) years and four (4) months of *reclusion temporal* as maximum,

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[8] *Id.* at 9.

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

and to indemnify complainant the sum of ₱10,000.00 for actual damages, and to pay the cause of suit.

SO ORDERED.[10]

Ruling of the CA

Aggrieved, Isla interposed an appeal with the CA. On December 17, 2010, the CA denied the appeal and affirmed the RTC decision which found Isla to have acted with discernment when he committed the crimes. According to the CA, Isla exactly knew that what he was doing was evil so much so that he had to employ cunning means, by discreetly closing the windows and the door of the house and by resorting to threats and violence, to ensure the consummation of his dastardly deed. The fact that he scampered away after AAA was able to take the knife from him, would only show that he fully understood that he committed a crime for which he could be held liable.

The CA did not give weight to the expert testimonies given by the two psychiatric doctors either. Since the mental examination on Isla was taken four to six years after the commission of the crimes, the doctors could not say with definite certainty that he was suffering from psychosis immediately before or simultaneous to the commission of the crimes which was very vital for said defense to prosper. Thus, the CA affirmed the RTC decision.[11]

Hence, the present appeal.

Both the prosecution and the defense opted not to file any supplemental briefs and manifested that they were adopting their arguments in their respective briefs filed before the CA. In his Appellant's Brief, the defense presented the following:

I.

THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING THE ACCUSED–APPELLANT NOTWITHSTANDING THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

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[10] *Id.* at 69-70.

[11] *Rollo*, p. 12.

II.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS INSANE AT THE TIME OF THE COMMISSION OF THE OFFENSE.

At the outset, this Court notes that there is no more question as to whether or not AAA was raped by Isla. The latter never denied this fact which can be gleaned from his direct testimony, to wit:

> Atty. Erasmo (defense counsel)
>
> Q: So when you left at 4:00, where did you proceed?
> A: To my aunt at Balintawak.
>
> Q: How about AAA, what happened to her if you know?
> A: she was raped and stabbed, sir.
>
> **Q: Who raped and stabbed AAA, if you know?**
> A: **Me, sir**.
>
> Q: What time did this happen?
> A: 3:00 o'clock, sir.
>
> **Q: Now, how did you rape AAA?**
> **A: I went inside their house**.[12]
>
> (Emphases supplied)

That being so, what is left for this jurisdiction to resolve is whether or not Isla's claim of insanity is creditable so as to exculpate him of the crimes he admittedly committed.

This Court is not convinced with Isla's defense.

Article 12 of the Revised Penal Code *(RPC)* provides for one of the circumstances which will exempt one from criminal liability which is when the perpetrator of the act was an imbecile or insane, unless the latter has acted during a lucid interval. This circumstance, however, is not easily available to an accused as a successful defense. Insanity is the exception rather than the rule in the human condition. Under Article 800 of the Civil

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[12] TSN, June 5, 2001, pp. 4-5.

Code, the presumption is that every human is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence. It is in the nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty because of insanity. The testimony or proof of an accused's insanity must, however, relate to the time immediately preceding or simultaneous with the commission of the offense with which he is charged.[13]

In the case at bench, the defense failed to overcome the presumption of sanity. The respective testimonies of Dr. Villacorta and Dr. Gomez of the NCMH, as qualified expert witnesses, failed to support its claim of insanity. As observed by the CA, the mental examination on Isla taken four to six years after the incident happened in July 1997, in effect, showed that it could not be concluded with certainty that he was suffering from such psychosis immediately before or simultaneous to the commission of the crimes. The expert witnesses themselves opined that their findings were not conclusive as to whether Isla was insane on that fateful day of July 21, 1997, as no examination was made on said day or for lack of information from other informants during that time.[14]

This Court also agrees with the observation of the RTC as affirmed by the CA that Isla acted with discernment as can be deduced from his acts before, during and after the commission of the crimes with which he was charged. The RTC wrote:

> The overt acts committed by the accused are attributed to a criminal mind, not a lunatic. There is no indication whatsoever that he was completely deprived of reason or discernment and freedom of will when he stood for a while by the door of complainant's house, then entered it, toyed with a disconnected telephone set, and cunningly poked a knife at complainant's neck and dragged her inside the room where he raped her. The fact that he first discreetly closed the door and the window before he approached and poked a knife at

[13] *People v. Tibon*, G.R. No. 188320, June 29, 2010, 622 SCRA 510, 519.

[14] *Rollo*, pp. 10-11.

complainant, then, as he laid on top of her, ordered her to undress, kissed her breast, separated apart her legs with his own legs, and satisfied his lust, all the while holding a knife with his right hand poked at complainant's body, are calculated means to ensure consummation of his lewd design. These are by no means the workings of an imbecile, but by one engulfed by lust.[15]

In the case of *People vs. Rafanan, Jr.,* this Court has held that the defense of insanity may be accepted as an exempting circumstance on the test of cognition, which requires a complete deprivation of intelligence, not only of the will, in committing the criminal act. Thus, when the accused in said case, threatened the victim with death in case she reported her ravishment indicated that he was aware of the reprehensible moral depravity of that assault and that he was not deprived of intelligence.[16]

If Isla had become insane after the commission of the crime, such fact does not alter the situation and the Court's ruling is the same. His defense still fails considering that he was not insane during the commission of the acts charged. Any problem regarding his present mental condition should be dealt with administratively.

With respect to the stabbings, it appears that Isla committed two acts. The first was while he was ravishing AAA. The Court considers this and the rape as one continuous act, the stabbing being necessary, as far as he was concerned, for the successful perpetration of the crime. When he testified, Isla claimed that he had to use the knife so he could have sexual intercourse with her.

The second stabbing took place after consummation of the rape act. According to AAA, after her defilement, she noticed the knife bloodied and she tried to wrest it from him. In their struggle, she was stabbed under her lower left breast but she was able to force Isla to drop the knife. At this point, Isla was able to escape through the backdoor. This second stabbing is

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[15] CA *rollo,* pp. 67-68.

[16] *People v. Rafanan, Jr.,* G.R. No. 54135, November 21, 1991, 204 SCRA 65, 74.

a separate and distinct offense as it was not a necessary means to commit the rape. It was intended to do away with her life. Thus, it has been written, "Where a girl was raped and then strangled to death, the crimes are the separate crimes of rape and homicide, not complex."[17] This was also the ruling in *People v. Dawandawan*,[18] where it was written:

> The physical injuries which could have caused the victim's death were not the result of the rape committed; neither was the slashing a necessary means for committing the rape. Independently of the slashing of the victim's neck and the stabbing, the accused was able to consummate the rape. The physical injuries were inflicted after the rape and were not a necessary means to commit the same. Hence, the crimes committed are the two separate crimes of Rape and Frustrated Homicide.

The Court, however, finds itself unable to agree that the second crime committed was frustrated murder. In the information, it was alleged that the stabbing was committed with treachery, evident premeditation and abuse of superior strength. There is, however, nothing in the records of the case that would show the presence of the said qualifying circumstances.

Evidently, there was no treachery. For treachery to exist "the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make." It is important in ascertaining the existence of treachery that it be proven that the attack was made swiftly, deliberately, unexpectedly, and without a warning, thus affording the unsuspecting victim no chance to resist or escape the attack.[19] In the case at bench, Isla's attack was not sudden, swift, deliberate and without warning. He stabbed AAA during the

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[17] Aquino, *Revised Penal Code*, 1987 Ed., p. 636, citing jurisprudence.

[18] 263 Phil. 161, 170 (1990).

[19] *People v. Gabrino*, G.R. No. 189981, March 9, 2011, 645 SCRA 187, 196.

course of the struggle. Thus, the prosecution failed to show that the stabbing was so calculated as not to afford AAA the chance to evade the attack.

Moreover, the attack was not with evident premeditation. The elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) overt act/acts manifestly indicating that the accused clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of his acts. These circumstances were not obtaining in the case at bench. An examination of the facts would reveal that there was no sufficient time that elapsed for Isla to decide to commit the crime and reflect on its consequences. Moreover, there was no showing that he performed other overt acts to show that he was determined to commit murder. The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment.[20] When Isla stabbed AAA the second time, it was more of a reaction to the possibility of his being disarmed by his victim rather than a well-planned attack to kill her.

Neither was there an abuse of superior strength. There was no showing that Isla took advantage of his superior strength to consummate the crime.

For said reasons, the crime charged should have been frustrated homicide only. Consequently the penalty should be changed.

Under Article 249 of the RPC, the imposable penalty for one found guilty of Homicide is *reclusion temporal*, whose duration is from twelve (12) years and one (1) day to twenty (20) years. Considering that the crime is frustrated, Article 250 in relation to Article 50 of the RPC provides that the penalty next lower in degree of the penalty prescribed by law for the consummated felony should be imposed. Thus, the penalty should

[20] *People v. Garcia*, 467 Phil. 1102, 1107 (2004).

only be *prision mayor,* the duration of which is from six (6) years to twelve (12) years.

Considering that there are neither aggravating nor mitigating circumstances, Article 64 of the RPC provides that the penalty should be in its medium period which is eight (8) years and one (1) day to ten (10) years.

Applying the Indeterminate Sentence Law, the minimum term should be within the range of *prision correccional*, the penalty next lower in degree. Hence, for the crime of frustrated homicide, Isla should suffer the indeterminate penalty ranging from four (4) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

With respect to the civil aspect, he should also be made to pay AAA the amount of ₱30,000.00 as exemplary damages in addition to the civil indemnity *ex delicto* and moral damages awarded. Said award is in consonance with prevailing jurisprudence on simple rape wherein exemplary damages are awarded in order to set a public example and to protect hapless individuals from sexual molestation.[21]

In lieu of the award of ₱10,000.00 as actual damages, an award of temperate damages should be given instead. The Court has consistently held that in order for one to be entitled to actual damages, the claim must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages but there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.[22]

In this case, AAA failed to provide receipts to substantiate her claim. This Court, however, is not unmindful of the fact that AAA was hospitalized for about five (5) days. Considering that the expenses she incurred cannot be proved with certainty, an award of temperate damages is but proper. Temperate

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[21] *People v. Bayrante,* G.R. No. 188978, June 13, 2012.

[22] *PHILTRANCO v. Paras*, G.R. No. 161909, April 25, 2012.

damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss.[23] An award of ₱8,000.00 as temperate damages is, to the Court's mind, just.

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the December 17, 2010 Decision of the Court of Appeals in CA-G.R. No. 28761 as follows:

1. In Criminal Case No. Q-97-72079, finding the accused Edwin Isla *y* Rossell guilty beyond reasonable doubt of the crime of Rape, the Court hereby sentences him to suffer the penalty of *reclusion perpetua;* to pay AAA ₱50,000.00 as civil indemnity *ex delicto*, and ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages; and to pay the cost of suit.

2. In Criminal Case No. Q-97-72078, finding the accused Edwin Isla *y* Rossell guilty beyond reasonable doubt of the crime of Frustrated Homicide, the Court hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from four (4) years *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum; to pay AAA the sum of ₱8,000.00 as temperate damages; and to pay the cost of suit.

SO ORDERED.

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

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[23] *Id.*

[*] Designated acting member, per Special Order No. 1352, dated November 7, 2012.

[**] Designated acting member, per Special Order No. 1229, dated August 28, 2012.

SECOND DIVISION

[G.R. No. 200868. November 21, 2012]

ANITA A. LEDDA, *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; INTEREST; PAYMENT OF THE INTEREST AT THE RATE OF 12% PER ANNUM FOR THE CREDIT CARD OBLIGATION, PROPER; RATIONALE.— Since there is no dispute that Ledda received, accepted and used the BPI credit card issued to her and that she defaulted in the payment of the total amount arising from the use of such credit card, Ledda is liable to pay BPI ₱322,138.58 representing the principal amount of her unpaid credit card obligation. Consistent with *Alcaraz*, Ledda must also pay interest on the total unpaid credit card amount at the rate of 12% per annum since her credit card obligation consists of a loan or forbearance of money. x x x In accordance with *Eastern Shipping Lines, Inc*., the 12% legal interest shall be reckoned from the date BPI extrajudicially demanded from Ledda the payment of her overdue credit card obligation. Thus, the 12% legal interest shall be computed from 2 October 2007, when Ledda, through her niece Sally D. Ganceña, received BPI's letter dated 26 September 2007 demanding the payment of the alleged overdue amount of ₱548,143.73.

2. ID.; ID.; ATTORNEY'S FEES; THE FACTUAL, LEGAL OR EQUITABLE JUSTIFICATION FOR THE AWARD THEREOF MUST BE STATED IN THE DISPOSITIVE PORTION OF THE DECISION; NOT PRESENT IN CASE AT BAR.— Settled is the rule that the trial court must state the factual, legal or equitable justification for the award of attorney's fees. The matter of attorney's fees cannot be stated only in the dispositive portion of the decision. The body of the court's decision must state the reasons for the award of attorney's fees. x x x In this case, the trial court failed to state in the body of its decision the factual or legal reasons for the award of attorney's fees in favor of BPI. Therefore, the same must be deleted.

APPEARANCES OF COUNSEL

Quimosing Tiu Law Office for petitioner.
Dabu and Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 15 July 2011 Decision[2] and 9 February 2012 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 93747. The Court of Appeals partially granted the appeal filed by petitioner Anita A. Ledda (Ledda) and modified the 4 June 2009 Decision[4] of the Regional Trial Court, Makati City, Branch 61. The Court of Appeals denied the motion for reconsideration.

The Facts

This case arose from a collection suit filed by respondent Bank of the Philippine Islands (BPI) against Ledda for the latter's unpaid credit card obligation.

BPI, through its credit card system, extends credit accommodations to its clientele for the purchase of goods and availment of various services from accredited merchants, as well as to secure cash advances from authorized bank branches or through automated teller machines.

As one of BPI's valued clients, Ledda was issued a pre-approved BPI credit card under Customer Account Number 020100-9-00-3041167. The BPI Credit Card Package, which

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 21-29. Penned by Associate Justice Rosmari D. Carandang with Associate Justices Ramon R. Garcia and Samuel H. Gaerlan, concurring.

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

[4] *Id.* at 50-54. Penned by Presiding Judge J. Cedrick O. Ruiz.

included the Terms and Conditions governing the use of the credit card, was delivered at Ledda's residence on 1 July 2005. Thereafter, Ledda used the credit card for various purchases of goods and services and cash advances.

Ledda defaulted in the payment of her credit card obligation, which BPI claimed in their complaint amounted to ₱548,143.73 per Statement of Account dated 9 September 2007.[5] Consequently, BPI sent letters[6] to Ledda demanding the payment of such amount, representing the principal obligation with 3.25% finance charge and 6% late payment charge per month.

Despite BPI's repeated demands, Ledda failed to pay her credit card obligation constraining BPI to file an action for collection of sum of money with the Regional Trial Court, Makati City, Branch 61. The trial court declared Ledda in default for failing to file Answer within the prescribed period, despite receipt of the complaint and summons. Upon Ledda's motion for reconsideration, the trial court lifted the default order and admitted Ledda's Answer *Ad Cautelam*.

While she filed a Pre-Trial Brief, Ledda and her counsel failed to appear during the continuation of the Pre-Trial. Hence, the trial court allowed BPI to present its evidence *ex-parte*.

In its Decision of 4 June 2009, the trial court ruled in favor of BPI, thus:

WHEREFORE, premises duly considered, the instant "Complaint" of herein plaintiff Bank of the Philippine Islands (BPI) is hereby given **DUE COURSE/GRANTED.**

Accordingly, judgment is hereby rendered against herein defendant **ANITA A. LEDDA** and in favor of the plaintiff.

Ensuably, the herein defendant **ANITA A. LEDDA** is hereby ordered to pay the herein plaintiff Bank of the Philippine Islands (BPI) the following sums, to wit:

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[5] Records, pp. 8-9.

[6] *Id.* at 47-48. In the letter dated 17 August 2007, BPI's counsel demanded the payment of ₱502,431.69, allegedly the amount due from Ledda as of the period 9 August 2007 to 9 September 2007.

1. Five Hundred Forty-Eight Thousand One Hundred Forty-Three Pesos and Seventy-Three Centavos (₱548,143.73) as and for actual damages, with finance and late-payment charges at the rate of three and one-fourth percent (3.25%) and six percent (6%) per month, respectively, to be counted from 19 October 2007 until the amount is fully paid;

2. Attorney's fees equivalent to twenty-five percent (25%) of the total obligation due and demandable, exclusive of appearance fee for every court hearing, and

3. Costs of suit.

SO ORDERED.[7] (Emphasis in the original)

The Ruling of the Court of Appeals

The Court of Appeals rejected Ledda's argument that the document containing the Terms and Conditions governing the use of the BPI credit card is an actionable document contemplated in Section 7, Rule 8 of the 1997 Rules of Civil Procedure. The Court of Appeals held that BPI's cause of action is based on "Ledda's availment of the bank's credit facilities through the use of her credit/plastic cards, coupled with her refusal to pay BPI's outstanding credit for the cost of the goods, services and cash advances despite lawful demands."

Citing *Macalinao v. Bank of the Philippine Islands*,[8] the Court of Appeals held that the interest rates and penalty charges imposed by BPI for Ledda's non-payment of her credit card obligation, totalling 9.25% per month or 111% per annum, are exorbitant and unconscionable. Accordingly, the Court of Appeals reduced the monthly finance charge to 1% and the late payment charge to 1%, or a total of 2% per month or 24% per annum.

The Court of Appeals recomputed Ledda's total credit card obligation by deducting ₱226,000.15, representing interests and charges, from ₱548,143.73, leaving a difference of ₱322,138.58 as the principal amount, on which the reduced interest rates should be imposed.

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[7] *Rollo*, p. 54.

[8] G.R. No. 175490, 17 September 2009, 600 SCRA 67.

The Court of Appeals awarded BPI ₱10,000 attorney's fees, pursuant to the ruling in *Macalinao*.

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, premises considered, the appeal is **PARTLY GRANTED**, and accordingly the herein assailed June 4, 2009 Decision of the trial court is hereby **MODIFIED**, ordering defendant-appellant Anita Ledda to pay plaintiff-appellee BPI the amount of Php322,138.58, with 1% monthly finance charges from date of availment of the plaintiff's credit facilities, and penalty charge at 1% per month of the amount due from the date the amount becomes due and payable, until full payment. The award of attorney's fees is fixed at Php10,000.00.

SO ORDERED.[9] (Emphasis in the original)

The Issues

Ledda raises the following issues:

1. Whether the Court of Appeals erred in holding that the document containing the Terms and Conditions governing the issuance and use of the credit card is not an actionable document contemplated in Section 7, Rule 8 of the 1997 Rules of Civil Procedure.
2. Whether the Court of Appeals erred in applying *Macalinao v. Bank of the Philippine Islands* instead of *Alcaraz v. Court of Appeals*[10] as regards the imposition of interest and penalty charges on the credit card obligation.
3. Whether the Court of Appeals erred in awarding attorney's fees in favor of BPI.

The Ruling of the Court

The petition is partially meritorious.

I.
Whether the document containing the Terms and Conditions is an actionable document.

[9] *Rollo*, p. 28.

[10] 529 Phil. 77 (2006).

Section 7, Rule 8 of the 1997 Rules of Civil Procedure provides:

> SEC. 7. *Action or defense based on document*. — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

Clearly, the above provision applies when the action is based on a written instrument or document.

In this case, the complaint is an action for collection of sum of money arising from Ledda's default in her credit card obligation with BPI. BPI's cause of action is primarily based on Ledda's (1) acceptance of the BPI credit card, (2) usage of the BPI credit card to purchase goods, avail services and secure cash advances, and (3) non-payment of the amount due for such credit card transactions, despite demands.[11] In other words,

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[11] *Rollo*, pp. 44-45. The pertinent portions of the Complaint are as follows:

> Paragraph 5 states:
>
> 5. Defendant Anita was issued a BPI Credit Card under customer No. 020100 900 3041167, upon her acceptance of the terms and conditions governing the issuance and use of the BPI Credit Card.
>
> Paragraph 7 states:
>
> 7. Defendant availed herself of such credit accommodation by using the said BPI card.
>
> Paragraph 8 states:
>
> 8. Through the use of her aforesaid credit card, defendant incurred credit charges, with Total Outstanding Balance (TOB) of ₱548,143.73 per Statement of Account (SOA) dated 09 September 2007, x x x.
>
> Paragraph 10 states:
>
> 10.The plaintiff made several verbal and written demands on the defendant for the payment of her credit availments through the use of the subject credit card, by sending the defendant demand letters and also the pertinent statements of account showing the amount owed and the date of the required payment is due from her Notwithstanding the defendant's receipt of these demands, she unjustifiably refused and failed,

BPI's cause of action is not based only on the document containing the Terms and Conditions accompanying the issuance of the BPI credit card in favor of Ledda. Therefore, the document containing the Terms and Conditions governing the use of the BPI credit card is not an actionable document contemplated in Section 7, Rule 8 of the 1997 Rules of Civil Procedure. As such, it is not required by the Rules to be set forth in and attached to the complaint.

At any rate, BPI has sufficiently established a cause of action against Ledda, who admits having received the BPI credit card, subsequently used the credit card, and failed to pay her obligation arising from the use of such credit card.[12]

II.
Whether *Alcaraz v. Court of Appeals*, instead of *Macalinao v. BPI*, is applicable.

Ledda contends that the case of *Alcaraz v. Court of Appeals*,[13] instead of *Macalinao v. Bank of the Philippine Islands*[14] which the Court of Appeals invoked, is applicable in the computation of the interest rate on the unpaid credit card obligation. Ledda claims that similar to Alcaraz, she was a "pre-screened" client who did not sign any credit card application form or terms and conditions prior to the issuance of the credit card. Like Alcaraz, Ledda asserts that the provisions of the Terms and Conditions, particularly on the interests, penalties and other charges for non-payment of any outstanding obligation, are not binding on her as such Terms and Conditions were never shown to her nor did she sign it.

We agree with Ledda. The ruling in *Alcaraz v. Court of Appeals*[15] applies squarely to the present case. In *Alcaraz*,

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as she unjustifiably continues to refuse and fail to pay her plain, just, valid, outstanding and overdue obligation to the plaintiff.

[12] *Id.* at 4. Paragraphs 6 and 8 of the Petition.

[13] *Supra* note 10.

[14] *Supra* note 8.

[15] *Supra* note 10.

petitioner there, as a pre-screened client of Equitable Credit Card Network, Inc., did not submit or sign any application form or document before the issuance of the credit card. There is no evidence that petitioner Alcaraz was shown a copy of the terms and conditions before or after the issuance of the credit card in his name, much less that he has given his consent thereto.

In this case, BPI issued a pre-approved credit card to Ledda who, like Alcaraz, did not sign any credit card application form prior to the issuance of the credit card. Like the credit card issuer in *Alcaraz*, BPI, which has the burden to prove its affirmative allegations, failed to establish Ledda's agreement with the Terms and Conditions governing the use of the credit card. It must be noted that BPI did not present as evidence the Terms and Conditions which Ledda allegedly received and accepted.[16] Clearly, BPI failed to prove Ledda's conformity and acceptance of the stipulations contained in the Terms and Conditions. Therefore, as the Court held in *Alcaraz*, the Terms and Conditions do not bind petitioner (Ledda in this case) "without a clear showing that x x x petitioner was aware of and consented to the provisions of [such] document."[17]

On the other hand, *Macalinao v. Bank of the Philippine Islands*,[18] which the Court of Appeals cited, involves a different set of facts. There, petitioner Macalinao did not challenge the existence of the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card and her consent to its provisions, including the imposition of interests and other charges on her unpaid BPI credit card obligation. Macalinao simply questioned the legality of the stipulated interest rate and penalty charge, claiming that such charges are iniquitous. In fact, one of Macalinao's assigned errors before this Court reads: "The reduction of interest rate, from 9.25% to 2%, should be upheld since the **stipulated rate of interest** was unconscionable and iniquitous, and thus illegal."[19] Therefore, there is evidence that Macalinao was fully aware of the stipulations contained in the

[16] See BPI's Formal Offer of Evidence, records, pp. 197-199.

[17] *Alcaraz v. Court of Appeals*, *supra* note 10 at 88.

[18] *Supra* note 8.

[19] *Supra* note 8 at 75.

Terms and Conditions Governing the Issuance and Use of the Credit Card, unlike in this case where there is no evidence that Ledda was aware of or consented to the Terms and Conditions for the use of the credit card.

Since there is no dispute that Ledda received, accepted and used the BPI credit card issued to her and that she defaulted in the payment of the total amount arising from the use of such credit card, Ledda is liable to pay BPI ₱322,138.58 representing the principal amount of her unpaid credit card obligation.[20]

Consistent with *Alcaraz,* Ledda must also pay interest on the total unpaid credit card amount at the rate of 12% per annum since her credit card obligation consists of a loan or forbearance of money.[21] In *Eastern Shipping Lines, Inc. v. Court of Appeals,*[22] the Court explained:

> 1. When an obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

We reject Ledda's contention that, since there was no written agreement to pay a higher interest rate, the interest rate should only be 6%. Ledda erroneously invokes Article 2209 of the

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[20] Relevantly, Ledda states in paragraph 28 of her petition that: "Assuming, *arguendo*, that respondent was able to establish a cause of action against petitioner, the same will only be limited to the principal obligation of ₱322,138.58. Given the illegality of the finance charges unilaterally imposed by respondent in the amount of ₱226,005.15 should be deleted and deducted from the ₱548,143.73, leaving an unpaid principal balance of only ₱322,138.58 as of September 2007." (*Rollo*, p. 15)

[21] *Alcaraz*, *supra* note 10 at 88, citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95.

[22] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95.

Civil Code.[23] Article 2209 refers to indemnity for damages and not interest on loan or forbearance of money, which is the case here. In *Sunga-Chan v. Court of Appeals*,[24] the Court held:

> *Eastern Shipping Lines, Inc.* synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: **The 12% per annum rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the 6% per annum under Art. 2209 of the Civil Code applies "when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general**," with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid." In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest. (Emphasis supplied)

In accordance with *Eastern Shipping Lines, Inc.*, the 12% legal interest shall be reckoned from the date BPI extrajudicially demanded from Ledda the payment of her overdue credit card obligation. Thus, the 12% legal interest shall be computed from 2 October 2007, when Ledda, through her niece Sally D. Ganceña,[25] received BPI's letter[26] dated 26 September 2007 demanding the payment of the alleged overdue amount of ₱548,143.73.

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[23] Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, **the indemnity for damages**, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum. (Emphasis supplied)

[24] G.R. No. 164401, 25 June 2008, 555 SCRA 275, 288.

[25] *Rollo*, p. 74.

[26] Sent by registered mail.

III.
Whether the award of attorney's fees is proper.

Ledda assails the award of attorney's fees in favor of BPI on the grounds of (1) erroneous reliance by the Court of Appeals on the case of *Macalinao* and (2) failure by the trial court to state the reasons for the award of attorney's fees.

Settled is the rule that the trial court must state the factual, legal or equitable justification for the award of attorney's fees.[27] The matter of attorney's fees cannot be stated only in the dispositive portion of the decision.[28] The body of the court's decision must state the reasons for the award of attorney's fees.[29] In *Frias v. San Diego-Sison*,[30] the Court held:

> Article 2208 of the New Civil Code enumerates the instances where such may be awarded and, in all cases, it must be reasonable, just and equitable if the same were to be granted. Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the general rule. As such, it is necessary for the trial court to make findings of facts and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. They must be clearly explained and justified by the trial court in the body of its decision. On appeal, the CA is precluded from supplementing the bases for awarding attorney's fees when the trial court failed to discuss in its Decision the reasons for awarding the same. Consequently, the award of attorney's fees should be deleted.

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[27] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 123238, 22 September 2008, 566 SCRA 124, 137; *Tomimbang v. Tomimbang*, G.R. No. 165116, 4 August 2009, 595 SCRA 135, 146, citing *Delos Santos v. Papa*, G.R. No. 154427, 8 May 2009, 587 SCRA 385; *Siga-an v. Villanueva*, G.R. No. 173227, 20 January 2009, 576 SCRA 696.

[28] *Buñing v. Santos*, 533 Phil. 610, 617 (2006); *Serrano v. Spouses Gutierrez*, 537 Phil. 187, 198 (2006), citing *Legaspi v. Spouses Ong*, 498 Phil. 167 (2005).

[29] *Buñing v. Santos*, 533 Phil. 610, 617 (2006).

[30] G.R. No. 155223, 3 April 2007, 520 SCRA 244, 259-260.

In this case, the trial court failed to state in the body of its decision the factual or legal reasons for the award of attorney's fees in favor of BPI. Therefore, the same must be deleted.

WHEREFORE, we **GRANT** the petition **IN PART.** Petitioner Anita A. Ledda is **ORDERED** to pay respondent Bank of the Philippine Islands the amount of ₱322,138.58, representing her unpaid credit card obligation, with interest thereon at the rate of 12% per annum to be computed from 2 October 2007, until full payment thereof. The award of attorney's fees is **DELETED** for lack of basis.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. P-12-3097. November 26, 2012]
(Formerly OCA IPI No. 09-3311-P)

VICSAL DEVELOPMENT CORPORATION, *complainant, vs.* **ATTY. JENNIFER H. DELA CRUZ-BUENDIA, in her capacity as *Ex-Officio* Sheriff of the Office of the Clerk of Court — Regional Trial Court of Manila; and Messrs. NATHANIEL F. ABAYA, LUIS A. ALINA, LORELEX B. ILAGAN and MARIO P. VILLANUEVA, in their capacities as Sheriffs IV of the Office of the Clerk of Court — Regional Trial Court of Manila,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; DUTIES; THE SHERIFF HAS NO

DISCRETION ON THE MANNER OF IMPLEMENTING THE WRIT OF EXECUTION.— We state at the outset that the highest standard of professionalism in the performance of judicial tasks is demanded from every court personnel. The Court expects every court personnel to perform his/her duties promptly, with great care and diligence, having in mind the important role he/she plays in the administration of justice. x x x The procedure in enforcing a money judgment is found in Section 9, Rule 39 of the Rules of Court: x x x Under this rule, the duties of a sheriff are: (1) to first make a demand from the obligor for the immediate payment of the full amount stated in the writ of execution and of all lawful fees; (2) to receive payment in the form of cash, certified bank check payable to the obligee, or any other form of payment acceptable to the latter; (3) to levy upon the properties of the obligor, not exempt from execution, if the latter cannot pay all or part of the obligation; (4) give the obligor the opportunity to exercise the option to choose which property may be levied upon; (5) in case the option is not exercised, to first levy on the personal properties of the obligor, including the garnishment of debts due the obligor and other credits, *i.e.*, bank deposits, financial interests, royalties, commissions and other personal properties not capable of manual delivery or in the possession or control of third parties; and (6) to levy on real properties if the personal properties are insufficient to answer for the judgment. In addition, Section 14, Rule 39 of the Rules of Court imposes upon a sheriff the duty to submit a Sheriff's Return. x x x These provisions underscore the ministerial nature of the functions of the sheriff's office. The sheriff has no discretion on the manner of implementing a writ of execution. The sheriff must strictly abide by the prescribed procedure to avoid liability.

2. ID.; ID.; ID.; ID.; GRAVE ABUSE OF AUTHORITY AS MISDEMEANOR, DEFINED; NOT PRESENT IN CASE AT BAR.— In *Rafael v. Sualog,* we defined grave abuse of authority as "a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury"; it is an act characterized with "cruelty, severity, or excessive use of authority." None of these circumstances are present in the case. The records show that after receiving the writ, Atty. Buendia

reminded the respondent sheriffs to implement the execution according to the writ's terms and the prescribed procedure under Section 9, Rule 39 of the Rules of Court. x x x Section 9, Rule 39 of the Rules of Court does not prohibit the respondent sheriffs from garnishing the complainant's bank deposits on the same day that a copy of the writ of execution was served on the judgment obligor. In *Torres v. Cabling*, we held that a sheriff is not required to give the judgment debtor time to raise cash. The reason for this is to ensure that the available property is not lost. We even disciplined a sheriff who failed to immediately levy on the personal properties of the debtor who refused to pay the amount stated in the writ of execution. We find no proof that the respondent sheriffs acted in bad faith in garnishing the complainant's bank deposits. During the investigation, the respondent sheriffs denied this accusation and provided a satisfactory explanation: the bank secrecy laws prevent them from knowing or securing information on the amount of the complainant's bank deposits with the garnishee banks. In other words, the respondent sheriffs could not have known that the bank deposits they garnished were in excess of the money judgment.

3. ID.; ID.; ID.; ID.; WHEN GUILTY OF SIMPLE NEGLECT OF DUTY.— Despite the clear language of Section 14, Rule 39 of the Rules of Court and the terms of the writ of execution, the respondent sheriffs failed to make a return within the prescribed period and/or to submit periodic reports. The respondent sheriffs likewise admitted that they failed to furnish the parties copies of the return. We cannot accept the respondent sheriffs' explanation that they decided to extend the period to file the return because of their dilemma on whether to include in their report the levy on the real properties by the DECC's counsels. As an officer of the court, the respondent sheriffs should have known the proper action to take when questions relating to the writ require clarification. The respondent sheriffs are also presumed to know what duties they must discharge. We have previously held that a sheriff's deviation from the procedure laid down by the Rules warrants disciplinary action. In *Atty. Bansil v. DeLeon*, the Court declared that a lapse in following the prescribed procedure (such as the sheriff's failure to make a return) is equivalent to simple neglect of duty. Simple neglect of duty is defined as the "failure of an employee to give one's

attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference."

4. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY.— Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service classifies simple neglect of duty as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. In the absence of circumstances affecting the imposable penalty, we impose on the respondent sheriffs suspension for one (1) month and one (1) day for simple neglect of duty.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leaño for complainant.
Carlos G. Buendia for Atty. Jennifer Buendia.
Melita D. Go for Nathaniel F. Abaya, *et al.*

D E C I S I O N

BRION, *J.*:

For consideration is the administrative complaint charging Sheriffs Nathaniel F. Abaya, Luis A. Alina, Lorelex B. Ilagan and Mario P. Villanueva (*respondent sheriffs*), and Clerk of Court Jennifer H. dela Cruz-Buendia (*Atty. Buendia*) (*respondents, collectively*) with grave abuse of discretion/ authority in relation to Section 9 and Section 14, Rule 39 of the Rules of Court, and Section 6, Canon IV of the Code of Conduct for Court Personnel.

The present case stems from the decision dated July 14, 2006 of the Construction Industry Arbitration Commission (*CIAC*) in CIAC Case No. 20-2005, entitled "*Dell Equipment & Construction Corp. v. Vicsal Development Corporation.*" The CIAC issued a writ of execution ordering Atty. Buendia, as Clerk of Court and *Ex-Officio* Sheriff of the Regional Trial Court of Manila, to act under the following terms:

You are hereby commanded that, of the goods and chattels of Vicsal Development Corporation, x x x, you cause to be made the amount of ***Seventeen Million One Hundred One Thousand Six Hundred Six Pesos and 23/100 (₱17,101,606.23)*** plus interest of six percent (6%) per annum from the time of promulgation of this award until award becomes final and executory, thereafter a twelve percent (12%) per annum shall be paid by Respondent on any balance remaining until full settlement thereof, together with your lawful fees for the services of this execution, all in Philippine currency. You shall render the foregoing sums to the said Claimant, aside from your own fees on this execution, and that you likewise return this Writ unto this Commission within fifteen (15) days from date of receipt hereof, with your proceedings endorsed thereon. But if sufficient personal property cannot be found whereof to satisfy this execution and lawful fees thereon, then you are commanded that of the lands and buildings of the said Respondent, you make the said sum of money in the manner required by the Rules of Court, and make return of your proceedings with this Writ within thirty (30) days from receipt hereof.[1] (italics and emphasis supplied)

Vicsal Development Corporation (*complainant*) refused to pay, arguing that the execution was premature. The respondent sheriffs garnished ₱58,966,013.70 from the complainant's bank deposits in Cebu and in Manila.

On December 9, 2009, Metrobank released a cashier's check for ₱21,445,714.20 in the name of Dell Equipment & Construction Corporation (*DECC*) to DECC's counsel. After the satisfaction of the money judgment, the garnishment of the complainant's bank deposits was lifted; the CIAC also lifted the levy made by DECC's counsel on the complainant's real properties.

On February 2, 2010, the respondent sheriffs sent by mail to the CIAC a Sheriff's Return reporting the proceedings they had undertaken.

The Administrative Complaint

The complainant asserts that the respondent sheriffs did not follow the prescribed procedure under Section 9, Rule 39 of

[1] *Rollo*, p. 21.

the Rules of Court.[2]

The complainant also asserts that the respondent sheriffs violated Section 14, Rule 39 of the Rules of Court when they omitted to: (1) include the fact of levy of the complainant's real properties in the Sheriff's Return; (2) file the Sheriff's Return within the prescribed period; and (3) serve the parties copies of the Sheriff's Return.

The complainant further argues that the respondent sheriffs failed and/or refused to implement the writ of execution within its terms, in violation of Section 6, Canon IV of the Code of Conduct for Court Personnel.

The Report and Recommendation of the Investigating Judge

In a *Minute* Resolution dated November 28, 2011, the Court assigned the case for formal investigation to Executive Judge Maximo M. dela Cruz, Jr. (*Investigating Judge)* of the Regional Trial Court of Manila. During the investigation, the parties presented their respective testimonial and documentary evidence.

After evaluation of the records and the evidence, the Investigating Judge submitted his Report and Recommendation dated July 17, 2012 to the Court, recommending:

A. The administrative case for grave abuse of discretion/ authority and violation of the Code of Conduct for Court Personnel filed against Respondent Atty. Jennifer H. dela Cruz-Buendia, Clerk of Court & *Ex-Officio* Sheriff, Regional Trial Court of Manila be DISMISSED for lack of merit.

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[2] According to the complainant: (1) there was no proper and written demand made by the respondent sheriffs; (2) it was denied the right to exercise the option provided in the aforesaid Rule; (3) there was simultaneous service of the notice of garnishment to the banks even before respondent Sheriff Alina left the complainant's premises; (4) there was no actual computation of the outstanding amount, which was prepared and served to the complainant; (5) a levy was immediately made on the complainant's real properties without initially enforcing the writ against the complainant's personal properties; (6) the garnishments of the bank deposits was made in bad faith; and (7) the amount of bank deposits garnished was excessive.

B. The Respondent Sheriffs Nathaniel Abaya, Luis Alina, Lorelex Ilagan and Mario Villanueva be found GUILTY of SIMPLE NEGLECT OF DUTY and be meted a penalty of FINE equivalent to ONE MONTH salary.[3]

The Investigating Judge found no evidence that Atty. Buendia abused her authority or neglected to supervise the respondent sheriffs in implementing the writ of execution. The Investigating Judge observed that Atty. Buendia attended to the complainant's concerns despite being on leave of absence; she also required the respondent sheriffs to explain the garnishment of the complainant's bank deposits and the levy on the complainant's real properties.

The Investigating Judge also ruled that the respondent sheriffs did not violate Section 9, Rule 39 of the Rules of Court and Section 6, Canon IV of the Code of Conduct for Court Personnel, and found that the writ of execution was properly implemented.

Nevertheless, the Investigating Judge held the respondent sheriffs liable of violating Section 14, Rule 39 of the Rules of Court. The evidence showed that the respondent sheriffs failed to file the Sheriff's Return within the prescribed period and to furnish a copy thereof to the parties.

The Court's Ruling

Except for the recommended penalty, we find the findings of the Investigating Judge to be well-taken.

We state at the outset that the highest standard of professionalism in the performance of judicial tasks is demanded from every court personnel. The Court expects every court personnel to perform his/her duties promptly, with great care and diligence, having in mind the important role he/she plays in the administration of justice.[4]

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[3] Report and Recommendation, p. 40.

[4] *Garcera II v. Parrone*, 502 Phil. 8, 13 (2005).

With respect to a sheriff's duty in implementing writs, the case of *Cruz v. Villar*[5] teaches us that:

> "[S]heriffs and deputy sheriffs, being ranking officers of the court and agents of the law, must discharge their duties with great care and diligence. In serving and implementing court writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice." Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They should always hold inviolate and invigorate the tenet that a public office is a public trust. [citations omitted]

The procedure in enforcing a money judgment is found in Section 9, Rule 39 of the Rules of Court:

> SEC. 9. Execution of judgments for money, how enforced –
>
> (a) Immediate payment on demand. – The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. x x x.
>
> x x x x x x x x x
>
> (b) Satisfaction by levy. – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.
>
> x x x x x x x x x
>
> (c) Garnishment of debts and credits. – The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal

[5] 427 Phil. 229, 234-235 (2002).

property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishee requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

Under this rule, the duties of a sheriff are: (1) to first make a demand from the obligor for the immediate payment of the full amount stated in the writ of execution and of all lawful fees; (2) to receive payment in the form of cash, certified bank check payable to the obligee, or any other form of payment acceptable to the latter; (3) to levy upon the properties of the obligor, not exempt from execution, if the latter cannot pay all or part of the obligation; (4) give the obligor the opportunity to exercise the option to choose which property may be levied upon; (5) in case the option is not exercised, to first levy on the personal properties of the obligor, including the garnishment of debts due the obligor and other credits, *i.e.*, bank deposits, financial interests, royalties, commissions and other personal properties not capable of manual delivery or in the possession or control of third parties; and (6) to levy on real properties if the personal properties are insufficient to answer for the judgment.

In addition, Section 14, Rule 39 of the Rules of Court imposes upon a sheriff the duty to submit a Sheriff's Return, thus:

SEC. 14. *Return of writ of execution.* — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

These provisions underscore the ministerial nature of the functions of the sheriff's office. The sheriff has no discretion on the manner of implementing a writ of execution. The sheriff must strictly abide by the prescribed procedure to avoid liability.

On grave abuse of authority

We agree with the Investigating Judge that no substantial evidence was adduced to prove that Atty. Buendia and the respondent sheriffs exceeded the limits of their authority in garnishing the complainant's bank deposits. There was also insufficient evidence to support the alleged violation of Section 6, Canon IV of the Code of Conduct for Court Personnel, which requires court personnel to "enforce rules and implement orders of the court within the limits of their authority."

In *Rafael v. Sualog*,[6] we defined grave abuse of authority as "a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury"; it is an act characterized with "cruelty, severity, or excessive use of authority."

None of these circumstances are present in the case. The records show that after receiving the writ, Atty. Buendia reminded the respondent sheriffs to implement the execution according to the writ's terms and the prescribed procedure under Section 9, Rule 39 of the Rules of Court.

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[6] A.M. No. P-07-2330, June 12, 2008, 554 SCRA 278, 287.

We note from the records that the respondent sheriffs served a copy of the writ of execution on the complainant's general counsel who refused to pay. The complainant's general counsel also refused to exercise the option under Section 9, Rule 39 of the Rules of Court. As the Investigating Judge observed:

> [T]he repudiation of execution by the Complainant claiming that it was premature signified its express refusal to comply with the arbitral award and settle the same. The wordings of Rule 39[,] Section 9 (b) "*if the judgment obligor cannot pay all or part of the obligation*" suggest that what the provision contemplates is a situation of INABILITY or to be sure INCAPABILITY on the part of the judgment debtor to pay all or part of the judgment debt. Only in that situation will the option to choose arise, for clearly the choice is given so as to afford the judgment debtor the chance not to be the subject of any further proceedings that may cause such party harm. By the submissions of the Complainant, what it claimed to have offered was the Surety Bond, by showing a Certification from Pioneer Insurance and Surety Corporation, not even the bond itself. Also, as it was earlier discussed, the same was unacceptable.[7] (italics and underscore supplied)

Section 9, Rule 39 of the Rules of Court does not prohibit the respondent sheriffs from garnishing the complainant's bank deposits on the same day that a copy of the writ of execution was served on the judgment obligor. In *Torres v. Cabling*,[8] we held that a sheriff is not required to give the judgment debtor time to raise cash. The reason for this is to ensure that the available property is not lost.[9] We even disciplined a sheriff who failed to immediately levy on the personal properties of the debtor who refused to pay the amount stated in the writ of execution.[10]

We find no proof that the respondent sheriffs acted in bad faith in garnishing the complainant's bank deposits. During the investigation, the respondent sheriffs denied this accusation

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[7] Report and Recommendation, pp. 34-35.

[8] 341 Phil. 325, 330 (1997).

[9] *Ibid.*

[10] *Mangubat v. Camino,* 518 Phil. 333, 342-343 (2006).

and provided a satisfactory explanation: the bank secrecy laws prevent them from knowing or securing information on the amount of the complainant's bank deposits with the garnishee banks. In other words, the respondent sheriffs could not have known that the bank deposits they garnished were in excess of the money judgment.

Finally, the Investigating Judge's investigation also disclosed that it was the DECC's counsels, not the respondents, who were responsible for the levy on the complainant's real properties. The levy was made by the DECC's counsels without the respondents' knowledge and consent. The records show that the respondents immediately rectified the situation by asking the CIAC to lift the levy on the complainant's real properties.

On simple neglect of duty

While the records do not support the charge of grave abuse of authority, the evidence clearly establishes the respondent sheriffs' disregard of Section 14, Rule 39 of the Rules of Court.

Despite the clear language of Section 14, Rule 39 of the Rules of Court and the terms of the writ of execution, the respondent sheriffs failed to make a return within the prescribed period and/or to submit periodic reports. The respondent sheriffs likewise admitted that they failed to furnish the parties copies of the return.

We cannot accept the respondent sheriffs' explanation that they decided to extend the period to file the return because of their dilemma on whether to include in their report the levy on the real properties by the DECC's counsels. As an officer of the court, the respondent sheriffs should have known the proper action to take when questions relating to the writ require clarification.[11] The respondent sheriffs are also presumed to know what duties they must discharge.[12]

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[11] *Office of the Court Administrator v. Tolosa*, A.M. No. P-09-2715, June 13, 2011, 651 SCRA 696, 704.

[12] *Ibid.*

We have previously held that a sheriff's deviation from the procedure laid down by the Rules warrants disciplinary action.[13] In *Atty. Bansil v. De Leon*,[14] the Court declared that a lapse in following the prescribed procedure (such as the sheriff's failure to make a return) is equivalent to simple neglect of duty. Simple neglect of duty is defined as the "failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference."

Section 52(B)(1) of the Uniform Rules on Administrative Cases in the Civil Service classifies simple neglect of duty as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. In the absence of circumstances affecting the imposable penalty, we impose on the respondent sheriffs suspension for one (1) month and one (1) day for simple neglect of duty.[15]

WHEREFORE, premises considered, respondent sheriffs Nathaniel F. Abaya, Luis A. Alina, Lorelex B. Ilagan and Mario P. Villanueva are **GUILTY** of SIMPLE NEGLECT OF DUTY for violating Section 14, Rule 39 of the Rules of Court. The respondent sheriffs are hereby **SUSPENDED** for One (1) Month and One (1) Day with a STERN WARNING that a repetition of the same or similar offense shall be dealt with more severely.

The administrative charge of grave abuse of discretion/ authority and violation of Section 6, Canon IV of the Code of Conduct for Court Personnel against respondents Clerk of Court Jennifer H. dela Cruz-Buendia, and Sheriffs Nathaniel F. Abaya, Luis A. Alina, Lorelex B. Ilagan and Mario P. Villanueva is **DISMISSED**.

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[13] *Id.* at 704-705.

[14] 529 Phil. 144, 148 (2006).

[15] See *Office of the Court Administrator v. Mary Lou C. Sarmiento, etc., et al.*, A.M. No. P-11-2912, April 10, 2012; and *Attys. Ricardo D. Gonzalez and Ernesto D. Rosales v. Arthur G. Calo, etc.*, A.M. No. P-12-3028, April 11, 2012.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *Del Castillo,* and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 168499. November 26, 2012]

SPOUSES EROSTO SANTIAGO and NELSIE SANTIAGO, *petitioners, vs.* **MANCER VILLAMOR, CARLOS VILLAMOR, JOHN VILLAMOR and DOMINGO VILLAMOR, JR.,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; OWNERSHIP; QUIETING OF TITLE; CONSTRUED.— Quieting of title is a common law remedy for the removal of any cloud, doubt or uncertainty affecting title to real property. The plaintiffs must show not only that there is a cloud or contrary interest over the subject real property, but that they have a valid title to it. Worth stressing, in civil cases, the plaintiff must establish his cause of action by preponderance of evidence; otherwise, his suit will not prosper.

2. ID.; ID.; INCORPOREAL PROPERTY; EXECUTION OF PUBLIC INSTRUMENT GIVES RISE ONLY TO A *PRIMA FACIE* PRESUMPTION OF DELIVERY; NOT PRESENT IN CASE AT BAR.— Article 1477 of the Civil Code recognizes that the "ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof." Related to this article is Article 1497 which provides that "[t]he thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee." With respect to incorporeal

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[*] Designated as Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Special Order No. 1377 dated November 22, 2012.

property, Article 1498 of the Civil Code lays down the general rule: the execution of a public instrument "shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred." However, the execution of a public instrument gives rise only to a *prima facie* presumption of delivery, which is negated by the failure of the vendee to take actual possession of the land sold. "[A] person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument." In this case, no constructive delivery of the land transpired upon the execution of the deed of sale since it was not the spouses Villamor, Sr. but the respondents who had actual possession of the land. The presumption of constructive delivery is inapplicable and must yield to the reality that the petitioners were not placed in possession and control of the land.

3. ID.; ID.; PURCHASER IN GOOD FAITH; DEFINED; NOT APPLICABLE IN CASE AT BAR.— A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he has notice of the adverse claims and interest of another person in the same property." However, where the land sold is in the possession of a person other than the vendor, the purchaser must be wary and must investigate the rights of the actual possessor; without such inquiry, the buyer cannot be said to be in good faith and cannot have any right over the property. x x x The burden of proving the status of a purchaser in good faith lies upon the party asserting that status and cannot be discharged by reliance on the legal presumption of good faith. The petitioners failed to discharge this burden.

APPEARANCES OF COUNSEL

Real Brotarlo & Real for petitioners.
Gil S. Gojol for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by spouses Erosto Santiago and Nelsie Santiago (petitioners) to challenge the August 10, 2004 decision[2] and the June 8, 2005 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 59112. The CA decision set aside the May 28, 1997 decision[4] of the Regional Trial Court (*RTC*) of San Jacinto, Masbate, Branch 50, in Civil Case No. 201. The CA resolution denied the petitioners' subsequent motion for reconsideration.

THE FACTUAL ANTECEDENTS

In January 1982,[5] the spouses Domingo Villamor, Sr. and Trinidad Gutierrez Villamor (*spouses Villamor, Sr.*), the parents of Mancer Villamor, Carlos Villamor and Domingo Villamor, Jr. (respondents) and the grandparents of respondent John Villamor, mortgaged their 4.5-hectare coconut land in Sta. Rosa, San Jacinto, Masbate, known as Lot No. 1814, to the Rural Bank of San Jacinto (Masbate), Inc. (*San Jacinto Bank*) as security for a ₱10,000.00 loan.

For non-payment of the loan, the San Jacinto Bank extrajudicially foreclosed the mortgage, and, as the highest bidder at the public auction, bought the land. When the spouses Villamor, Sr. failed to redeem the property within the prescribed period, the San Jacinto Bank obtained a final deed of sale in its favor sometime in 1991. The San Jacinto Bank then offered the land for sale to any interested buyer.[6]

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-22.

[2] Penned by Associate Justice Rosalinda Asuncion-Vicente, and concurred in by Associate Justices Eugenio S. Labitoria and Bienvenido L. Reyes (now a member of this Court); *id.* at 26-34.

[3] *Id*. at 36-39.

[4] Penned by Judge Manuel S. Pecson; *id*. at 83-86.

[5] *Id*. at 193. "January 1982" in other parts of the *rollo; id*. at 83, 110.

[6] *Id*. at 175.

a. The Specific Performance Case

Since the respondents had been in possession and cultivation of the land, they decided, together with their sister Catalina Villamor Ranchez, to acquire the land from the San Jacinto Bank. The San Jacinto Bank agreed with the respondents and Catalina to a ₱65,000.00 sale, payable in installments. The respondents and Catalina made four (4) installment payments of ₱28,000.00, ₱5,500.00, ₱7,000.00 and ₱24,500.00 on November 4, 1991, November 23, 1992, April 26, 1993 and June 8, 1994, respectively.[7]

When the San Jacinto Bank refused to issue a deed of conveyance in their favor despite full payment, the respondents and Catalina filed a complaint against the San Jacinto Bank (docketed as Civil Case No. 200) with the RTC on October 11, 1994. The complaint was for specific performance with damages.

The San Jacinto Bank claimed that it already issued a deed of repurchase in favor of the spouses Villamor, Sr.; the payments made by the respondents and Catalina were credited to the account of Domingo, Sr. since the real buyers of the land were the spouses Villamor, Sr.[8]

In a February 10, 2004 decision, the RTC dismissed the specific performance case. It found that the San Jacinto Bank acted in good faith when it executed a deed of "repurchase" in the spouses Villamor, Sr.'s names since Domingo, Sr., along with the respondents and Catalina, was the one who transacted with the San Jacinto Bank to redeem the land.[9]

The CA, on appeal, set aside the RTC's decision.[10] The CA found that the respondents and Catalina made the installment payments on their own behalf and not as representatives of

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[7] *Id*. at 136-137.

[8] *Id*. at 193.

[9] *Id*. at 51-57.

[10] Decision of December 20, 2005.

the spouses Villamor, Sr. The San Jacinto Bank mistakenly referred to the transaction as a "repurchase" when the redemption period had already lapsed and the title had been transferred to its name; the transaction of the respondents and Catalina was altogether alien to the spouses Villamor, Sr.'s loan with mortgage. Thus, it ordered the San Jacinto Bank to execute the necessary deed of sale in favor of the respondents and Catalina, and to pay ₱30,000.00 as attorney's fees.[11] **No appeal appears to have been taken from this decision.**

b. <u>The Present Quieting of Title Case</u>

On July 19, 1994 (or prior to the filing of the respondents and Catalina's complaint for specific performance, as narrated above), the San Jacinto Bank issued a deed of sale in favor of Domingo, Sr.[12] On July 21, 1994, the spouses Villamor, Sr. sold the land to the petitioners for ₱150,000.00.[13]

After the respondents and Catalina refused the petitioners' demand to vacate the land, the petitioners filed on October 20, 1994 a complaint for quieting of title and recovery of possession against the respondents.[14] **This is the case that is now before us.**

The respondents and Catalina assailed the San Jacinto Bank's execution of the deed of sale in favor of Domingo, Sr., claiming that the respondents and Catalina made the installment payments on their own behalf.[15]

In its May 28, 1997 decision,[16] the RTC declared the petitioners as the legal and absolute owners of the land, finding that the

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[11] CA-G.R. CV No. 84279; *rollo*, pp. 192-199.

[12] *Id*. at 70.

[13] *Id*. at 71.

[14] *Id*. at 72-77.

[15] *Id*. at 78-82.

[16] At the joint pre-trial of the two cases, the RTC, upon motion of the petitioners' counsel for summary judgment in the quieting of title case, ordered the parties to submit their memoranda on whether the cases could

petitioners were purchasers in good faith; the spouses Villamor, Sr.'s execution of the July 21, 1994 notarized deed of sale in favor of the petitioners resulted in the constructive delivery of the land. Thus, it ordered the respondents to vacate and to transfer possession of the land to the petitioners, and to pay ₱10,000.00 as moral damages.[17]

On appeal, the CA, in its August 10, 2004 decision, found that the petitioners' action to quiet title could not prosper because the petitioners failed to prove their legal or equitable title to the land. It noted that there was no real transfer of ownership since neither the spouses Villamor, Sr. nor the petitioners were placed in actual possession and control of the land after the execution of the deeds of sale. It also found that the petitioners failed to show that the respondents and Catalina's title or claim to the land was invalid or inoperative, noting the pendency of the specific performance case, at that time on appeal with the CA. Thus, it set aside the RTC decision and ordered the dismissal of the complaint, without prejudice to the outcome of the specific performance case.[18]

When the CA denied[19] the motion for reconsideration[20] that followed, the petitioners filed the present Rule 45 petition.

THE PETITION

The petitioners argue that the spouses Villamor, Sr.'s execution of the July 21, 1994 deed of sale in the petitioners' favor was equivalent to delivery of the land under Article 1498 of the Civil Code; the petitioners are purchasers in good faith since they had no knowledge of the supposed transaction between the San Jacinto Bank and the respondents and Catalina; and

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be decided based on the pleadings under Rule 19 of the then Rules of Court. The RTC later rendered a summary judgment in the quieting of title case. *Id.* at 83, 172.

[17] *Id*. at 83-86.

[18] *Supra* note 2.

[19] *Supra* note 3.

[20] *Rollo*, pp. 40-49.

the respondents and Catalina's possession of the land should not be construed against them (petitioners) since, by tradition and practice in San Jacinto, Masbate, the children use their parents' property.

THE CASE FOR THE RESPONDENTS

The respondents and respondent John submit that they hold legal title to the land since they perfected the sale with the San Jacinto Bank as early as November 4, 1991, the first installment payment, and are in actual possession of the land; the petitioners are not purchasers in good faith since they failed to ascertain why the respondents were in possession of the land.

THE ISSUE

The case presents to us the issue of whether the CA committed a reversible error when it set aside the RTC decision and dismissed the petitioners' complaint for quieting of title and recovery of possession.

OUR RULING

The petition lacks merit.

Quieting of title is a common law remedy for the removal of any cloud, doubt or uncertainty affecting title to real property. The plaintiffs must show not only that there is a cloud or contrary interest over the subject real property,[21] but that they have a valid title to it.[22] Worth stressing, in civil cases, the plaintiff

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[21] Civil Code, Article 476 provides: "Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein."

[22] Civil Code, Article 477 provides: "The plaintiff must have legal or equitable title to, or interest in the real property which is the subject matter of the action. He need not be in possession of said property." See also *Top Management Programs Corporation v. Fajardo,* G.R. No. 150462,

must establish his cause of action by preponderance of evidence; otherwise, his suit will not prosper.[23]

The petitioners anchor their claim over the disputed land on the July 21, 1994 notarized deed of sale executed in their favor by the spouses Villamor, Sr. who in turn obtained a July 19, 1994 notarized deed of sale from the San Jacinto Bank. On the other hand, the respondents and respondent John claim title by virtue of their installment payments to the San Jacinto Bank from November 4, 1991 to June 8, 1994 and their actual possession of the disputed land.

After considering the parties' evidence and arguments, we agree with the CA that the petitioners failed to prove that they have any legal or equitable title over the disputed land.

Execution of the deed of sale only a prima facie presumption of delivery.

Article 1477 of the Civil Code recognizes that the "ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof." Related to this article is Article 1497 which provides that "[t]he thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee."

With respect to incorporeal property, Article 1498 of the Civil Code lays down the general rule: the execution of a public instrument "shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred." However, the execution of a public instrument gives rise only to a *prima facie* presumption of delivery, which is negated by the failure of the vendee to take actual possession of the land sold.[24] "[A] person who does

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June 15, 2011, 652 SCRA 18, 33; and *Secuya v. De Selma*, 383 Phil. 126, 134 (2000).

[23] *Bontilao v. Gerona*, G.R. No. 176675, September 15, 2010, 630 SCRA 561, 572.

[24] *Beatingo v. Gasis*, G.R. No. 179641, February 9, 2011, 642 SCRA 539, 549; and *Ten Forty Realty and Dev't. Corp. v. Cruz*, 457 Phil. 603, 615 (2003).

not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument."[25]

In this case, no constructive delivery of the land transpired upon the execution of the deed of sale since it was not the spouses Villamor, Sr. but the respondents who had actual possession of the land. The presumption of constructive delivery is inapplicable and must yield to the reality that the petitioners were not placed in possession and control of the land.

The petitioners are not purchasers in good faith.

The petitioners can hardly claim to be purchasers in good faith.

"A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he has notice of the adverse claims and interest of another person in the same property."[26] However, where the land sold is in the possession of a person other than the vendor, the purchaser must be wary and must investigate the rights of the actual possessor; without such inquiry, the buyer cannot be said to be in good faith and cannot have any right over the property.[27]

In this case, the spouses Villamor, Sr. were not in possession of the land. The petitioners, as prospective vendees, carried the burden of investigating the rights of the respondents and respondent John who were then in actual possession of the land. The petitioners cannot take refuge behind the allegation

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[25] *Estelita Villamar v. Balbino Mangaoil*, G.R. No. 188661, April 11, 2012; and *Asset Privatization Trust v. T.J. Enterprises*, G.R. No. 167195, May 8, 2009, 587 SCRA 481, 487.

[26] *Heirs of Romana Saves v. Heirs of Escolastico Saves*, G.R. No. 152866, October 6, 2010, 632 SCRA 236, 253; and *Chua v. Soriano*, G.R. No. 150066, April 13, 2007, 521 SCRA 68, 78.

[27] *Tio v. Abayata*, G.R. No. 160898, June 27, 2008, 556 SCRA 175, 188-189; and *PNB v. Heirs of Estanislao and Deogracias Militar*, 526 Phil. 788, 795 (2006).

that, by custom and tradition in San Jacinto, Masbate, the children use their parents' property, since they offered no proof supporting their bare allegation. The burden of proving the status of a purchaser in good faith lies upon the party asserting that status and cannot be discharged by reliance on the legal presumption of good faith.[28] The petitioners failed to discharge this burden.

Lastly, since the specific performance case already settled the respondents and respondent John's claim over the disputed land, the dispositive portion of the CA decision (dismissing the complaint without prejudice to the outcome of the specific performance case[29]) is modified to reflect this fact; we thus dismiss for lack of merit the complaint for quieting of title and recovery of possession.

WHEREFORE, we hereby **DENY** the petition and **ORDER** the **DISMISSAL** of Civil Case No. 201 before the Regional Trial Court of San Jacinto, Masbate, Branch 50.

Costs against the petitioners.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo,* and *Perez, JJ.,* concur.

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[28] *Pudadera v. Magallanes*, G.R. No. 170073, October 18, 2010, 633 SCRA 332, 351; and *Rufloe v. Burgos*, G.R. No. 143573, January 30, 2009, 577 SCRA 264, 273.

[29] *Rollo,* p. 43.

[*] Designated as Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Special Order No. 1377 dated November 22, 2012.

SECOND DIVISION

[G.R. No. 169380. November 26, 2012]

FIORELLO R. JOSE, *petitioner, vs.* **ROBERTO ALFUERTO, ERNESTO BACAY, ILUMINADO BACAY, MANUEL BANTACULO, LETTY BARCELO, JING BERMEJO, MILNA BERMEJO, PABLO BERMEJO, JHONNY BORJA, BERNADETTE BUENAFE, ALFREDO CALAGOS, ROSAURO CALAGOS, ALEX CHACON, AIDA CONSULTA, CARMEN CORPUZ, RODOLFO DE VERA, ANA DELA ROSA, RUDY DING, JOSE ESCASINAS, GORGONIO ESPADERO, DEMETRIO ESTRERA, ROGELIO ESTRERA, EDUARDO EVARDONE, ANTONIO GABALEÑO, ARSENIA GARING, NARCING GUARDA, NILA LEBATO, ANDRADE LIGAYA, HELEN LOPEZ, RAMON MACAIRAN, DOMINGO NOLASCO, JR., FLORANTE NOLASCO, REGINA OPERARIO, CARDING ORCULLO, FELICISIMO PACATE, CONRADO PAMINDALAN, JUN PARIL, RENE SANTOS, DOMINADOR SELVELYEJO, ROSARIO UBALDO, SERGIO VILLAR, JOHN DOE, JANE DOE and Unknown Occupants of Olivares Compound, Phase II, Barangay San Dionisio, Parañaque City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ELUCIDATED; NOT PROPER REMEDY IN CASE AT BAR.— Unlawful detainer is a summary action for the recovery of possession of real property. This action may be filed by a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied. In unlawful detainer, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an

express or implied contract between them. However, the defendant's possession became illegal when the plaintiff demanded that the defendant vacate the subject property due to the expiration or termination of the right to possess under the contract, and the defendant refused to heed such demand. A case for unlawful detainer must be instituted one year from the unlawful withholding of possession. The allegations in the complaint determine both the nature of the action and the jurisdiction of the court. The complaint must specifically allege the facts constituting unlawful detainer. In the absence of these allegations of facts, an action for unlawful detainer is not the proper remedy and the municipal trial court or the MeTC does not have jurisdiction over the case. x x x In an unlawful detainer case, the defendant's possession becomes illegal only upon the plaintiff's demand for the defendant to vacate the property and the defendant's subsequent refusal. In the present case, paragraph 8 characterizes the defendant's occupancy as unlawful even before the formal demand letters were written by the petitioner's counsel. Under these allegations, the unlawful withholding of possession should not be based on the date the demand letters were sent, as the alleged unlawful act had taken place at an earlier unspecified date.

2. ID.; ID.; ID.; IF THE POSSESSION WAS UNLAWFUL FROM THE START, AN ACTION FOR UNLAWFUL DETAINER SHOULD BE DISMISSED; SUSTAINED.— The Court has consistently adopted this position: **tolerance or permission must have been present at the beginning of possession; if the possession was unlawful from the start, an action for unlawful detainer would not be the proper remedy and should be dismissed**. It is not the first time that this Court adjudged contradictory statements in a complaint for unlawful detainer as a basis for dismissal. In *Unida v. Heirs of Urban*, the claim that the defendant's possession was merely tolerated was contradicted by the complainant's allegation that the entry to the subject property was unlawful from the very beginning. The Court then ruled that the unlawful detainer action should fail. x x x As the Court then explained, **a case for unlawful detainer alleging tolerance must definitely establish its existence from the start of possession; otherwise, a case for forcible entry can mask itself as an action for unlawful detainer and permit it to be filed beyond the required one-year prescription period from the time of forcible entry**: x x x.

3. ID.; ID.; EJECTMENT CASES; DISTINGUISHED FROM *ACCION PUBLICIANA* AND *ACCION REIVINDICATORIA*. — In *Regis, Jr. v. Court of Appeals*, we ruled that an action for forcible entry cannot be treated as an *accion publiciana* and summarized the reasons therefor. We find these same reasons also applicable to an unlawful detainer case which bears the same relevant characteristics: x x x The cause of action in ejectment is different from that in an *accion publiciana* or *accion reivindicatoria*. An ejectment suit is brought before the proper inferior court to recover physical possession only or possession *de facto*, **not** possession *de jure*. Unlawful detainer and forcible entry cases are not processes to determine actual title to property. Any ruling by the MeTC on the issue of ownership is made only to resolve the issue of possession, and is therefore inconclusive. Because they only resolve issues of possession *de facto*, ejectment actions are summary in nature, while *accion publiciana* (for the recovery of possession) and *accion reivindicatoria* (for the recovery of ownership) are plenary actions. The purpose of allowing actions for forcible entry and unlawful detainer to be decided in summary proceedings is to provide for a peaceful, speedy and expeditious means of preventing an alleged illegal possessor of property from unjustly taking and continuing his possession during the long period it would take to properly resolve the issue of possession *de jure* or ownership, thereby ensuring the maintenance of peace and order in the community; otherwise, the party illegally deprived of possession might take the law in his hands and seize the property by force and violence. An ejectment case cannot be a substitute for a fullblown trial for the purpose of determining rights of possession or ownership.

4. ID.; APPEALS; A PARTY CANNOT CHANGE HIS THEORY OF THE CASE OR HIS CAUSE OF ACTION ON APPEAL; RATIONALE.— It is a settled rule that a party cannot change his theory of the case or his cause of action on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court will not be considered by the reviewing court. The defenses not pleaded in the answer cannot, on appeal, change fundamentally the nature of the issue in the case. To do so would be unfair to the adverse party, who had no opportunity to present evidence in connection with the new theory; this would offend the basic rules of due process and fair play.

APPEARANCES OF COUNSEL

Fiorello R. Jose for petitioner.
Luisito Lopez for respondents.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the decision[1] dated March 14, 2005 of the Court of Appeals in CA-G.R. SP No. 80166. The Court of Appeals' decision reversed the decisions of the Regional Trial Court (*RTC*) of Parañaque City, Branch 257, and of the Metropolitan Trial Court (MeTC) of Parañaque City, Branch 77, by dismissing petitioner Fiorello R. Jose's complaint for ejectment against Roberto Alfuerto, Ernesto Bacay, Iluminado Bacay, Manuel Bantaculo, Letty Barcelo, Jing Bermejo, Milna Bermejo, Pablo Bermejo, Jhonny Borja, Bernadette Buenafe, Alfredo Calagos, Rosauro Calagos, Alex Chacon, Aida Consulta, Carmen Corpuz, Rodolfo De Vera, Ana Dela Rosa, Rudy Ding, Jose Escasinas, Gorgonio Espadero, Demetrio Estrera, Rogelio Estrera, Eduardo Evardone, Antonio Gabaleño, Arsenia Garing, Narcing Guarda, Nila Lebato, Andrade Ligaya, Helen Lopez, Ramon Macairan, Domingo Nolasco, Jr., Florante Nolasco, Regina Operario, Carding Orcullo, Felicisimo Pacate, Conrado Pamindalan, Jun Paril, Rene Santos, Dominador Selvelyejo, Rosario Ubaldo, Sergio Villar, John Doe, Jane Doe and Unknown Occupants of Olivares Compound, Phase II, *Barangay* San Dionisio, Parañaque City (respondents), on the ground that the petitioner's cause of action was not for unlawful detainer but for recovery of possession. The appellate court affirmed this decision in its resolution of August 22, 2005.[2]

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[1] *Rollo*, pp. 21-34; penned by Associate Justice Hakim S. Abdulwahid, and concurred in by Associate Justices Elvi John S. Asuncion and Estela M. Perlas-Bernabe (now Associate Justice of the Supreme Court).

[2] *Id*. at 36-37.

The dispute involves a parcel of land registered in the name of Rodolfo Chua Sing under Transfer Certificate of Title No. 52594,[3] with an area of 1919 square meters, located in *Barangay* San Dionisio, Parañaque City. Chua Sing purchased the land in 1991. On April 1, 1999, Chua Sing leased the property to the petitioner. Their contract of lease was neither notarized nor registered with the Parañaque City Registry of Deeds.[4]

The lease contract provided that:

That the term of this lease shall be FIVE (5) years and renewable for the same period upon mutual agreement of the parties to commence upon the total eviction of any occupant or occupants. The LESSOR hereby transfers all its rights and prerogative to evict said occupants in favor of the LESSEE which shall be responsible for all expenses that may be incurred without reimbursement from the LESSOR. It is understood however that the LESSOR is hereby waiving, in favor of the LESSEE any and all damages that [may be] recovered from the occupants[.][5] (Underscore ours)

Significantly, the respondents already occupied the property even before the lease contract was executed.

On April 28, 1999, soon after Chua Sing and the petitioner signed the lease contract, the petitioner demanded in writing that the respondents vacate the property within 30 days and that they pay a monthly rental of ₱1,000.00 until they fully vacate the property.[6]

The respondents refused to vacate and to pay rent. On October 20, 1999, the petitioner filed an ejectment case against the respondents before Branch 77 of the Parañaque City MeTC, docketed as Civil Case No. 11344.[7] In this complaint, no mention was made of any proceedings before the *barangay*. Jose then

[3] *Id*. at 180-181.

[4] *Id.* at 178-179.

[5] *Id.* at 56.

[6] *Id.* at 182-228.

[7] *Id*. at 163.

brought the dispute before the *barangay* for conciliation.[8] The *barangay* issued a Certification to File Action on March 1, 2000.[9] Jose was then able to file an amended complaint, incorporating the proceedings before the *barangay* before the summons and copies of the complaint were served upon the named defendants.[10]

In the Amended Complaint[11] dated March 17, 2000, the petitioner claimed that as lessee of the subject property, he had the right to eject the respondents who unlawfully occupy the land. He alleged that:

7. Defendants, having been fully aware of their unlawful occupancy of the subject lot, have defiantly erected their houses thereat without benefit of any contract or law whatsoever, much less any building permit as sanctioned by law, but by mere tolerance of its true, lawful and registered owner, plaintiff's lessor.[12]

The petitioner also stated that despite his written demand, the respondents failed to vacate the property without legal justification. He prayed that the court order the respondents; (1) to vacate the premises; (2) to pay him not less than ₱41,000.00

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[8] CA *rollo*, pp. 162-184, 209. The records do not state when the conciliation meeting occurred. Nevertheless, the respondents did not dispute that the conciliation meeting took place during the MeTC proceedings, nor appear to have raised this as a ground for dismissal in their Amended Answer. However, in their Memorandum before the Court of Appeals, they stated that a conciliation meeting between the proper parties did not take place; it is unclear whether they were saying that no meeting between Chua Sing and the respondents took place or that no conciliation meeting between the petitioner and the respondents occurred. The CA did not resolve this issue, and no petition was filed before the Supreme Court by either party raising this issue, even if the respondents again raise it in their Memorandum before the Court.

[9] CA *rollo*, pp. 162-184.

[10] Motion to Admit Amended Complaint dated March 22, 2000. Records, volume I, p. 93.

[11] *Rollo*, pp. 227-230.

[12] *Id*. at 175.

a month from May 30,1999 until they vacate the premises; and (3) to pay him attorney's fees of no less than ₱50,000.00, and the costs of suit.[13]

In their Answer, the respondents likewise pointed out that they have been in possession of the land long before Chua Sing acquired the property in 1991, and that the lease contract between the petitioner and Chua Sing does not affect their right to possess the land. The respondents also presented a Deed of Assignment,[14] dated February 13, 2000, issued by David R. Dulfo in their favor. They argued that the MeTC had no jurisdiction over the case as the issue deals with ownership of the land, and sought the dismissal of the complaint for lack of cause of action and for lack of jurisdiction. They also filed a counterclaim for actual and moral damages for the filing of a baseless and malicious suit.

After the required position papers, affidavits and other pieces of evidence were submitted, the MeTC resolved the case in the petitioner's favor. In its decision[15] of January 27, 2003, the MeTC held that the respondents had no right to possess the land and that their occupation was merely by the owner's tolerance. It further noted that the respondents could no longer raise the issue of ownership, as this issue had already been settled: the respondents previously filed a case for the annulment/ cancellation of Chua Sing's title before the RTC, Branch 260, of Parañaque City, which ruled that the registered owner's title was genuine and valid. Moreover, the MeTC held that it is not divested of jurisdiction over the case because of the respondents' assertion of ownership of the property. On these premises, the MeTC ordered the respondents to vacate the premises and to remove all structures introduced on the land; to each pay ₱500.00 per month from the date of filing of this case until they vacate the premises; and to pay Jose, jointly and severally, the costs of suit and ₱20,000.00 as attorney's fees.

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[13] *Id.* at 176.

[14] *Id*. at 232-239.

[15] *Id*. at 137-141.

On appeal before the RTC, the respondents raised the issue, among others, that no legal basis exists for the petitioner's claim that their occupation was by tolerance, "where the possession of the defendants was illegal at the inception as alleged in the complaint[,] there can be no tolerance."[16]

The RTC affirmed the MeTC decision of January 27, 2003. It issued its decision[17] on October 8, 2003, reiterating the MeTC's ruling that a case for ejectment was proper. The petitioner, as lessee, had the right to file the ejectment complaint; the respondents occupied the land by mere tolerance and their possession became unlawful upon the petitioner's demand to vacate on April 28, 1999. The RTC, moreover, noted that the complaint for ejectment was filed on October 20, 1999, or within one year after the unlawful deprivation took place. It cited *Pangilinan, et al. v. Hon. Aguilar, etc., et al.*[18] and *Yu v. Lara, et al.*[19] to support its ruling that a case for unlawful detainer was appropriate.

On March 14, 2005, the Court of Appeals reversed the RTC and MeTC decisions.[20] It ruled that the respondents' possession of the land was not by the petitioner or his lessor's tolerance. It defined tolerance not merely as the silence or inaction of a lawful possessor when another occupies his land; tolerance entailed permission from the owner by reason of familiarity or neighborliness. The petitioner, however, alleged that the respondents unlawfully entered the property; thus, tolerance (or authorized entry into the property) was not alleged and there could be no case for unlawful detainer. The respondents' allegation that they had been in possession of the land before the petitioner's lessor had acquired it in 1991 supports this finding. Having been in possession of the land for more than a year, the respondents should not be evicted through an ejectment case.

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[16] *Id.* at 44.

[17] *Id.* at 126-136.

[18] 150 Phil. 166 (1972).

[19] 116 Phil. 1105 (1962).

[20] *Supra* note 1.

The Court of Appeals emphasized that ejectment cases are summary proceedings where the only issue to be resolved is who has a better right to the physical possession of a property. The petitioner's claim, on the other hand, is based on an *accion publiciana*: he asserts his right as a possessor by virtue of a contract of lease he contracted after the respondents had occupied the land. The dispositive part of the decision reads:

WHEREFORE, the instant petition is GRANTED. The decision dated October 8, 2003 of the RTC, Branch 257, Parañaque City, in Civil Case No. 03-0127, is REVERSED and SET ASIDE and the amended complaint for ejectment is DISMISSED.[21]

The petitioner filed a motion for reconsideration,[22] which the Court of Appeals denied in its resolution[23] of August 22, 2005. In the present appeal, the petitioner raises before us the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT THE CAUSE OF ACTION OF THE SUBJECT COMPLAINT IS NOT FOR UNLAWFUL DETAINER BUT FOR RECOVERY OF POSSESSION AND THEREFORE DISMISSIBLE

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECIDING THE CASE BASED ON RESPONDENTS' MATERIAL CHANGE OF THEORY WHICH IS COMPLETELY INCONSISTENT WITH THEIR DEFENSES INVOKED BEFORE THE MUNICIPAL TRIAL COURT

III

WHETHER OR NOT THIS HONORABLE COURT MAY DECIDE THIS CASE ON THE MERITS TO AVOID

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[21] *Id*. at 33.

[22] CA *rollo*, pp. 258-264.

[23] *Rollo*, pp. 36-37.

CIRCUITOUS PROCEDURE IN THE ADMINISTRATION OF JUSTICE.[24]

The Court's Ruling

We find the petition unmeritorious.

Unlawful detainer is not the proper remedy for the present case.

The key issue in this case is whether an action for unlawful detainer is the proper remedy.

Unlawful detainer is a summary action for the recovery of possession of real property. This action may be filed by a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied. In unlawful detainer, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. However, the defendant's possession became illegal when the plaintiff demanded that the defendant vacate the subject property due to the expiration or termination of the right to possess under the contract, and the defendant refused to heed such demand. A case for unlawful detainer must be instituted one year from the unlawful withholding of possession.[25]

The allegations in the complaint determine both the nature of the action and the jurisdiction of the court. The complaint must specifically allege the facts constituting unlawful detainer. In the absence of these allegations of facts, an action for unlawful detainer is not the proper remedy and the municipal trial court or the MeTC does not have jurisdiction over the case.[26]

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[24] *Id*. at 7.

[25] *Estate of Soledad Manantan v. Somera*, G.R. No. 145867, April 7, 2009, 584 SCRA 81, 89-90.

[26] *Id*. at 90; *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147, 156.

In his amended complaint, the petitioner presents the following allegations in support of his unlawful detainer complaint:

> 3. On April 1, 1999, plaintiff leased from lessor, Mr. Rudy Chuasing, that parcel of lot owned and registered in [the] lessor's name, covering the area occupied by the defendants.
>
> x x x x x x x x x
>
> 6. Plaintiff's lessor had acquired the subject property as early as 1991 through sale, thereafter the aforesaid Transfer Certificate of Title was subsequently registered under his name.
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> 7. Defendants, having been fully aware of their **unlawful occupancy** of the subject lot, have **defiantly erected their houses thereat without benefit of any contract or law** whatsoever, much less any building permit as sanctioned by law, but by mere tolerance of its true, lawful and registered owner, plaintiff's lessor.
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> 8. By reason of defendants' **continued unlawful occupancy** of the subject premises, plaintiff referred the matter to his lawyer who immediately sent a formal demand upon each of the defendants to vacate the premises. Copies of the demand letter dated 28 April 1999 are xxx hereto attached as annexes "C" to "QQ[.]"
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> 9. Despite notice, however, defendants failed and refused and continues to fail and refuse to vacate the premises without valid or legal justification.[27] (emphasis ours)

The petitioner's allegations in the amended complaint run counter to the requirements for unlawful detainer. In an unlawful detainer action, the possession of the defendant was originally legal and his possession was permitted by the owner through an express or implied contract.

In this case, paragraph 7 makes it clear that the respondents' occupancy was unlawful from the start and was bereft of contractual or legal basis. In an unlawful detainer case, the defendant's possession becomes illegal only upon the plaintiff's demand for the defendant to vacate the property and the defendant's subsequent refusal. In the present case, paragraph

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

8 characterizes the defendant's occupancy as unlawful even before the formal demand letters were written by the petitioner's counsel. Under these allegations, the unlawful withholding of possession should not be based on the date the demand letters were sent, as the alleged unlawful act had taken place at an earlier unspecified date.

The petitioner nevertheless insists that he properly alleged that the respondents occupied the premises by mere tolerance of the owner. No allegation in the complaint nor any supporting evidence on record, however, shows when the respondents entered the property or who had granted them permission to enter. Without these allegations and evidence, the bare claim regarding "tolerance" cannot be upheld.

In *Sarona, et al. v. Villegas, et al.*,[28] the Court cited Prof. Arturo M. Tolentino's definition and characterizes "tolerance" in the following manner:

> Professor Arturo M. Tolentino states that acts merely tolerated are "those which by reason of neighborliness or familiarity, the owner of property *allows* his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who permits them out of friendship or courtesy." He adds that: "[t]hey are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, *permits* others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well." And, Tolentino continues, even though "this is *continued* for a long time, no right will be acquired by prescription." Further expounding on the concept, Tolentino writes: "There is tacit consent of the possessor to the acts which are merely tolerated. Thus, *not every case of knowledge and silence* on the part of the possessor *can be considered mere tolerance*. By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission. [citations omitted; italics supplied]

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[28] 131 Phil. 365, 372 (1968).

The Court has consistently adopted this position: **tolerance or permission must have been present at the beginning of possession; if the possession was unlawful from the start, an action for unlawful detainer would not be the proper remedy and should be dismissed**.[29]

It is not the first time that this Court adjudged contradictory statements in a complaint for unlawful detainer as a basis for dismissal. In *Unida v. Heirs of Urban*,[30] the claim that the defendant's possession was merely tolerated was contradicted by the complainant's allegation that the entry to the subject property was unlawful from the very beginning. The Court then ruled that the unlawful detainer action should fail.

The contradictory statements in the complaint are further deemed suspicious when a complaint is silent regarding the factual circumstances surrounding the alleged tolerance. In *Ten Forty Realty Corporation v. Cruz*,[31] the complaint simply stated that: "(1) [defendant] immediately occupied the subject property after its sale to her, an action merely tolerated by [the plaintiff]; and (2) [the respondent's] allegedly illegal occupation of the premises was by mere tolerance." The Court expressed its qualms over these averments of fact as they did not contain anything substantiating the claim that the plaintiff tolerated or permitted the occupation of the property by the defendant:

> These allegations contradict, rather than support, [plaintiff's] theory that its cause of action is for unlawful detainer. First, these arguments advance the view that [defendant's] occupation of the property was unlawful at its inception. Second, they counter the essential requirement in unlawful detainer cases that [plaintiff's] supposed act of sufferance or tolerance must be present right from the start of a possession that is later sought to be recovered.
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> As the bare allegation of [plaintiff's] tolerance of [defendant's]

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[29] *Ten Forty Realty and Development Corporation v. Cruz*, 457 Phil. 603, 610 (2003); and *Go, Jr. v. Court of Appeals*, 415 Phil. 172, 185 (2001).

[30] 499 Phil. 64, 70 (2005).

[31] *Supra* note 29, at 611.

occupation of the premises has not been proven, the possession should be deemed illegal from the beginning. Thus, the CA correctly ruled that the ejectment case should have been for forcible entry — an action that had already prescribed, however, when the Complaint was filed on May 12, 1999. The prescriptive period of one year for forcible entry cases is reckoned from the date of [defendant's] actual entry into the land, which in this case was on April 24, 1998.[32]

Similarly, in *Go, Jr. v. Court of Appeals*,[33] the Court considered the owner's lack of knowledge of the defendant's entry of the land to be inconsistent with the allegation that there had been tolerance.

In *Padre v. Malabanan*,[34] the Court not only required allegations regarding the grant of permission, but proof as well. It noted that the plaintiffs alleged the existence of tolerance, but ordered the dismissal of the unlawful detainer case because the evidence was "totally wanting as to when and under what circumstances xxx the alleged tolerance came about." It stated that:

> Judging from the respondent's Answer, the petitioners were never at all in physical possession of the premises from the time he started occupying it and continuously up to the present. For sure, the petitioners merely derived their alleged prior physical possession only on the basis of their Transfer Certificate of Title (TCT), arguing that the issuance of said title presupposes their having been in possession of the property at one time or another.[35]

Thus, the complainants in unlawful detainer cases cannot simply anchor their claims on the validity of the owner's title. Possession *de facto* must also be proved.

As early as the 1960s, in *Sarona, et al. v. Villegas, et al.*,[36] we already ruled that a complaint which fails to positively aver any overt act on the plaintiff's part indicative of permission to

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[32] *Ibid.*

[33] *Supra* note 29, at 186.

[34] 532 Phil. 714, 721 (2006).

[35] *Ibid.*

[36] *Supra* note 28, at 371-372.

occupy the land, or any showing of such fact during the trial is fatal for a case for unlawful detainer. As the Court then explained, **a case for unlawful detainer alleging tolerance must definitely establish its existence from the start of possession; otherwise, a case for forcible entry can mask itself as an action for unlawful detainer and permit it to be filed beyond the required one-year prescription period from the time of forcible entry**:

> A close assessment of the law and the concept of the word "tolerance" confirms our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer — not of forcible entry. Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons: *First*. Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress — in the inferior court — provided for in the rules. If one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. *Second*. If a forcible entry action *in the inferior court* is allowed after the lapse of a number of years, then the result may well be that no action of forcible entry can really prescribe. No matter how long such defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court — upon plea of tolerance to prevent prescription to set in — and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one year time-bar to the suit is but in pursuance of the summary nature of the action.[37] (italics supplied)

Given these rulings, it would be equally dangerous for us to deprive the respondents of possession over a property that they have held for at least eight years before the case was filed in 1999, by means of a summary proceeding, simply because the petitioner used the word "tolerance" without sufficient allegations or evidence to support it.

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[37] *Id.* at 373.

There was no change in the respondents' theory during the appeal that would amount to a deprivation of the petitioner's right to due process.

The petitioner alleges that the respondents had never questioned before the MeTC the fact that their occupancy was by tolerance. The only issues the respondents allegedly raised were: (1) the title to the property is spurious; (2) the petitioner's predecessor is not the true owner of the property in question; (3) the petitioner's lease contract was not legally enforceable; (4) the petitioner was not the real party-in-interest; (5) the petitioner's predecessor never had prior physical possession of the property; and (6) the respondents' right of possession was based on the "Deed of Assignment of Real Property" executed by Dulfo. The respondents raised the issue of tolerance merely on appeal before the RTC. They argue that this constitutes a change of theory, which is disallowed on appeal.[38]

It is a settled rule that a party cannot change his theory of the case or his cause of action on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court will not be considered by the reviewing court. The defenses not pleaded in the answer cannot, on appeal, change fundamentally the nature of the issue in the case. To do so would be unfair to the adverse party, who had no opportunity to present evidence in connection with the new theory; this would offend the basic rules of due process and fair play.[39]

While this Court has frowned upon changes of theory on appeal, this rule is not applicable to the present case. The Court of Appeals dismissed the action due the petitioner's failure to allege and prove the essential requirements of an unlawful

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[38] *Rollo,* pp. 11-14.

[39] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* 535 Phil. 481, 489-490; *Philippine Ports Authority v. City of Iloilo,* 453 Phil. 927, 934-935 (2003); and *Olympia Housing, Inc. v. Panasiatic Travel Corporation,* 443 Phil. 385, 399-400 (2003).

detainer case. In *Serdoncillo v. Spouses Benolirao*,[40] we held that:

> In this regard, to give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint must sufficiently show such a statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, without resort to parol testimony, as these proceedings are summary in nature. In short, the jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, **as where it does not state how entry was effected or how and when dispossession started,** the remedy should either be an *accion publiciana* or *accion reivindicatoria*. (emphasis ours; italics supplied)

Regardless of the defenses raised by the respondents, the petitioner was required to properly allege and prove when the respondents entered the property and that it was the petitioner or his predecessors, not any other persons, who granted the respondents permission to enter and occupy the property. Furthermore, it was not the respondents' defense that proved fatal to the case but the petitioner's contradictory statements in his amended complaint which he even reiterated in his other pleadings.[41]

Although the respondents did not use the word "tolerance" before the MeTC, they have always questioned the existence of the petitioner's tolerance. In their Answer to Amended Complaint, the respondents negated the possibility of their possession of the property under the petitioner and his lessor's tolerance when the respondents alleged to have occupied the premises even before the lessor acquired the property in 1991. They said as much in their Position Paper:

> RODOLFO CHUA SING never had actual physical possession of his supposed property, as when he became an owner of the 1,919 square meters property described in TCT No. 52594, the property had already been occupied by herein DEFENDANTS since late 1970. Therefore,

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[40] 358 Phil. 83, 95 (1998).

[41] *Rollo*, pp. 5, 95, 163.

DEFENDANTS were already occupants/possessors of the property from where they are being ejected by FIORELLO JOSE, a supposed LESSEE of a property with a dubious title. The main thing to be proven in the case at bar is prior possession and that the same was lost through force, intimidation, threat, strategy and stealth, so that it behooves the court to restore possession regardless of title or even ownership xxx. In the case at bar, neither RODOLFO CHUA SING nor herein PLAINTIFF ever had any actual physical possession of the property where DEFENDANTS have already possessed for more than ten (10) years in 1991 when RODOLFO CHUA SING got his fake title to the property[.][42] (citation omitted)

In addition, whether or not it was credible, the respondent's claim that their possession was based on the Deed of Assignment executed by Dulfo, in behalf of the estate of Domingo de Ocampo, shows that they considered the petitioner and his lessor as strangers to any of their transactions on the property, and could not have stayed there upon the latter's permission.

We note that even after the issue of tolerance had been directly raised by the respondents before the RTC, the petitioner still failed to address it before the RTC, the Court of Appeals, and the Supreme Court.[43] At best, he belatedly states for the first time in his Memorandum[44] before this Court that his lessor had tolerated the respondents' occupancy of the lot, without addressing the respondents' allegation that they had occupied the lot in 1970, before the petitioner's lessor became the owner of the property in 1991, and without providing any other details. His pleadings continued to insist on the existence of tolerance without providing the factual basis for this conclusion. Thus, we cannot declare that the Court of Appeals had in anyway deprived the petitioner of due process or had unfairly treated him when it resolved the case based on the issue of tolerance.

The Court cannot treat an ejectment case as an *accion*

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[42] CA *rollo*, p. 147.

[43] *Rollo*, pp. 3-17, 88-92, 173-177.

[44] *Id.* at 95-111.

***publiciana* or *accion reivindicatoria*.**

The petitioner argues that assuming this case should have been filed as an *accion publiciana* or *accion reivindicatoria*, this Court should still resolve the case, as requiring him to properly refile the case serves no other ends than to comply with technicalities.[45]

The Court cannot simply take the evidence presented before the MeTC in an ejectment case and decide it as an *accion publiciana* or *accion reivindicatoria*. These cases are not interchangeable and their differences constitute far more than mere technicalities.

In *Regis, Jr. v. Court of Appeals*,[46] we ruled that an action for forcible entry cannot be treated as an *accion publiciana* and summarized the reasons therefor. We find these same reasons also applicable to an unlawful detainer case which bears the same relevant characteristics:

> On the issue of whether or not an action for forcible entry can be treated as *accion publiciana*, we rule in the negative. Forcible entry is distinct from *accion publiciana*. *First*, forcible entry should be filed within one year from the unlawful dispossession of the real property, while *accion publiciana* is filed a year after the unlawful dispossession of the real property. *Second*, forcible entry is concerned with the issue of the right to the physical possession of the real property; in *accion publiciana*, what is subject of litigation is the better right to possession over the real property. *Third*, an action for forcible entry is filed in the municipal trial court and is a summary action, while *accion publiciana* is a plenary action in the RTC. [italics supplied]

The cause of action in ejectment is different from that in an *accion publiciana* or *accion reivindicatoria*. An ejectment suit is brought before the proper inferior court to recover physical possession only or possession *de facto*, **not** possession *de jure*.

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[45] *Id.* at 16.

[46] G.R. No. 153914, July 31, 2007, 528 SCRA 611, 620.

Unlawful detainer and forcible entry cases are not processes to determine actual title to property. Any ruling by the MeTC on the issue of ownership is made only to resolve the issue of possession, and is therefore inconclusive.[47]

Because they only resolve issues of possession *de facto*, ejectment actions are summary in nature, while *accion publiciana* (for the recovery of possession) and *accion reivindicatoria* (for the recovery of ownership) are plenary actions.[48] The purpose of allowing actions for forcible entry and unlawful detainer to be decided in summary proceedings is to provide for a peaceful, speedy and expeditious means of preventing an alleged illegal possessor of property from unjustly taking and continuing his possession during the long period it would take to properly resolve the issue of possession *de jure* or ownership, thereby ensuring the maintenance of peace and order in the community; otherwise, the party illegally deprived of possession might take the law in his hands and seize the property by force and violence.[49] An ejectment case cannot be a substitute for a full-blown trial for the purpose of determining rights of possession or ownership. Citing *Mediran v. Villanueva*,[50] the Court in *Gonzaga v. Court of Appeals*[51] describes in detail how these two remedies should be used:

> In giving recognition to the action of forcible entry and detainer the purpose of the law is to protect the person who in fact has actual possession; and in case of controverted right, it requires the parties to preserve the *status quo* until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership. It is obviously just that the person who has first acquired possession should remain in possession pending [the] decision; and the parties cannot be permitted meanwhile to

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[47] *A. Francisco Realty and Development Corporation v. CA*, 358 Phil. 833, 841-842; and *Spouses Refugia v. CA*, 327 Phil. 982, 1004 (1996).

[48] *Custodio v. Corrado*, 479 Phil. 415, 427 (2004).

[49] *Spouses Refugia v. CA*, *supra* note 47, at 1007.

[50] 37 Phil. 752, 761 (1918).

[51] G.R. No. 130841, February 26, 2008, 546 SCRA 532, 540-541.

engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order. Therefore, where a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction; and he [cannot] be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an [action] to try the property right. [italics supplied]

Thus, if we allow parties to file ejectment cases and later consider them as an *accion publiciana* or *accion reivindicatoria*, we would encourage parties to simply file ejectment cases instead of plenary actions. Courts would then decide in summary proceedings cases which the rules intend to be resolved through full-blown trials. Because these "summary" proceedings will have to tackle complicated issues requiring extensive proof, they would no longer be expeditious and would no longer serve the purpose for which they were created. Indeed, we cannot see how the resulting congestion of cases, the hastily and incorrectly decided cases, and the utter lack of system would assist the courts in protecting and preserving property rights.

WHEREFORE, we **DENY** the petition, and **AFFIRM** the Court of Appeals' decision dated March 14, 2005 and resolution dated August 22, 2005 in CA-G.R. SP No. 80166.

SO ORDERED.

Sereno, C.J.,[*] *Carpio (Chairperson), del Castillo*, and *Perez, JJ.,* concur.

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[*] Designated as Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Raffle dated November 26, 2012.

THIRD DIVISION

[G.R. No. 172778. November 26, 2012]

SABINIANO DUMAYAG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT; BINDING AND CONCLUSIVE UPON THE SUPREME COURT ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS; EXCEPTIONS.—** Well-settled is the rule that findings of fact of the trial court, especially when affirmed by the CA, are binding and conclusive upon this Court. The Court, however, recognizes several exceptions to this rule, to wit: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record. Several exceptions obtain in this case; hence, a departure from the general rule is warranted.

2. **CRIMINAL LAW; REVISED PENAL CODE; CRIMINAL NEGLIGENCE; RECKLESS IMPRUDENCE, DEFINED; IN ORDER TO ESTABLISH A MOTORIST'S LIABILITY FOR THE NEGLIGENT OPERATION OF A VEHICLE, A CAUSAL CONNECTION BETWEEN THE NEGLIGENCE AND THE INJURY COMPLAINED OF MUST BE SHOWN.—** Reckless imprudence, as defined by our penal law, consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of

precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. In order to establish a motorist's liability for the negligent operation of a vehicle, it must be shown that there was a direct causal connection between such negligence and the injuries or damages complained of. Thus, to constitute the offense of reckless driving, the act must be something more than a mere negligence in the operation of a motor vehicle, and a willful and wanton disregard of the consequences is required.

3. **COMMERCIAL LAW; R.A. NO. 4136 (LAND TRANSPORTATION AND TRAFFIC CODE); MANDATES ALL MOTORISTS TO DRIVE AND OPERATE VEHICLES ON THE RIGHT SIDE OF THE ROAD OR HIGHWAY; EFFECT THEREOF, EXPLAINED.—** Section 37 of R.A. No. 4136, as amended, mandates all motorists to drive and operate vehicles on the right side of the road or highway. When overtaking another, it should be made only if the highway is clearly visible and is free from oncoming vehicle. Overtaking while approaching a curve in the highway, where the driver's view is obstructed, is not allowed. Corollarily, drivers of automobiles, when overtaking another vehicle, are charged with a high degree of care and diligence to avoid collision. The obligation rests upon him to see to it that vehicles coming from the opposite direction are not taken unaware by his presence on the side of the road upon which they have the right to pass.

4. **CRIMINAL LAW; REVISED PENAL CODE; *QUASI-DELICT*; THE ACQUITTAL OF THE ACCUSED DOES NOT CARRY THE EXTINCTION OF CIVIL LIABILITY; THE DETERMINATION OF THE MITIGATION OF THE CIVIL LIABILITY VARIES DEPENDING ON THE CIRCUMSTANCES OF EACH CASE; APPLICATION IN CASE AT BAR.—** The immediate and proximate cause being the reckless and imprudent act of the tricycle driver, petitioner should be acquitted. Nevertheless, he is civilly liable. The rule is that an "acquittal of the accused, even if based on a finding that he is not guilty, does not carry with it the extinction of the civil liability based on *quasi delict*." x x x Considering that the proximate cause was the negligence of the tricycle driver and that negligence on the part of petitioner was only contributory, there is a need

to mitigate the amounts of the civil liability imposed on the latter. The determination of the mitigation of the civil liability varies depending on the circumstances of each case. The Court allowed the reduction of 50% in *Rakes v. Atlantic Gulf & Pacific Co.*, 20% in *Phoenix Construction, Inc. v. IAC* and *LBC Air Cargo, Inc. v. CA*, and 40% in *Bank of the Philippine Islands v. CA* and *Philippine Bank of Commerce v. CA.* In this case, a reduction of 50% of the actual damages is deemed equitable considering that the negligence of the tricycle driver was the proximate cause of the accident and that of petitioner was merely contributory. Moreover, under the circumstances, petitioner cannot be made liable for moral and exemplary damages for lack of basis. The award of attorney's fees is not warranted either.

APPEARANCES OF COUNSEL

Law Firm of Cahig Canares & Carin and *Bonachita Law Office* for petitioner.

Daryll Roque A. Amante, Jr. for private complainant.

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 seeking the reversal of the November 26, 2004 Decision[1] and the May 10, 2006 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. CR No. 26513, which affirmed the June 24, 2002 Decision[3] of the Regional Trial Court, Branch 21, Cebu City *(RTC)*. The RTC decision upheld with modification the Decision[4] of the Municipal Trial Court of San Fernando, Cebu City *(MTC)*, finding accused Sabiniano Dumayag

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[1] *Rollo*, pp. 71-80. Penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justice Mariflor P. Punzalan Castillo and Associate Justice Ramon M. Bato, Jr.

[2] *Id*. at 88-89.

[3] Records, pp. 315-337.

[4] *Id*. at 257-270.

(petitioner) guilty of the complex crime of reckless imprudence resulting in multiple homicide and reckless imprudence resulting in physical injuries.

The Facts:

On July 6, 1995, at around 11:30 o'clock in the morning, along the national highway in Magtalisay, Sangat, San Fernando, Cebu, a passenger bus of Petrus Bus Liner *(passenger bus)*, driven by petitioner, collided with a tricycle driven by Elsie Genayas *(Genayas)*, resulting in the death of four (4) persons and causing physical injuries to five (5) others, who were all passengers of the tricycle.[5] The passenger bus was bound for Dalaguete, Cebu, while the tricycle came from the opposite direction, going towards Cebu City. At the time of the mishap, the tricycle was overtaking a Mitsubishi pick-up when it collided with a passenger bus coming from the opposite direction.[6]

Petitioner was charged before the MTC with reckless imprudence resulting in multiple homicide for the deaths of Genayas, Orlando Alfanta *(Alfanta)*, Grace Israel *(Israel)*, and Julius Amante *(Amante)*; and with reckless imprudence resulting in serious physical injuries sustained by Crispin Cañeda, Jannette Bacalso, Carmela Lariosa, Fediliza Basco *(Basco)*, and Nelfe Agad *(Agad)* and damage to property.[7]

During the trial, one of the witnesses presented by the prosecution was Rogelio Cagakit *(Cagakit)*, a driver of Badian Island Resort. He testified that on July 6, 1995, at around 11:30 o'clock in the morning, he was driving a Mitsubishi Pajero with tourist passengers bound for Cebu City; that along the national highway somewhere in Barangay Magtalisay, Balud, San Fernando, Cebu, he was trailing a tricycle bearing a total of 8 passengers; that upon reaching the first blind curve of the road, he noticed the tricycle following a Mitsubishi pick-up; that when the Mitsubishi pick-up slowed down upon reaching the second

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[5] *Id*. at 8.

[6] *Rollo*, pp. 71-74.

[7] Records, p. 3.

blind curve, the tricycle tried to overtake the pick up and, while overtaking, a fast moving vehicle from the opposite direction hit the tricycle which was thrown towards his direction; and that two passengers of the tricycle died on the spot.[8]

Senior Police Officer 3 Gregorio Patalinghug *(SPO3 Patalinghug)* was also presented as a witness and he narrated that on the said date and time he and Senior Police Officer 2 Felipe Yap *(SPO2 Yap*) responded to a report about a traffic accident somewhere in Magtalisay, Balud, San Fernando, Cebu. When they arrived at the place, SPO2 Yap immediately boarded the injured victims in a vehicle and brought them to the hospital. He noticed two lifeless bodies lying on the road, later identified as those of Alfanta and Genayas. He then inspected the place of the incident; measured the relative positions of the tricycle, the Mitsubishi Pajero and passenger bus; and drew a sketch. From the sketch, he identified the point of impact, which was one (1) foot away from the centerline of the road, crossing the lane occupied by the passenger bus. He also pointed to the skid mark, about sixty (60) feet in length, produced by the bus when its driver stepped on the brake pedal. Based on his observation from the point of impact and on the information he gathered from several persons present at the time of the accident, he was of the opinion that the driver of the tricycle was at fault.[9]

The prosecution also presented Cañeda, Agad and Basco, who related the collision they witnessed. The parents of the victims and the owner of the tricycle, meanwhile, both testified on their respective claims for damages; while Dr. Rolando Anzano, reported his findings on the injuries sustained by the victims.

In his defense, petitioner testified that he was a professional driver for 26 years and worked for five (5) different employers, the fifth of which was the Petrus Bus Liner; that his everyday route was from Dalaguete, Cebu to Cebu City and back, with two (2) round trips a day; that he was familiar with the road

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[8] TSN, July 11, 1997, pp. 3-27.

[9] TSN, August 7, 1997, pp. 3-25.

since he had been traversing it for around 20 years; that the road where the accident happened had two (2) blind curves and upon approaching the first blind curve, he slowed down by stepping on the brakes; that while negotiating the second blind curve, he noticed that his lane was clear and so he stepped on the accelerator in order to gain momentum; that it was at this moment that the tricycle while in the process of overtaking a vehicle ahead of it, suddenly occupied his lane; that he tried to avoid hitting the tricycle but to no avail; that he could not swerve the bus to the left because there was another vehicle occupying the same; and he could not also swerve the bus to the road shoulder on the right side of the lane because it was sloping down and there was a canal. He posited that the accident would not have taken place at all if the tricycle driver had not attempted to overtake another vehicle and occupied his lane.[10]

On March 18, 1999, the MTC found petitioner guilty beyond reasonable doubt of the crime of reckless imprudence resulting in multiple homicide. [11] It explained:

> Taking into account the circumstances and condition of the road there being two (2) blind curves involved, the length of the skidmark produced at sixty (60) feet in length clearly speaks for itself that the accused drove and operated the passenger bus negligently without taking the necessary precautions and without due regard to the road condition.
>
> Simpl[y] stated, if in the exercise of reasonable care as contended by the accused, the speed of the passenger bus at that time was commensurate and corresponds with the demands of the circumstances and conditions of the road where as is obtaining, the conditions are such as to increase the danger of accident, no matter how sudden the tricycle appeared at the bus' front, indisputably, the skid mark produced would not have reached that much or the accident may have been avoided and if not, the damage or injuries caused could only be slight and manageable.[12]

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[10] TSN, April 3, 1998 & June 26, 1998, pp. 3-36 & 2-13.

[11] Records, pp. 257-270.

[12] *Id*. at 266.

The dispositive portion reads:

WHEREFORE, finding the accused, Sabiniano Dumayag, guilty beyond reasonable doubt of the crime of reckless imprudence resulting in multiple homicide, he is sentenced to suffer the penalty of imprisonment of two (2) years and one (1) day minimum to three (3) years, six (6) months and twenty (20) days maximum and to pay the following civil liabilities:

1. To the surviving heirs of deceased Orlando Alfanta:
    a. ₱50,000.00 death Indemnity;
    b. ₱50,000.00 for wake, funeral, burial and other related miscellaneous expenses; and
    c. ₱20,000.00 moral damages for the agony, mental anguish and sorrow suffered by the surviving heirs;
2. To the surviving heirs of deceased Julius Amante;
    a. ₱50,000.00 death Indemnity;
    b. ₱50,000.00 for wake, funeral, burial and other related miscellaneous expenses; and
    c. ₱20,000.00 moral damages for the agony, mental anguish and sorrow suffered by the surviving heirs;
3. To the surviving heirs of deceased Grace Israel:
    a. ₱50,000.00 death Indemnity;
    b. ₱50,000.00 for wake, funeral, burial and other related miscellaneous expenses; and
    c. ₱20,000.00 moral damages for the agony, mental anguish and sorrow suffered by the surviving heirs;

plus ₱50,000.00 by way of attorney's fees and ₱20,000.00 exemplary damages.

With costs against the accused.

SO ORDERED.[13]

On appeal, the RTC affirmed with modification the decision of the MTC.[14] The modified judgment reads:

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[13] *Id.* at 269-270.

[14] *Id.* at 315-337.

WHEREFORE, in view of the foregoing premises, the appealed decision is hereby AFFIRMED but modified as follows:

1. For the complex crime of reckless imprudence resulting in multiple homicide of Alfante, Israel and Amante, accused is sentenced to suffer the indeterminate penalty of TWO (2) YEARS and FOUR (4) MONTHS (of *arresto mayor* in its maximum period to *prision correccional* in its minimum period), as minimum, to SIX (6) YEARS (of *prision correccional* in its medium and maximum periods), as the maximum thereof, with all the accessory penalties thereto.

2. For reckless imprudence resulting in slight physical injuries accused is sentenced to PUBLIC CENSURE for the injuries sustained by each of the private complainants, to wit, Canieda, Bacalso, Lariosa, Bascon and Agad. In other words, accused is sentenced to said penalty for as many private complainants as were injured.

3. For his civil liabilities, accused is directed –

3.1 To pay the surviving heirs of each of the deceased tricycle passengers, namely, Alfante, Amante and Israel the following:

3.1.1 Fifty Thousand Pesos (₱50,000.00) for the death each of the defendant;

3.1.2 Thirty Thousand Pesos (₱30,000.00) for the wake, funeral, burial and other related expenses in connection with the said death;

3.1.3 Twenty Thousand (₱20,000.00) pesos for moral damages

3.1.4 Ten Thousand Pesos (₱10,000.00) for exemplary damages;

3.1.5 Twenty Thousand (₱20,000.00) pesos as attorney's fees.

3.2 To pay Beethoven Bernabe, the owner of the damaged tricycle, EIGHTY THOUSANDS PESOS (₱80,000.00) as compensatory damage representing the value of the said property after deducting therefrom its salvage value and allowance for depreciation; and

3.3 The costs.

SO ORDERED.[15]

The CA affirmed *in toto* the decision of the RTC. It found the petitioner and the tricycle driver equally guilty of negligence, the former for failing to observe the precautionary measure when approaching a blind curve and the latter for unsuccessfully overtaking a vehicle. The CA stated that the petitioner should have been more careful considering that the area had blind curves and there could be oncoming vehicles from the other side. The fact that petitioner was driving on the right side of the road did not relieve him of the obligation of exercising due and ordinary care to prevent collision and avoid injury to persons or property, including others who may be on the wrong side of the road.[16]

Petitioner filed a motion for reconsideration, but it was denied in a Resolution, dated May 10, 2006.

Hence, this petition raising the following issues:

WHETHER OR NOT NEGLIGENCE, IMPRUDENCE AND RECKLESSNESS WAS CORRECTLY ATTRIBUTED TO PETITIONER BY THE COURTS BELOW WHEN THE VEHICULAR MISHAP COMPLAINED OF IN THIS PROCEEDING OCCURRED LAST 6 JULY 1995;

IF INDEED PETITIONER WAS NEGLIGENT, RECKLESS AND IMPRUDENT WHEN THE MISHAP LITIGATED IN THIS PROCEEDING OCCURRED LAST 6 JULY 1995, WHETHER OR NOT SAID NEGLIGENCE, RECKLESSNESS AND IMPRUDENCE, WAS THE PROXIMATE CAUSE OF THE SAME;

WHETHER OR NOT PETITIONER'S CONVICTION, AS SUSTAINED BY THE COURT OF APPEALS, IS VIOLATIVE OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND TO BE PRESUMED INNOCENT OF THE CRIME CHARGED AT BAR.[17]

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[15] *Id.* at 336-337.

[16] *Rollo*, pp. 71-80.

[17] *Id.* at 16.

Petitioner argues that his guilt was not proven beyond reasonable doubt, claiming that the vehicular mishap was purely an accident. He insists that he was not negligent, reckless and imprudent in the operation of the motor vehicle at the time of the accident and that he was driving the bus on the lane properly belonging to him at a moderate speed.

He asserts that the proximate cause of the accident was the negligent, reckless and imprudent act of the tricycle driver, who suddenly overtook another vehicle while approaching a blind curve. He stresses that had the tricycle driver not attempted to suddenly overtake another vehicle while approaching a blind curve, the accident would not have taken place.

Petitioner further avers that, at the time of the accident, the tricycle was overloaded with eight passengers, in addition to the driver; that the driver of the tricycle was operating along the national highway, a route specifically prohibited under the franchise; and that the tricycle driver also violated Section 41 (a) and (b) of Republic Act *(R.A.)* No. 4136,[18] as amended, otherwise known as the Land Transportation and Traffic Code of the Philippines when he tried to overtake another vehicle while approaching a blind curve of the highway. Therefore, due to serious violations committed by the tricycle driver, the

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[18] **Section 41.** *Restrictions on overtaking and passing.*

(a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle proceeding in the same direction, unless such left side is clearly visible, and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.

(b) The driver of a vehicle shall not overtake or pass another vehicle proceeding in the same direction, when approaching the crest of a grade, not upon a curve in the highway, where the driver's view along the highway is obstructed within a distance of five hundred feet ahead, except on a highway having two or more lanes for movement of traffic in one direction where the driver of a vehicle may overtake or pass another vehicle: Provided, That on a highway within a business or residential district, having two or more lanes for movement of traffic in one direction, the driver of a vehicle may overtake or pass another vehicle on the right.

resulting deaths and injuries arising from the vehicular accident should be his sole responsibility.[19]

The Court finds merit in the petition.

Well-settled is the rule that findings of fact of the trial court, especially when affirmed by the CA, are binding and conclusive upon this Court.[20] The Court, however, recognizes several exceptions to this rule, to wit: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[21] Several exceptions obtain in this case; hence, a departure from the general rule is warranted.

The MTC, the RTC and the CA found petitioner guilty beyond reasonable doubt of reckless imprudence resulting in homicide and physical injuries and damage to property. They all concluded that petitioner was guilty because he was driving fast at the time of the collision. Consequently, he was sentenced to suffer the penalty of imprisonment and ordered to pay the victims civil indemnity.

Reckless imprudence, as defined by our penal law, consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable

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[19] *Rollo*, pp. 9-30.

[20] *Lambert v. Heirs of Ray Castillon*, 492 Phil. 384, 389 (2005).

[21] *Estacion v. Bernardo*, 518 Phil. 388, 398-399 (2006).

lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.[22] In order to establish a motorist's liability for the negligent operation of a vehicle, it must be shown that there was a direct causal connection between such negligence and the injuries or damages complained of.[23] Thus, to constitute the offense of reckless driving, the act must be something more than a mere negligence in the operation of a motor vehicle, and a willful and wanton disregard of the consequences is required.[24]

After going over the records of this case, the Court is unable to sustain the findings of fact and conclusion reached by the courts below. The totality of the evidence shows that the proximate cause of the collision was the reckless negligence of the tricycle driver, who hastily overtook another vehicle while approaching a blind curve, in violation of traffic laws.

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. And more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.[25]

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[22] Art. 365, Revised Penal Code.

[23] *Gaid v. People*, G.R. No. 171636, April 7, 2009, 584 SCRA 489, 498-499.

[24] *Caminos, Jr. v. People*, G.R. No. 147437, May 8, 2009, 587 SCRA 348, 357.

[25] *Vallacar Transit v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 295-296.

The evidence indubitably shows that before the collision, the passenger bus was cruising along its rightful lane when the tricycle coming from the opposite direction suddenly swerved and encroached on its lane. The accident would not have happened had Genayas, the tricycle driver, stayed on his lane and did not recklessly try to overtake another vehicle while approaching a blind curve. Section 37 of R.A. No. 4136, as amended, mandates all motorists to drive and operate vehicles on the right side of the road or highway. When overtaking another, it should be made only if the highway is clearly visible and is free from oncoming vehicle. Overtaking while approaching a curve in the highway, where the driver's view is obstructed, is not allowed.[26] Corollarily, drivers of automobiles, when overtaking another vehicle, are charged with a high degree of care and diligence to avoid collision. The obligation rests upon him to see to it that vehicles coming from the opposite direction are not taken unaware by his presence on the side of the road upon which they have the right to pass.[27]

The MTC opined that the accident could have been avoided or damage or injuries could only be slight and manageable, if the speed of the passenger bus was commensurate with the demands of the circumstances and the condition of the road. The Court, however, cannot subscribe to the conclusion that petitioner was driving fast and without regard to the condition of the road at the time of the collision.

The testimony of Cagakit that the passenger bus was running fast at the time of the collision lacks probative value. The actual speed of the bus was not established because he merely stated that when the tricycle was trying to overtake the Mitsubishi pick-up, a fast moving vehicle hit it. Also, it was not indubitably shown that petitioner was driving at a speed beyond the rate

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[26] Section 41 (a) (b) of Republic Act No. 4136.

[27] *United States v. Crame*, Separate Opinion, 30 Phil. 2, 21-22 (1915).

allowed by law.[28] In a similar case, *Vallacar Transit, Inc. v. Catubig*,[29] the Court, in adopting the conclusion of the RTC, wrote:

Based on the evidence on record, it is crystal clear that the immediate and proximate cause of the collision is the reckless and negligent act of Quintin Catubig, Jr. and not because the Ceres Bus was running very fast. Even if Ceres Bus is running very fast on its

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[28] Republic Act No. 4136, Section 35. *Restriction as to speed.* -

(a) Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed, not greater nor less than is reasonable and proper, having due regard for the traffic, the width of the highway, and of any other condition then and there existing; and no person shall drive any motor vehicle upon a highway at such a speed as to endanger the life, limb and property of any person, nor at a speed greater than will permit him to bring the vehicle to a stop within the assured clear distance ahead.

(b) Subject to the provisions of the preceding paragraph, the rate of speed of any motor vehicle shall not exceed the following:

MAXIMUM ALLOWABLE SPEEDS	Passengers Cars and Motorcycle	Motor trucks and buses
1. On open country roads, with no "blinds corners" not closely bordered by habitations.	80 km. per hour	50 km. per hour
2. On "through streets" or boulevards, clear of traffic, with no " blind corners," when so designated.	40 km. per hour	30 km. per hour
3. On city and municipal streets, with light traffic, when not designated "through streets".	30 km. per hour	30 km. per hour
4. Through crowded streets, approaching intersections at "blind corners," passing school zones, passing other vehicles which are stationery, or for similar dangerous circumstances.	20 km. per hour	20 km. per hour

[29] *Supra* note 25, at 296.

lane, it could not have caused the collision if not for the fact that Quintin Catubig, Jr. tried to overtake a cargo truck and encroached on the lane traversed by the Ceres Bus while approaching a curve. As the driver of the motorcycle, Quintin Catubig, Jr. has not observed reasonable care and caution in driving his motorcycle which an ordinary prudent driver would have done under the circumstances. Recklessness on the part of Quintin Catubig, Jr. is evident when he tried to overtake a cargo truck while approaching a curve in Barangay Donggo-an, Bolisong, Manjuyod, Negros Oriental. x x x.

Furthermore, it was undisputed that the tricycle was overloaded, with a total of eight (8) passengers (excluding the driver), which is a clear violation of traffic rules and regulation. It was likewise admitted by the owner of the tricycle, Beethoven Bernabe *(Bernabe)*, that his driver violated the conditions specified in the tricycle franchise which prohibited all tricycles to travel along the national highway. In fact, he admitted that Genayas was only the alternate driver of his son and that he did not interview him anymore when he applied as a company driver because he was a neighbor and a nephew of his wife. For said reason, the award of damages to Bernabe by the courts below has no justifiable basis.

The immediate and proximate cause being the reckless and imprudent act of the tricycle driver, petitioner should be acquitted. Nevertheless, he is civilly liable. The rule is that an "acquittal of the accused, even if based on a finding that he is not guilty, does not carry with it the extinction of the civil liability based on *quasi delict*." [30]

Under the proven circumstances, there was contributory negligence on the part of petitioner. It is to be noted that there were two blind curves along the national highway. Having travelled along it for the past 20 years, he was aware of the blind curves and should have taken precaution in operating the passenger bus as it approached them. In the situation at hand, he did not exercise the necessary precaution. After negotiating the first curve, he claimed to have stepped on the accelerator

[30] *Heirs of Late Guaring, Jr. v. Court of Appeals*, 336 Phil. 274, 279 (1997).

pedal because his lane was clear. According to SPO2 Patalinghug, he found skid marks produced by the passenger bus. It could only mean that petitioner had slammed on the brake brought about by the sudden emergence of the tricycle in front of him. Notwithstanding, it was still short of reckless or criminal negligence as he was driving along his rightful lane.

Considering that the proximate cause was the negligence of the tricycle driver and that negligence on the part of petitioner was only contributory, there is a need to mitigate the amounts of the civil liability imposed on the latter. The determination of the mitigation of the civil liability varies depending on the circumstances of each case.[31] The Court allowed the reduction of 50% in *Rakes v. Atlantic Gulf & Pacific Co.*,[32] 20% in *Phoenix Construction, Inc. v. IAC*[33] and *LBC Air Cargo, Inc. v. CA*,[34] and 40% in *Bank of the Philippine Islands v. CA*[35] and *Philippine Bank of Commerce v. CA*.[36]

In this case, a reduction of 50% of the actual damages is deemed equitable considering that the negligence of the tricycle driver was the proximate cause of the accident and that of petitioner was merely contributory. Moreover, under the circumstances, petitioner cannot be made liable for moral and exemplary damages for lack of basis. The award of attorney's fees is not warranted either.

WHEREFORE, the petition is **PARTLY GRANTED**. Petitioner Sabiniano Dumayag is hereby **ACQUITTED** of the crime of reckless imprudence resulting in homicide and damage to property. He is, however, civilly liable and, accordingly, **ORDERED** to pay each of the surviving heirs of Orlando Alfanta, Grace Israel and Julius Amante the following:

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[31] *Lambert v. Heirs of Ray Castillon, supra* note 17, at 392.

[32] 7 Phil. 359 (1907).

[33] 232 Phil. 327 (1987).

[34] 311 Phil. 715 (1995).

[35] G.R. No. 102383, November 26, 1992, 216 SCRA 51.

[36] 336 Phil. 667 (1997).

1] ₱25,000.00 as civil indemnity; and

2] ₱15,000.00 for funeral expenses.

The award of damages to Beethoven Bernabe, the owner of the tricycle, is **DELETED.**

SO ORDERED.

Leonardo-de Castro,[*] *Peralta (Acting Chairperson),*[**] *Abad,* and *Leonen, JJ.*, concur.

SECOND DIVISION

[G.R. No. 173336. November 26, 2012]

PABLO PUA, *petitioner, vs.* **LOURDES L. DEYTO, doing business under the trade name of "JD Grains Center"; and JENNELITA DEYTO ANG *a.k.a.* "JANET ANG,"** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE BY PUBLICATION; WHEN ALLOWED.— Under Section 14, Rule 14 of the Rules of Court, service of summons may be effected on a defendant by publication, with leave of court, when his whereabouts are unknown and cannot be ascertained by diligent inquiry. x x x In *Santos, Jr. v. PNOC Exploration Corporation*, the Court authorized resort to service of summons by publication even in actions *in personam*, considering that

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[*] Designated Acting Member, per Special Order No. 1361 dated November 19, 2012.

[**] Per Special Order No. 1360 dated November 19, 2012.

the provision itself allows this mode in *any* action, *i.e.*, whether the action is *in personam*, *in rem*, or *quasi in rem*. The ruling, notwithstanding, there must be prior resort to service in person on the defendant and substituted service, and proof that service by these modes were ineffective before service by publication may be allowed for defendants whose whereabouts are unknown, considering that Section 14, Rule 14 of the Rules of Court requires a diligent inquiry of the defendant's whereabouts.

2. **ID.; ID.; PARTIES; INDISPENSABLE PARTY, DEFINED.—** An indispensable party is one who must be included in an action before it may properly go forward. A court must acquire jurisdiction over the person of indispensable parties before it can validly pronounce judgments personal to the parties. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

3. **ID.; ID.; DISMISSAL OF ACTIONS; DISMISSAL OF ACTION FOR FAILURE TO PROSECUTE MAY HAVE THE EFFECT OF AN ADJUDICATION ON THE MERITS; PRESENT IN CASE AT BAR.—** Section 3, Rule 17 of the Revised Rules of Court authorizes the dismissal of a case when the plaintiff fails to prosecute his action for an unreasonable length of time: x x x Once a case is dismissed for failure to prosecute, the dismissal has the effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal. In this case, Pua failed to take any action on the case after summons was served by publication on Ang. It took him more than two years to file a motion to declare Ang in default and only after the RTC has already dismissed his case for failure to prosecute. That Pua renewed the attachment bond is not an indication of his intention to prosecute. The payment of an attachment bond is not the appropriate procedure to settle a legal dispute in court; it could not be considered as a substitute for the submission of necessary pleadings or motions that would lead to prompt action on the case.

4. **LEGAL ETHICS; ATTORNEYS; A CLIENT IS BOUND BY THE ACTION OF HIS COUNSEL IN THE CONDUCT OF HIS CASE; APPLICATION IN CASE AT BAR.—** We give scant consideration to Pua's claim that the untimely demise of his counsel caused the delay in prosecuting the case. Pua had

employed the services of a law firm; hence, the death of one partner does not excuse such delay; the law firm had other lawyers who would take up the slack created by the death of a partner. The more relevant rule is that a client is bound by the action of his counsel in the conduct of his case; he cannot complain that the result of the litigation could have been different had the counsel proceeded differently. Moreover, Pua had also secured the services of another law firm even before the death of Atty. Kamid Abdul. In fact, this second law firm signed the formal appearance in court on October 15, 2001. To our mind, with two (2) law firms collaborating on the case, no reason exists for delay if only Pua had been more vigilant.

APPEARANCES OF COUNSEL

Cruz Durian Alday & Cruz-Matters for petitioner.
Rocamora and Timbancaya Law Office for respondents.

D E C I S I O N

BRION, *J.*:

Before us is the petition for review on *certiorari*,[1] filed by Pablo Pua under Rule 45 of the Rules of Court, assailing the decision[2] dated February 23, 2006 and the resolution[3] dated June 23, 2006 of the Court of Appeals *(CA)* in CA-G.R. CV No. 84331. The CA affirmed the order[4] dated January 3, 2005 of the Regional Trial Court *(RTC)*, Branch 19, Manila, in Civil Case No. 00-99353 which dismissed the case for failure to prosecute.

The Antecedent Facts

Pua is engaged in the business of wholesale rice trading. Among his clients was respondent Jennelita Ang, allegedly

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[1] *Rollo*, pp. 9-28.

[2] *Id.* at 30-43.

[3] *Id.* at 45-46.

[4] Records, pp. 189-191.

operating under the business and trade name of JD Grains Center. In October 2000, Pua delivered to Ang truckloads of rice worth ₱766,800.00. Ang paid Pua through two (2) postdated checks dated November 4, 2000 and November 6, 2000. When the checks fell due, Pua tried to encash them, but they were dishonored because they were drawn from a closed account.

Pua immediately went to Ang's residence to complain. Unfortunately, he was only able to talk to Ang's mother and co-respondent, Lourdes Deyto, who told him that Ang had been missing. Unable to locate Ang, Pua demanded payment from Deyto, but she refused to pay.

On November 24, 2000, Pua filed a complaint[5] with the RTC for **collection of sum of money with preliminary attachment against Ang and Deyto**, as co-owners of JD Grains Center. The complaint alleged that the respondents were guilty of fraud in contracting the obligation, as they persuaded Pua to conduct business with them and presented documents regarding their financial capacity to fund the postdated checks.

On November 28, 2000, the RTC issued an order for the issuance of a writ of preliminary attachment upon an attachment bond of ₱766,800.00. Since Ang could not be found and had no available properties to satisfy the lien, the properties of Deyto were levied upon.

Summons was duly served on Deyto, but not on Ang who had absconded. On April 16, 2001, Deyto submitted her answer with special and affirmative defenses.[6] On May 8, 2001, Deyto filed a "Motion to Set Hearing of Defendant's Special and Affirmative Defenses," which was in the nature of a motion to dismiss.[7] In an order dated July 12, 2001, the RTC denied Deyto's motion to dismiss, stating that:

The allegations raised by defendant Lourdes Deyto as special and affirmative defenses are largely evidentiary in nature and therefore

[5] *Rollo*, pp. 258-267.

[6] *Id.* at 238.

[7] *Ibid.*

can be threshed out in a trial on the merit. Consequently, the prayer to dismiss the complaint upon these grounds, is hereby Denied.[8]

After Pua and Deyto filed their respective pre-trial briefs, the case was set for pre-trial conference on November 13, 2001. On the scheduled date, the RTC ordered the resetting of the pre-trial conference to January 22, 2002, upon the parties' agreement.[9] The RTC, upon motion by Pua, also ordered the sheriff to submit the return of summons for Ang.

The summons by publication to Ang

Since service of summons could not be effected on Ang, Pua moved for leave of court to serve summons by publication on Ang on January 8, 2002.[10] The RTC granted the motion in an order dated January 11, 2002.[11]

By March 2002, Pua's counsel manifested that the summons for Ang remained unpublished; the RTC accordingly cancelled the pre-trial scheduled on March 5, 2002.[12]

On May 17, 2002, Pua again filed a manifestation that as early as April 17, 2002, he had already paid ₱9,500.00 to Manila Standard for the publication of the summons on Ang, but it failed to do so.[13] This prompted the RTC to issue an order directing Manila Standard to explain why the summons was not published despite payment of the corresponding fees.[14] On May 30, 2002, Manila Standard explained[15] to the trial court that when Pua paid the publication fee, he issued a specific order to hold the publication until he ordered otherwise.

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[8] *Ibid.*

[9] Records, p. 94.

[10] *Id.* at 97-98.

[11] *Id.* at 101.

[12] *Id.* at 113.

[13] *Id.* at 116-118.

[14] *Id.* at 120.

[15] Letter addressed to Hon. Zenaida R. Daguna, Regional Trial Court, Branch 19, Manila; *rollo*, p. 151.

Eventually, the summons for Ang was published in the May 31, 2002 edition of the Manila Standard.

On January 24, 2003, more than (6) months after the publication of summons for Ang, the case was archived for inactivity.[16] Since neither party filed any further motions, the **RTC dismissed the case for the plaintiff's lack of interest to prosecute on October 1, 2004**.[17]

On November 3, 2004, Pua submitted a motion for reconsideration and a motion to declare Ang in default. The RTC, however, denied the motion in an order dated January 3, 2005; it added that the dismissal of the main case amounts to the dismissal of the motion to declare Ang in default.

Pua appealed the case to the CA. He argued that the reason for the delay in prosecuting the case was the untimely death of his counsel – Atty. Kamid Abdul. He added that he had shown interest in the case by securing the properties of Deyto; paying the annual premium of the attachment bond for the years 2002, 2003, and 2004; and causing the publication of summons on Ang.

On February 23, 2006, the CA denied Pua's appeal. While the CA recognized some of Pua's actions in prosecuting the case, it still found that the totality of the surrounding circumstances of the case pointed to gross and immoderate delay in the prosecution of the complaint.[18] Pua moved for reconsideration, which the CA denied in its resolution dated June 23, 2006.

The Petition

Pua now questions the CA rulings before us. He insists that it was the untimely demise of his counsel that created the hiatus in the prosecution of the case. He adds that he has consistently paid the annual premiums of the attachment bond and has also

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[16] Records, p. 129.

[17] *Id.* at 133.

[18] *Rollo*, pp. 36-37.

served summons by publication on Ang. He also questions the delay in the filing of Deyto's answer.

Pua pleads that the case be decided on the merits and not on mere technicalities. He contends that he has adequately shown his interest in pursuing his meritorious claim against the respondents before the RTC; and the RTC and the CA committed patent error in dismissing his case for his alleged lack of interest.

For her part, Deyto reiterates that the numerous delays involved in this case warrant its dismissal for failure to prosecute. *First*, the motion to serve summons by publication on Ang was filed about four hundred (400) days after the filing of the complaint; *second*, the delay of seventy-seven (77) days before the case was set for pre-trial; and *third*, the delay of almost four (4) years in the prosecution of the case.

The Issue

The issue centers on **whether the plaintiff incurred unreasonable delay in prosecuting the present case.**

The Court's Ruling

We deny the petition for lack of merit.

We agree with the finding that Pua committed delay in prosecuting his case against the respondents. We clarify, however, that Pua's delay is limited to his failure to move the case forward *after the summons for Ang had been published in the Manila Standard*; he could not be faulted for the delay in the service of summons for Ang.

A 13-month delay occurred between the filing of the complaint and the filing of the motion to serve summons by publication on Ang. This delay, however, is attributable to the failure of the sheriff to immediately file a return of service of summons. The complaint was filed on November 24, 2000, but the return of service of summons was filed only on January 3, 2002, after the RTC ordered its submission and upon Pua's motion.[19]

[19] Records, p. 94.

Under Section 14, Rule 14 of the Rules of Court, service of summons may be effected on a defendant by publication, with leave of court, when his whereabouts are unknown and cannot be ascertained by diligent inquiry. The Rules of Court provides:

> SEC. 14. *Service upon defendant whose identity or whereabouts are unknown*. – In **any action** where the defendant is designated as an unknown owner, or the like, or **whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication** in a newspaper of general circulation and in such places and for such time as the court may order. [emphases ours]

In *Santos, Jr. v. PNOC Exploration Corporation*,[20] the Court authorized resort to service of summons by publication even in actions *in personam*, considering that the provision itself allows this mode in *any* action, *i.e.*, whether the action is *in personam*, *in rem*, or *quasi in rem*. The ruling, notwithstanding, there must be prior resort to service in person on the defendant[21] and substituted service,[22] and proof that service by these modes were ineffective before service by publication[23] may be allowed for defendants whose whereabouts are unknown, considering that Section 14, Rule 14 of the Rules of Court requires a diligent inquiry of the defendant's whereabouts.[24]

Until the summons has been served on Ang, the case cannot proceed since Ang is an indispensable party to the case; Pua alleged in his complaint that the respondents are co-owners of JD Grains Center.[25] An indispensable party is one who must be included in an action before it may properly go forward. A court must acquire jurisdiction over the person of indispensable

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[20] G.R. No. 170943, September 23, 2008, 566 SCRA 272.

[21] RULES OF COURT, Rule 14, Section 6.

[22] *Id.*, Section 7.

[23] *Id.*, Section 14.

[24] *Mangila v. Court of Appeals*, 435 Phil. 870, 882 (2002).

[25] *Rollo*, p. 259.

parties before it can validly pronounce judgments personal to the parties. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[26]

After the summons for Ang was published on May 31, 2002 and the Affidavit of Service was issued by Manila Standard's Advertising Manager on June 3, 2002, no further action was taken on the case by Pua. Even after the RTC issued its order dated January 24, 2003 to archive the case, Pua made no move to have the case reopened. More than a year after the case was sent to the archives (October 1, 2004), the RTC decided to dismiss the case for Pua's lack of interest to prosecute the case. It was only after Pua received the order of dismissal that he filed his motion for reconsideration and motion to declare Ang in default.[27]

We give scant consideration to Pua's claim that the untimely demise of his counsel caused the delay in prosecuting the case. Pua had employed the services of a law firm;[28] hence, the death of one partner does not excuse such delay; the law firm had other lawyers who would take up the slack created by the death of a partner. The more relevant rule is that a client is bound by the action of his counsel in the conduct of his case; he cannot complain that the result of the litigation could have been different had the counsel proceeded differently.[29]

Moreover, Pua had also secured the services of another law firm even before the death of Atty. Kamid Abdul.[30] In fact, this second law firm signed the formal appearance in court

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[26] *Regner v. Logarta*, G.R. No. 168747, October 19, 2007, 537 SCRA 277, 289.

[27] Dated November 3, 2004; records, pp. 137-141.

[28] Abdul & Maningas Law Offices; *rollo*, p. 201.

[29] *United States v. Umali*, 15 Phil. 33, 35 (1910).

[30] Cruz Durian Alday & Cruz Matters; records, p. 74.

on October 15, 2001.[31] To our mind, with two (2) law firms collaborating on the case, no reason exists for delay if only Pua had been more vigilant.

Section 3, Rule 17 of the Revised Rules of Court authorizes the dismissal of a case when the plaintiff fails to prosecute his action for an unreasonable length of time:

> SEC. 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or **to prosecute his action for an unreasonable length of time**, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. **This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.** [emphases ours; italics supplied]

Once a case is dismissed for failure to prosecute, the dismissal has the effect of an adjudication on the merits and is understood to be with prejudice to the filing of another action unless otherwise provided in the order of dismissal.[32]

In this case, Pua failed to take any action on the case after summons was served by publication on Ang. It took him more than two years to file a motion to declare Ang in default and only after the RTC has already dismissed his case for failure to prosecute. That Pua renewed the attachment bond is not an indication of his intention to prosecute. The payment of an attachment bond is not the appropriate procedure to settle a legal dispute in court; it could not be considered as a substitute for the submission of necessary pleadings or motions that would lead to prompt action on the case.

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[31] *Ibid.*

[32] *Insular Veneer, Inc. v. Judge Plan,* 165 Phil. 1, 11-12 (1976); *Malvar v. Pallingayan,* No. L-24736, September 27, 1966, 18 SCRA 121, 124; *Rivera v. Luciano,* No. L-20844, August 14, 1965, 14 SCRA 947, 948; and *Guanzon, et al. v. Mapa,* 117 Phil. 471, 472-473 (1963).

WHEREFORE, the foregoing premise considered, this present petition is **DENIED**. Accordingly, the decision and the resolution of the Court of Appeals in CA-G.R. CV No. 84331 are hereby **AFFIRMED**.

Costs against Pablo Pua.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *Bersamin,*[**] and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 177392. November 26, 2012]

PAZ DEL ROSARIO, *petitioner, vs.* **FELIX H. LIMCAOCO, Z. ROJAS AND BROS., REPUBLIC OF THE PHILIPPINES, and REGISTER OF DEEDS OF TAGAYTAY CITY,** *respondents.*

[G.R. No. 177421. November 26, 2012]

LUDIVINA LANTIN-ROJAS, LEANDRITO L. ROJAS, ROSEMARIE T. ROJAS, LEURENCIO L. ROJAS, MA. STELLA ROJAS, TERESITA ROJAS, JOCELYN ROJAS, VIRGINIA SALCEDO ROJAS, BAILIA ROJAS-FOJAS, EULOGIA ROJAS-CORPUS, VIRGILIO ROJAS, ELIZABETH ROJAS, THERESA V. ROJAS-PERALTA, MANUELITA V. ROJAS, HONORIO V. ROJAS, SYLVIA ROJAS,

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[*] Designated as Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Special Order No. 1377 dated November 22, 2012.

[**] Designated as Additional Member in lieu of Associate Justice Mariano C. del Castillo per Raffle dated November 26, 2012.

and MARIA R. JOCO-SHIRANI, in substitution of Z. ROJAS AND BROS., *petitioners, vs.* **THE REPUBLIC OF THE PHILIPPINES, represented by THE DIRECTOR OF LANDS, PAZ DEL ROSARIO, and FELIX LIMCAOCO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TENANCY RELATIONSHIP; REQUISITES.—** Tenancy cannot be simply presumed. To exist, it must have the following elements: (1) the parties are the landowner and the tenant; (2) the subject matter of the relationship is agricultural land; (3) there is consent between the parties; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant; and (6) the harvest is shared between the landowner and the tenant. Here, it appears from the records that the Amulongs did not enter into an agricultural lease with the owner. They cultivated the land at their own expense and for their own benefit and never shared the produce of the land with anyone.

2. **REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; DUE EXECUTION AND AUTHENTICITY OF PUBLIC DOCUMENTS NEED NOT BE PROVED TO MAKE THEM ADMISSIBLE; APPLICATION IN CASE AT BAR.—** Notably, the contested documents are court decisions and orders, which are undoubtedly public in character. As public documents, their due execution and authenticity need not be proved to make them admissible in evidence. Their existence may be evidenced by an official publication or by a copy attested by the officer having the legal custody of the record. Here, the copies of the assailed court issuances were attested by Mr. Leon Barrera, the then Cavite CFI Deputy Clerk of Court. The only reason the CA regarded those court orders as private was that they were not reconstituted after the original court records had been destroyed in a fire. But reconstitution cannot apply where, as in the land registration action in question, the trial had already ended and the court had indeed already decided. Reconstitution of judicial records under Act 3110 are undertaken after they have been lost only with respect to pending proceedings where

the subject case had not yet been decided. It does not apply to closed and decided cases.

3. ID.; ID.; FINDINGS OF THE TRIAL COURT; ENTITLED TO GREAT WEIGHT AND SHOULD NOT BE DISTURBED ON APPEAL; EXCEPTION; NOT APPLICABLE IN CASE AT BAR. — The trial court also held that the fact that no decree has as yet been issued cannot divest the Rojases of their title to and ownership of the land in question. There is nothing in the law that limits the period within which the court may issue a decree. The reason is that the judgment is merely declaratory in character and does not need to be enforced against the adverse party. The Court does not find any cogent reason to deviate from the rulings of the Tagaytay RTC. It is settled that the conclusions and findings of fact of a trial judge are entitled to great weight and should not be disturbed on appeal, unless strong and compelling evidence to the contrary exists. In comparison, appellate magistrates merely read and rely on the cold and inanimate pages of the transcript of stenographic notes and the original records brought before them. This places the trial judge in a better position to examine the real evidence and calibrate the testimonies of the witnesses at the stand.

APPEARANCES OF COUNSEL

Capacillo Law Office for Paz Del Rosario.

Ignacio Ignacio & Associates Law Offices for Eulogia Rojas Corpus.

Orioste Lim & Calderon Law Offices for L. Rojas, *et al.*

San Pedro San Pedro San Pedro & Associates for Felix Limcaoco.

The Solicitor General for public respondents.

D E C I S I O N

ABAD, *J.*:

These cases refer to various claims over a vast parcel of land in Tagaytay, the ownership of which had been previously awarded in a land registration proceeding but no decree of registration has as yet been issued pursuant to such award.

The Facts and the Case

Three different claims on a 12.5-hectare of land in Maitim II, Tagaytay City, Cavite, brought about these cases. Paz Del Rosario (Del Rosario) contends that in 1976 she bought the land from the Amulong family which had been in peaceful and continuous possession of the same since time immemorial. Del Rosario presented a copy of the February 27, 1976 *Kasulatan ng Bilihang Tuluyan* that evidences the sale. Felix H. Limcaoco (Limcaoco), the other claimant, alleges that he bought the same land from one Eugenio Flores as shown by a February 13, 1976 Deed of Absolute Sale. Finally, Z. Rojas and Bros., the third claimant, claims that the spouses Honorio and Maria Rojas bought the land as early as 1932 from the spouses Petrona Amulong and Agapito Acosta.

Upon learning that the government issued a free patent in Limcaoco's favor, on June 7, 1977 Del Rosario filed a complaint for reconveyance against him before the Tagaytay Regional Trial Court (RTC) in Civil Case TG-411. Later, Z. Rojas and Bros., a partnership, filed a complaint-in-intervention in the case, pointing out that the spouses Rojas had donated the subject land to their children, who in turn had applied for the registration of the property in their names with the then Court of First Instance (CFI) of Cavite which rendered a Decision on April 17, 1941, granting the application. The Court of Appeals (CA) affirmed the CFI Decision on December 29, 1942.

On September 15, 1981 Z. Rojas and Bros. also filed a petition with the Bureau of Lands for the cancellation of Limcaoco's Free Patent 578173 and Original Certificate of Title (OCT) OP-165. After hearing, the Director of Lands recommended the cancellation of the subject Free Patent and OCT, which recommendation the Ministry of Natural Resources approved. On February 27, 1984 the Republic of the Philippines filed, through the Bureau of Lands, a complaint for the cancellation of Free Patent 578173 and OCT OP-165 before the Tagaytay RTC in Civil Case TG-796 in which Z. Rojas and Bros. again filed a complaint-in-intervention. Civil Cases TG-411 and TG-796 were eventually consolidated and jointly tried.

On October 17, 1997 the RTC rendered a decision, declaring Z. Rojas and Bros. as the true and lawful owner of the subject land, annulling Limcaoco's Free Patent and OCT, and ruling that Del Rosario merely acquired a possessory right of tenancy over the land. Meanwhile, on May 25, 2000 Z. Rojas and Bros. was dissolved and was substituted by the Rojas heirs.[1] The court granted the motion for substitution on July 19, 2000. The appeals brought before the CA were joined and docketed as CA-G.R. CV 76599.

On April 28, 2006 the CA rendered a decision holding that, while the Rojas heirs appear to have a just title over the property, the partnership of Z. Rojas and Bros., which had a separate and distinct personality, did not. The CA further held that its determination is without prejudice to the claim of the individual Rojas heirs over the property and to pending or future proceedings leading to the grant of such claim. The appellate court, however, affirmed the rest of the RTC Decision. Del Rosario and the Rojas heirs appealed to this Court in G.R. 177392 and G.R. 177421, respectively.

The Issue Presented

The sole issue in these cases is whether or not the CA committed error in declaring the Rojas heirs, rather than Del Rosario or Z. Rojas and Bros., substituted by the same heirs, the true and lawful owner of the subject Tagaytay City land.

The Ruling of the Court

Del Rosario mainly claims that she was a purchaser for value and in good faith, having bought the land from the Amulong sisters and their husbands as evidenced by the *Kasulatan ng Bilihang Tuluyan* dated February 27, 1976.

But, when Miguela Amulong, one of Josefa's daughters, took the witness stand, she testified as follows:

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[1] Consisting of Ludivina Lantin-Rojas, Leandrito L. Rojas, Rosemarie T. Rojas, Leurencio L. Rojas, Ma. Stella Rojas, Teresita Rojas, Jocelyn Rojas, Virginia Salcedo-Rojas, Basilia Rojas-Fojas, Eulogia Rojas-Corpus, Virgilio Rojas, Elizabeth Rojas, Theresa V. Rojas-Peralta, Manuelita V. Rojas, Honorio V. Rojas, Sylvia Rojas, and Maria R. Joco-Shirani; *id*. at 238-241.

Q: Your father or mother, Josefa Garcia and Luis Amulong, had no tax declaration over this property, is it not?
A: I do not know, sir.

x x x x x x x x x

Q: Do you know that properties owned by people in Tagaytay or anywhere else has the so-called tax declaration in order to pay realty taxes to the city or in any place where it is situated?
A: I do not know because **we have no property, sir.**

Q: And what did you sell in that exhibit "A" if you have no right?
A: **Only our right to farm, our tenancy right, sir.**[2] (Emphasis supplied)

Based on the above testimony, the RTC ruled that Del Rosario merely acquired the Amulongs' tenancy rights. But, as the CA noted, this ruling contradicts the RTC's order in the dispositive portion of its decision that ordered Del Rosario to surrender the possession of the property to Z. Rojas and Bros. As the appellate court pointed out, if tenancy really existed, then the surrender of the property to the alleged rightful owner would not be proper because tenants are entitled to security of tenure.[3]

Tenancy cannot be simply presumed. To exist, it must have the following elements: (1) the parties are the landowner and the tenant; (2) the subject matter of the relationship is agricultural land; (3) there is consent between the parties; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant; and (6) the harvest is shared between the landowner and the tenant.[4] Here, it appears from the records that the Amulongs did not enter into an agricultural lease with the owner. They cultivated the land at their own expense and for their own benefit and never shared the produce of the land with anyone.

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[2] *Rollo* (G.R. No. 177392), pp. 91-92.

[3] *Galope v. Bugarin*, G.R. No. 185669, February 1, 2012, 664 SCRA 733, 740.

[4] *Granada v. Bormaheco, Inc.*, G.R. No. 154481, July 27, 2007, 528 SCRA 259, 268.

What Del Rosario actually bought from the Amulongs was, therefore, merely the right of possession, consistent with the facts claimed by the Rojas heirs. In a letter dated February 2, 1982 the Bureau of Lands directed an investigation on the different claims on that vast land in Tagaytay. The Director of Lands found that before the Japanese occupation, the Rojas children appointed Remigio Garcia as caretaker of the subject property. When he died, his daughter, Josefa Garcia, wife of Luis Amulong, took over the property. Josefa then employed her daughters and their husbands to work in the farm. On February 27, 1976 the Amulongs sold the property to Del Rosario for ₱100,000.00, without the consent and knowledge of the Rojases.[5]

The Director of Lands' investigation further revealed that the spouses Honorio Rojas and Maria Sipriaso bought the property in controversy from the Amulong family on July 16, 1932. On that same day, they transferred the property to their six children by way of donation. On August 14, 1939 the Rojas children filed a petition for registration and confirmation of title over the property before the CFI of Cavite in Land Registration Case 309, G.L.R.O. Record 51353. On April 17, 1941 the land registration court rendered a decision, declaring the registration of the parcel of land in favor of the Rojases. The CA thereafter affirmed the registration on December 29, 1942 in G.R. 9120, and from there, no more appeal was ever made.

Consequently, on February 10, 1943 the land registration court issued an Order, directing the Judicial Land Title Division of the Department of Justice to cause the preparation and issuance of the appropriate decree over the subject property for the Rojas children. When Manuel Rojas, however, was incarcerated by the Japanese during World War II, the documents pertaining to the Tagaytay land were confiscated from him. Still, the Rojases continued paying the real estate taxes on the property which they had been doing since 1940. Sometime in December 1949 they formed a partnership named Z. Rojas and Brothers and contributed the subject parcel of land to constitute the partnership's capital.

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[5] *Rollo* (G.R. No. 177421), pp. 197-198.

It is indubitable that the April 17, 1941 CFI Decision in the land registration case granting the Rojases' application, the December 29, 1942 CA Decision affirming that grant, and the February 10, 1943 CFI Order in the land registration case all prove the Rojases' ownership of the land. Still, the CA regarded these documents as private and that their due execution and authenticity need first be established before they can be admitted in evidence.

Notably, the contested documents are court decisions and orders, which are undoubtedly public in character.[6] As public documents, their due execution and authenticity need not be proved to make them admissible in evidence.[7] Their existence may be evidenced by an official publication or by a copy attested by the officer having the legal custody of the record.[8] Here, the copies of the assailed court issuances were attested by Mr. Leon Barrera, the then Cavite CFI Deputy Clerk of Court. The only reason the CA regarded those court orders as private was that they were not reconstituted after the original court records had been destroyed in a fire.[9]

But reconstitution cannot apply where, as in the land registration action in question, the trial had already ended and the court had indeed already decided.[10] Reconstitution of judicial

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[6] Rule 132, Section 19. *Classes of documents.*—For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The **written official acts, or records of the official acts of** the sovereign authority, **official bodies and tribunals**, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (Emphasis ours)

[7] *Evidence (A Restatement for the Bar),* Willard B. Riano, 2006, p. 119.

[8] REVISED RULES OF COURT, Rule 132, Section 24.

[9] *Supra* note 2, at 96.

[10] *Cristobal v. Court of Appeals,* 257 Phil. 433, 442 (1989).

records under Act 3110[11] are undertaken after they have been lost only with respect to pending proceedings where the subject case had not yet been decided. It does not apply to closed and decided cases.[12]

And even assuming that the subject documents may be regarded as private in character,[13] the Rojases presented Mr. Barrera, the retired Cavite CFI Deputy Clerk of Court, who established by his testimony and various supporting papers, the due execution and authenticity of the documents in question.[14] Thus:

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[11] Entitled AN ACT TO PROVIDE AN ADEQUATE PROCEDURE FOR THE RECONSTITUTION OF THE RECORDS OF PENDING JUDICIAL PROCEEDINGS AND BOOKS, DOCUMENTS, AND FILES OF THE OFFICE OF THE REGISTER OF DEEDS, DESTROYED BY FIRE OR OTHER PUBLIC CALAMITIES, AND FOR OTHER PURPOSES.

[12] *Director of Lands v. Court of Appeals*, 195 Phil. 9, 17 (1981).

[13] Rule 132, Section 20. *Proof of private document*. - Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

a. **By anyone who saw the document executed or written**; or

b. By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be. (Emphasis ours)

[14] (1) A photocopy of the Notice of Original Hearing issued by Cavite CFI Judge Francisco Zulueta, and attested by the Chief of the General Land Registration Office on August 19, 1936; (2) A Certification dated August 3, 1979 issued by the Librarian for Technical Services of the Supreme Court of the Philippines, to the effect that Land Registration Case 309, G.L.R.O. 51353 was published in the Official Gazette, Vol. XXXIV No. 122, pp. 1979-1980; (3) A true copy of the Decision of the Court of First Instance in Land Registration Case 309 made in the Spanish language issued and signed by Leon Barrera, Deputy Clerk of Court; and a copy of its English translation; (4) A copy of the decision of the Court of Appeals, Second Division in G.R. 9120 made in Spanish, and a copy of its English translation; (5) A Certification by the Assistant Clerk of Court of the Court of Appeals relative to a certified photocopy of the entire page 277 of "Official List of Decisions Promulgated from 1936 to 1942" of the Court of Appeals"; and (6) An unsigned copy of an Order of the Court of First Instance of Cavite in Land Registration Case 309, G.L.R.O. 51353 for the issuance of the decree; *rollo* (G.R. 177421), pp. 199-200.

Q: Do you know if a decision was ever rendered in the case by the Court of First Instance of Cavite?
A: There was a decision rendered in year 1941.

Q: Now, I would like to show to you a document which appears to be a decision in **Case Number 309, Zosimo Rojas, *et al*. versus Hammon Buch, *et al*.** Will you inform the Court what relation has this to the decision that you have mentioned a while ago?
A: **This is a copy of that decision, sir.**

Q: Now, I noticed that at the last page thereof, there is a signature appearing above the printed name Leon Barrera, who is described or identified as Deputy Clerk of Court. Could you tell us whose signature is that?
A: That is my signature, sir.

Q: I also noticed, Mr. Barrera, that there is a phrase here which states **"a true copy."** Now, could you tell the Court where is the original of this decision?
A: I believe it was burned when the Provincial Capitol Building was razed by fire in Cavite City.

x x x x x x x x x

Q: Mr. Witness, could you tell us who prepared a copy of this decision which you have identified a while ago?
A: Well, as far as my memory won't fail me, **I think this is a carbon copy of the original.**

Q: Now, where is the original, as you have said?
A: It was burned, sir.

Q: Now, I also noticed at the last page of this decision initials appearing as EG/MF. Is there any significance on these initials?
A: Yes, sir.

Q: Now, could you tell what is the significance of these initials?
A: EG pertains to Judge Eulalio Garcia, and the MF, is the initial of the stenographer, Manuel Flores.

Q: Now, you said that this is a carbon original. However, I noticed that there is a signature above the printed name of the Judge Eulalio Garcia. Would you explain or do you know the reason why?

A: Well, usually, Judge Eulalio Garcia does not sign the copy, the carbon copy. It is only the original, sir.

Court: Are you trying to say that while the judge would sign the first original copy, the duplicate original, the triplicate original or the fourth original are no longer signed by the judge, as that was his practice?

A: Yes, sir.

x x x x x x x x x

Court: Mr. Witness, the question is, after the decision has been rendered by the Court of First Instance, you said the case was appealed?

A: Yes, your Honor.

Court: Do you know to what particular office it was appealed, the Supreme Court or the Court of Appeals because these are the two higher courts?

A: To the Honorable Court of Appeals, your Honor.

Court: Now, what happened after this appeal took place, if any decision or resolution came out and was furnished your court?

A: **There was a decision of the Court of Appeals we received personally from a messenger or employee of the Court of Appeals.**

x x x x x x x x x

Q: Before you submitted the decision to the Judge, to the then Judge Eulalio Garcia, what did you do before submitting the same to the judge? Before submitting to the judge, what did you do with the decision?

A: I attached the decision of the Court of Appeals with the records of the Court, together with all the exhibits, sir.

x x x x x x x x x

Q: x x x When you submitted the decision to the judge, what else did you do?

A: **The judge after reading the decision told me to prepare the order for the issuance of the decree for his signature.**

Q: Were you able to prepare the order from the issuance of the decree as ordered by the Court?

A: Yes, sir.

x x x x x x x x x

Q: I am going to show to you **a document purported to be an order for the issuance of the decree**, will you please tell us if it has any connection with the order you mentioned a while ago?

A: This is a copy of the order of the issuance of the decree, and original of which was signed by the judge. Judge Eulalio Garcia.

Q: What made you say that this a copy?

A: **I was the one who prepared this.**

Q: What is your **indication** appearing in the recording or document which would **show that you were the one who prepared the document**?

A: **My initials appear on this duplicate.**

Q: Will you please point the same?

A: **L.B., Leon Barrera**.[15] (Emphasis supplied)

The trial court also held that the fact that no decree has as yet been issued cannot divest the Rojases of their title to and ownership of the land in question. There is nothing in the law that limits the period within which the court may issue a decree. The reason is that the judgment is merely declaratory in character and does not need to be enforced against the adverse party.[16] The Court does not find any cogent reason to deviate from the rulings of the Tagaytay RTC.

It is settled that the conclusions and findings of fact of a trial judge are entitled to great weight and should not be disturbed on appeal, unless strong and compelling evidence to the contrary exists.[17] In comparison, appellate magistrates merely read and rely on the cold and inanimate pages of the transcript of stenographic notes and the original records brought before them. This places the trial judge in a better position to examine the

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[15] *Supra* note 2, at 99-101.

[16] *Republic v. Nillas*, 541 Phil. 277, 285 (2007).

[17] *Dela Rosa v. Heirs of Juan Valdez*, G.R. No. 159101, July 27, 2011, 654 SCRA 467, 487.

real evidence and calibrate the testimonies of the witnesses at the stand.[18]

Finally, the CA held that although the Rojases might indeed have a just title to the property, they do not necessarily share it with Z. Rojas and Bros, the partnership.[19] The appellate court even indirectly suggests that, since Z. Rojas and Bros. had no legal interest in the land, the Rojas heirs should just institute a new action to claim ownership of the same.

Upon review of the records, however, it would appear that sometime in December 1949 the Rojas heirs transferred the ownership of the property to Z. Rojas and Bros. when they contributed it as the partnership's capital. And when the partnership was dissolved on May 25, 2000, Z. Rojas and Bros. filed a motion for its substitution by the Rojas heirs, which the trial court granted on July 14, 2000. No one has challenged that substitution.

In any case, the rules of procedure are mere tools designed to facilitate the attainment of justice. A strict and rigid application of such rules would but tend to frustrate rather than promote substantial justice. If this Court were to follow the CA ruling, the Rojases would be forced to go through another calvary, presenting the same set of evidence and again proving the fact of their ownership, notwithstanding that they already did so against stiff oppositions offered by other determined claimants. The Rojases have already waited for over three decades. It is highly unjust to make them wait for several decades more.

WHEREFORE, the Court **GRANTS** the petition in G.R. 177421, **REVERSES and SETS ASIDE** the CA Decision in CA-G.R. CV 76599 dated April 28, 2006, **REINSTATES and AFFIRMS** the Regional Trial Court of Tagaytay's Decision in Civil Cases TG-411 and TG-796 dated October 17, 1997, and **DISMISSES** for lack of merit the petition in G.R. 177392.

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[18] *Bastian v. Court of Appeals*, G.R. No. 160811, April 18, 2008, 552 SCRA 43, 53.

[19] *Rollo* (G.R. No. 177421), pp. 86-87.

SO ORDERED.

Leonardo-de Castro,[*] *Peralta (Acting Chairperson),*[**] *Mendoza,* and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 181042. November 26, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAMIN ZAKARIA *y* MAKASULAY and JOANA ZAKARIA *y* SILUNGAN,** *accused.*

SAMIN ZAKARIA *y* MAKASULAY, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; CHAIN OF CUSTODY REQUIREMENT; PURPOSE THEREOF, EXPLAINED.— In every prosecution for the illegal sale of dangerous drugs, the presentation of the seized dangerous drugs as evidence in court is indispensable. It is essential that the identity of the dangerous drugs be established beyond doubt. What is more, the fact that the dangerous drugs bought during the buy-bust operation are the same dangerous drugs offered in court should be established. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. Moreover,

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[*] Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order 1361 dated November 19, 2012.

[**] Per Special Order 1360 dated November 19, 2012.

to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt, the State bears the burden of proving the *corpus delicti*, or the body of the crime. The Prosecution does not comply with the indispensable requirement of proving the *corpus delicti* either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court. That proof of the *corpus delicti* depends on a gapless showing of the chain of custody.

2. ID.; ID.; ID.; ID.; THE MARKING OF DANGEROUS DRUGS OR OTHER RELATED ITEMS IMMEDIATELY AFTER ITS SEIZURE FROM THE ACCUSED IS CRUCIAL IN PROVING THE CHAIN OF CUSTODY; EXPLAINED.— Crucial in proving the chain of custody is the marking of the seized dangerous drugs or other related items immediately after they are seized from the accused, for the marking upon seizure is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. Moreover, the value of marking of the evidence is to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until disposition at the end of criminal proceedings, obviating switching, "planting" or contamination of evidence. A failure to mark at the time of taking of initial custody imperils the integrity of the chain of custody that the law requires.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE MANDATORY PROCEDURES EVEN IF UNDER JUSTIFIABLE GROUNDS MUST BE FIRST RECOGNIZED AND EXPLAINED; RATIONALE.— The records show that the buy-bust team did not observe the mandatory procedures under Republic Act No. 9165 and its IRR. Although PO2 Aninias supposedly marked the confiscated *shabu* with his initials immediately upon seizure, he did not do so in the presence of the accused or of their representatives and any representative from the media and Department of Justice (DOJ), or any elected public official. x x x Another serious lapse committed was that the buy-bust team did not take any photographs of the sachets of *shabu* upon their seizure. The photographs were intended by the law as another means to confirm the chain of custody of the dangerous drugs. The last paragraph of Section 21 (a) of the IRR, *supra*,

> contains a saving proviso to the effect 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." But in order for the saving proviso to apply, the Prosecution must first recognize and explain the lapse or lapses in procedure committed by the arresting lawmen. That did not happen here, because the Prosecution neither recognized nor explained the lapses. x x x The Prosecution's failure to recognize and to explain to the trial court the non-compliance by the buy-bust team with the requirements for preserving the chain of custody left the identity of the *shabu* ultimately presented as evidence in court suspect and ambiguous. The suspiciousness and ambiguity irreparably broke the chain of custody required under Republic Act No. 9165, which was fatal to the cause of the Prosecution. Indeed, the chain of custody was crucial in establishing the link between the *shabu* confiscated from the accused and the evidence presented to the court for its appreciation. x x x Under the circumstances, the *corpus delicti* was not credibly proved because the Prosecution did not establish an unbroken chain of custody, resulting in rendering the seizure and confiscation of the *shabu* open to doubt and suspicion. Hence, the incriminatory evidence should not pass judicial scrutiny.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Chuchi DS. Tan for accused-appellant.

D E C I S I O N

BERSAMIN, *J.*:

Statutory rules on preserving the chain of custody of confiscated prohibited drugs and related items are designed to ensure the integrity and reliability of the evidence to be presented against the accused. Their observance is the key to the successful

prosecution of illegal possession or illegal sale of dangerous drugs.[1]

On appeal is the decision promulgated on April 11, 2007,[2] whereby the Court of Appeals (CA), in CA-G.R. CR-H.C. No. 01781,[3] affirmed the conviction of both accused for violation of Section 5 of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) the Regional Trial Court (RTC), Branch 154, in Pasig City handed down through its decision rendered on August 26, 2005.[4]

Antecedents

The following information charged the two accused as follows:

On or about January 7, 2005, in Taguig, Metro Manila, and within the jurisdiction of this Honorable Court, the above-accused, in conspiracy with one another, not being lawfully authorized, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Luisito L. Aninias, a police poseur buyer, three (3) pieces heat-sealed transparent plastic sachet bag containing the following:

a) (EXH "A-1") – 4.84 grams

b) (EXH "A-2") – 4.73 grams

c) (EXH "A-3") – 24.66 grams

with a total weight of thirty four point twenty three (34.23 grams) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride (*shabu*), a dangerous drug, in violation of the said law.

Contrary to Law.[5]

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[1] *People v. Relato*, G.R. No. 173794, January 18, 2012, 663 SCRA 260, 262.

[2] *Rollo*, pp. 2-24; penned by Associate Justice Monina Arevalo-Zenarosa (retired) and concurred in by Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Edgardo F. Sundiam (deceased).

[3] Entitled *People v. Samin Zakaria y Makasulay and Joana Zakaria y Silungan.*

[4] Original Records, pp. 91-100.

[5] *Id.* at 1-2.

On January 27, 2005, each of the accused pleaded *not guilty*.[6]

During the pre-trial, the Prosecution dispensed with the testimony of Forensic Chemist Donna Villa P. Huelgas after the accused admitted the existence of the Forensic Chemist Report.[7]

At the trial, the State presented only two witnesses, namely: PO2 Luisito Aninias and PO3 Ronald Valdez; while the Defense had only the accused themselves as its witnesses.

Version of the Prosecution

PO2 Aninias declared that at about 1:00 p.m. on January 6, 2005, a confidential informant went to the CALABARZON Regional Office of the Philippine Drug Enforcement Agency (PDEA) in Camp Vicente Lim in Calamba, Laguna and informed Chief Supt. Abe Lemos that he had entered into a drug deal for 35 grams of *shabu* worth ₱98,000.00 with *alias* Danny and *alias* Joana to take place at 287 Tamayo Compound on Caliraya Drive, in Taguig City.[8] Thereafter, Chief Supt. Lemos tasked Insp. Julius Ceasar Ablang to form a team for a buy-bust operation. The team was made up of PO2 Aninias as poseur-buyer, and SPO2 Gerry Abalos, SPO1 Miguel Lapitan, SPO1 Norman Jesus Platon, PO3 Ronald Valdez, PO3 Sherwin Bulan, and PO3 Danilo Leona as the other team members.[9] Insp. Ablang gave a ₱500.00 bill to PO2 Aninias to serve as the buy-bust money. PO2 Aninias wrote his initials "*LLA*" on the ₱500.00 bill,[10] and then placed the marked bill on the bundle of boodle money that seemingly amounted to ₱98,000.00. He put the boodle money in a white window envelope.[11]

At about 3:00 p.m. of January 6, 2005, PO2 Aninias, PO3 Valdez and the confidential informant surveyed the target area

[6] *Id.* at 24-26

[7] *Id.* at 29.

[8] TSN of March 3, 2005, pp. 2-3.

[9] *Id.* at 4.

[10] *Id.* at 4-5.

[11] *Id.* at 4.

in order to confirm if drug activities were taking place there. PO2 Aninias observed there about ten persons going in and out of the target area. The persons were thin and looked haggard, and had deep set eyes and protruding cheeks. About 30 minutes later, PO2 Aninias and his companions left the target area and returned to the Regional Office to report their observations.[12]

In the morning of January 7, 2005, the confidential informant contacted Danny to tell him that he had a buyer. They agreed to have the deal at the target area.[13] Insp. Ablang prepared a pre-operation report,[14] and coordinated with the PDEA National Office.[15]

Using a Toyota Revo and a Mitsubishi Adventure, the buy-bust team arrived at the target area at around 1:45 p.m. of January 7, 2005. PO2 Aninias drove the Revo, with the confidential informant on board. The rest of the team rode on the Adventure. PO2 Aninias parked the Revo some 10 meters away from the target area, while the other driver parked the Adventure about 50 meters from the Revo. The confidential informant then called Danny and told him that he and the buyer were already in the vicinity, but Danny advised them to wait for the *shabu* to be prepared. At about 2:00 p.m., PO2 Aninias moved the Revo closer to the target area. Not long after, Danny arrived. The confidential informant, whom Danny personally knew, motioned to Danny to get on board the Revo. Once Danny got in the Revo, the confidential informant introduced PO2 Aninias to Danny as the buyer of *shabu*. Danny asked PO2 Aninias about the money. PO2 Aninias showed to Danny the white window envelope containing the ₱500.00 bill and boodle money. Saying that the *shabu* was with his wife, Danny then got out of the Revo to fetch her.[16]

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

[13] *Id.* at 8.

[14] Original Records, p. 20.

[15] TSN of March 3, 2005, p. 11.

[16] *Id.* at 11-14.

After nearly 15 minutes, Danny returned with a woman. The confidential informant requested the two to board the Revo. Danny introduced the woman to PO2 Aninias as his wife Joana. Danny again asked for the money. PO2 Aninias once more flashed the white window envelope to Danny and asked to see the *shabu*. Danny pulled three sachets containing white crystalline substance from his pocket and handed the sachets to PO2 Aninias, who turned over the white window envelope to Joana and forthwith made a missed call to PO3 Valdez. The missed call was the pre-arranged signal indicating that the transaction was consummated. As Danny was about to count the money in the envelope, PO2 Aninias drew and pointed his gun at Danny and Joana. The rest of the team, who had meanwhile rushed towards the Revo as soon as PO3 Valdez received PO2 Aninias' missed call, quickly arrested the two suspects.

PO2 Aninias immediately placed his initials on the three sachets received from Danny, while PO3 Valdez recovered the boodle money from Joana.[17] The team then brought Danny and Joana to Camp Vicente Lim for investigation.[18] Danny was identified as Samin Zakaria *y* Makasulay and Joana as Joana Zakaria *y* Silungan.

Bearing the Request for a Laboratory Examination prepared by Chief Supt. Lemos,[19] PO2 Aninias turned over the seized sachets and their contents to the PNP Regional Crime Laboratory, where Forensic Chemist Sr. Insp. Donna Villa Huelgas conducted qualitative and quantitative examinations on the contents. The examinations yielded positive results for the presence of methylamphetamine hydrochloride, a dangerous drug. Forensic Chemist Huelgas issued Chemistry Report No. D-0031-05 dated January 8, 2005,[20] as follows:

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

[18] *Id.* at 17.

[19] Original Records, p. 13.

[20] *Id.* at 14.

SPECIMEN SUBMITTED:

Three (3) heat-sealed transparent plastic sachets, each containing white crystalline substance with the following markings (with signature) and net weights:

A (EXH "A-1" LLA 07 Jan '05) – 4.84 grams
B (EXH "A-2" LLA 07 Jan '05) – 4.73 grams
C (EXH "A-3" LLA 07 Jan '05) – 24.66 grams

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drug/s on the above-mentioned specimen

x x x x x x x x x

FINDINGS:

Qualitative examination conducted on specimen A, B and C gave POSITIVE result to the tests for the presence of Methamphetamine Hydrochloride, a dangerous drug.[21]

x x x x x x x x x

A certificate of inventory[22] was issued by the PDEA Regional Office and was signed by Insp. Ablang, Bell Desolo of Abante-Tonite, and Victor Penid, an official of Barangay Mapayapa.

PO3 Valdez corroborated PO2 Aninias' account of the conduct of the surveillance and buy-bust operation. PO3 Valdez said that during the operation he received the missed call from PO2 Aninias and immediately rushed towards the Revo to assist in the arrest of the two suspects.[23] He attested that he recovered the marked money from Joana.[24]

Version of the Defense

The Defense gave a different story.

[21] *Id.*

[22] *Id.* at 17.

[23] TSN of June 20, 2005, p. 6.

[24] *Id.* at 7.

Joana said that at about 12:00 noon on January 7, 2005, she left to fetch her five-year old child, Jornea, from school on board a tricycle;[25] that on her return home with her child at around 1:00 p.m., she immediately noticed that the door to their house had been detached and that at least eight men in civilian clothes were inside their house;[26] that she saw Samin, her husband, lying face down on the floor of their bedroom, and one of the men was stepping on her husband's head;[27] that Samin's cousins, Benson Pam and Saudi, were in the *sala*, also lying face down on the floor about three meters from where her husband was;[28] that the men brought the couple to Camp Vicente Lim; that on the way to Camp Vicente Lim on board a white Revo driven by PO2 Aninias, PO3 Valdez demanded ₱100,000.00 in exchange for their release;[29] and that she answered that they could not give ₱100,000.00 because they did not have money due to her husband being only a tricycle driver.[30]

Joana recalled that she and her husband were detained for a while in a small room in Camp Vicente Lim before being shown by PO2 Aninias plastic sachets containing *shabu* that had been supposedly recovered from them; and that she protested and argued that they were not selling *shabu*.[31]

Samin corroborated Joana's recollection. He stated that on January 7, 2005, he and his cousins, Saudi and Benson Pam, went to worship in the mosque and returned to his house at around 12:50 p.m. to rest;[32] that while he was resting in the bedroom, two men in civilian attire barged in and ordered him

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[25] TSN of June 27, 2005, pp. 3, 8.

[26] *Id.* at 11-12, 14.

[27] *Id.* at 13-14.

[28] *Id.* at 12.

[29] *Id.* at 18-20.

[30] *Id.* at 21.

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

[32] TSN of July 4, 2005, pp. 3, 7-8.

to lie face down on the floor; that one of them put his foot on his nape;[33] and that he came to know later on that his cousins, who were themselves resting in the *sala*, had also been ordered to lie face down by other men who had entered his house.[34]

Samin asserted that he saw the sachets of *shabu* for the first time only when PO2 Aninias showed them to him in Camp Vicente Lim;[35] and that one of the men whom he could no longer identify demanded ₱100,000.00 as settlement of the case against them.[36]

On August 26, 2005, the RTC convicted both accused, disposing thus:

> WHEREFORE, premises considered, judgment is hereby rendered finding both the accused SAMIN ZAKARIA *y* Makasulay and his wife JOANA ZAKARIA *y* Silungan GUILTY beyond reasonable doubt of violation of Section 5 of R.A. 9165 (illegal sale of dangerous drugs) and they are hereby sentenced to suffer the penalty of LIFE IMPRISONMENT. Each of them is also ordered to pay a fine of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS.
>
> The illegal substance subject of the information is directed to be delivered forthwith to the PDEA for its immediate disposition.
>
> Considering the penalty imposed by the Court, the commitment of the accused Samin Zakaria and Joana Zakaria to the New Bilibid Prison and Correctional Institution for Women, respectively, is ordered.
>
> SO ORDERED.[37]

On appeal, the accused assigned the following errors, to wit:

> I. The trial court committed grave error in considering that the group of PO2 Aninias who are assigned at the Philippine Drug Agency, Regional Office, Calabarzon Camp Vicente Lim failed to observed (sic) strictly the provision of RA 9165 -

[33] *Id.* at 11-16.

[34] *Id.* at 18.

[35] *Id.* at 7.

[36] *Id.* at 26.

[37] Original Records, p. 100.

the procedure in the obtaining seized prohibited and regulated drugs.

II. The trial court gravely erred in disregarding the fact that police officers merely informed the accused of their constitutional rights only without elaborating what are their constitutional rights.

III. The trial court gravely erred in not considering that minor inconsistencies of accused do not affect their credibility.[38]

On April 11, 2007, the CA affirmed the conviction, *viz*:

After carefully going over the evidence on record, we find absolutely no reason to disturb the findings of the trial court and its decision finding both accused guilty beyond reasonable doubt of the offense as charged in the information.

WHEREFORE, the decision appealed from is hereby AFFIRMED *in toto*.

SO ORDERED.[39]

Only Samin filed a timely notice of appeal,[40] resulting in the decision of the CA becoming final and executory as to Joana. The CA issued a partial entry of judgment on May 11, 2007.[41]

Issues

Samin insists that the members of the buy-bust team did not fully explain to him his constitutional rights; that the State did not establish the origin of the seized dangerous drugs and did not prove that the chain of custody had been observed; and that his guilt was not established beyond reasonable doubt.

The State, through the Office of the Solicitor General (OSG), counters that Samin was properly convicted because his guilt for the crime charged was sufficiently established; that the State proved the identities of the sellers and the buyer, the

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[38] CA *rollo*, pp. 45-46.

[39] *Id.* at 136.

[40] *Id.* at 146.

[41] *Id.* at 147.

object and the consideration; that the State further proved the delivery of the *shabu* and the payment for the *shabu*; that there was no doubt that the sachets of *shabu* came from Samin and Joana, considering that PO2 Aninias proved that the *shabu* had not been planted but had been in the possession of the accused at the time of the buy-bust operation; that PO2 Aninias marked the confiscated items, prepared the certificate of inventory, and personally brought the *shabu* to the Regional Crime Laboratory with the request for examination; that the chain of custody was not broken; that the supposed failure to inform the accused of their constitutional rights was immaterial considering that no admission or confession had been taken from them; and that the credibility of the Defense witnesses was best addressed by the RTC as the trial court, which found that their inconsistencies affected their credibility because they concerned material points.

Ruling

The appeal is meritorious.

In every prosecution for the illegal sale of dangerous drugs, the presentation of the seized dangerous drugs as evidence in court is indispensable.[42] It is essential that the identity of the dangerous drugs be established beyond doubt. What is more, the fact that the dangerous drugs bought during the buy-bust operation are the same dangerous drugs offered in court should be established. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[43]

Moreover, to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt, the State bears the burden of proving the *corpus delicti*, or the body of the crime.

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[42] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 718.

[43] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

The Prosecution does not comply with the indispensable requirement of proving the *corpus delicti* either when the dangerous drugs are missing, or when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence ultimately presented in court.[44] That proof of the *corpus delicti* depends on a gapless showing of the chain of custody. As the Court has pointed out in *People v. Belocura*:[45]

> xxx. The chain-of-custody requirement applied xxx by virtue of the universal need to competently and sufficiently establish the *corpus delicti*. It is basic under the *Rules of Court*, indeed, that evidence, to be relevant, must throw light upon, or have a logical relation to, the facts in issue to be established by one party or disproved by the other.[46] The test of relevancy is whether an item of evidence will have any value, as determined by logic and experience, in proving the proposition for which it is offered, or whether it would reasonably and actually tend to prove or disprove any matter of fact in issue, or corroborate other relevant evidence. The test is satisfied if there is some logical connection either directly or by inference between the fact offered and the fact to be proved.[47]

To ensure the establishment of the chain of custody, Section 21 (1) of Republic Act No. 9165 provides:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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[44] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

[45] G.R. No. 173474, August 29, 2012.

[46] *Id.*, citing Section 3 and Section 4, Rule 128, *Rules of Court*.

[47] *Id.*, citing 31A CJS, Evidence, §199.

(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.

x x x x x x x x x

Section 21 (a) of Article II, the Implementing Rules and Regulations (IRR) of Republic Act No. 9165, states:

x x x x x x x x x

(a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

Crucial in proving the chain of custody is the marking of the seized dangerous drugs or other related items immediately after they are seized from the accused, for the marking upon seizure is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. Moreover, the value of marking of the evidence is to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until disposition at the

end of criminal proceedings, obviating switching, "planting" or contamination of evidence.[48] A failure to mark at the time of taking of initial custody imperils the integrity of the chain of custody that the law requires.

The records show that the buy-bust team did not observe the mandatory procedures under Republic Act No. 9165 and its IRR. Although PO2 Aninias supposedly marked the confiscated *shabu* with his initials immediately upon seizure, he did not do so in the presence of the accused or of their representatives and any representative from the media and Department of Justice (DOJ), or any elected public official. If he had, he would have readily stated so in court. In fact, both PO2 Aninias and PO3 Valdez themselves revealed that no media or DOJ representative, or elected public official was present during the buy-bust operation and at the time of the recovery of the evidence at the target area. Instead, the media were only around in the PDEA regional headquarters.[49]

The certificate of inventory, although signed by a media representative and a *barangay* official,[50] was nonetheless discredited by PO2 Aninias' admission that only the confidential informant and the members of the buy-bust team were present at the time of the recovery of the sachets of *shabu* from Samin. Verily, although PO2 Aninias declared having personally seen the media representative and the *barangay* official affixing their signatures on the certificate of inventory, he gave no indication at all that the certificate had been signed in the presence of the accused or of their representative.

Another serious lapse committed was that the buy-bust team did not take any photographs of the sachets of *shabu* upon their seizure. The photographs were intended by the law as another means to confirm the chain of custody of the dangerous drugs.

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[48] *People v. Coreche*, *supra* note 43, at 357.

[49] TSN of May 30, 2005, p.11.

[50] Original Records, p. 17.

The last paragraph of Section 21 (a) of the IRR, *supra*, contains a saving proviso to the effect 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." But in order for the saving proviso to apply, the Prosecution must first recognize and explain the lapse or lapses in procedure committed by the arresting lawmen.[51] That did not happen here, because the Prosecution neither recognized nor explained the lapses. Even conceding, for instance, that the PDEA Regional Office contacted and informed the media about the buy-bust operation, we wonder why the media representative or the *barangay* official did not witness the actual marking of the evidence and why the representative and *barangay* official signed the certificate of inventory *sans* the presence of the accused or his representatives. In that respect, the Prosecution offered no explanation at all.

Even if we are now to disregard the frame-up defense of Samin, the Prosecution's failure to recognize and to explain to the trial court the non-compliance by the buy-bust team with the requirements for preserving the chain of custody left the identity of the *shabu* ultimately presented as evidence in court suspect and ambiguous. The suspiciousness and ambiguity irreparably broke the chain of custody required under Republic Act No. 9165, which was fatal to the cause of the Prosecution. Indeed, the chain of custody was crucial in establishing the link between the *shabu* confiscated from the accused and the evidence presented to the court for its appreciation. The Court has pointed out in *Malillin v. People*:[52]

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what

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[51] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 270.

[52] *Supra*, note 42, pp. 632-633.

the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

Under the circumstances, the *corpus delicti* was not credibly proved because the Prosecution did not establish an unbroken chain of custody, resulting in rendering the seizure and confiscation of the *shabu* open to doubt and suspicion. Hence, the incriminatory evidence should not pass judicial scrutiny.[53]

WHEREFORE, the Court **SETS ASIDE** the decision of the Court of Appeals promulgated on April 11, 2007; **ACQUITS** accused **SAMIN ZAKARIA *y* MAKASULAY** of the violation of Section 5 of Republic Act No. 9165 charged in the information; **DIRECTS** the immediate release from detention of accused **SAMIN ZAKARIA *y* MAKASULAY**, unless he is also detained for some other lawful cause; and **ORDERS** the Director of the Bureau of Corrections to implement this decision and to report his action hereon to this Court within ten days from receipt hereof. No pronouncements on costs of suit.

[53] *People v. Belocura, supra,* note 44.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Perez,*[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 184056. November 26, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GEORGE EYAM *y* WATANG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRE-TRIAL; STIPULATION OF FACTS AT THE PRE-TRIAL CONSTITUTES JUDICIAL ADMISSIONS WHICH ARE BINDING AND CONCLUSIVE UPON THE PARTIES.— Appellant wittingly overlooked the fact that during the pre-trial, the prosecution and the defense stipulated that the specimen submitted for examination was positive for Methylamphetamine Hydrochloride, a dangerous drug, per Physical Science Report No. D-925-03S. This was the very reason why the testimony of the forensic chemist was dispensed with during the trial. Stipulation of facts at the pre-trial constitutes judicial admissions which are binding and conclusive upon the parties.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; IN THE ABSENCE OF PALPABLE ERROR OR GRAVE ABUSE OF DISCRETION ON THE PART OF THE TRIAL COURT, ITS EVALUATION OF CREDIBILITY OF WITNESS WILL NOT BE DISTURBED ON APPEAL.— The second error ascribed to the trial court boils down to the issue of credibility of

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[*] Vice Associate Justice Bienvenido L. Reyes, who is on Wellness Leave, per Special Order No. 1356 dated November 13, 2012.

witnesses. In this regard, the well-settled rule is that in the absence of palpable error or grave abuse of discretion on the part of the trial court, its evaluation of the credibility of witnesses will not be disturbed on appeal. And "[i]n cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner unless there is evidence to the contrary." We cannot find anything to justify a deviation from the said rules.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); CHAIN OF CUSTODY REQUIREMENT; THE PROSECUTION HAD INDUBITABLY ESTABLISHED THE CRUCIAL LINKS IN THE CHAIN OF CUSTODY AS THE EVIDENCE CLEARLY SHOW THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED SUBSTANCE HAVE BEEN PRESERVED.— Regarding the chain of custody rule, records reveal that after S/G Sahid confiscated and marked with GEW the plastic sachet containing the substance seized from appellant, S/G Sahid, together with his OIC Ruben Geronimo, then immediately brought the appellant and the plastic sachet to Police Community Precinct 2 from whence the incident was referred to the DEU for investigation. PO3 Mapili thereafter received the plastic sachet and made a request for laboratory examination of its contents. When the prosecution presented the marked specimen in court, these witnesses positively identified it to be the same plastic sachet seized from the appellant. Thus, the prosecution had indubitably established the crucial links in the chain of custody as the evidence clearly show that the integrity and evidentiary value of the confiscated substance have been preserved. This is the clear import of the chain of custody rule – to ensure the preservation of the integrity and the evidentiary value of the seized item as it would determine the guilt or innocence of the accused. Significantly, in no instance did appellant manifest or at least intimate before the trial court that there were lapses in the handling and safekeeping of the seized item that might affect its admissibility, integrity and evidentiary value. When a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the

first time on appeal as we ruled in *People v. Sta. Maria* and reiterated in *People v. Hernandez.*

4. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; COMMITTED IN CASE AT BAR.— Finally, the Court is convinced of appellant's commission of the crime charged. In *People v. Sembrano*, we ruled that "[f]or illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and, (3) the accused freely and consciously possessed the drug." All the foregoing elements were duly established by the prosecution in this case. Appellant was caught in possession of *shabu*, a dangerous drug. He failed to show that he was authorized to possess the same. Lastly, by his mere possession of the drug, there is already a *prima facie* evidence of knowledge, which he failed to rebut. All told, we sustain the conviction of appellant.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Subject of this appeal is the September 20, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02215 which affirmed appellant's conviction by the Makati City Regional Trial Court (RTC), Branch 64, through its March 8, 2006 Decision,[2] for the crime of illegal possession of methylamphetamine hydrochloride or *shabu*, a dangerous drug, in violation of Section 11, Article II of Republic Act (RA) No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] CA *rollo*, pp. 77-88; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Marina L. Buzon and Rosmari D. Carandang.

[2] Records, pp. 91-96; penned by Judge Delia H. Panganiban.

Factual Antecedents

In an Information[3] filed on July 17, 2003, appellant was charged with violation of Section 11, Article II of RA No. 9165, the accusatory portion of which reads:

> That on or about the 15th day of July, 2003, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess and/or use dangerous drugs and without any license or proper prescription, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) small heat sealed transparent plastic sachet of Methylamphetamine Hydrochloride weighing forty seven point eighty (47.80) gram[s], a dangerous drug, in violation of the aforesaid law.
>
> CONTRARY TO LAW.[4]

Appellant pleaded not guilty to the charge when arraigned. After termination of the pre-trial, trial on the merits ensued.

Version of the Prosecution

At around 11:00 a.m. of July 15, 2003, Security Guard Rashied A. Sahid (S/G Sahid) was doing routinary inspection of people entering the Guadalupe Commercial Complex. When it was appellant's turn to be inspected, S/G Sahid patted appellant's back pocket and felt something bulky. Thinking that appellant was carrying a bomb, S/G Sahid ordered him to empty his pocket. Appellant brought out a plastic sachet[5] and when asked what it contained, replied *"shabu"*. Appellant was immediately apprehended and brought to the security office of the complex. S/G Sahid marked the plastic sachet with appellant's initials, GEW.[6] Then, together with the Officer-in-Charge (OIC) of the security office, he brought appellant and the plastic sachet

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3 *Id.* at 1.

4 *Id.*

5 Exhibit "E", *id.* at 50.

6 Exhibit "E-2", *id.*

to the Police Community Precinct 2 for recording purposes and subsequently, to the Drug Enforcement Unit (DEU) for investigation. Police investigator PO3 Conrado Mapili (PO3 Mapili) received the plastic sachet containing the suspected *shabu*. Thereafter, he prepared a request for laboratory examination[7] and submitted the specimen to the Philippine National Police (PNP) Crime Laboratory.

Version of the Defense

The defense gave an entirely different version of the incident.

At around 11:00 a.m. of July 15, 2003, while appellant was at the entrance of the Guadalupe Commercial Complex, a man in front of him was frisked by S/G Sahid. The guard recovered something wrapped in a newspaper from the man's right pocket. However, the man suddenly ran away so S/G Sahid pursued him. Unable to catch the man, S/G Sahid returned, held appellant's shirt, and pointed to him as the man's companion. Appellant denied any knowledge of the man but still he was brought to the second floor of the mall where he was frisked and beaten by four men including S/G Sahid. S/G Sahid even asked ₱20,000.00 from him in exchange for his release, but he could not give any money. He was thereafter brought to Police Station 2 and later to the DEU-Criminal Investigation Division (CID) where he was investigated by PO3 Mapili. When he told PO3 Mapili that the *shabu* came from the man pursued by S/G Sahid, PO3 Mapili and two others tortured him. Because of the severe beatings, appellant lost consciousness.When he woke up, he realized that he had urinated. He was then made to lick his urine off the floor. Due to this ordeal, appellant was forced to admit ownership of the *shabu.* He was thus brought to Fort Bonifacio for drug test and then detained at the CID. The following day, he was taken to the prosecutor's office for inquest.

Ruling of the Regional Trial Court

After evaluating the evidence for the prosecution and the defense, the trial court, in its Decision[8] dated March 8, 2006,

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[7] Exhibit "B", *id*. at 43.

found appellant guilty beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165 and sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱400,000.00.

Ruling of the Court of Appeals

In its assailed Decision[9] of September 20, 2007, the CA found that the prosecution was able to prove appellant's guilt of the crime charged. Hence, it dismissed the appeal and affirmed *in toto* the Decision of the RTC.

Issues

Unable to accept the verdict of his conviction, appellant is now before this Court raising the same issues he submitted before the CA, *viz*:

I

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH: (1) [THAT] THE ITEM ALLEGEDLY CONFISCATED WAS INDEED A PROHIBITED DRUG AND (2) THE CHAIN OF CUSTODY OF THE SPECIMEN.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING SCANT CONSIDERATION TO THE EVIDENCE PRESENTED BY THE DEFENSE, WHICH IS MORE CREDIBLE THAN THAT OF THE PROSECUTION.[10]

Our Ruling

After a painstaking review of the records of the case, the Court finds no merit in the appeal.

Appellant contends that the prosecution failed to prove beyond reasonable doubt that the substance allegedly confiscated was

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[8] *Id.* at 91-96.

[9] CA *rollo*, pp. 77-88.

[10] *Id.* at 35.

an illegal drug when it did not present the forensic chemist who conducted the examination on the specimen. He thus avers that the identity of the illegal drug which constitutes the *corpus delicti* of the crime and which must be established with certainty and conclusiveness was not proven in this case. He also questions the chain of custody in the handling of the said specimen.

Appellant's contentions are utterly untenable.

Appellant wittingly overlooked the fact that during the pre-trial, the prosecution and the defense stipulated that the specimen submitted for examination was positive for Methylamphetamine Hydrochloride, a dangerous drug, per Physical Science Report No. D-925-03S.[11] This was the very reason why the testimony of the forensic chemist was dispensed with during the trial. Stipulation of facts at the pre-trial constitutes judicial admissions which are binding and conclusive upon the parties.[12]

Regarding the chain of custody rule, records reveal that after S/G Sahid confiscated and marked with GEW the plastic sachet containing the substance seized from appellant, S/G Sahid, together with his OIC Ruben Geronimo, then immediately brought the appellant and the plastic sachet to Police Community Precinct 2 from whence the incident was referred to the DEU for investigation. PO3 Mapili thereafter received the plastic sachet and made a request for laboratory examination of its contents. When the prosecution presented the marked specimen in court, these witnesses positively identified it to be the same plastic sachet seized from the appellant. Thus, the prosecution had indubitably established the crucial links in the chain of custody as the evidence clearly show that the integrity and evidentiary value of the confiscated substance have been preserved. This is the clear import of the chain of custody rule – to ensure the preservation of the integrity and the evidentiary value of the

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[11] Records, p. 44.

[12] *Cuenco v. Talisay Tourist Sports Complex, Incorporated*, G.R. No. 174154, October 17, 2008, 569 SCRA 616, 628.

seized item as it would determine the guilt or innocence of the accused.

Significantly, in no instance did appellant manifest or at least intimate before the trial court that there were lapses in the handling and safekeeping of the seized item that might affect its admissibility, integrity and evidentiary value. When a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal as we ruled in *People v. Sta. Maria*[13] and reiterated in *People v. Hernandez*.[14]

The second error ascribed to the trial court boils down to the issue of credibility of witnesses. In this regard, the well-settled rule is that in the absence of palpable error or grave abuse of discretion on the part of the trial court, its evaluation of the credibility of witnesses will not be disturbed on appeal.[15] And "[i]n cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner unless there is evidence to the contrary."[16] We cannot find anything to justify a deviation from the said rules.

Finally, the Court is convinced of appellant's commission of the crime charged. In *People v. Sembrano*,[17] we ruled that "[f]or illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and, (3) the accused freely and consciously possessed the drug."

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[13] G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

[14] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 645.

[15] *People v. Remerata*, 449 Phil. 813, 822 (2003).

[16] *People v. Llamado*, G.R. No. 185278, March 13, 2009, 581 SCRA 544, 552.

[17] G.R. No. 185848, August 16, 2010, 628 SCRA 328, 342-343.

All the foregoing elements were duly established by the prosecution in this case. Appellant was caught in possession of *shabu*, a dangerous drug. He failed to show that he was authorized to possess the same. Lastly, by his mere possession of the drug, there is already a *prima facie* evidence of knowledge, which he failed to rebut. All told, we sustain the conviction of appellant.

WHEREFORE, the appeal is **DISMISSED** and the September 20, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02215 is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and Mendoza,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 184181. November 26, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH ROBELO *y* TUNGALA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL POSSESSION AND SALE OF DANGEROUS DRUGS; THE ABSENCE OF A PRIOR SURVEILLANCE OR TEST-BUY DOES NOT AFFECT THE LEGALITY OF THE BUY-BUST OPERATION AS THERE IS NO TEXT-BOOK METHOD OF CONDUCTING THE SAME.— We sustain the validity of the buy-bust operation. A buy-bust operation has been proven to be an effective mode of apprehending drug pushers. In this regard, police authorities

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[*] Per raffle dated November 19, 2012.

are given a wide latitude in employing their own ways of trapping or apprehending drug dealers in *flagrante delicto*. There is no prescribed method on how the operation is to be conducted. As ruled in *People v. Garcia*, the absence of a prior surveillance or test-buy does not affect the legality of the buy-bust operation as there is no text-book method of conducting the same. As long as the constitutional rights of the suspected drug dealer are not violated, the regularity of the operation will always be upheld. Thus, in *People v. Salazar*, we ruled that "[i]f carried out with due regard to constitutional and legal safeguards, buy-bust operation deserves judicial sanction."

2. ID.; ID.; ID.; THE LAW DOES NOT PRESCRIBE AS AN ELEMENT OF THE CRIME THAT THE VENDOR AND THE VENDEE BE FAMILIAR WITH EACH OTHER.— Neither impressive is appellant's contention that it is contrary to human nature to sell the illegal stuff to a complete stranger. The law does not prescribe as an element of the crime that the vendor and the vendee be familiar with each other. As aptly held by the CA, peddlers of illicit drugs have been known with ever increasing casualness and recklessness to offer and sell their wares for the right price to anybody, be they strangers or not.

3. ID.; ID.; CHAIN OF CUSTODY RULE; NON-COMPLIANCE THEREWITH MUST BE RAISED BEFORE THE TRIAL COURT AND NOT FOR THE FIRST TIME ON APPEAL.— It should be noted that the alleged non-compliance with Section 21 of Article II of R.A. No. 9165 was not raised before the trial court but only for the first time on appeal. This cannot be done. In *People v. Sta. Maria, People v. Hernandez*, and *People v. Lazaro, Jr.*, among others, in which the very same issue was belatedly raised, we ruled: x x x Indeed the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal. Moreover, "[n]on-compliance with Section 21 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What

is essential 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.'" The records reveal that at no instance did appellant hint a doubt on the integrity of the seized items. Undoubtedly, therefore, the suspected illegal drugs confiscated from appellant were the very same substance presented and identified in court. This Court, thus, upholds the presumption of regularity in the performance of official duties by the apprehending police officers.

4. ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; MAY BE INFERRED FROM THE ACTS OF THE ACCUSED BEFORE, DURING AND AFTER THE COMMISSION OF THE CRIME SUGGESTING CONCERTED ACTION AND UNITY OF PURPOSE AMONG THEM.— While indeed there was little or no exchange between the poseur-buyer and the appellant as it was the former and Umali who negotiated for the sale, he still cannot escape liability because of his passive complicity therein. Simply stated, there was conspiracy between appellant and Umali as can be deduced from the testimony of PO2 Tubbali. x x x. Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime suggesting concerted action and unity of purpose among them. In this case, the testimony of the poseur-buyer clearly shows a unity of mind between appellant and Umali in selling the illegal drugs to him. Hence, applying the basic principle in conspiracy that the "act of one is the act of all" appellant is guilty as a co-conspirator and regardless of his participation, is liable as co-principal. Appellant's silence when the poseur-buyer was introduced to him as an interested buyer of *shabu* is *non-sequitur*.

5. REMEDIAL LAW; EVIDENCE; DEFENSES OF ALIBI AND FRAME-UP; REJECTED.— Appellant denies his complicity in the crime by invoking alibi and frame-up. He claims that in the morning of March 26, 2004, he was at his mother's house doing some repair job and was just suddenly arrested and brought to the precinct where the arresting officers demanded ₱10,000.00 for his liberty. We, however, find that the RTC correctly rejected this defense of the appellant. Time and again, we have stressed virtually to the point of repletion that alibi is one of the weakest defenses that an accused can invoke because it is easy to fabricate. In order to be given full faith and credit, an alibi must be clearly established and must not leave any

doubt as to its plausibility and veracity. Here, appellant's claim that he was at his mother's house at the time of the incident cannot stand against the clear and positive identification of him by the prosecution witnesses. As aptly held by the RTC, "[t]he portrayal put forward by [appellant] remained uncorroborated. The testimonies of the witnesses presented by the defense do not jibe with one another and that of the claim of the [appellant] himself. x x x Lastly[,] the demand for money worth ₱10,000.00 remained unsubstantiated. x x x If indeed [appellant] is innocent he or his family who were his witnesses should have filed a case of planting of evidence against the police which is now punishable by life imprisonment."

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is another instance where we are called upon to resolve an issue concerning the constitutional presumption of innocence accorded to an accused *vis-à-vis* the corresponding presumption of regularity in the performance of official duties of police officers involved in a drug buy-bust operation.

Assailed in this appeal interposed by appellant Joseph Robelo *y* Tungala is the February 27, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02711, which affirmed the January 26, 2007 Decision[2] of the Regional Trial Court (RTC) of the City of Manila, Branch 2, finding him guilty beyond reasonable doubt of the crimes of Illegal Possession and Illegal Sale of Dangerous Drugs under Sections 11(3) and (5) in relation to Section 26, Article II, respectively, of Republic Act (R.A.) No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] CA *rollo*, pp. 100-121; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Juan Q. Enriquez and Marlene Gonzales-Sison.

[2] Records, pp. 78-85; penned by Judge Alejandro G. Bijasa.

Factual Antecedents

At about 10:00 a.m. of March 26, 2004, the Station of Anti-Illegal Drugs Special Operation Task Force (SAID), Police Station 2 in Moriones, Tondo, Manila received information from a civilian informer that a certain *alias* "Kalbo" (appellant) is involved in the sale of illegal drugs in Parola Compound. Forthwith, the Chief of SAID organized a team composed of eight police officers to conduct a "buy-bust" operation to entrap appellant. PO2 Arnel Tubbali (PO2 Tubbali) was designated as the poseur-buyer and was thus handed a 100 peso bill which he marked with his initials. The rest of the team were to serve as back-ups.

The civilian asset led PO2 Tubbali to the target area while others positioned themselves in strategic places. Not long after, appellant came out from Gate 16, Area 1-b with a companion who was later identified as Teddy Umali (Umali). Upon approaching the two, the civilian informer introduced to them PO2 Tubbali as a friend and a prospective buyer of *shabu*. PO2 Tubbali then conveyed his desire to buy ₱100.00 worth of *shabu* and handed Umali the marked ₱100.00 bill. After accepting the money, Umali ordered appellant to give PO2 Tubbali one plastic sachet of *shabu* to which the latter readily complied. PO2 Tubbali then looked at the plastic sachet, placed it in his pocket, and made the pre-arranged signal by scratching his butt. Whereupon, the rest of the team rushed to the scene and arrested appellant and Umali. When frisked by PO2 Conrado Juano, one plastic sachet suspected to contain *shabu* was found inside appellant's pocket. He and Umali were afterwards brought to the precinct where the investigator marked the seized items with the initials "JRT-1" and "JRT-2". The investigator then prepared the Laboratory Request,[3] Booking Sheet,[4] Arrest Report,[5] Joint Affidavit of Apprehension[6] and a referral letter for inquest.[7]

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[3] Exhibit "F", *id*. at 11.

[4] Exhibit "E", *id*. at 4-5.

[5] *Id*.

[6] Exhibit "D", *id*. at 6-10.

[7] *Id*. at 12.

After qualitative examination, the forensic chemist found the items positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.

Appellant was accordingly charged with illegal sale and illegal possession of *shabu* in two separate Informations while Umali was indicted in another Information raffled to a different branch of the RTC.

The Informations against appellant read as follows:

CRIMINAL CASE NO. 04-225284

That on or about March 26, 2004, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) transparent plastic sachet containing ZERO POINT ZERO NINETEEN (0.019) gram of white crystalline substance known as *shabu*, containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[8]

CRIMINAL CASE NO. 04-225285

That on or about March 26, 2004, in the City of Manila, Philippines, the said accused, conspiring and confederating with one whose true name, identity and present whereabouts are still unknown and mutually helping each other, 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 or offer for sale one (1) transparent plastic sachet containing ZERO POINT ZERO THIRTEEN (0.013) gram of white crystalline substance known as *shabu*, containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[9]

During arraignment, appellant, assisted by his counsel, pleaded "not guilty" in the two cases. After the termination of the pre-trial, trial on the merits immediately ensued.

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[8] *Id.* at 2.

[9] *Id.* at 3.

Appellant denied being a drug pusher and claimed complete ignorance as to why he was being implicated in the said crimes. He averred that he was repairing the floor of his mother's house when two police officers in civilian clothes went inside the house, ransacked the closet and without any reason handcuffed and brought him to the precinct. At the precinct, the police officers demanded from him ₱10,000.00 in exchange for his liberty.

Ruling of the Regional Trial Court

After trial, the RTC rendered a verdict of conviction on January 26, 2007,[10] *viz*:

> **WHEREFORE**, judgment is hereby rendered as follows, to wit:
>
> 1. In Criminal Case No. 04-225284, finding accused, Joseph Robelo *y* Tungala @ "Kalbo", **GUILTY** beyond reasonable doubt of the crime charged, he is hereby sentenced to suffer the indeterminate penalty of 12 years and 1 day as minimum to 17 years and 4 months as maximum; to pay a fine of ₱300,000,00 without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> 2. In Criminal Case No. 04-225285, finding accused, Joseph Robelo *y* Tungala @ "Kalbo", **GUILTY** beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay the fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> The specimens are 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.
>
> SO ORDERED.[11]

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[10] *Id*. at 78-85.

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

Ruling of the Court of Appeals

On appeal, the CA concurred with the RTC's findings and conclusions and, consequently, affirmed the said lower court's judgment in its assailed Decision[12] of February 27, 2008, the dispositive portion of which reads:

WHEREFORE, the instant appeal is **DISMISSED**. The assailed Decision dated January 26, 2007 is hereby **AFFIRMED**.

SO ORDERED.[13]

Still undeterred, appellant is now before us and by way of assignment of errors reiterates the grounds and arguments raised in his Brief filed before the CA, to wit:

I

THE LOWER COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASOANBLE DOUBT OF THE CRIME CHARGED NOTWITHSTANDING THE POLICE OFFICERS' FAILURE TO REGULARLY PERFORM THEIR OFFICIAL FUNCTIONS.[14]

Our Ruling

The appeal has no merit.

Appellant's first assignment of error basically hinges on the credibility of the prosecution witnesses, particularly in their conduct of the buy-bust operation. He asserts that the alleged buy-bust operation is tainted with infirmity due to the absence of a prior surveillance or investigation. Moreover, per the testimony of PO2 Tubbali, appellant did not say anything when

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[12] CA *rollo*, pp. 100-121.

[13] *Id*. at 121.

[14] *Id*. at 33.

the former was introduced to him as an interested buyer of *shabu*. Appellant points out that it is contrary to human nature that the seller would say nothing to the buyer who is a complete stranger to him.

We sustain the validity of the buy-bust operation.

A buy-bust operation has been proven to be an effective mode of apprehending drug pushers. In this regard, police authorities are given a wide latitude in employing their own ways of trapping or apprehending drug dealers in *flagrante delicto*. There is no prescribed method on how the operation is to be conducted. As ruled in *People v. Garcia*,[15] the absence of a prior surveillance or test-buy does not affect the legality of the buy-bust operation as there is no text-book method of conducting the same. As long as the constitutional rights of the suspected drug dealer are not violated, the regularity of the operation will always be upheld. Thus, in *People v. Salazar*,[16] we ruled that "[i]f carried out with due regard to constitutional and legal safeguards, buy-bust operation deserves judicial sanction."

Neither impressive is appellant's contention that it is contrary to human nature to sell the illegal stuff to a complete stranger. The law does not prescribe as an element of the crime that the vendor and the vendee be familiar with each other. As aptly held by the CA, peddlers of illicit drugs have been known with ever increasing casualness and recklessness to offer and sell their wares for the right price to anybody, be they strangers or not.

While indeed there was little or no exchange between the poseur-buyer and the appellant as it was the former and Umali who negotiated for the sale, he still cannot escape liability because of his passive complicity therein. Simply stated, there was conspiracy between appellant and Umali as can be deduced from the testimony of PO2 Tubbali, to wit:

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[15] G.R. No. 172975, August 8, 2007, 529 SCRA 519, 533, 534.

[16] 334 Phil. 556, 570 (1997).

Q. So when Teddy Umali received this One Hundred Peso-bill (₱100.00), what happened next, Mr. Witness?
A. Then he talked to Joseph Robelo *alias* "Kalbo" to give me a *shabu*, one (1) plastic sachet, sir.

Q. Did Robelo compl[y]?
A. Yes, sir.

Q. How did, this Joseph…
A. And then Joseph handed me one (1) plastic sachet, sir.[17]

Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime suggesting concerted action and unity of purpose among them. In this case, the testimony of the poseur-buyer clearly shows a unity of mind between appellant and Umali in selling the illegal drugs to him. Hence, applying the basic principle in conspiracy that the "act of one is the act of all" appellant is guilty as a co-conspirator and regardless of his participation, is liable as co-principal. Appellant's silence when the poseur-buyer was introduced to him as an interested buyer of *shabu* is *non-sequitur*.

Appellant denies his complicity in the crime by invoking alibi and frame-up. He claims that in the morning of March 26, 2004, he was at his mother's house doing some repair job and was just suddenly arrested and brought to the precinct where the arresting officers demanded ₱10,000.00 for his liberty.

We, however, find that the RTC correctly rejected this defense of the appellant.

Time and again, we have stressed virtually to the point of repletion that alibi is one of the weakest defenses that an accused can invoke because it is easy to fabricate. In order to be given full faith and credit, an alibi must be clearly established and must not leave any doubt as to its plausibility and veracity. Here, appellant's claim that he was at his mother's house at the time of the incident cannot stand against the clear and positive identification of him by the prosecution witnesses. As aptly

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[17] TSN, July 12, 2005, pp. 10-11.

held by the RTC, "[t]he portrayal put forward by [appellant] remained uncorroborated. The testimonies of the witnesses presented by the defense do not jibe with one another and that of the claim of the [appellant] himself. x x x Lastly[,] the demand for money worth ₱10,000.00 remained unsubstantiated. x x x If indeed [appellant] is innocent he or his family who were his witnesses should have filed a case of planting of evidence against the police which is now punishable by life imprisonment."[18]

In fine, no error was committed by the RTC and the CA in giving credence to the testimonies of the prosecution witnesses. The general rule is that findings of the trial court on the credibility of witnesses deserve great weight, and are generally not disturbed, on appeal. We find no reason to depart from such old-age rule as there are no compelling reasons which would warrant the reversal of the verdict.

In his second assignment of error, appellant draws attention to the failure of the apprehending officers to comply with Section 21 of R.A. No. 9165 regarding the physical inventory and photocopy of the seized items. He asserts that this failure casts doubt on the validity of his arrest and the identity of the suspected *shabu* allegedly bought and confiscated from him.

Appellant's contention fails to convince us.

It should be noted that the alleged non-compliance with Section 21 of Article II of R.A. No. 9165 was not raised before the trial court but only for the first time on appeal. This cannot be done. In *People v. Sta. Maria*,[19] *People v. Hernandez*,[20] and *People v. Lazaro, Jr.*,[21] among others, in which the very same issue was belatedly raised, we ruled:

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[18] Records, p. 83.

[19] G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

[20] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 645.

[21] G.R. No. 186418, October 16, 2009, 604 SCRA 250, 274.

x x x Indeed the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

Moreover, "[n]on-compliance with Section 21 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is essential 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.'"[22] The records reveal that at no instance did appellant hint a doubt on the integrity of the seized items.

Undoubtedly, therefore, the suspected illegal drugs confiscated from appellant were the very same substance presented and identified in court. This Court, thus, upholds the presumption of regularity in the performance of official duties by the apprehending police officers.

The Penalty

Under Section 5, Article II of R.A. No. 9165, illegal sale of *shabu* carries with it the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million irrespective of the quantity and purity of the substance.

On the other hand, Section 11(3), Article II of the same law provides that illegal possession of less than five grams of *shabu* is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years plus a fine ranging from ₱300,000.00 to ₱400,000.00.

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[22] *People v. Guiara*, G.R. No. 186497, September 17, 2009, 600 SCRA 310, 329.

Appellant was found guilty of selling 0.019 gram of *shabu* and of possessing another 0.013 gram. Hence, applying the above provisions, we find the penalties imposed by the RTC as affirmed by the CA to be in order.

WHEREFORE, the appeal is **DISMISSED**. The assailed February 27, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02711 is hereby **AFFIRMED** *in toto*.

SO ORDERED.

Carpio (Chairperson), Brion, Peralta,[*] and *Perez, JJ.*, concur.

EN BANC

[A.C. No. 9608. November 27, 2012]

MARIA VICTORIA B. VENTURA, *complainant, vs.* **ATTY. DANILO S. SAMSON,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; POSSESSION OF GOOD MORAL CHARACTER IS BOTH A CONDITION PRECEDENT AND A CONTINUING REQUIREMENT TO WARRANT ADMISSION TO THE BAR AND TO RETAIN MEMBERSHIP IN THE LEGAL PROFESSION.— As we explained in *Zaguirre v. Castillo*, the possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the bar and to retain membership in the legal profession. It is the bounden duty of members of the bar to observe the highest degree of morality in order to safeguard the integrity of the Bar. Consequently, any errant behavior on the part of a lawyer, be it in the lawyer's public or private

[*] Per Special Order No. 1377 dated November 22, 2012.

activities, which tends to show said lawyer deficient in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.

2. ID.; ID.; RESPONDENT'S ACT OF HAVING CARNAL KNOWLEDGE OF A WOMAN OTHER THAN HIS WIFE MANIFESTS HIS DISRESPECT FOR THE SANCTITY OF MARRIAGE AND HIS OWN MARITAL VOW OF FIDELITY; ALSO THE FACT THAT HE ENTICED A VERY YOUNG WOMAN WITH MONEY SHOWED HIS UTMOST MORAL DEPRAVITY AND LOW REGARD FOR THE DIGNITY OF THE HUMAN PERSON AND ETHICS OF HIS PROFESSION.— Immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community. Immoral conduct is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency. From the undisputed facts gathered from the evidence and the admissions of respondent himself, we find that respondent's act of engaging in sex with a young lass, the daughter of his former employee, constitutes gross immoral conduct that warrants sanction. Respondent not only admitted he had sexual intercourse with complainant but also showed no remorse whatsoever when he asserted that he did nothing wrong because she allegedly agreed and he even gave her money. Indeed, his act of having carnal knowledge of a woman other than his wife manifests his disrespect for the laws on the sanctity of marriage and his own marital vow of fidelity. Moreover, the fact that he procured the act by enticing a very young woman with money showed his utmost moral depravity and low regard for the dignity of the human person and the ethics of his profession.

3. ID.; ID.; RESPONDENT CLEARLY COMMITTED A DISGRACEFUL, GROSSLY IMMORAL AND HIGHLY REPREHENSIBLE ACT; SUCH ACT IS A TRANSGRESSION OF THE STANDARDS OF MORALITY REQUIRED OF THE LEGAL PROFESSION AND SHOULD BE DISCIPLINED ACCORDINGLY.— Respondent has violated the trust and confidence reposed on him by complainant, then a 13-year-old minor, who for a time was under respondent's care. Whether the sexual encounter

between the respondent and complainant was or was not with the latter's consent is of no moment. Respondent clearly committed a disgraceful, grossly immoral and highly reprehensible act. Such conduct is a transgression of the standards of morality required of the legal profession and should be disciplined accordingly. Section 27, Rule 138 of the Rules of Court expressly states that a member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for, among others, any deceit, grossly immoral conduct, or violation of the oath that he is required to take before admission to the practice of law. It bears to stress that membership in the Bar is a privilege burdened with conditions. As a privilege bestowed by law through the Supreme Court, membership in the Bar can be withdrawn where circumstances concretely show the lawyer's lack of the essential qualifications required of lawyers.

4. ID.; ID.; DISBARMENT; COMPLAINANT'S AFFIDAVIT OF DESISTANCE IS IMMATERIAL; A DISBARMENT CASE IS NOT AN INVESTIGATION INTO THE ACTS OF RESPONDENT BUT ON HIS CONDUCT AS AN OFFICER OF THE COURT AND HIS FITNESS TO CONTINUE AS A MEMBER OF THE BAR.— The fact that complainant filed an Affidavit of Desistance during the pendency of this case is of no moment. Complainant's Affidavit of Desistance cannot have the effect of abating the instant proceedings in view of the public service character of the practice of law and the nature of disbarment proceedings as a public interest concern. A case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. A disbarment case is not an investigation into the acts of respondent but on his conduct as an officer of the court and his fitness to continue as a member of the Bar.

5. ID.; ID.; ID.; THE SERIOUSNESS OF THE OFFENSE IN CASE AT BAR COMPELLED THE COURT TO WIELD ITS POWER TO DISBAR AS IT APPEARS TO BE THE MOST APPROPRIATE PENALTY.— Illicit sexual relations have been previously punished with disbarment, indefinite or definite suspension, depending on the circumstances. In this case, respondent's gross misbehavior and unrepentant demeanor

clearly shows a serious flaw in his character, his moral indifference to sexual exploitation of a minor, and his outright defiance of established norms. All these could not but put the legal profession in disrepute and place the integrity of the administration of justice in peril, hence the need for strict but appropriate disciplinary action. The Court is mindful of the dictum that the power to disbar must be exercised with great caution, and only in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court and as a member of the bar. Thus, where a lesser penalty, such as temporary suspension, could accomplish the end desired, disbarment should never be decreed. However, in the present case, the seriousness of the offense compels the Court to wield its power to disbar as it appears to be the most appropriate penalty.

APPEARANCES OF COUNSEL

Leo C. Romero for complainant.

Sansaet Masendo Cadiz & Bañozia Law Offices for respondent.

D E C I S I O N

***PER CURIAM*:**

The Court has often reminded members of the bar to live up to the standards and norms of the legal profession by upholding the ideals and principles embodied in the Code of Professional Responsibility. Lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity and fair dealing. Lawyers are at all times subject to the watchful public eye and community approbation. Needless to state, those whose conduct – both public and private – fail this scrutiny have to be disciplined and, after appropriate proceedings, accordingly penalized.[1]

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[1] See *Tapucar v. Tapucar*, Adm. Case No. 4148, July 30, 1998, 293 SCRA 331, 338.

Complainant Maria Victoria B. Ventura filed on July 29, 2004 a Complaint[2] for Disbarment or Suspension before the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline against respondent Atty. Danilo S. Samson for "grossly immoral conduct."

In her complaint, complainant alleged that

2. The herein Complainant **MARIA VICTORIA B. VENTURA** executed a Sworn Statement dated 19 April 2002 and a Supplemental-Complaint dated 10 May 2002 stating therein that the crime of **RAPE** was committed against her person sometime in December, 2001 and on 19 March 2002 when she was merely **thirteen (13) years of age** by herein Respondent **ATTY. DANILO S. SAMSON**, then thirty eight (38) years old, married to Teresita B. Samson, Filipino and resident of Barangay 5, San Francisco, Agusan Del Sur, Philippines….

3. In his Counter-Affidavit, herein Respondent **ATTY. DANILO S. SAMSON** admitted that sexual intercourse indeed transpired between the herein Complainant **MARIA VICTORIA B. VENTURA** and himself….

4. After the conduct of preliminary investigation, the Office of the Provincial Prosecutor of Agusan Del Sur, Philippines issued a RESOLUTION dated 10 June 2002 dismissing the charge of RAPE and finding the existence of probable cause for the crime of QUALIFIED SEDUCTION and issued the corresponding INFORMATION for QUALIFIED SEDUCTION on 04 July 2002….

5. Thereafter, the herein Complainant filed a MOTION FOR RECONSIDERATION dated 26 August 2002 which was denied in the RESOLUTION dated 02 October 2002 of the Office of the Provincial Prosecutor of Agusan Del Sur….

6. The aforesaid RESOLUTION dated 02 October 2002 was elevated to [the Department of Justice], by way of a PETITION FOR REVIEW, and is pending resolution by the Department of Justice.

x x x x x x x x x

8. The act/s committed by the herein Respondent Atty. Danilo S. Samson against the herein Complainant **MARIA VICTORIA B.**

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[2] *Rollo*, pp. 2-5.

VENTURA as hereinbefore stated clearly constitute … "**grossly immoral conduct**" under Section 27 of Rule 138 of the Rules of Court of the Philippines which provides for a penalty of "**DISBARMENT or SUSPENSION of an Attorney by the SUPREME COURT.**"

Complainant narrated in her Sworn Statement[3] that sometime in December 2001, at around midnight, she was sleeping in the maid's room at respondent's house when respondent entered and went on top of her. Respondent kissed her lips, sucked her breast, and succeeded in having sexual intercourse with her. She felt pain and found blood stain in her panty. She stated that another incident happened on March 19, 2002 at respondent's poultry farm in Alegria, San Francisco, Agusan del Sur. Respondent asked her to go with him to the farm. He brought her to an old shanty where he sexually abused her. Thereafter, respondent gave her five hundred pesos and warned her not to tell anyone what had happened or he would kill her and her mother.

In her Supplemental-Complaint,[4] complainant averred that respondent allowed her to sleep in his house after her mother agreed to let her stay there while she studied at the Agusan National High School. She further stated that on the night she was sexually abused, she was awakened when respondent went on top of her. She struggled to free herself and shouted, but respondent covered her mouth and nobody could hear as nobody was in the house. Complainant also claimed that on March 19, 2002, between 5:00 p.m. to 6:00 pm, respondent forced her to ride a multi-cab. When they arrived at his poultry farm in Alegria, respondent dragged her to a dilapidated shack. She resisted his advances but her efforts proved futile.

Respondent alleged in his Answer[5] that

2. Respondent admits the allegations in paragraph 2 of the complaint to the effect that Maria Victoria Ventura filed a complaint against

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[3] *Id.* at 6-7. Dated April 19, 2002.

[4] *Id.* at 8-9.

[5] *Id.* at 57-62. Dated September 2, 2004.

him for Rape at the Provincial Prosecutor's Office with qualification that the said complaint for Rape was dismissed. Respondent, however, has no knowledge or information as to the truth of the allegation that she was 13 years….

x x x x x x x x x

5. Respondent vehemently denies the truth of the allegations in paragraph 8 of the complaint to the effect that the acts of respondent in having sex with complainant constitute … grossly immoral conduct. The truth is that [the] act of respondent in having sex with complainant was done [with] mutual agreement after respondent gave money to complainant. Respondent respectfully submit[s] that his act of having sex with complainant once does not constitute … gross[ly] immoral conduct. There is no human law that punishes a person who [has] sex with a woman with mutual agreement and complainant [accepts] compensation therefore. Having sex with complainant once with just compensation does not amount to immoral conduct….

x x x x x x x x x

6. The complaint is instigated by Corazon Ventura who was an employee at the Law Office of respondent herein. The said Corazon Ventura entertained hatred and [had a grudge] against the herein respondent who terminated her services due to misunderstanding….

7. The filing of the Criminal Case against respondent as well as this Administrative Case is a well orchestrated and planned act of Corazon Ventura as vengeance against respondent as a result of her separation from the employment in the Law Office of the respondent. This claim is supported by the Affidavit of Natividad Ruluna, the former Office Clerk at the Law Office of respondent….

8. To show that Corazon Ventura desires to get back [at] respondent, she demanded from respondent to settle with her and demanded the payment of the amount [of] ₱2,000,000.00[;] otherwise she will file a case against him in Court for Rape and for disbarment. Respondent did not come across with Corazon Ventura, the latter made good her threats and filed the criminal case for Rape. [sic] When the case [for] rape did not prosper because the Prosecutor dropped the Rape Case, Corazon Ventura [sent word] to respondent that she is amenable for the amount of ₱400,000.00. In effect, Corazon Ventura wanted to extort from respondent so that she [can] get even with him and his wife for separating her from the employment;

9. Complainant is a woman of loose moral character. This is supported by the Affidavit of Patronio Punayan, Jr. which is hereto attached as Annex "3". And Corazon Ventura can afford to utilize Maria Victoria Ventura as her instrument in putting down the respondent herein because Maria Victoria Ventura is not her biological daughter and she knows before hand that her ward has a questionable reputation. The fact [that] Corazon Ventura is not the biological mother of Maria Victoria Ventura is shown by the pre-trial order in Criminal Case No. 5414….

x x x x x x x x x

Respondent has not violated any grounds mentioned in this rule. Respondent respectfully submits that his having sex with complainant with just compensation once does not amount to immoral conduct. For who among men will not yield to temptation when a woman shall invite him for sex?

Attached to respondent's Answer is his Counter-Affidavit[6] which he submitted to the Provincial Prosecutor. He alleged therein that complainant usually stayed late at night with her male friends when her mother was out of the house. He claimed that he heard rumors that complainant had sexual affairs with different boys. Respondent narrated that on March 19, 2002, he saw complainant with some of her classmates near their rented house. Complainant told him that they wanted to go out to swim but they did not have money. When she asked if he could spare some amount, he gave her money. He told her in jest that he wanted to see her that afternoon and go to a place where they could be alone, and he was surprised when she agreed. He just thought that for complainant, sex is a common thing despite her age. At around 5:00 p.m., he fetched complainant at her house. She casually walked towards the car and boarded it. He told her that they will not check in a lodging house because people might recognize him. Upon reaching his poultry farm, respondent met his farm worker and asked him if he could use the latter's hut. The farm worker agreed and they went straight to the hut.

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[6] *Id.* at 63-69.

Inside the farm worker's hut, complainant did not hesitate in entering the room. Respondent did not notice any involuntariness on her part as she undressed herself. He asserted that they had sexual intercourse based on their mutual understanding. Thereafter, the complainant dressed up and walked back to the multi-cab where she waited for him. He told her not to tell anyone about what had happened, to which she replied "*natural buang kay motug-an*" meaning, she's not crazy as to tell anyone. He alleged that she accepted the money he gave because she needed to buy some things but her mother did not give her any allowance. Respondent insisted that what happened between them was the first and the last incident. He claimed that he was able to confirm that complainant is no longer a virgin.

It likewise appears that the Investigating Prosecutors found that probable cause exists for respondent to stand trial for qualified seduction.[7] The charge of rape, however, was dismissed for insufficiency of evidence. An Information was filed with the Regional Trial Court (RTC) of Agusan del Sur, Branch 6, but complainant who was not satisfied with the dismissal of the rape charge, filed a motion for reconsideration. When said motion was denied, complainant filed a petition for review with the Department of Justice (DOJ). However, the DOJ sustained the findings of the prosecutor.

Then, on December 14, 2006, complainant and her mother appeared before the public prosecutor and executed their respective Affidavits of Desistance.[8] Complainant stated that what happened between respondent and her in March 2002 was based on mutual understanding. Thus, she was withdrawing the complaint she filed against respondent before the RTC as well as the one she filed before the IBP Commission on Bar Discipline. Accordingly, the criminal case against respondent was dismissed.[9]

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[7] *Id.* at 119-122. Resolution dated June 10, 2002.

[8] *Id.* at 158-159.

[9] *Id.* at 164.

In its Report and Recommendation[10] dated October 10, 2007, the IBP Commission on Bar Discipline recommended that respondent be suspended for a period of one year from the practice of law for immorality with the warning that repetition of the same or similar act will merit a more severe penalty.

On November 10, 2007, the Board of Governors of the IBP issued Resolution No. XVIII-2007-237, to wit:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously 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 that respondent is found guilty of immorality, the victim is a minor, respondent and his wife was victim's guardians and for being a married man, Atty. Danilo S. Samson is hereby **SUSPENDED** from the practice of law for five (5) years with **Stern Warning** that repetition of the same or similar act in the future will be dealt with more severely.[11]

Complainant now moves to reconsider the IBP Resolution. She argues that the penalty imposed by the IBP is not commensurate to the gravity and depravity of the offense. She contends that respondent committed grossly immoral conduct by forcing himself to have sexual intercourse with a young and innocent lass of 13 years of age. He also took advantage of his moral ascendancy over complainant considering that she was then staying at respondent's residence. Moreover, there was a betrayal of the marital vow of fidelity considering that respondent was a married man. She insists that this detestable behavior renders respondent unfit and undeserving of the honor and privilege which his license confers upon him. Thus, complainant prays that the penalty of disbarment be imposed.[12]

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[10] *Id.* at 172-184.

[11] *Id.* at 170.

[12] *Id.* at 185-188.

Meanwhile, respondent also filed a Motion for Reconsideration[13] of the IBP Resolution. He asserts that complainant has not presented any proof of her minority. Likewise, during the sexual encounter, complainant was not under their custody. He contends that complainant's mother even testified that her daughter stayed at respondent's house only until February 2002. He further stresses that because of his admission and remorse, and since this is the first time he has been found administratively liable, he is entitled to a reduction of the penalty to one year suspension from the practice of law.

The pertinent provisions in the Code of Professional Responsibility provide:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01. - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

x x x x x x x x x

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

x x x x x x x x x

Rule 7.03. - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

As we explained in *Zaguirre v. Castillo*,[14] the possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the bar and to retain membership in the legal profession. It is the bounden

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[13] *Id.* at 194-201.

[14] A.C. No. 4921, March 6, 2003, 398 SCRA 658, 664.

duty of members of the bar to observe the highest degree of morality in order to safeguard the integrity of the Bar.[15] Consequently, any errant behavior on the part of a lawyer, be it in the lawyer's public or private activities, which tends to show said lawyer deficient in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.

Immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community.[16] Immoral conduct is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.[17]

From the undisputed facts gathered from the evidence and the admissions of respondent himself, we find that respondent's act of engaging in sex with a young lass, the daughter of his former employee, constitutes gross immoral conduct that warrants sanction. Respondent not only admitted he had sexual intercourse with complainant but also showed no remorse whatsoever when he asserted that he did nothing wrong because she allegedly agreed and he even gave her money. Indeed, his act of having carnal knowledge of a woman other than his wife manifests his disrespect for the laws on the sanctity of marriage and his own marital vow of fidelity. Moreover, the fact that he procured the act by enticing a very young woman with money showed his utmost moral depravity and low regard for the dignity of the human person and the ethics of his profession.

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[15] See *Advincula v. Macabata,* A.C. No. 7204, March 7, 2007, 517 SCRA 600, 609.

[16] See *Cojuangco, Jr. v. Palma*, Adm. Case No. 2474, September 15, 2004, 438 SCRA 306, 314.

[17] *Garrido v. Garrido*, A.C. No. 6593, February 4, 2010, 611 SCRA 508, 518, citing *St. Louis University Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz,* A.C. No. 6010, August 28, 2006, 499 SCRA 614, 624.

In *Cordova v. Cordova*,[18] we held that the moral delinquency that affects the fitness of a member of the bar to continue as such includes conduct that outrages the generally accepted moral standards of the community, conduct for instance, which makes a mockery of the inviolable social institution of marriage.

Respondent has violated the trust and confidence reposed on him by complainant, then a 13-year-old minor,[19] who for a time was under respondent's care. Whether the sexual encounter between the respondent and complainant was or was not with the latter's consent is of no moment. Respondent clearly committed a disgraceful, grossly immoral and highly reprehensible act. Such conduct is a transgression of the standards of morality required of the legal profession and should be disciplined accordingly.

Section 27, Rule 138 of the Rules of Court expressly states that a member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for, among others, any deceit, grossly immoral conduct, or violation of the oath that he is required to take before admission to the practice of law. It bears to stress that membership in the Bar is a privilege burdened with conditions. As a privilege bestowed by law through the Supreme Court, membership in the Bar can be withdrawn where circumstances concretely show the lawyer's lack of the essential qualifications required of lawyers.[20]

Likewise, it was held in *Maligsa v. Cabanting*[21] that a lawyer may be disbarred for any misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, in honesty, probity and good demeanor or unworthy to continue as an officer of the court. Similarly, in *Dumadag v. Lumaya*,[22] the Court pronounced:

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[18] Adm. Case No. 3249, November 29, 1989, 179 SCRA 680, 683.

[19] *Rollo*, p. 84. Certification of the Municipal Civil Registrar certifying that complainant was born on September 25, 1988.

[20] *Garrido v. Garrido, supra* note 17 at 526.

[21] Adm. Case No. 4539, May 14, 1997, 272 SCRA 408, 414.

[22] A.C. No. 2614, June 29, 2000, 334 SCRA 513, 521.

The practice of law is a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law.

The fact that complainant filed an Affidavit of Desistance during the pendency of this case is of no moment. Complainant's Affidavit of Desistance cannot have the effect of abating the instant proceedings in view of the public service character of the practice of law and the nature of disbarment proceedings as a public interest concern. A case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts. A disbarment case is not an investigation into the acts of respondent but on his conduct as an officer of the court and his fitness to continue as a member of the Bar.[23]

Illicit sexual relations have been previously punished with disbarment, indefinite or definite suspension, depending on the circumstances.[24] In this case, respondent's gross misbehavior and unrepentant demeanor clearly shows a serious flaw in his character, his moral indifference to sexual exploitation of a minor, and his outright defiance of established norms. All these could not but put the legal profession in disrepute and place the integrity of the administration of justice in peril, hence the need for strict but appropriate disciplinary action.[25]

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[23] *Tiong v. Florendo*, A.C. No. 4428, December 12, 2011, 662 SCRA 1, 6-7.

[24] *Samaniego v. Ferrer*, A.C. No. 7022, June 18, 2008, 555 SCRA 1, 5, citing *Bustamante-Alejandro v. Alejandro*, A.C. No. 4526, February 13, 2004, 422 SCRA 527, 533, *Guevarra v. Eala*, A.C. No. 7136, August 1, 2007, 529 SCRA 1, 21, *Zaguirre v. Castillo*, A.C. No. 4921, August 3, 2005, 465 SCRA 520, 525, and *Ferancullo v. Ferancullo*, A.C. No. 7214, November 30, 2006, 509 SCRA 1, 15.

[25] See *Tapucar v. Tapucar, supra* note 1 at 341.

The Court is mindful of the dictum that the power to disbar must be exercised with great caution, and only in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court and as a member of the bar. Thus, where a lesser penalty, such as temporary suspension, could accomplish the end desired, disbarment should never be decreed.[26] However, in the present case, the seriousness of the offense compels the Court to wield its power to disbar as it appears to be the most appropriate penalty.[27]

WHEREFORE, respondent Atty. Danilo S. Samson is hereby **DISBARRED** for Gross Immoral Conduct, Violation of his oath of office, and Violation of Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility.

Let a copy of this Decision, which is immediately executory, be made part of the records of respondent in the Office of the Bar Confidant, Supreme Court of the Philippines. And let copies of the Decision be furnished the Integrated Bar of the Philippines and circulated to all courts.

This Decision takes effect immediately.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Leonen, JJ.,* concur.

Brion, J., on leave.

Reyes and *Perlas-Bernabe, JJ.,* on official leave.

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[26] *Dantes v. Dantes,* A.C. No. 6486, September 22, 2004, 438 SCRA 582, 590, citing *Tapucar v. Tapucar, supra* note 1 at 339-340 and *Resurreccion v. Sayson,* Adm. Case No. 1037, December 14, 1998, 300 SCRA 129, 136-137.

[27] *Dantes v. Dantes, id.*

EN BANC

[G.R. No. 178630. November 27, 2012]

ROSA F. MERCADO, *petitioner, vs.* **COMMISSION ON HIGHER EDUCATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; ATTORNEYS; THE WITHDRAWAL OF A COUNSEL FROM A CASE MADE WITH THE CONFORMITY OF THE CLIENT TAKES EFFECT ONCE THE SAME IS FILED IN COURT.— We find that the Court of Appeals did not err in refusing to recognize the two (2) PNP signature analyses as "*newly discovered evidence*." The said analyses do not have sufficient weight to "*materially affect*" the earlier findings of the CHED that were, in turn, based on the evidence yielded during the Committee hearings. It is doctrined that opinions of handwriting experts, like signature analyses of the PNP, are not conclusive upon courts or tribunals on the issue of authenticity of signatures. The seminal case of ***Gamido v. Court of Appeals*** reminds Us that the authenticity or forgery of signatures "*is not a highly technical issue in the same sense that questions concerning, e.g., quantum physics or topology or molecular biology, would constitute matters of a highly technical nature*," and thus "*[t]he opinion of a handwriting expert on the genuineness of a questioned signature is certainly much less compelling x x x than an opinion rendered by a specialist on a highly technical issue.*" Hence, in resolving the question of whether or not forgery exists, courts or tribunals are neither limited to, nor bound by, the opinions of handwriting experts. Far from it, courts or tribunals may even disregard such opinions entirely in favor of either their own independent examination of the contested handwritings or on the basis of any other relevant, if not more direct, evidence of the character of the questioned signatures.

2. ID.; ID.; ID.; WHEN THE IMPENDING WITHDRAWAL WITH THE WRITTEN CONFORMITY OF THE CLIENT WOULD

LEAVE THE LATTER WITH NO LEGAL REPRESENTATION IN THE CASE, IT IS AN ACCEPTED PRACTICE FOR COURTS TO ORDER THE DEFERMENT OF THE EFFECTIVITY OF SUCH WITHDRAWAL UNTIL SUCH TIME THAT IT BECOMES CERTAIN THAT THE SERVICE OF COURT PROCESSES AND OTHER PAPERS TO THE PARTY-CLIENT WOULD NOT THEREBY COMPROMISED.— Verily, the weight that may be given to opinions of handwriting experts varies on a case-to-case basis and largely depends on the quality of the opinion itself as well as the availability of other evidence directly proving the forgery or authenticity of the questioned signatures. Before such opinions may be accepted and given probative value, it is indispensable that the integrity and soundness of the procedures undertaken by the expert in arriving at his conclusion, as well as the qualifications of the expert himself, must first be established satisfactorily. However, as such opinions are essentially based on mere inference, they should always be accorded less significance when lined up against direct statements of witnesses as to matters within their personal observation.

3. ID.; ID.; ID.; THE WITHDRAWAL OF COUNSEL WITH THE WRITTEN CONFORMITY OF PETITIONER WAS VALID AND BINDING.— In this case, full faith on the correctness of the two (2) PNP signature analyses, as expert opinions on handwritings, cannot be accorded in view of the fact that the integrity of the comparisons made therein were never really tested and verified satisfactorily. Even the qualifications of the police officers who made the examination are not extant on the records. Rather, the CSC just immediately accepted the two (2) PNP signature analyses hook, line and sinker, without even inquiring into the soundness of the findings therein set forth. That is a clear and patent error. In terms of evidentiary weight, the two (2) PNP signature analyses cannot, therefore, overcome the earlier signature comparison made by the CHED. Moreover, the PNP signature analysis that dealt with a comparison of the purported signatures of Ms. Dimayuga carries lesser weight than the statement given by Ms. Dimayuga herself

during the CHED proceedings that she did not execute any such *Affidavit of Desistance*. Mere inference based on comparison indubitably offers less certainty of the existence or non-existence of a fact, than a direct statement on that matter by a qualified and truthful witness.

4. ID.; ID.; ID.; PETITIONER IS NOT BOUND BY HER FORMER COUNSEL'S RECEIPT OF THE 30 MARCH 2007 DECISION.— Anent the issue regarding the failure of the Court of Appeals to consider the *Alcala Affidavit*, We find that such cannot serve to alter the disposition in the 30 March 2007 Decision. Petitioner, it must be borne in mind, was charged with the administrative offenses of "*dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and falsification of official document*" in relation to her use of two (2) allegedly falsified documents, *i.e.*, the *Affidavit of Desistance* and the *Alcala Resolution*. The *Alcala Affidavit*, however, only tends to prove the genuineness of the *Alcala Resolution*, but not the authenticity of the *Affidavit of Desistance*. On the contrary, the finding that the *Affidavit of Desistance* is a forgery still holds, in view of the unchallenged and categorical statement of Ms. Dimayuga during the CHED proceedings that she did not execute any such instrument. As a witness whose credibility and motive have not been sullied, We, like the CHED and the Court of Appeals before Us, find Ms. Dimayuga to be worthy of belief. Since the *Affidavit of Desistance* was established as a forgery, petitioner may still be held liable for "*dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and falsification of official document*" for her use thereof notwithstanding the possible authenticity of the *Alcala Resolution*. Being the sole and chief beneficiary of the falsified *Affidavit of Desistance*, petitioner may rightfully be presumed as its author. Indeed, even if We grant that the *Alcala Resolution* is genuine, it cannot itself prove that the *Affidavit of Desistance* is likewise genuine. What that merely proves is that Chairman Alcala's reliance on the *Affidavit of Desistance* is, though genuine, mistaken. Ms. Dimayuga herself testified that her supposed *Affidavit*

of Desistance is false. For the same reasons, this Court no longer sees the necessity of further passing upon the merits of the entries in the logbook for incoming communications of Chairman Alcala that were attached by petitioner, for the first time, only in her *Motion for Reconsideration*.

APPEARANCES OF COUNSEL

Adolfo P. Runas for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

This case is an appeal[1] from the Resolution[2] dated 29 June 2007 of the Court of Appeals in CA-G.R. No. SP No. 72864. In the assailed Resolution, the Court of Appeals denied the *Motion for Leave to File Motion for Reconsideration and to Admit Attached Motion for Reconsideration*[3] of petitioner Rosa F. Mercado (Mercado) on the ground of lack of merit. The assailed Resolution provides:[4]

WHEREFORE, premises considered, respondent's Motion for Leave to File Motion for Reconsideration and Admit Attached Motion for Reconsideration is hereby **DENIED** for lack of merit.

The antecedents:

Petitioner is a Senior Education Program Specialist of the respondent Commission on Higher Education (CHED).[5]

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[1] The appeal was filed under Rule 45 of the Rules of Court. *Rollo*, pp. 10-42.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando for the Former Ninth Division of the Court of Appeals with Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas, concurring. *Id.* at 44-46.

[3] *Id.* at 91-101.

[4] *Id.* at 45-46.

[5] *Id.* at 14.

On 13 November 1998, a letter-complaint[6] against petitioner was filed before the CHED by one Ma. Luisa F. Dimayuga (Ms. Dimayuga)—Dean of the College of Criminology of the Republican College. In the letter-complaint, Ms. Dimayuga accused petitioner of *"arrogance and abuse of power and authority, ignorance of the appropriate provisions of the Manual of Regulations for Private Schools and CHED orders, and incompetence"* in relation to her evaluation of the Republican College's application for the recognition of its Master of Criminology program.[7]

On 22 January 1999, CHED, through its Office of Program and Standards, issued a memorandum[8] directing petitioner to explain in writing why no administrative charges should be filed against her.

On 26 January 1999, petitioner submitted her explanation[9] denying the accusations in the letter-complaint. Ms. Dimayuga thereafter filed a reply.[10]

On 27 September 1999, CHED *en banc* issued a decision[11] finding petitioner guilty of discourtesy in the performance of her official duties and imposed upon her the penalty of reprimand coupled with a stern warning that a similar violation in the future will warrant a more severe punishment.

The Alcala Resolution and the Affidavit of Desistance

On 26 October 1999, petitioner filed a motion for reconsideration[12] of the CHED decision. In it, petitioner argued that the CHED decision was already barred by an earlier

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[6] CA *rollo*, pp. 61-64.

[7] *Id.* See narration of facts in *Commissioner of Higher Education v. Rosa F. Mercado*, G.R. No. 157877, 10 March 2006, 484 SCRA 424.

[8] *Id.* at 66.

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

[10] *Id.* at 71-80.

[11] *Id.* at 81-83.

[12] *Id.* at 84-89.

Resolution issued by former CHED Chairman Angel A. Alcala (*Alcala Resolution*)[13] on 3 June 1999. According to the petitioner, the *Alcala Resolution* already dismissed the letter-complaint against her based on an *Affidavit of Desistance*[14] executed by Ms. Dimayuga herself. Copies of both the *Alcala Resolution* and the *Affidavit of Desistance* were thus attached in petitioner's motion for reconsideration.

Questions about the authenticity of the *Alcala Resolution* and the *Affidavit of Desistance*, however, soon surfaced when CHED was able to discover that there was no official record of any such *Alcala Resolution* being passed and that the signature of Ms. Dimayuga in the *Affidavit of Desistance* differed from those in her authentic samples. These doubts prompted CHED to defer resolution of petitioner's motion for reconsideration until the genuineness of the *Alcala Resolution* and the *Affidavit of Desistance* would have been determined in a full-blown investigation.

The New Charges, Investigation and the CHED Resolution

On 24 December 1999, CHED *en banc* passed Resolution No. R-438-99[15] adopting the recommendation of its Legal Affairs Service to investigate and place petitioner under preventive suspension in connection with her use of the apparently fake *Alcala Resolution* and *Affidavit of Desistance*. A Hearing and Investigating Committee (Committee) was organized to conduct the investigation.[16] On 3 January 2000, petitioner was formally charged with "*dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and falsification of official document*" and was placed under preventive suspension for sixty (60) days without pay.[17]

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[13] *Id.* at 92-102.

[14] The *Affidavit of Desistance* was dated 19 May 1999. *Id.* at 103-104.

[15] *Id.* at 106.

[16] *Id.*

[17] *Id.* at 107-108.

The Committee scheduled hearings on 17 March, 13 April and 15 May 2000.[18] However, despite being summoned in all three hearing dates, petitioner failed to appear in any of them.[19]

During the 13 March 2000 hearing, Ms. Dimayuga appeared and testified under oath that she never signed any affidavit of desistance much less the *Affidavit of Desistance* being presented by petitioner.[20] On the other hand, at the 11 May 2000 hearing, CHED Records Officers, Ms. Maximina Sister and Ms. Revelyn Brina, testified that the purported *Alcala Resolution* does not exist per CHED records.[21]

The Committee likewise made a comparison of the signatures of Ms. Dimayuga and Chairman Alcala.[22] The Committee observed that the signature of Ms. Dimayuga as appearing in the *Affidavit of Desistance* is remarkably different with those in the samples[23] supplied by her.[24] It also noted disparity between the signatures of Chairman Alcala in the *Alcala Resolution* with those in earlier resolutions signed by him.[25]

After evaluating the evidence thus gathered, the Committee issued a Consolidated Fact Finding Report[26] on 8 June 2000. In it, the Committee concluded that, based on the evidence yielded by its investigation, there is strong indication that the *Alcala Resolution* and the *Affidavit of Desistance* attached in petitioner's motion for reconsideration were not genuine.[27]

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[18] See Subpoenas dated 13 March, 10 April and 11 May 2000. *Id*. at 109-112.

[19] See Consolidated Fact Finding Report. *Id*. at 117-119.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.* at 124-125.

[24] *Id.* at 117-119.

[25] *Id.*

[26] *Id.*

[27] *Id.*

Thus, on 19 June 2000, CHED *en banc* issued a Resolution[28] adopting the findings of the Committee and holding petitioner guilty of the charges of "*dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and falsification of official documents*." Petitioner was therein meted the penalty of dismissal from the service with forfeiture of leave credits and retirement benefits.[29] In addition, CHED *en banc* also denied petitioner's motion for reconsideration.[30]

The CSC Appeal

Aggrieved by her dismissal, petitioner filed an appeal[31] with the Civil Service Commission (CSC).

On 18 October 2000, the CSC issued Resolution No. 00-2406[32] wherein it initially denied the appeal of petitioner. However, upon petitioner's motion for reconsideration, the CSC reversed itself. Thus, on 21 August 2002, the CSC issued Resolution No. 02-1106[33] granting petitioner's motion for reconsideration and ordering her reinstatement.

The CSC hinged its reversal on the following pieces of evidence that were submitted by the petitioner only during the course of the appeal:

1. Signature analyses of the Philippine National Police (PNP) as contained in Questioned Document Report Nos. 134-00[34] and 141-01.[35]

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[28] *Id.* at 55-60.

[29] *Id.*

[30] *Id.*

[31] *Id.* at 130-205.

[32] Penned by Commissioner J. Waldemar V. Valmores with then Chairman Corazon Alma G. De Leon and Commissioner Jose F. Erestain, Jr., concurring. *Id*. at 43-54.

[33] Penned by Commissioner J. Waldemar V. Valmores with Commissioner Jose F. Erestain, Jr., concurring. Chairman Karina Constantino-David did not participate. *Id.* at 36-42.

[34] *Id.* at 285.

[35] *Id.* at 318.

a. Questioned Document Report No. 134-00 dealt with a comparison of the signature of Chairman Alcala as appearing in the *Alcala Resolution* and his standard signature as appearing in sample documents.[36] The report stated that the signature in the *Alcala Resolution* and in the sample documents, appear to be written by one and the same person.[37]

b. Questioned Document Report No. 141-01 dealt with a comparison of the signature of Ms. Dimayuga as appearing in the *Affidavit of Desistance* and her standard signature as appearing in sample documents.[38] The report stated that the signature in the *Affidavit of Desistance* and in the sample documents, appear to be written by one and the same person.[39]

2. An affidavit dated 11 January 2001 executed by Chairman Alcala (*Alcala Affidavit*),[40] wherein the latter affirmed that he indeed issued the *Alcala Resolution*.

The CSC considered the foregoing as "*newly discovered evidence*," which tend to prove that the *Alcala Resolution* and the *Affidavit of Desistance* were genuine and not falsified.[41]

[36] The sample documents mentioned are: (a) Order dated 7 September 1998 signed by Chairman Alcala in the CHED case *Aleli N. Cornista v. Magdalena Jasmin* (*Id*. at 352); (b) Memorandum dated 25 August 1998 from Chairman Alcala; (c) Special Power of Attorney dated 4 December 1998; (d) CHED appointment of Dr. Ruben Sta. Teresa and Dr. Lourdes A. Aniceta dated 1 January 1999; (d) Two (2) CHED Authority to Travel of Atty. Felina Dasig dated 22-24 December 1998 and 2-4 February 1998; and (e) Memorandum dated 25 February 1998 from Chairman Alcala to Renigia A. Nathaniels. *Id*. at 285.

[37] *Id.* at 285.

[38] The sample documents mentioned are: (a) Affidavit dated 27 January 2000 executed by Ms. Dimayuga (*Id*. at 122-123); (b) Letter dated 13 November 1998 of Ms. Dimayuga to Dr. Reynaldo Peña (*Id*. at 61-64); (c) Letter dated 23 April 1999 of Ms. Dimayuga to Atty. Joel Voltaire Mayo (*Id*. at 71-80). *Id*. at 318.

[39] *Id.* at 318.

[40] *Id.* at 317.

[41] *Id.* at 36-42.

The CSC thus found no basis to hold petitioner accountable for her use of the *Alcala Resolution* and the *Affidavit of Desistance*.[42]

The Ensuing Appeals

CHED then filed an appeal[43] with the Court of Appeals, which was docketed as CA-G.R. SP No. 72864.

On 13 January 2003, the Court of Appeals rendered a decision[44] denying the appeal of CHED on the *technical* ground of prematurity. This decision, however, eventually became the subject of an appeal by *certiorari* before this Court in G.R. No. 157877 or the case of *Commissioner of Higher Education vs. Rosa F. Mercado*.

In G.R. No. 157877, We reversed the 13 January 2003 Decision of the Court of Appeals and ordered the latter to instead resolve CA-G.R. SP No. 72864 *on the merits*.[45]

Following Our directive in G.R. No. 157877, the Court of Appeals rendered another Decision[46] on 30 March 2007. In it, the Court of Appeals granted CHED's appeal and ordered Resolution No. 02-1106 of the CSC to be set aside.[47] Accordingly, the appellate court affirmed the findings of CHED that petitioner ought to be dismissed from the service *except* that the latter cannot be deprived thereby of her accrued leave benefits.[48]

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[42] *Id.*

[43] The appeal was filed under Rule 43 of the Rules of Court. *Id*. at 6-34.

[44] Penned by Associate Justice Remedios A. Salazar-Fernando for the Seventh Division of the Court of Appeals with Associate Justices Ruben T. Reyes and Edgardo F. Sundiam, concurring. *Id*. at 396-404.

[45] *Commissioner of Higher Education v. Rosa F. Mercado*, G.R. No. 157877, 10 March 2006, 484 SCRA 424.

[46] Penned by Associate Justice Remedios A. Salazar-Fernando for the Ninth Division of the Court of Appeals with Justices Rosalinda-Asuncion-Vicente and Enrico A. Lanzanas, concurring. CA *rollo*, pp. 948-964.

[47] *Id.*

[48] *Id.*

In overturning Resolution No. 02-1106, the Court of Appeals mainly faulted the CSC in treating the PNP signature analyses as "*newly discovered evidence*."[49] According to the appellate court, they could not have constituted as "*newly discovered evidence*" for the following reasons:[50]

1. The sample documents[51] used as basis of the comparisons in the two (2) PNP signature analyses were not actually "*newly discovered*" but were readily available to petitioner from the very start of the proceedings before the CHED. Such documents could have been easily presented during the Committee hearings.
2. The two (2) PNP signature analyses cannot be given any weight for being hearsay evidence. The police officers who executed the signature analyses were never presented before the CSC. Hence, the said officers were never cross-examined.
3. The integrity of the findings contained in the two (2) PNP signature analyses was not established, because the competency of the police officers who conducted the examinations on the contested signatures were not qualified as experts.

Records reveal that copies of the 30 March 2007 Decision of the Court of Appeals were served by registered mail upon petitioner, both at her address-on-record[52] *and* also thru one Atty. Juan S. Sindingan (Atty. Sindingan).[53] The copy sent to petitioner's address was returned unserved.[54] However, Atty. Sindingan was able to receive his copy on 13 April 2007.[55]

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[49] *Id.*

[50] *Id.*

[51] See notes 36 and 38.

[52] See Notice of Judgment dated 30 March 2007. *Id.* at 947.

[53] *Id.*

[54] See Returned Envelope. *Id.* at 973.

[55] See Registry Return Receipt for Atty. Juan S. Sindingan, *id.* at 947. See also Compliance, *id.* at 967-968.

More than a month thereafter, or on 7 June 2007, petitioner filed a *Motion for Leave to File Motion for Reconsideration and to Admit Attached Motion for Reconsideration* (*Motion for Leave*)[56] before the Court of Appeals. The said motion was accompanied by an *Entry of Appearance*[57] of one Atty. Adolfo P. Runas (Atty. Runas), who sought recognition as petitioner's new counsel *in lieu* of Atty. Sindingan.

Motion for Leave and This Petition

In her *Motion for Leave*, petitioner asked that she be allowed to seek reconsideration of the 30 March 2007 Decision even though more than a month has already passed since its promulgation. Petitioner claims that:[58]

1. She came to know about the 30 March 2007 Decision of the Court of Appeals only on 29 May 2007 *i.e.*, the date when she went to the Court of Appeals to personally inquire about her case. Hence, she should be entitled to at least fifteen (15) days from such date, or until 13 June 2007, within which to file a motion for reconsideration.

2. Atty. Sindingan's receipt of the 30 March 2007 Decision does not bind her. At that time, Atty. Sindingan was no longer her counsel—the former having earlier withdrawn from the case. Atty. Sindingan also never informed her about the 30 March 2007 Decision.

In the *Motion for Reconsideration* attached to the *Motion for Leave*, on the other hand, petitioner vouched for the correctness of CSC Resolution No. 02-1106 and faults the Court of Appeals for overturning the same.[59] She argued that the Court of Appeals, unlike the CSC, failed to consider the merits of the *Alcala Affidavit* as evidence to show that the *Alcala Resolution* was not falsified.[60]

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[56] *Rollo*, pp. 91-101.

[57] CA *rollo*, p. 1019.

[58] *Rollo*, pp. 91-101.

[59] *Id.*

[60] *Id.*

Also in the *Motion for Reconsideration*, petitioner seeks the introduction, for the first time, of the following entries in the logbook for incoming communications of Chairman Alcala—as new and additional proof of the authenticity of the *Alcala Resolution*, to wit:[61]

1. Page 58 – which shows that the *Affidavit of Desistance* was received by the Office of the CHED Chairman on 21 May 1999;

2. Page 78 – which shows receipt of the draft for the *Alcala Resolution*;

3. Page 89 – which shows that the *Alcala Resolution* was officially released.

On 29 June 2007, the Court of Appeals issued a Resolution[62] noting the entry of appearance of Atty. Runas but flat-out denying petitioner's *Motion for Leave* for lack of merit. The appellate court considered the petitioner to be bound still by Atty. Sindingan's receipt and so held that the 30 March 2007 Decision had already become final and executory.[63]

Hence the present appeal by petitioner.[64]

In this appeal, petitioner raises the solitary issue of whether the Court of Appeals erred in denying her *Motion for Leave*.[65] Reiterating the arguments she previously raised in the said motion, petitioner would have Us answer the foregoing in the affirmative.[66]

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[61] *Id.* at 229-231.

[62] *Id.* at 44-47.

[63] *Id.*

[64] Per Our Resolution dated 28 August 2007 (*id.* at 233), the present appeal was previously denied outright: (a) for having defective verification, (b) for having defective affidavit of service, and (c) for failure of petitioner's counsel to submit his latest IBP OR Number. However, per Our Resolution dated 9 October 2007 (*id.* at 249), upon Motion for Reconsideration by the petitioner, this Court subsequently reinstated the present appeal.

[65] *Rollo*, pp. 10-42.

[66] *Id.*

OUR RULING

We find that the Court of Appeals erred in denying petitioner's *Motion for Leave*. The appellate court ought to have admitted petitioner's *Motion for Reconsideration*, because at the time such motion was filed, the assailed 30 March 2007 Decision has not yet attained finality.

However, pursuant to procedural policy which will be discussed anon, instead of remanding the instant case to the Court of Appeals, this Court opted to exercise its sound discretion to herein resolve the merits of petitioner's *Motion for Reconsideration*. This was done for the sole purpose of bringing final resolution to this otherwise protracted case.

On that end, We find that petitioner's *Motion for Reconsideration* failed to raise any substantial issue that may merit a reversal of the 30 March 2007 Decision. Ultimately, We deny the present appeal.

Motion for Leave

As intimated earlier, the Court of Appeals denied petitioner's *Motion for Leave* for lack of merit.[67] The appellate court refused to admit petitioner's *Motion for Reconsideration* because it held that the 30 March 2007 Decision was already final and executory.[68]

The Court of Appeals maintains that petitioner was still bound by Atty. Sindingan's receipt of the 30 March 2007 Decision.[69] The appellate court points out that the earlier withdrawal filed by Atty. Sindingan was ineffective as it was made *without* the written conformity of petitioner and it did not state any valid reason therefor.[70] Hence, the Court of Appeals still considered Atty. Sindingan to be the counsel-of-record of petitioner until Atty. Runas filed an entry of appearance to replace him.[71]

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[67] *Id.* at 44-47.

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Id.*

The petitioner, on the other hand, disagrees. She counters that the withdrawal of Atty. Sindingan was made *with* her written conformity. Petitioner posits that, at the time the Court of Appeals rendered the 30 March 2007 Decision, Atty. Sindingan was no longer her counsel. Therefore, she was not bound by Atty. Sindingan's receipt of the 30 March 2007 Decision.

We find for petitioner.

Withdrawal of Atty. Sindingan was made WITH Conformity of Petitioner

We first settle the pivotal factual dispute of whether the previous withdrawal of Atty. Sindingan was made *with* the written conformity of petitioner or *without*. While questions of fact are generally not passed upon in appeals by *certiorari*, We nevertheless digress from this procedural norm for it is apparent that the records do not support, but rather contradict, the findings of the Court of Appeals on this point.[72]

A review of the records of this case reveals the following facts:

One. Atty. Sindingan filed a *Motion to Withdraw as Counsel*[73] for petitioner as early as **17 February 2005**. Such motion was filed before this very Court during the pendency of G.R. No. 157877. As G.R. No. 157877 was merely an appeal from CA-G.R. No. 72864, the *Motion to Withdraw as Counsel* filed in the former likewise takes effect in the latter.

Two. Atty. Sindingan's *Motion to Withdraw as Counsel*, in fact, **bears the written conformity of petitioner**.[74] The signature of petitioner is clearly affixed below the word "*Conforme*" at the bottom part of the said motion.[75]

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[72] See *International Container Terminal Services, Inc. v. FGU Insurance Corporation*, G.R. No. 161539, 28 June 2008, 556 SCRA 194, 199.

[73] *Rollo*, p. 186. See also *Rollo* of G.R. No. 157877, p. 487.

[74] *Id.*

[75] *Id.*

Thus, no conclusion can be had other than that the withdrawal of Atty. Sindingan, filed before this Court on 17 February 2005 during the pendency of G.R. No. 157877, was made with the written conformity of petitioner.

Having settled the contentious fact, We now proceed with an examination of the rules, jurisprudence and practice regarding the withdrawal of counsels from a case.

Rules for the Withdrawal of Counsel from a Case

In our jurisdiction, a client has the absolute right to relieve his counsel at any time with or without cause.[76] In contrast, the counsel, on his own, cannot terminate their attorney-client relation except for sufficient cause as determined by the court.[77] These basic principles form the bedrock of Section 26 of Rule 138 of the Rules of Court, which prescribes the rules for the withdrawal of counsel from a case.

Under Section 26 of Rule 138 of the Rules of Court, the withdrawal of a counsel from a case could either be with the written conformity of the client or without, thus:

SEC. 26. *Change of attorneys.*—**An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court**. **He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire**. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party. (Emphasis supplied)

Pursuant to the quoted section, when a counsel withdraws from a case *with* the written consent of the client, the former no longer needs to provide reasons to justify his retirement from a case. The act of withdrawal is accomplished by merely filing the same with the court.[78]

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[76] *Orcino v. Gaspar*, 344 Phil. 792, 797 (1997).

[77] *Id.* at 797-798.

[78] *Real Bank, Inc. v. Samsung Mabuhay Corporation*, G.R. No. 175862,

On the other hand, the rule is structured differently when the withdrawal is made *without* the consent of the client. The counsel, in that event, must actually provide valid reasons[79] to justify the withdrawal. Section 26 of Rule 138 is categorical that when the withdrawal was made without the consent of the client, the court must first determine, in a hearing upon notice to the client, whether the counsel may be allowed to retire.

As a rule, the withdrawal of a counsel from a case made *with* the written conformity of the client takes effect once the same is filed with the court. The leading case of ***Arambulo v. Court of Appeals***[80] laid out the rule that, in general, such kind of a withdrawal does not require any further action or approval from the court in order to be effective. In contrast, the norm with respect to withdrawals of counsels *without* the written conformity of the client is that they only take effect after their approval by the court.[81]

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13 October 2010, 633 SCRA 124, 135, citing *Arambulo v. Court of Appeals*, G.R. No. 105818, 17 September 1993, 226 SCRA 589, 597-598.

[79] Rule 22.01 of Canon 22 of the Code of Professional Responsibility states the valid grounds for withdrawal of counsel, to wit:

CANON 22 – A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES.

Rule 22.01— A lawyer may withdraw his services in any of the following cases:

a) When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;

b) When the client insists that the lawyer pursue conduct violative of these canons and rules;

c) When his inability to work with co-counsel will not promote the best interest of the client;

d) When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;

e) When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;

f) When the lawyer is elected or appointed to public office; and

g) Other similar cases.

[80] G.R. No. 105818, 17 September 1993, 226 SCRA 589.

[81] *Supra* note 76.

The rule that the withdrawal of a counsel *with* the written conformity of the client is immediately effective once filed in court, however, is **not** absolute. *When the counsel's impending withdrawal with the written conformity of the client would leave the latter with no legal representation in the case*, it is an accepted practice for courts to **order the deferment of the effectivity** of such withdrawal until such time that it becomes certain that service of court processes and other papers to the party-client would not thereby be compromised—either by the due substitution of the withdrawing counsel in the case or by the express assurance of the party-client that he now undertakes to himself receive serviceable processes and other papers. Adoption by courts of such a practice in that particular context, while neither mandatory nor sanctioned by a specific provision of the Rules of Court, is nevertheless justified as part of their inherent power to see to it that the potency of judicial processes and judgment are preserved.

We now apply the foregoing tenets to the case at bar.

Atty. Sindingan No Longer the Counsel of Petitioner at the Time 30 March 2007 Decision was Rendered

As settled beforehand, the withdrawal of Atty. Sindingan, filed before this Court during the pendency of G.R. No. 157877 on 17 February 2005, bore the written conformity of the petitioner. The withdrawal was, thus, valid notwithstanding that Atty. Sindingan did not state therein any supporting reason therefor. Moreover, despite the fact that such withdrawal left petitioner without counsel in G.R. No. 157877, this Court never issued any order deferring its effectivity. On the contrary, this Court had implicitly assented to the withdrawal of Atty. Sindingan when it served, albeit unsuccessfully, copies of its decision in G.R. No. 157877 on petitioner at her address-of-record. Indeed, it was only after multiple failed attempts to reach petitioner that this Court finally issued a Resolution wherein we "*considered*" the decision in G.R. No. 157877 as already served upon her.[82]

[82] *Rollo* of G.R. No. 157877, p. 545.

Hence, following the rules and jurisprudence, Atty. Sindingan can no longer be deemed as counsel of petitioner as of 17 February 2005. The finding of the Court of Appeals that Atty. Sindingan remained as counsel of petitioner simply has no leg to stand on.

Petitioner Not Bound by Atty. Sindingan's Receipt of the 30 March 2007 Decision

With their severed attorney-client relationship, Atty. Sindingan's receipt of the 30 March 2007 decision on 13 April 2007 cannot be deemed as receipt thereof by the petitioner. Inevitably, the period within which petitioner may file a motion for reconsideration *cannot* run from such receipt. From the time of the withdrawal of Atty. Sindingan *until* his subsequent replacement by Atty. Runas on 7 July 2007, court notices for the petitioner may, as it should, be served directly upon the latter.[83]

Anent the matter, the records of this case do attest that a copy of the 30 March 2007 Decision was sent *via* registered mail directly to petitioner's address of record.[84] Unfortunately, the records also profess that such copy was returned unserved.[85]

Due to the circumstances mentioned, and *in the absence of bad faith*, We are constrained to reckon the period within which petitioner may file her motion for reconsideration only from the time the latter received actual notice of the challenged decision—*i.e.*, according to petitioner's manifestation, on 29 May 2007. This Court, therefore, disagrees with the Court of Appeals in holding that petitioner was already barred from seeking reconsideration of the 30 March 2007 Decision. Without question, petitioner was able to file her *Motion for Leave* with *Motion for Reconsideration* on 7 June 2007 or within fifteen (15) days from her actual notice of the 30 March 2007 decision.[86]

[83] *Elli v. Ditan*, 115 Phil. 502, 505 (1962).

[84] CA *rollo*, Notice of Judgment dated 30 March 2007, p. 947.

[85] Returned Envelope. *Id*. at 973.

[86] See Section 1, Rule 37 in relation to Section 1, Rule 45 of the Rules of Court.

Verily, the 30 March 2007 decision has not yet attained finality insofar as petitioner is concerned. The appellate court ought to have admitted her *Motion for Reconsideration* attached to her *Motion for Leave*.

Motion for Reconsideration

Rather than remanding this case to the Court of Appeals, however, this Court chooses to herein resolve petitioner's *Motion for Reconsideration.* In doing so, We only exercise a procedural policy, already established by a catena of decided cases[87] no less, that empowers this Court to bring final resolution to a case when it could, instead of remanding it and allowing it to "*bear the seeds of future litigation.*"[88] After all, the voluminous documentary evidence existing in the records of this case already affords this Court with more than enough foundation to make a ruling on the merits. Undoubtedly, the ends of justice as well as the interest of all parties would be better served, if this otherwise protracted case can be brought to its conclusion without any further delay.

We now proceed to resolve petitioner's *Motion for Reconsideration*.

As mentioned earlier, the petitioner vouches for a reinstatement of CSC Resolution No. 02-1106. She primarily argues that the Court of Appeals' reversal of CSC Resolution No. 02-1106 is erroneous because it failed to consider the merits of the *Alcala Affidavit* as evidence to show that the *Alcala Resolution* was not falsified.[89]

Looking back at Resolution No. 02-1106, on the other hand, We discern that the CSC hinged its absolution of petitioner on

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[87] *Gokongwei, Jr. v. Securities and Exchange Commission*, 178 Phil. 266, (1979); *Francisco v. The City of Davao*, 120 Phil. 1417 (1964); *Republic v. Security Credit and Acceptance Corporation*, 125 Phil. 471 (1967); *Rep. of the Phil. v. Central Surety and Ins. Co., et al.*, 134 Phil. 631 (1968).

[88] *Marquez v. Marquez*, 73 Phil. 74, 78 (1941); *Vidal v. Escueta*, 463 Phil. 314, 336 (2003).

[89] *Rollo*, pp. 91-101.

the two (2) PNP signature analyses and the *Alcala Affidavit*. The CSC considered such pieces of evidence as "*newly discovered"* that proves the genuineness of the *Alcala Resolution* and the *Affidavit of Desistance*.[90] Hence, the CSC found no basis to hold petitioner accountable for her use of the *Alcala Resolution* and the *Affidavit of Desistance*.[91]

We are not convinced.

It must be stated at the outset that petitioner did not raise any issue relative to the Court of Appeals' rejection of the two (2) PNP signature analyses in her *Motion for Reconsideration*, much less in the instant appeal. For all intents and purposes, the determination by the Court of Appeals on that issue may be considered as already settled.

At any rate, We find that the Court of Appeals did not err in refusing to recognize the two (2) PNP signature analyses as "*newly discovered evidence*." The said analyses do not have sufficient weight to "*materially affect*"[92] the earlier findings of the CHED that were, in turn, based on the evidence yielded during the Committee hearings.

It is doctrined that opinions of handwriting experts, like signature analyses of the PNP, are not conclusive upon courts or tribunals on the issue of authenticity of signatures.[93] The seminal case of ***Gamido v. Court of Appeals***[94] reminds Us that the authenticity or forgery of signatures "*is not a highly technical issue in the same sense that questions concerning, e.g., quantum*

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[90] CA *rollo*, pp. 36-42.

[91] *Id.*

[92] Section 40(a), Rule III of CSC Memorandum Circular No. 19, series of 1999 allows a party who was aggrieved by a decision of a disciplining authority in an administrative case to file a Motion for Reconsideration on the ground that "*[n]ew evidence has been discovered which materially affects the decision rendered*."

[93] *Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, USA*, 432 Phil. 895, 907 (2002).

[94] 321 Phil. 463, 472 (1995).

physics or topology or molecular biology, would constitute matters of a highly technical nature," and thus *"[t]he opinion of a handwriting expert on the genuineness of a questioned signature is certainly much less compelling x x x than an opinion rendered by a specialist on a highly technical issue."* Hence, in resolving the question of whether or not forgery exists, courts or tribunals are neither limited to, nor bound by, the opinions of handwriting experts. Far from it, courts or tribunals may even disregard such opinions entirely in favor of either their own independent examination of the contested handwritings or on the basis of any other relevant, if not more direct, evidence of the character of the questioned signatures.[95]

Verily, the weight that may be given to opinions of handwriting experts varies on a case-to-case basis and largely depends on the quality of the opinion itself[96] as well as the availability of other evidence directly proving the forgery or authenticity of the questioned signatures.[97] Before such opinions may be accepted and given probative value, it is indispensable that the integrity and soundness of the procedures undertaken by the expert in arriving at his conclusion, as well as the qualifications of the expert himself, must first be established satisfactorily.[98] However, as such opinions are essentially based on mere inference, they should always be accorded less significance when lined up against direct statements of witnesses as to matters within their personal observation.[99]

In this case, full faith on the correctness of the two (2) PNP signature analyses, as expert opinions on handwritings, cannot be accorded in view of the fact that the integrity of the

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[95] *Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, Supra,* note 90, citing *Heirs of Severa P. Gregorio v. Court of Appeals*, 360 Phil. 753, 764 (1998); Regalado, *Remedial Law Compendium,* Volume II, p. 762.

[96] *Gamido v. Court of Appeals, supra* note 94.

[97] Regalado, *Remedial Law Compendium,* Volume II, p. 762.

[98] *Id.* at 761.

[99] *Id.* at 762.

comparisons made therein were never really tested and verified satisfactorily. Even the qualifications of the police officers who made the examination are not extant on the records. Rather, the CSC just immediately accepted the two (2) PNP signature analyses hook, line and sinker, without even inquiring into the soundness of the findings therein set forth. That is a clear and patent error. In terms of evidentiary weight, the two (2) PNP signature analyses cannot, therefore, overcome the earlier signature comparison made by the CHED.

Moreover, the PNP signature analysis that dealt with a comparison of the purported signatures of Ms. Dimayuga carries lesser weight than the statement given by Ms. Dimayuga herself during the CHED proceedings that she did not execute any such *Affidavit of Desistance*. Mere inference based on comparison indubitably offers less certainty of the existence or non-existence of a fact, than a direct statement on that matter by a qualified and truthful witness.

Anent the issue regarding the failure of the Court of Appeals to consider the *Alcala Affidavit*, We find that such cannot serve to alter the disposition in the 30 March 2007 Decision.

Petitioner, it must be borne in mind, was charged with the administrative offenses of "*dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and falsification of official document*" in relation to her use of two (2) allegedly falsified documents, *i.e.*, the *Affidavit of Desistance* and the *Alcala Resolution*.[100] The *Alcala Affidavit*, however, only tends to prove the genuineness of the *Alcala Resolution*, but not the authenticity of the *Affidavit of Desistance*. On the contrary, the finding that the *Affidavit of Desistance* is a forgery still holds, in view of the unchallenged and categorical statement of Ms. Dimayuga during the CHED proceedings that she did not execute any such instrument. As a witness whose credibility and motive have not been sullied,

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[100] See Formal Charge and Order of Preventive Suspension. CA *rollo*, pp. 107-108.

We, like the CHED and the Court of Appeals before Us, find Ms. Dimayuga to be worthy of belief.

Since the *Affidavit of Desistance* was established as a forgery, petitioner may still be held liable for "*dishonesty, grave misconduct, conduct prejudicial to the best interest of the service and falsification of official document*" for her use thereof notwithstanding the possible authenticity of the *Alcala Resolution*. Being the sole and chief beneficiary of the falsified *Affidavit of Desistance*, petitioner may rightfully be presumed as its author.[101] Indeed, even if We grant that the *Alcala Resolution* is genuine, it cannot itself prove that the *Affidavit of Desistance* is likewise genuine. What that merely proves is that Chairman Alcala's reliance on the *Affidavit of Desistance* is, though genuine, mistaken. Ms. Dimayuga herself testified that her supposed *Affidavit of Desistance* is false.

For the same reasons, this Court no longer sees the necessity of further passing upon the merits of the entries in the logbook for incoming communications of Chairman Alcala[102] that were attached by petitioner, for the first time, only in her *Motion for Reconsideration*.

WHEREFORE, in light of the foregoing premises, the instant petition is **DENIED**. The Resolution dated 29 June 2007, insofar as it effectively sustains the Decision dated 30 March 2007, of the Court of Appeals in CA-G.R. No. SP No. 72864 is hereby **AFFIRMED**.

Costs against petitioner.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.*, concur.

Brion, J., on leave.

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[101] *Sarep v. Sandiganbayan*, 258 Phil. 229, 238 (1989).

[102] *Rollo,* pp. 229-231.

EN BANC

[G.R. No. 180705. November 27, 2012]

EDUARDO M. COJUANGCO, JR., *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; SANDIGANBAYAN; HAS JURISDICTION OVER THE SUBJECT MATTER OF THE SUBDIVIDED AMENDED COMPLAINTS, INCLUDING THE SHARES ALLEGEDLY ACQUIRED BY PETITIONER BY VIRTUE OF THE PHILIPPINE COCONUT AUTHORITY (PCA) AGREEMENTS. — THE SANDIGANBAYAN HAS JURISDICTION OVER THE SUBJECT MATTER OF THE SUBDIVIDED AMENDED COMPLAINTS, INCLUDING THE SHARES ALLEGEDLY ACQUIRED BY COJUANGCO BY VIRTUE OF THE PCA AGREEMENTS. The issue of jurisdiction over the subject matter of the subdivided amended complaints has peremptorily been put to rest by the Court in its January 24, 2012 Decision in *COCOFED v. Republic*. There, the Court, citing Regalado and settled jurisprudence, stressed the following interlocking precepts: Subject matter jurisdiction is conferred by law, not by the consent or acquiescence of any or all of the parties. In turn, the issue on whether a suit comes within the penumbra of a statutory conferment is determined by the allegations in the complaint, regardless of whether or not the suitor will be entitled to recover upon all or part of the claims asserted.

2. ID.; ID.; POWER OF TAXATION; TAXES ARE IMPOSED ONLY FOR A PUBLIC PURPOSE, THEY MUST, THEREFORE, BE USED FOR THE BENEFIT OF THE PUBLIC AND NOT FOR THE EXCLUSIVE PROFIT OR GAIN OF PRIVATE PERSONS.— As heretofore amply discussed, taxes are imposed only for a public purpose. They must, therefore, be used for the benefit of the public and not for the exclusive profit or gain of private persons. Otherwise, grave injustice is inflicted not only upon the Government but most especially upon the citizenry—the taxpayers—to whom We owe a great deal of

accountability. In this case, out of the 72.2% FUB (now UCPB) shares of stocks PCA purchased using the coconut levy funds, the May 25, 1975 Agreement between the PCA and Cojuangco provided for the transfer to the latter, by way of compensation, of 10% of the shares subject of the agreement, or a total of 7.22% fully paid shares. In sum, Cojuangco received public assets – in the form of FUB (UCPB) shares with a value then of ten million eight hundred eighty-six thousand pesos (PhP 10,886,000) in 1975, paid by coconut levy funds. In effect, Cojuangco received the aforementioned asset as a result of the PCA-Cojuangco Agreement, and exclusively benefited himself by owning property acquired using solely public funds. Cojuangco, no less, admitted that the PCA paid, out of the CCSF, the entire acquisition price for the 72.2% option shares. This is in clear violation of the prohibition, which the Court seeks to uphold. We, therefore, affirm, on this ground, the decision of the Sandiganbayan nullifying the shares of stock transfer to Cojuangco. Accordingly, the UCPB shares of stock representing the 7.22% fully paid shares subject of the instant petition, with all dividends declared, paid or issued thereon, as well as any increments thereto arising from, but not limited to, the exercise of pre-emptive rights, shall be reconveyed to the Government of the Republic of the Philippines, which as We previously clarified, shall "be used only for the benefit of all coconut farmers and for the development of the coconut industry."

3. ID.; ID.; ID.; PROVISIONS THAT CONVERT PUBLIC PROPERTY INTO PRIVATE FUNDS TO BE USED ULTIMATELY FOR PERSONAL BENEFIT SHOULD BE STRUCK DOWN AS UNCONSTITUTIONAL; THE COCONUT LEVY FUNDS WERE EXACTED FOR A SPECIAL PUBLIC PURPOSE, CONSEQUENTLY, ANY USE OR TRANSFER OF THE FUNDS THAT DIRECTLY BENEFIT PRIVATE INDIVIDUALS SHOULD BE INVALIDATED.—The ensuing are the underlying rationale for declaring, as unconstitutional, provisions that convert public property into private funds to be used ultimately for personal benefit: … not only were the laws unconstitutional for decreeing the distribution of the shares of stock for free to the coconut farmers and therefore negating the public purposed declared by P.D. No.

276, *i.e.*, to stabilize the price of edible oil and to protect the coconut industry. They likewise reclassified the coconut levy fund as *private fund*, to be owned by *private individuals* in their *private capacities*, contrary to the original purpose for the creation of such fund. To compound the situation, the offending provisions effectively removed the coconut levy fund away from the cavil of public funds which normally can be paid out only pursuant to an appropriation made by law. The conversion of public funds into private assets was illegally allowed, in fact mandated, by these provisions. Clearly therefore, the pertinent provisions of P.D. Nos. 755, 961 and 1468 are unconstitutional for violating Article VI, Section 29 (3) of the Constitution. In this context, the distribution by PCA of the UCPB shares purchased by means of the coconut levy fund – a special fund of the government – to the coconut farmers is, therefore, void. It is precisely for the foregoing that impels the Court to strike down as unconstitutional the provisions of the PCA-Cojuangco Agreement that allow petitioner Cojuangco to personally and exclusively own public funds or property, the disbursement of which We so greatly protect if only to give light and meaning to the mandates of the Constitution.

4. CIVIL LAW; CIVIL CODE; EFFECT AND APPPICATION OF LAWS; THE AGREEMENT BETWEEN PCA AND PETITIONER DATED MAY 25, 1975 CANNOT BE ACCORDED THE STATUS OF LAW FOR THE LACK OF REQUISITE PUBLICATION; THE AGREEMENT SHALL BE TREATED AS AN ORDINARY TRANSACTION BETWEEN AGREEING MINDS TO BE GOVERNED BY CONTRACT LAW UNDER THE CIVIL CODE.— Section 1 of P.D. No. 755 incorporated, by reference, the "Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers" executed by the PCA. Particularly, Section 1 states: **Section 1.** *Declaration of National Policy.* It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at preferential rates; that this policy can be expeditiously and efficiently realized by the implementation of the **"Agreement for the Acquisition of a Commercial Bank for the benefit of the Coconut Farmers" executed**

by the Philippine Coconut Authority, the terms of which "Agreement" are hereby incorporated by reference; and that the Philippine Coconut Authority is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate. It bears to stress at this point that the PCA-Cojuangco Agreement referred to above in Section 1 of P.D. 755 was not reproduced or attached as an annex to the same law. And it is well-settled that laws must be published to be valid. In fact, publication is an indispensable condition for the effectivity of a law. x x x The publication, as further held in *Tañada*, must be of the full text of the law since the purpose of publication is to inform the public of the contents of the law. Mere referencing the number of the presidential decree, its title or whereabouts and its supposed date of effectivity would not satisfy the publication requirement. In this case, while it incorporated the PCA-Cojuangco Agreement by reference, Section 1 of P.D. 755 did not in any way reproduce the exact terms of the contract in the decree. Neither was a copy thereof attached to the decree when published. We cannot, therefore, extend to the said Agreement the status of a law. Consequently, We join the Sandiganbayan in its holding that the PCA-Cojuangco Agreement shall be treated as an ordinary transaction between agreeing minds to be governed by contract law under the Civil Code.

5. ID.; ID.; CONTRACTS; REQUISITES OF A VALID CONTRACT; CAUSE OR CONSIDERATION; IT IS PRESUMED THAT A CONTRACT HAS SUFFICIENT CONSIDERATION UNLESS THE CONTRARY IS PROVEN; THE PRESUMPTION CONTEXTUALLY OPERATES IN FAVOR OF PETITIONER AND AGAINST THE REPUBLIC, AS PLAINTIFF *A QUO*, WHICH THEN HAD THE BURDEN TO PROVE THAT INDEED THERE WAS NO SUFFICIENT CONSIDERATION FOR THE SECOND AGREEMENT.— After a circumspect study, the Court finds as inconclusive the evidence relied upon by Sandiganbayan to support its ruling that the PCA-Cojuangco Agreement is devoid of sufficient consideration. We shall explain. Rule 131, Section 3(r) of the Rules of Court states: Sec.3. *Disputable*

presumptions.—The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: x x x (r) That there was a sufficient consideration for a contract; The Court had the occasion to explain the reach of the above provision in *Surtida v. Rural Bank of Malinao (Albay), Inc.*, to wit: x x x **The presumption that a contract has sufficient consideration cannot be overthrown by the bare uncorroborated and self-serving assertion** of petitioners **that it has no consideration. To overcome the presumption** of consideration**, the alleged lack of consideration must be shown by preponderance of evidence.** Petitioners failed to discharge this burden x x x. The rule then is that the party who stands to profit from a declaration of the nullity of a contract on the ground of insufficiency of consideration—which would necessarily refer to one who asserts such nullity–-has the burden of overthrowing the presumption offered by the aforequoted Section 3(r). Obviously then, the presumption contextually operates in favor of Cojuangco and against the Republic, as plaintiff *a quo*, which then had the burden to prove that indeed there was no sufficient consideration for the Second Agreement. The Sandiganbayan's stated observation, therefore, that based on the wordings of the Second Agreement, Cojuangco had no personal and exclusive option to purchase the FUB shares from Pedro Cojuangco had really little to commend itself for acceptance. This, as opposed to the fact that such sale and purchase agreement is memorialized in a notarized document whereby both Eduardo Cojuangco, Jr. and Pedro Cojuangco attested to the correctness of the provisions thereof, among which was that Eduardo had such option to purchase. A notarized document, *Lazaro v. Agustin* teaches, "generally carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the disputable presumption of regularity."

6. ID.; ID.; ID.; ID.; ID.; THE EXPRESS AND POSITIVE DECLARATION BY THE PARTIES OF THE PRESENCE OF ADEQUATE CONSIDERATION IN THE CONTRACT MAKES CONCLUSIVE THE PRESUMPTION OF SUFFICIENT CONSIDERATION IN THE PCA AGREEMENT.— In *Samanilla v. Cajucom*, the Court clarified that the presumption of a valid

consideration cannot be discarded on a simple claim of absence of consideration, especially when the contract itself states that consideration was given: x x x **This presumption appellants cannot overcome by a simple assertion of lack of consideration. Especially may not the presumption be so lightly set aside when the contract itself states that consideration was given, and the same has been reduced into a public instrument will all due formalities and solemnities as in this case.** A perusal of the PCA-Cojuangco Agreement disclosed an express statement of consideration for the transaction: **x x x** **As compensation for exercising his personal and exclusive option to acquire the Option Shares and for transferring such shares to the coconut farmers, as well as for performing the management services required of him,** SELLER shall receive equity in the Bank amounting, in the aggregate, to 95,304 fully paid shares in accordance with the procedure set forth in paragraph 6 below. Applying *Samanilla* to the case at bar, the express and positive declaration by the parties of the presence of adequate consideration in the contract makes conclusive the presumption of sufficient consideration in the PCA Agreement. Moreover, the option to purchase shares and management services for UCPB was already availed of by petitioner Cojuangco for the benefit of the PCA. The exercise of such right resulted in the execution of the PC-ECJ Agreement, which fact is not disputed. The document itself is incontrovertible proof and hard evidence that petitioner Cojuangco had the right to purchase the subject FUB (now UCPB) shares. *Res ipsa loquitur*.

7. ID.; ID.; ID.; ID.; ID.; INADEQUACY OF THE CONSIDERATION DOES NOT RENDER A CONTRACT VOID.— The Sandiganbayan, however, pointed to the perceived "lack of any pecuniary value or advantage to the government of the said option, which could compensate for the generous payment to him by PCA of valuable shares of stock, as stipulated in the May 25, 1975 Agreement between him and the PCA." Inadequacy of the consideration, however, does not render a contract void under Article 1355 of the Civil Code: Art. 1355. Except in cases specified by law, lesion **or inadequacy of cause shall not invalidate a contract**, unless there has been fraud, mistake or undue influence. *Alsua-Betts v. Court of Appeals* is instructive that lack of ample consideration does not nullify the contract:

Inadequacy of consideration does not vitiate a contract unless it is proven which in the case at bar was not, that there was fraud, mistake or undue influence. (Article 1355, New Civil Code). We do not find the stipulated price as so inadequate to shock the court's conscience, considering that the price paid was much higher than the assessed value of the subject properties and considering that the sales were effected by a father to her daughter in which case filial love must be taken into account.

8. ID.; ID.; ID.; ID.; ID.; WHILE CONSIDERATION IS USUALLY IN THE FORM OF MONEY OR PROPERTY, IT NEED NOT BE MONETARY.— While consideration is usually in the form of money or property, it need not be monetary. This is clear from Article 1350 which reads: Art. 1350. In onerous contracts the cause is understood to be, for each contracting party, **the prestation or promise of a thing or service by the other;** in remuneratory ones, the **service or benefit which is remunerated;** and in contracts of pure beneficence, the mere liability of the benefactor. *Gabriel v. Monte de Piedad y Caja de Ahorros* tells us of the meaning of consideration: x x x A consideration, in the legal sense of the word, is some **right, interest, benefit, or advantage** conferred upon the promisor, to which he is otherwise not lawfully entitled, **or any detriment, prejudice, loss, or disadvantage** suffered or undertaken by the promisee other than to such as he is at the time of consent bound to suffer. The Court rules that the transfer of the subject UCPB shares is clearly supported by valuable consideration.

9. ID.; ID.; ID.; ID.; ID.; WHILE THE PCA-COJUANGCO AGREEMENT PUTS PCA AND THE COCONUT FARMERS AT A DISADVANTAGE, THE FACTS DO NOT MAKE OUT A CLEAR CASE OF VIOLATION OF ANY LAW THAT WILL NECESSITATE THE RECALL OF SAID CONTRACT.— While one may posit that the PCA-Cojuangco Agreement puts PCA and the coconut farmers at a disadvantage, the facts do not make out a clear case of violation of any law that will necessitate the recall of said contract. Indeed, the anti-graft court has not put forward any specific stipulation therein that is at war with any law, or the Constitution, for that matter. It is even clear as day that none of the parties who entered into the two agreements with petitioner Cojuangco contested nor sought the nullification of said agreements, more particularly

the PCA who is always provided legal advice in said transactions by the Government corporate counsel, and a battery of lawyers and presumably the COA auditor assigned to said agency. A government agency, like the PCA, stoops down to level of an ordinary citizen when it enters into a private transaction with private individuals. In this setting, PCA is bound by the law on contracts and is bound to comply with the terms of the PCA-Cojuangco Agreement which is the law between the parties. With the silence of PCA not to challenge the validity of the PCA-Cojuangco Agreement and the inability of government to demonstrate the lack of ample consideration in the transaction, the Court is left with no other choice but to uphold the validity of said agreements.

10. ID.; ID.; ID.; ID.; ID.; IT IS INCONTESTABLE THAT PETITIONER INDEED HAD THE RIGHT OR OPTION TO BUY THE FIRST UNITED BANK (FUB) SHARES AS BUTTRESSED BY THE EXECUTION AND ENFORCEMENT OF THE FIRST AGREEMENT.— Even if conceding for the sake of argument that PCA is one of the buyers of the FUB shares in the PC-ECJ Agreement, still it does not necessarily follow that petitioner had no option to buy said shares from the group of Pedro Cojuangco. In fact, the very execution of the first agreement undeniably shows that he had the rights or option to buy said shares from the Pedro Cojuangco group. Otherwise, the PC-ECJ Agreement could not have been consummated and enforced. The conclusion is incontestable that petitioner indeed had the right or option to buy the FUB shares as buttressed by the execution and enforcement of the very document itself. We can opt to treat the PC-ECJ Agreement as a totally separate agreement from the PCA-Cojuangco Agreement but it will not detract from the fact that petitioner actually acquired the rights to the ownership of the FUB shares from the Pedro Cojuangco group. The consequence is he can legally sell the shares to PCA. In this scenario, he would resell the shares to PCA for a profit and PCA would still end up paying a higher price for the FUB shares. The "profit" that will accrue to petitioner may just be equal to the value of the shares that were given to petitioner as commission. Still we can only speculate as to the true intentions of the parties. Without any evidence adduced on this issue, the Court will not venture on any unproven

conclusion or finding which should be avoided in judicial adjudication.

11. ID.; ID.; ID.; ID.; ID.; THE FACT THAT THE EXECUTION OF THE SPECIAL POWER OF ATTORNEY (SPA) PCA-COJUANGCO AGREEMENT OCCURRED SEQUENTIALLY ON THE SAME DAY CANNOT, WITHOUT MORE, BE THE BASIS FOR THE CONCLUSION AS TO THE NON-EXISTENCE OF THE OPTION OF PETITIONER.— The fact that the execution of the SPA and the PCA-Cojuangco Agreement occurred sequentially on the same day cannot, without more, be the basis for the conclusion as to the non-existence of the option of petitioner. Such conjecture cannot prevail over the fact that without petitioner Cojuangco, none of the two agreements in question would have been executed and implemented and the FUB shares could not have been successfully conveyed to PCA. Again, only the parties can explain the reasons behind the execution of the two agreements and the SPA on the same day. They were, however, precluded from elucidating the reasons behind such occurrence. In the absence of such illuminating proof, the proposition that the option does not exist has no leg to stand on. More importantly, the fact that the PC-ECJ Agreement was executed not earlier than May 25, 1975 proves that petitioner Cojuangco had an option to buy the FUB shares *prior* to that date. Again, it must be emphasized that from its terms, the first Agreement did not create the option. It, however, proved the exercise of the option by petitioner. The execution of the PC-ECJ Agreement on the same day as the PCA-Cojuangco Agreement more than satisfies paragraph 2 thereof which requires petitioner to exercise his option to purchase the FUB shares as promptly as practicable **after**, and not before, the execution of the second agreement.

12. ID.; ID.; ID.; ID.; ID.; IN THE ABSENCE OF PROOF TO THE CONTRARY AND CONSIDERING THE ABSENCE OF ANY COMPLAINT OF ILLEGALITY OR FRAUD FROM THE CONTRACTING PARTIES, THEN THE PRESUMPTION THAT PRIVATE TRANSACTIONS MUST HAVE BEEN FAIR AND REGULAR MUST APPLY.— The Sandiganbayan viewed the compensation of petitioner of 14,400 FUB shares

as exorbitant. In the absence of proof to the contrary and considering the absence of any complaint of illegality or fraud from any of the contracting parties, then the presumption that "private transactions have been fair and regular" must apply.

13. ID.; ID.; ID.; ID.; IT IS THE PCA WHICH HAS THE RIGHT TO CHALLENGE THE STIPULATIIONS ON THE MANAGEMENT CONTRACT AS UNENFORCEABLE; IT'S FAILURE TO DO SO MEANS THAT PCA HAS WAIVED AND FORFEITED ITS RIGHT TO NULLIFY THE STIPULATIONS AND IS NOW ESTOPPED FROM QUESTIONING THE SAME.— Respondent interjects the thesis that PCA could not validly enter into a bank management agreement with petitioner since PCA has a personality separate and distinct from that of FUB. Evidently, it is PCA which has the right to challenge the stipulations on the management contract as unenforceable. However, PCA chose not to assail said stipulations and instead even complied with and implemented its prestations contained in said stipulations by installing petitioner as Chairman of UCPB. Thus, PCA has waived and forfeited its right to nullify said stipulations and is now estopped from questioning the same. In view of the foregoing, the Court is left with no option but to uphold the validity of the two agreements in question.

14. ID.; ID.; PROPERTY; PUBLIC DOMINION; PETITIONER IS NOT ENTITLED TO THE UNITED COCONUT PLANTERS BANK (UCPB) SHARES WHICH WERE BOUGHT WITH PUBLIC FUNDS AND ARE PUBLIC PROPERTY.— As the coconut levy funds partake of the nature of taxes and can only be used for public purpose, and importantly, for the purpose for which it was exacted, *i.e.*, the development, rehabilitation and stabilization of the coconut industry, they cannot be used to benefit—whether directly or indirectly— private individuals, be it by way of a commission, or as the subject Agreement interestingly words it, compensation. Consequently, Cojuangco cannot stand to benefit by receiving, in his private capacity, 7.22% of the FUB shares without violating the constitutional caveat that public funds can only be used for public purpose. Accordingly, the 7.22% FUB (UCPB) shares that were given

to Cojuangco shall be returned to the Government, to be used "only for the benefit of all coconut farmers and for the development of the coconut industry."

15. ID.; ID.; THE OTHER PROVISIONS OF THE PCA-COJUANGCO AGREEMENT WHICH ARE VALID SHALL BE ENFORCED AND RESPECTED.— But apart from the stipulation in the PCA-Cojuangco Agreement, more specifically paragraph 4 in relation to paragraph 6 thereof, providing for the transfer to Cojuangco for the UCPB shares adverted to immediately above, other provisions are valid and shall be enforced, or shall be respected, if the corresponding prestation had already been performed. Invalid stipulations that are independent of, and divisible from, the rest of the agreement and which can easily be separated therefrom without doing violence to the manifest intention of the contracting minds do not nullify the entire contract.

APPEARANCES OF COUNSEL

Estelito P. Mendoza and *Hyacinth E. Rafael* for petitioner.

The Solicitor General for public respondent.

Angara Abello Concepcion Regala and Cruz for Cocofed, *et al*.

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

Sycip Salazar Hernandez & Gatmaitan for San Miguel Corp.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Of the several coconut levy appealed cases that stemmed from certain issuances of the Sandiganbayan in its Civil Case No. 0033, the present recourse proves to be one of the most difficult.

In particular, the instant petition for review under Rule 45 of the Rules of Court assails and seeks to annul a portion of the Partial Summary Judgment dated July 11, 2003, as affirmed

in a Resolution of December 28, 2004, both rendered by the Sandiganbayan in its **Civil Case ("CC") No. 0033-A** (the judgment shall hereinafter be referred to as "PSJ-A"), entitled **"***Republic of the Philippines, Plaintiff, v. Eduardo M. Cojuangco, Jr., et al., Defendants, COCOFED, et al., BALLARES, et al., Class Action Movants.*" CC No. 0033-A is the result of the splitting into eight (8) amended complaints of CC No. 0033 entitled, "*Republic of the Philippines v. Eduardo Cojuangco, Jr., et al.,*" a suit for recovery of ill-gotten wealth commenced by the Presidential Commission on Good Government ("PCGG"), for the Republic of the Philippines ("Republic"), against Eduardo M. Cojuangco, Jr. ("Cojuangco") and several individuals, among them, Ferdinand E. Marcos, Maria Clara Lobregat ("Lobregat"), and Danilo S. Ursua ("Ursua"). Each of the eight (8) subdivided complaints, CC No. 0033-A to CC No. 0033-H, correspondingly impleaded as defendants only the alleged participants in the transaction/s subject of the suit, or who are averred as owner/s of the assets involved.

Apart from this recourse, We clarify right off that PSJ-A was challenged in two other separate but consolidated petitions for review, one commenced by COCOFED, *et al*., docketed as G.R. Nos. 177857-58, and the other, interposed by Danilo S. Ursua, and docketed as G.R. No. 178193.

By Decision dated January 24, 2012, in the aforesaid G.R. Nos. 177857-58 (*COCOFED, et al. v. Republic*) and G.R. No. 178193 (*Ursua v. Republic*) consolidated cases[1] hereinafter collectively referred to as ("***COCOFED v. Republic***"), the Court addressed and resolved all key matters elevated to it in relation to PSJ-A, except for the issues raised in the instant petition which have not yet been resolved therein. In the same decision, We made clear that: (1) PSJ-A is subject of another petition for review interposed by Eduardo Cojuangco, Jr., in G.R. No. 180705, entitled *Eduardo M. Cojuangco, Jr. v. Republic of the Philippines*, which shall be decided separately by the Court,[2] and (2) the issues raised in the instant petition

[1] G.R. Nos. 177857-58 & 178193, January 24, 2012.

[2] *Id.*

should not be affected by the earlier decision "save for determinatively legal issues directly addressed [t]herein."[3]

For a better perspective, the instant recourse seeks to reverse the Partial Summary Judgment[4] of the anti-graft court dated **July 11, 2003,** as reiterated in a Resolution[5] of December 28, 2004, denying COCOFED's motion for reconsideration, and the **May 11, 2007** Resolution[6] denying COCOFED's motion to set case for trial and declaring the partial summary judgment final and appealable, all issued in PSJ-A. In our adverted January 24, 2012 Decision in *COCOFED v. Republic*, we affirmed with modification PSJ-A of the Sandiganbayan, and its Partial Summary Judgment in Civil Case No. 0033-F, dated **May 7, 2004** (hereinafter referred to as "PSJ-F').[7]

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[3] *Id.*

[4] Penned by Associate Justice Teresita Leonardo-De Castro (now a member of this Court), concurred in by Associate Justices Diosdado M. Peralta (now also a member of this Court) and Francisco H. Villaruz, Jr.; *rollo*, pp. 179-261.

[5] *Rollo*, pp. 361-400.

[6] *Id.* at 1043-53.

[7] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

The dispositive portion of the Our modificatory decision reads:

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

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

WHEREFORE, in view of the foregoing, We rule as follows:

SUMMARY OF THE COURT'S RULING.

A. Re: CLASS ACTION MOTION FOR A SEPARATE SUMMARY JUDGMENT dated April 11, 2001 filed by Defendant Maria Clara L. Lobregat, COCOFED, *et al.*, and Ballares, *et al.*

The Class Action Motion for Separate Summary Judgment dated April 11, 2001 filed by defendant Maria Clara L. Lobregat, COCOFED, *et al.* and Ballares, *et al.*, is hereby DENIED for lack of merit.

B. Re: MOTION FOR PARTIAL SUMMARY JUDGMENT (RE: COCOFED, *ET AL.* AND BALLARES, *ET AL.)* dated April 22, 2002 filed by Plaintiff.

1. a. The portion of Section 1 of P.D. No. 755, which reads:

…and that the Philippine Coconut Authority is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate.

taken in relation to Section 2 of the same P.D., is unconstitutional: (i) for having allowed the use of the CCSF to benefit directly private interest by the outright and unconditional grant of absolute ownership of the FUB/ UCPB shares paid for by PCA entirely with the CCSF to the undefined "coconut farmers", which negated or circumvented the national policy or public purpose declared by P.D. No. 755 to accelerate the growth and development of the coconut industry and achieve its vertical integration; and (ii) for having unduly delegated legislative power to the PCA.

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

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

3. Lobregat, COCOFED, *et al.* and Ballares, *et al.* have not legally and validly obtained title of ownership over the subject UCPB shares by virtue of P.D. No. 755, the Agreement dated May 25, 1975 between the PCA and defendant Cojuangco, and PCA implementing rules, namely, Adm. Order No. 1, s. 1975 and Resolution No. 074-78.

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

… … …

SO ORDERED.

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

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

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

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

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

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

AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:

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

More specifically, We upheld the Sandiganbayan's ruling that the coconut levy funds are special public funds of the Government. Consequently, We affirmed the Sandiganbayan's declaration that Sections 1 and 2 of Presidential Decree ("P.D.") 755, Section 3, Article III of P.D. 961 and Section 3, Article III of P.D. 1468, as well as the pertinent implementing regulations of the Philippine Coconut Authority ("PCA"), are unconstitutional for allowing the use and/or the distribution of properties acquired through the coconut levy funds to private individuals for their own direct benefit and absolute ownership. The Decision also affirmed the Government's ownership of the six CIIF companies, the fourteen holding companies, and the CIIF block of San Miguel Corporation shares of stock, for having likewise been acquired using the coconut levy funds. Accordingly, the properties subject of the January 24, 2012 Decision were declared owned by and ordered reconveyed to the Government, to be used only for the benefit of all coconut farmers and for the development of the coconut industry.

By Resolution of September 4, 2012,[8] the Court affirmed the above-stated Decision promulgated on January 24, 2012.

AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALING 33,133,266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT TO BE USED ONLY FOR THE BENEFIT OF ALL COCONUT FARMERS AND FOR THE DEVELOPMENT OF THE COCONUT INDUSTRY, AND ORDERED RECONVEYED TO THE GOVERNMENT.

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

SO ORDERED.

…. (Emphasis and underlining in the original)

[8] Resolution, *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, September 4, 2012.

It bears to stress at this juncture that the only portion of the appealed Partial Summary Judgment dated July 11, 2003 ("PSJ-A") which remains at issue revolves around the following decretal holdings of that court relating to the "compensation" paid to petitioner for exercising his personal and exclusive option to acquire the FUB/UCPB shares.[9] It will be recalled that the Sandiganbayan declared the Agreement between the PCA and Cojuangco containing the assailed "compensation" null and void for not having the required valuable consideration. Consequently, the UCPB shares of stocks that are subject of the Agreement were declared conclusively owned by the Government. It also held that the Agreement did not have the effect of law as it was not published as part of P.D. 755, even if Section 1 thereof made reference to the same.

Facts

We reproduce, below, portions of the statement of facts in *COCOFED v. Republic* relevant to the present case:[10]

In 1971, **Republic Act No. ("R.A.") 6260** was enacted creating the Coconut Investment Company ("CIC") to administer the **Coconut Investment Fund** ("CIF"), which, under Section 8 thereof, was to be sourced from a PhP 0.55 levy on the sale of every 100 kg. of copra. Of the PhP 0.55 levy of which the copra seller was – or ought to be – issued **COCOFUND** receipts, PhP 0.02 was placed at the disposition of COCOFED, the national association of coconut producers declared by the Philippine Coconut Administration ("PHILCOA" now "PCA") as having the largest membership.

The declaration of martial law in September 1972 saw the issuance of several presidential decrees ("P.D.") purportedly designed to improve the coconut industry through the collection and use of the coconut levy fund. While coming generally from impositions on the first sale of copra, the coconut levy fund came under various names x x x. Charged with the duty of collecting and administering the Fund was PCA. Like COCOFED with which it had a legal linkage, the PCA, by statutory provisions scattered in different coco levy decrees, had its share of the coco levy.

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[9] *Rollo*, pp. 259-260.

[10] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

The following were some of the issuances on the coco levy, its collection and utilization, how the proceeds of the levy will be managed and by whom and the purpose it was supposed to serve:

1. **P.D. No. 276** established the Coconut Consumers Stabilization Fund ("**CCSF**") and declared the proceeds of the CCSF levy as trust fund, to be utilized to subsidize the sale of coconut-based products, thus stabilizing the price of edible oil.

2. **P.D. No. 582** created the Coconut Industry Development Fund ("**CIDF**") to finance the operation of a hybrid coconut seed farm.

3. Then came **P.D. No. 755** providing under its Section 1 the following:

It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at preferential rates; that this policy can be expeditiously and efficiently realized by the implementation of the "Agreement for the Acquisition of a Commercial Bank for the benefit of Coconut Farmers" executed by the [PCA]…; and that the [PCA] is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers….

Towards achieving the policy thus declared, P.D. No. 755, under its **Section 2,** authorized PCA to utilize the CCSF and the CIDF collections to acquire a commercial bank and **deposit the CCSF levy collections in said bank interest free,** the deposit withdrawable only when the bank has attained a certain level of sufficiency in its equity capital. The same section also decreed that all levies PCA is authorized to collect shall not be considered as special and/or fiduciary funds or form part of the general funds of the government within the contemplation of P.D. No. 711.

4. **P.D. No. 961** codified the various laws relating to the development of coconut/palm oil industries.

5. The relevant provisions of P.D. No. 961, as later amended by **P.D. No. 1468 (***Revised Coconut Industry Code*), read:

ARTICLE III
Levies

Section 1. *Coconut Consumers Stabilization Fund Levy.* — The [PCA] is hereby empowered to impose and collect … the Coconut Consumers Stabilization Fund Levy, ….

... ...

> Section 5. *Exemption.* — The **[CCSF]** and the **[CIDF]** as well as all disbursements as herein authorized, shall **not** be construed … as **special and/or fiduciary funds,** or as **part of the general funds** of the national government within the contemplation of PD 711; … **the intention being that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers** shall be **owned by them in their private capacities**: …. (Emphasis supplied)

6. **Letter of Instructions No. ("LOI") 926,** s. of 1979, made reference to the creation, out of other coco levy funds, of the Coconut Industry Investment Fund ("**CIIF**") in P.D. No. 1468 and entrusted a portion of the CIIF levy to UCPB for investment, on behalf of coconut farmers, in oil mills and other private corporations, with the following equity ownership structure:

> Section 2. Organization of the Cooperative Endeavor. – The [UCPB], in its capacity as the investment arm of the coconut farmers thru the [CIIF] … is hereby directed to invest, on behalf of the coconut farmers, such portion of the CIIF … in private corporations … under the following guidelines:
>
> a) The coconut farmers shall own or control at least … (50%) of the outstanding voting capital stock of the private corporation [acquired] thru the CIIF and/or corporation owned or controlled by the farmers thru the CIIF …. (Words in bracket added.)

Through the years, a part of the coconut levy funds went directly or indirectly to [finance] various projects and/or was converted into various assets or investments.[11] Relevant to the present petition is the acquisition of the **First United Bank** ("FUB"), which was subsequently renamed as **United Coconut Planters Bank** ("UCPB").[12]

Apropos the intended acquisition of a commercial bank for the purpose stated earlier, it would appear that FUB was the bank of choice which Pedro Cojuangco's group (collectively, "Pedro Cojuangco") had control of. The plan, then, was for PCA to buy all of Pedro Cojuangco's shares in FUB. However, as later events

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[11] *Id.*; citing *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25.

[12] *Id.*

unfolded, a simple direct sale from the seller (Pedro) to PCA did not ensue as it was made to appear that Cojuangco had the exclusive option to acquire the former's FUB controlling interests. Emerging from this elaborate, circuitous arrangement were two deeds. The first one was simply denominated as *Agreement,* dated May 1975, entered into by and between Cojuangco for and in his behalf and in behalf of "*certain other buyers*", and Pedro Cojuangco in which the former was purportedly accorded the option to buy **72.2%** of FUB's outstanding capital stock, or 137,866 shares (the "option shares," for brevity), at PhP 200 per share. On its face, this agreement does not mention the word "option."

The second but related contract, dated May 25, 1975, was denominated as *Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers of the Philippines.* It had PCA, for itself and for the benefit of the coconut farmers, purchase from Cojuangco the shares of stock subject of the First Agreement for PhP200.00 per share. As additional consideration for PCA's buy-out of what Cojuangco would later claim to be his exclusive and personal option, it was stipulated that, from PCA, Cojuangco shall receive equity in FUB amounting to 10%, or **7.22%,** of the 72.2%, or fully paid shares. And so as not to dilute Cojuangco's equity position in FUB, later UCPB, the PCA agreed under paragraph 6 (b) of the second agreement to cede over to the former a number of fully paid FUB shares out of the shares it (PCA) undertakes to eventually subscribe. It was further stipulated that Cojuangco would act as bank president for an extendible period of 5 years.

Apart from the aforementioned 72.2%, PCA purchased from other FUB shareholders 6,534 shares [of which Cojuangco, as may be gathered from the records, got 10%.].

While the 64.98% portion of the option shares (72.2% – 7.22% = 64.98%) ostensibly pertained to the farmers, the corresponding stock certificates supposedly representing the farmers' equity were in the name of and delivered to PCA. There were, however, shares forming part of the aforesaid 64.98% portion, which ended up in the hands of non-farmers. The remaining 27.8% of the FUB capital stock were not covered by any of the agreements.

Under paragraph #8 of the second agreement, PCA agreed to expeditiously distribute the FUB shares purchased to such "*coconut farmers holding registered COCOFUND receipts*" on equitable basis.

As found by the Sandiganbayan, the PCA appropriated, out of its own fund, an amount for the purchase of the said 72.2% equity, **albeit it would later reimburse itself from the coconut levy fund**.

And per Cojuangco's own admission, PCA paid, out of the CCSF, the entire acquisition price for the 72.2% option shares.[13]

As of June 30, 1975, the list of FUB stockholders included Cojuangco with 14,440 shares and PCA with 129,955 shares.[14] It would appear later that, pursuant to the stipulation on maintaining Cojuangco's equity position in the bank, PCA would cede to him 10% of its subscriptions to (a) the authorized but unissued shares of FUB and (b) the increase in FUB's capital stock (the equivalent of 158,840 and 649,800 shares, respectively). In all, from the "mother" PCA shares, Cojuangco would receive a total of 95,304 FUB (UCPB) shares broken down as follows: 14,440 shares + 10% (158,840 shares) + 10% (649,800 shares) = 95,304.[15]

We further quote, from *COCOFED v. Republic*, facts relevant to the instant case:[16]

Shortly after the execution of the PCA – Cojuangco Agreement, President Marcos issued, on July 29, 1975, P.D. No. 755 directing x x x as narrated, PCA to use the CCSF and CIDF to acquire a commercial bank to provide coco farmers with "*readily available credit facilities at preferential rate*" x x x.

Then came the 1986 EDSA event. One of the priorities of then President Corazon C. Aquino's revolutionary government was the recovery of ill-gotten wealth reportedly amassed by the Marcos family and close relatives, their nominees and associates. Apropos thereto, she issued Executive Order Nos. (EO) 1, 2 and 14, as amended by

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[13] *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 477.

[14] *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25.

[15] *Rollo*, p. 263.

[16] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

E.O. 14-A, all series of 1986. E.O. 1 created the PCGG and provided it with the tools and processes it may avail of in the recovery efforts;[17] E.O. No. 2 asserted that the ill-gotten assets and properties come in the form of shares of stocks, *etc.*, while E.O. No. 14 conferred on the Sandiganbayan exclusive and original jurisdiction over ill-gotten wealth cases, with the proviso that "*technical rules of procedure and evidence shall not be applied strictly*" to the civil cases filed under the EO. Pursuant to these issuances, the PCGG issued numerous orders of sequestration, among which were those handed out x x x against shares of stock in UCPB purportedly owned by or registered in the names of (a) the more than a million coconut farmers, (b) the CIIF companies and (c) Cojuangco, Jr., including the SMC shares held by the CIIF companies. On July 31, 1987, the PCGG instituted before the Sandiganbayan a recovery suit docketed thereat as CC No. 0033.

x x x x x x x x x

3. Civil Case 0033 x x x would be subdivided into eight complaints, docketed as CC 0033-A to CC 0033-H.

x x x x x x x x x

5. By Decision of **December 14, 2001**, in **G.R. Nos. 147062-64** (*Republic v. COCOFED*),[18] the Court declared the coco levy funds as *prima facie* public funds. And purchased as the sequestered UCPB shares were by such funds, beneficial ownership thereon and the corollary voting rights *prima facie* pertain, according to the Court, to the government.

x x x x x x x x x

Correlatively, the Republic, on the strength of the December 14, 2001 ruling in *Republic v. COCOFED* and on the argument, among others, that the claim of COCOFED and Ballares *et al*., over the subject UCPB shares is based solely on the supposed COCOFUND receipts issued for payment of the RA 6260 CIF levy, filed a *Motion for Partial Summary Judgment* [RE: COCOFED, *et al*. and Ballares, *et al*.] dated April 22, 2002, praying that a summary judgment be rendered declaring:

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[17] The validity and propriety of these processes were sustained by the Court in *BASECO v. PCGG*, No. 75885, May 27, 1987, 150 SCRA 181.

[18] Reported in 372 SCRA 2001.

a. That Section 2 of [PD] 755, Section 5, Article III of P.D. 961 and Section 5, Article III of P.D. No. 1468 are unconstitutional;

b. That x x x (CIF) payments under x x x (R.A.) No. 6260 are not valid and legal bases for ownership claims over UCPB shares; and

c. That COCOFED, *et al.*, and Ballares, *et al.* have not legally and validly obtained title over the subject UCPB shares.

Right after it filed the *Motion for Partial Summary Judgment* [RE: COCOFED, *et al*. and *Ballares, et al.*, the Republic interposed a *Motion for Partial Summary Judgment [Re: Eduardo M. Cojuangco, Jr.],* praying that a summary judgment be rendered:

a. Declaring that Section 1 of P.D. No. 755 is unconstitutional insofar as it validates the provisions in the "[PCA-Cojuangco] Agreement x x x" dated May 25, 1975 providing payment of ten percent (10%) commission to defendant Cojuangco with respect to the [FUB], now [UCPB] shares subject matter thereof;

b. Declaring that x x x Cojuangco, Jr. and his fronts, nominees and dummies, including x x x and Danilo S. Ursua, have not legally and validly obtained title over the subject UCPB shares; and

c. Declaring that the government is the lawful and true owner of the subject UCPB shares registered in the names of … Cojuangco, Jr. and the entities and persons above-enumerated, for the benefit of all coconut farmers. x x x

Following an exchange of pleadings, the Republic filed its sur-rejoinder praying that it be conclusively declared the true and absolute owner of the coconut levy funds and the UCPB shares acquired therefrom.[19] We quote from *COCOFED v. Republic*:[20]

A joint hearing on the separate motions for summary judgment to determine what material facts exist with or without controversy

[19] *Rollo* (G.R. Nos. 177857-58), pp. 830-871.

[20] G.R. Nos. 177857-58 & 178193, January 24, 2012.

then ensued. By Order of March 11, 2003, the Sandiganbayan detailed, based on this Court's ruling in related ill-gotten cases, the parties' manifestations made in open court and the pleadings and evidence on record, the facts it found to be without substantial controversy, together with the admissions and/or extent of the admission made by the parties respecting relevant facts, as follows:

> As culled from the exhaustive discussions and manifestations of the parties in open court of their respective pleadings and evidence on record, the facts which exist without any substantial controversy are set forth hereunder, together with the admissions and/or the extent or scope of the admissions made by the parties relating to the relevant facts:
>
> 1. The late President Ferdinand E. Marcos was President x x x for two terms under the 1935 Constitution and, during the second term, he declared Martial Law through Proclamation No. 1081 dated September 21, 1972.
>
> 2. On January 17, 1973, [he] issued Proclamation No. 1102 announcing the ratification of the 1973 Constitution.
>
> 3. From January 17, 1973 to April 7, 1981, [he] x x x exercised the powers and prerogative of President under the 1935 Constitution and the powers and prerogative of President x x x the 1973 Constitution.
>
> [He] x x x promulgated various [P.D.s], among which were P.D. No. 232, P.D. No. 276, P.D. No. 414, P.D. No. 755, P.D. No. 961 and P.D. No. 1468.
>
> 4. On April 17, 1981, amendments to the 1973 Constitution were effected and, on June 30, 1981, [he], after being elected President, "reassumed the title and exercised the powers of the President until 25 February 1986."
>
> 5. Defendants Maria Clara Lobregat and Jose R. Eleazar, Jr. were [PCA] Directors x x x during the period 1970 to 1986 x x x.
>
> 6. Plaintiff admits the existence of the following agreements which are attached as Annexes "A" and "B" to the Opposition dated October 10, 2002 of defendant Eduardo M. Cojuangco, Jr. to the above-cited Motion for Partial Summary Judgment:
>
> a) "This Agreement made and entered into this _____ day of May, 1975 at Makati, Rizal, Philippines, by and between:

PEDRO COJUANGCO, Filipino, of legal age and with residence at 1575 Princeton St., Mandaluyong, Rizal, for and in his own behalf and in behalf of certain other stockholders of First United Bank listed in Annex "A" attached hereto (hereinafter collectively called the SELLERS);

– and –

EDUARDO COJUANGCO, JR., Filipino, of legal age and with residence at 136 9th Street corner Balete Drive, Quezon City, represented in this act by his duly authorized attorney-in-fact, EDGARDO J. ANGARA, for and in his own behalf and in behalf of certain other buyers, (hereinafter collectively called the BUYERS)";

WITNESSETH: That

WHEREAS, the SELLERS own of record and beneficially a total of 137,866 shares of stock, with a par value of ₱100.00 each, of the common stock of the First United Bank (the "Bank"), a commercial banking corporation existing under the laws of the Philippines;

WHEREAS, the BUYERS desire to purchase, and the SELLERS are willing to sell, the aforementioned shares of stock totaling 137,866 shares (hereinafter called the "Contract Shares") owned by the SELLERS due to their special relationship to EDUARDO COJUANGCO, JR.;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

1. Sale and Purchase of Contract Shares

Subject to the terms and conditions of this Agreement, the SELLERS hereby sell, assign, transfer and convey unto the BUYERS, and the BUYERS hereby purchase and acquire, the Contract Shares free and clear of all liens and encumbrances thereon.

2. Contract Price

The purchase price per share of the Contract Shares payable by the BUYERS is ₱200.00 or an aggregate price of ₱27,573,200.00 (the "Contract Price").

3. Delivery of, and payment for, stock certificates

Upon the execution of this Agreement, (i) the SELLERS shall deliver to the BUYERS the stock certificates representing the Contract Shares, free and clear of all liens, encumbrances, obligations, liabilities and other burdens in favor of the Bank or third parties, duly endorsed in blank or with stock powers sufficient to transfer the shares to bearer; and (ii) BUYERS shall deliver to the SELLERS ₱27,511,295.50 representing the Contract Price less the amount of stock transfer taxes payable by the SELLERS, which the BUYERS undertake to remit to the appropriate authorities. (Emphasis added.)

4. Representation and Warranties of Sellers

The SELLERS respectively and independently of each other represent and warrant that:

(a) The SELLERS are the lawful owners of, with good marketable title to, the Contract Shares and that (i) the certificates to be delivered pursuant thereto have been validly issued and are fully paid and non-assessable; (ii) the Contract Shares are free and clear of all liens, encumbrances, obligations, liabilities and other burdens in favor of the Bank or third parties x x x.

This representation shall survive the execution and delivery of this Agreement and the consummation or transfer hereby contemplated.

(b) The execution, delivery and performance of this Agreement by the SELLERS does not conflict with or constitute any breach of any provision in any agreement to which they are a party or by which they may be bound.

(c) They have complied with the condition set forth in Article X of the Amended Articles of Incorporation of the Bank.

5. Representation of BUYERS

x x x x x x x x x

6. Implementation

The parties hereto hereby agree to execute or cause

to be executed such documents and instruments as may be required in order to carry out the intent and purpose of this Agreement.

7. Notices

x x x x x x x x x

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands at the place and on the date first above written.

PEDRO COJUANGCO (on his own behalf and in behalf of the other Sellers listed in Annex "A" hereof)
(SELLERS)

EDUARDO COJUANGCO, JR. (on his own behalf and in behalf of the other Buyers)
(BUYERS)

By:

EDGARDO J. ANGARA
Attorney-in-Fact

x x x x x x x x x

b) "Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers of the Philippines, made and entered into this 25th day of May 1975 at Makati, Rizal, Philippines, by and between:

EDUARDO M. COJUANGCO, JR., Filipino, of legal age, with business address at 10th Floor, Sikatuna Building, Ayala Avenue, Makati, Rizal, hereinafter referred to as the SELLER;

– and –

PHILIPPINE COCONUT AUTHORITY, a public corporation created by Presidential Decree No. 232, as amended, for itself and for the benefit of the coconut farmers of the Philippines, (hereinafter called the BUYER)"

WITNESSETH: That

WHEREAS, on May 17, 1975, the Philippine Coconut Producers Federation ("PCPF"), through its Board of Directors, expressed the desire of the coconut farmers to own a commercial bank which will be an effective

instrument to solve the perennial credit problems and, for that purpose, passed a resolution requesting the PCA to negotiate with the SELLER for the transfer to the coconut farmers of the SELLER's option to buy the First United Bank (the "Bank") under such terms and conditions as BUYER may deem to be in the best interest of the coconut farmers and instructed Mrs. Maria Clara Lobregat to convey such request to the BUYER;

WHEREAS, the PCPF further instructed Mrs. Maria Clara Lobregat to make representations with the BUYER to utilize its funds to finance the purchase of the Bank;

WHEREAS, the SELLER has the exclusive and personal option to buy 144,400 shares (the "Option Shares") of the Bank, constituting 72.2% of the present outstanding shares of stock of the Bank, at the price of ₱200.00 per share, which option only the SELLER can validly exercise;

WHEREAS, in response to the representations made by the coconut farmers, the BUYER has requested the SELLER to exercise his personal option for the benefit of the coconut farmers;

WHEREAS, the SELLER is willing to transfer the Option Shares to the BUYER at a price equal to his option price of ₱200 per share;

WHEREAS, recognizing that ownership by the coconut farmers of a commercial bank is a permanent solution to their perennial credit problems, that it will accelerate the growth and development of the coconut industry and that the policy of the state which the BUYER is required to implement is to achieve vertical integration thereof so that coconut farmers will become participants in, and beneficiaries of the development and growth of the coconut industry, the BUYER approved the request of PCPF that it acquire a commercial bank to be owned by the coconut farmers and, appropriated, for that purpose, the sum of ₱150 Million to enable the farmers to buy the Bank and capitalize the Bank to such an extension as to be in a position to adopt a credit policy for the coconut farmers at preferential rates;

WHEREAS, x x x the BUYER is willing to subscribe to additional shares ("Subscribed Shares") and place the Bank in a more favorable financial position to extend loans and credit facilities to coconut farmers at preferential rates;

NOW, THEREFORE, for and in consideration of the foregoing premises and the other terms and conditions hereinafter contained, the parties hereby declare and affirm that their principal contractual intent is (1) to ensure that the coconut farmers own at least 60% of the outstanding capital stock of the Bank; and (2) that the SELLER shall receive compensation for exercising his personal and exclusive option to acquire the Option Shares, for transferring such shares to the coconut farmers at the option price of ₱200 per share, and for performing the management services required of him hereunder.

1. To ensure that the transfer to the coconut farmers of the Option Shares is effected with the least possible delay and to provide for the faithful performance of the obligations of the parties hereunder, the parties hereby appoint the Philippine National Bank as their escrow agent (the "Escrow Agent").

Upon execution of this Agreement, the BUYER shall deposit with the Escrow Agent such amount as may be necessary to implement the terms of this Agreement x x x.

2. As promptly as practicable after execution of this Agreement, the SELLER shall exercise his option to acquire the Option Share and SELLER shall immediately thereafter deliver and turn over to the Escrow Agent such stock certificates as are herein provided to be received from the existing stockholders of the Bank by virtue of the exercise on the aforementioned option x x x.

3. To ensure the stability of the Bank and continuity of management and credit policies to be adopted for the benefit of the coconut farmers, the parties undertake to cause the stockholders and the Board of Directors of the Bank to authorize and approve a management contract between the Bank and the SELLER under the following terms:

(a) The management contract shall be for a period of five (5) years, renewable for another five (5) years by mutual agreement of the SELLER and the Bank;

(b) The SELLER shall be elected President and shall hold office at the pleasure of the Board of Directors. While serving in such capacity, he shall be entitled to such salaries and emoluments as the Board of Directors may determine;

(c) The SELLER shall recruit and develop a professional management team to manage and operate the Bank under the control and supervision of the Board of Directors of the Bank;

(d) The BUYER undertakes to cause three (3) persons designated by the SELLER to be elected to the Board of Directors of the Bank;

(e) The SELLER shall receive no compensation for managing the Bank, other than such salaries or emoluments to which he may be entitled by virtue of the discharge of his function and duties as President, provided x x x and

(f) The management contract may be assigned to a management company owned and controlled by the SELLER.

4. As compensation for exercising his personal and exclusive option to acquire the Option Shares and for transferring such shares to the coconut farmers, as well as for performing the management services required of him, SELLER shall receive equity in the Bank amounting, in the aggregate, to 95,304 fully paid shares in accordance with the procedure set forth in paragraph 6 below;

5. In order to comply with the Central Bank program for increased capitalization of banks and to ensure that the Bank will be in a more favorable financial position to attain its objective to extend to the coconut farmers loans and credit facilities, the BUYER undertakes to subscribe to shares with an aggregate par value of ₱80,864,000 (the "Subscribed Shares"). The obligation of the BUYER with respect to the Subscribed Shares shall be as follows:

(a) The BUYER undertakes to subscribe, for the benefit of the coconut farmers, to shares with an aggregate par value of ₱15,884,000 from the present authorized but unissued shares of the Bank; and

(b) The BUYER undertakes to subscribe, for the benefit of the coconut farmers, to shares with an aggregate par value of ₱64,980,000 from the increased capital stock of the Bank, which subscriptions shall be deemed made upon the approval by the stockholders of the increase of the authorized capital stock of the Bank from ₱50 Million to ₱140 Million.

The parties undertake to declare stock dividends of ₱8 Million out of the present authorized but unissued capital stock of ₱30 Million.

6. To carry into effect the agreement of the parties that the SELLER shall receive as his compensation 95,304 shares:

(a) The Escrow Agent shall, upon receipt from the SELLER of the stock certificates representing the Option Shares, duly endorsed in blank or with stock powers sufficient to transfer the same to bearer, present such stock certificates to the Transfer Agent of the Bank and shall cause such Transfer Agent to issue stock certificates of the Bank in the following ratio: one share in the name of the SELLER for every nine shares in the name of the BUYER.

(b) With respect to the Subscribed Shares, the BUYER undertakes, in order to prevent the dilution of SELLER's equity position, that it shall cede over to the SELLER 64,980 fully-paid shares out of the Subscribed Shares. Such undertaking shall be complied with in the following manner: upon receipt of advice that the BUYER has subscribed to the Subscribed Shares upon approval by the stockholders of the increase of the authorized capital stock of the Bank, the Escrow Agent shall thereupon issue a check in favor of the Bank covering the total payment for the Subscribed Shares. The Escrow Agent shall thereafter cause the Transfer Agent to issue a stock certificates of the Bank in the following

ratio: one share in the name of the SELLER for every nine shares in the name of the BUYER.

7. The parties further undertake that the Board of Directors and management of the Bank shall establish and implement a loan policy for the Bank of making available for loans at preferential rates of interest to the coconut farmers x x x.

8. The BUYER shall expeditiously distribute from time to time the shares of the Bank, that shall be held by it for the benefit of the coconut farmers of the Philippines under the provisions of this Agreement, to such, coconut farmers holding registered COCOFUND receipts on such equitable basis as may be determine by the BUYER in its sound discretion.

9. x x x

10. To ensure that not only existing but future coconut farmers shall be participants in and beneficiaries of the credit policies, and shall be entitled to the benefit of loans and credit facilities to be extended by the Bank to coconut farmers at preferential rates, the shares held by the coconut farmers shall not be entitled to pre-emptive rights with respect to the unissued portion of the authorized capital stock or any increase thereof.

11. After the parties shall have acquired two-thirds (2/3) of the outstanding shares of the Bank, the parties shall call a special stockholders' meeting of the Bank:

(a) To classify the present authorized capital stock of ₱50,000,000 divided into 500,000 shares, with a par value of ₱100.00 per share into: 361,000 Class A shares, with an aggregate par value of ₱36,100,000 and 139,000 Class B shares, with an aggregate par value of ₱13,900,000. All of the Option Shares constituting 72.2% of the outstanding shares, shall be classified as Class A shares and the balance of the outstanding shares, constituting 27.8% of the outstanding shares, as Class B shares;

(b) To amend the articles of incorporation of the Bank to effect the following changes:

(i) change of corporate name to First United Coconut Bank;

(ii) replace the present provision restricting the transferability of the shares with a limitation on ownership by any individual or entity to not more than 10% of the outstanding shares of the Bank;

(iii) provide that the holders of Class A shares shall not be entitled to pre-emptive rights with respect to the unissued portion of the authorized capital stock or any increase thereof; and

(iv) provide that the holders of Class B shares shall be absolutely entitled to pre-emptive rights, with respect to the unissued portion of Class B shares comprising part of the authorized capital stock or any increase thereof, to subscribe to Class B shares in proportion t the subscriptions of Class A shares, and to pay for their subscriptions to Class B shares within a period of five (5) years from the call of the Board of Directors.

(c) To increase the authorized capital stock of the Bank from ₱50 Million to ₱140 Million, divided into 1,010,800 Class A shares and 389,200 Class B shares, each with a par value of ₱100 per share;

(d) To declare a stock dividend of ₱8 Million payable to the SELLER, the BUYER and other stockholders of the Bank out of the present authorized but unissued capital stock of ₱30 Million;

(e) To amend the by-laws of the Bank accordingly; and

(f) To authorize and approve the management contract provided in paragraph 2 above.

The parties agree that they shall vote their shares and take all the necessary corporate action in order to carry into effect the foregoing provisions of this paragraph 11, including such other amendments of the articles of incorporation and by-laws of the Bank as

are necessary in order to implement the intention of the parties with respect thereto.

12. It is the contemplation of the parties that the Bank shall achieve a financial and equity position to be able to lend to the coconut farmers at preferential rates.

In order to achieve such objective, the parties shall cause the Bank to adopt a policy of reinvestment, by way of stock dividends, of such percentage of the profits of the Bank as may be necessary.

13. The parties agree to execute or cause to be executed such documents and instruments as may be required in order to carry out the intent and purpose of this Agreement.

IN WITNESS WHEREOF x x x

PHILIPPINE COCONUT AUTHORITY

(BUYER)

By:

EDUARDO COJUANGCO, JR. MARIA CLARA L. LOBREGAT

(SELLER)

x x x x x x x x x

7. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al*. admit that the x x x (PCA) was the "other buyers" represented by defendant Eduardo M. Cojuangco, Jr. in the May 1975 Agreement entered into between Pedro Cojuangco (on his own behalf and in behalf of other sellers listed in Annex "A"of the agreement) and defendant Eduardo M. Cojuangco, Jr. (on his own behalf and in behalf of the other buyers). Defendant Cojuangco insists he was the "only buyer" under the aforesaid Agreement.

8. Defendant Eduardo M. Cojuangco, Jr. did not own any share in the x x x (FUB) prior to the execution of the two Agreements x x x.

9. Defendants Lobregat, *et al.*, and COCOFED, *et al.*, and Ballares, *et al*. admit that in addition to the 137,866 FUB shares

of Pedro Cojuangco, *et al*. covered by the Agreement, other FUB stockholders sold their shares to PCA such that the total number of FUB shares purchased by PCA … increased from 137,866 shares to 144,400 shares, the OPTION SHARES referred to in the Agreement of May 25, 1975. Defendant Cojuangco did not make said admission as to the said 6,534 shares in excess of the 137,866 shares covered by the Agreement with Pedro Cojuangco.

10. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al.* admit that the Agreement, described in Section 1 of Presidential Decree (P.D.) No. 755 dated July 29, 1975 as the "Agreement for the Acquisition of a Commercial Bank for the Benefit of Coconut Farmers" executed by the Philippine Coconut Authority" and incorporated in Section 1 of P.D. No. 755 by reference, refers to the "AGREEMENT FOR THE ACQUISITION OF A COMMERCIAL BANK FOR THE BENEFIT OF THE COCONUT FARMERS OF THE PHILIPPINES" dated May 25, 1975 between defendant Eduardo M. Cojuangco, Jr. and the [PCA] (Annex "B" for defendant Cojuangco's OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT [RE: EDUARDO M. COJUANGCO, JR.] dated September 18, 2002).

Plaintiff refused to make the same admission.

11. As to whether P.D. No. 755 and the text of the agreement described therein was published, the Court takes judicial notice that P.D. No. 755 was published [in] x x x volume 71 of the Official Gazette but the text of the agreement x x x was not so published with P.D. No. 755.

12. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al.* admit that the PCA used public funds x x x in the total amount of ₱150 million, to purchase the FUB shares amounting to 72.2% of the authorized capital stock of the FUB, although the **PCA was later reimbursed from the coconut levy funds** and that the PCA subscription in the increased capitalization of the FUB, which was later renamed the x x x (UCPB), came from the said coconut levy funds x x x.

13. Pursuant to the May 25, 1975 Agreement, out of the 72.2% shares of the authorized and the increased capital stock of the FUB (later UCPB), entirely paid for by PCA, 64.98% of the shares

were placed in the name of the "PCA for the benefit of the coconut farmers" and 7,22% were given to defendant Cojuangco. The remaining 27.8% shares of stock in the FUB which later became the UCPB were not covered by the two (2) agreements referred to in item no. 6, par. (a) and (b) above.

"There were shares forming part of the aforementioned 64.98% which were later sold or transferred to non-coconut farmers.

14. Under the May 27, 1975 Agreement, defendant Cojuangco's equity in the FUB (now UCPB) was ten percent (10%) of the shares of stock acquired by the PCA for the benefit of the coconut farmers.

15. That the fully paid 95.304 shares of the FUB, later the UCPB, acquired by defendant x x x Cojuangco, Jr. pursuant to the May 25, 1975 Agreement were paid for by the PCA in accordance with the terms and conditions provided in the said Agreement.

16. Defendants Lobregat, *et al.* and COCOFED, *et al.* and Ballares, *et al.* admit that the affidavits of the coconut farmers (specifically, Exhibit "1-Farmer" to "70-Farmer") uniformly state that:

a. they are coconut farmers who sold coconut products;
b. in the sale thereof, they received COCOFUND receipts pursuant to R.A. No. 6260;
c. they registered the said COCOFUND receipts; and
d. by virtue thereof, and under R.A. No. 6260, P.D. Nos. 755, 961 and 1468, they are allegedly entitled to the subject UCPB shares.

but subject to the following qualifications:

a. there were other coconut farmers who received UCPB shares although they did not present said COCOFUND receipt because the PCA distributed the unclaimed UCPB shares not only to those who already received their UCPB shares in exchange for their COCOFUND receipts but also to the coconut farmers determined by a national census conducted pursuant to PCA administrative issuances;

b. [t]here were other affidavits executed by Lobregat, Eleazar, Ballares and Aldeguer relative to the said distribution of the

unclaimed UCPB shares; and

c. the coconut farmers claim the UCPB shares by virtue of their compliance not only with the laws mentioned in item (d) above but also with the relevant issuances of the PCA such as, PCA Administrative Order No. 1, dated August 20, 1975 (Exh. "298-Farmer"); PCA Resolution No. 033-78 dated February 16, 1978….

The plaintiff did not make any admission as to the foregoing qualifications.

17. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al.* claim that the UCPB shares in question have legitimately become the private properties of the 1,405,366 coconut farmers solely on the basis of their having acquired said shares in compliance with R.A. No. 6260, P.D. Nos. 755, 961 and 1468 and the administrative issuances of the PCA cited above.

18. On the other hand, defendant … Cojuangco, Jr. claims ownership of the UCPB shares, which he holds, solely on the basis of the two Agreements…. (Emphasis and words in brackets added.)

On July 11, 2003, the Sandiganbayan issued the assailed PSJ-A, ruling in favor of the Republic, disposing insofar as pertinent as follows:[21]

WHEREFORE, in view of the foregoing, we rule as follows:

x x x x x x x x x

C. Re: MOTION FOR PARTIAL SUMMARY JUDGMENT (RE: EDUARDO M. COJUANGCO, JR.) dated September 18, 2002 filed by plaintiff.

1. Sec. 1 of P.D. No. 755 did not validate the Agreement between PCA and defendant Eduardo M. Cojuangco, Jr. dated May 25, 1975 nor did it give the Agreement the binding force of a law because of the non-publication of the said Agreement.

2. Regarding the questioned transfer of the shares of stock of FUB (later UCPB) by PCA to defendant Cojuangco or the

[21] PSJ-A, pp. 15, 54-55, 80-83; *rollo*, pp. 193, 231-232, 257-60.

so-called "Cojuangco UCPB shares" which cost the PCA more than Ten Million Pesos in CCSF in 1975, we declare, that the transfer of the following FUB/UCPB shares to defendant Eduardo M. Cojuangco, Jr. was not supported by valuable consideration, and therefore null and void:

a. The 14,400 shares from the "Option Shares";

b. Additional Bank Shares Subscribed and Paid by PCA, consisting of:

1. Fifteen Thousand Eight Hundred Eighty-Four (15,884) shares out of the authorized but unissued shares of the bank, subscribed and paid by PCA;

2. Sixty Four Thousand Nine Hundred Eighty (64,980) shares of the increased capital stock subscribed and paid by PCA; and

3. Stock dividends declared pursuant to paragraph 5 and paragraph 11 (iv) (d) of the Agreement.

3. The above-mentioned shares of stock of the FUB/UCPB transferred to defendant Cojuangco are hereby declared conclusively owned by the plaintiff Republic of the Philippines.

4. The UCPB shares of stock of the alleged fronts, nominees and dummies of defendant Eduardo M. Cojuangco, Jr. which form part of the 72.2% shares of the FUB/UCPB paid for by the PCA with public funds later charged to the coconut levy funds, particularly the CCSF, belong to the plaintiff Republic of the Philippines as their true and beneficial owner.

Let trial of this Civil Case proceed with respect to the issues which have not been disposed of in this Partial Summary Judgment. For this purpose, the plaintiff's Motion Ad Cautelam to Present Additional Evidence dated March 28, 2001 is hereby GRANTED.[22] (Emphasis and underlining added.)

As earlier explained, the core issue in this instant petition is Part C of the dispositive portion in PSJ-A declaring the 7.22%

[22] PSJ-A, pp. 15, 54-55, 80-83; *rollo*, pp. 193, 231-32, 257-60.

FUB (now UCPB) shares transferred to Cojuangco, plus the other shares paid by the PCA as "***conclusively***" owned by the Republic. Parts A and B of the same dispositive portion have already been finally resolved and adjudicated by this Court in *Cocofed v. Republic* on January 24, 2012.[23]

From PSJ-A, Cojuangco moved for partial reconsideration but the Sandiganbayan, by Resolution[24] of December 28, 2004, denied the motion.

Hence, the instant petition.

The Issues

Cojuangco's petition formulates the issues in question form, as follows:[25]

a. Is the acquisition of the [so-called Cojuangco, Jr. UCPB shares] by petitioner Cojuangco x x x "not supported by valuable consideration and, therefore, null and void"?

b. Did the Sandiganbayan have jurisdiction, in Civil Case No. 0033-A, an "ill-gotten wealth" case brought under [EO] Nos. 1 and 2, to declare the [Cojuangco UCPB shares] acquired by virtue of the Pedro Cojuangco, *et al*. Agreement and/or the PCA Agreement null and void because "not supported by valuable consideration"?

c. Was the claim that the acquisition by petitioner Cojuangco of shares representing 7.2% of the outstanding capital stock of FUB (later UCPB) "not supported by valuable consideration", a "claim" pleaded in the complaint and may therefore be the basis of a "summary judgment" under Section 1, Rule 35 of the Rules of Court?

d. By declaring the [Cojuangco UCPB shares] as "not supported by valuable consideration, and therefore, null and void", did the Sandiganbayan effectively nullify the PCA Agreement? May the Sandiganbayan nullify the PCA Agreement when the parties to the Agreement, namely: x x x concede its validity? If the PCA Agreement be deemed "null and void", should not the FUB (later UCPB) shares

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[23] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

[24] *Rollo,* pp. 361-400.

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

revert to petitioner Cojuangco (under the PCA Agreement) or to Pedro Cojuangco, *et al*. x x x? Would there be a basis then, even assuming the absence of consideration x x x, to declare 7.2% UCPB shares of petitioner Cojuangco as "conclusively owned by the plaintiff Republic of the Philippines"?[26]

The Court's Ruling

I

THE SANDIGANBAYAN HAS JURISDICTION OVER THE SUBJECT MATTER OF THE SUBDIVIDED AMENDED COMPLAINTS, INCLUDING THE SHARES ALLEGEDLY ACQUIRED BY COJUANGCO BY VIRTUE OF THE PCA AGREEMENTS.

The issue of jurisdiction over the subject matter of the subdivided amended complaints has peremptorily been put to rest by the Court in its January 24, 2012 Decision in *COCOFED v. Republic*. There, the Court, citing Regalado[27] and settled jurisprudence, stressed the following interlocking precepts: Subject matter jurisdiction is conferred by law, not by the consent or acquiescence of any or all of the parties. In turn, the issue on whether a suit comes within the penumbra of a statutory conferment is determined by the allegations in the complaint, regardless of whether or not the suitor will be entitled to recover upon all or part of the claims asserted.

The Republic's material averments in its complaint subdivided in CC No. 0033-A included the following:

CC No. 0033-A

12. Defendant Eduardo M. Cojuangco, Jr. served as a public officer during the Marcos administration. During the period of his incumbency as a public officer, he acquired assets, funds and other property grossly and manifestly disproportionate to his salaries, lawful income and income from legitimately acquired property.

13. Defendant Eduardo M. Cojuangco, Jr., taking undue advantage of his association, influence, connection, and acting in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, AND

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[26] *Id*.

[27] 1 Regalado, *REMEDIAL LAW COMPENDIUM 11* (6th revised ed., 1997).

THE INDIVIDUAL DEFENDANTS, embarked upon devices, schemes and stratagems, to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, such as when he –

a) manipulated, beginning the year 1975 with the active collaboration of Defendants x x x Maria Clara Lobregat, Danilo Ursua [*etc.*], the purchase by . . . (PCA) of 72.2% of the outstanding capital stock of the x x x (FUB) which was subsequently converted into a universal bank named x x x (UCPB) through the use of the Coconut Consumers Stabilization Fund (CCSF) being initially in the amount of ₱85,773,100.00 in a manner contrary to law and to the specific purposes for which said coconut levy funds were imposed and collected under P.D. 276, and with sinister designs and under anomalous circumstances, to wit:

(i) Defendant Eduardo Cojuangco, Jr. coveted the coconut levy funds as a cheap, lucrative and risk-free source of funds with which to exercise his private option to buy the controlling interest in FUB; thus, claiming that the 72.2% of the outstanding capital stock of FUB could only be purchased and transferred through the exercise of his "personal and exclusive action [option] to acquire the 144,000 shares" of the bank, Defendant Eduardo M. Cojuangco, Jr. and PCA, x x x executed on May 26, 1975 a purchase agreement which provides, among others, for the payment to him in fully paid shares as compensation thereof 95,384 shares worth ₱1,444,000.00 with the further condition that he shall manage and control the bank as Director and President for a term of five (5) years renewable for another five (5) years and to designate three (3) persons of his choice who shall be elected as members of the Board of Directors of the Bank;

(ii) to legitimize *a posteriori* his highly anomalous and irregular use and diversion of government funds to advance his own private and commercial interests, Defendant Eduardo Cojuangco, Jr. caused the issuance by Defendant Ferdinand E. Marcos of PD 755 (a) declaring that the coconut levy funds shall not be considered special and fiduciary and trust funds and do not form part of the general funds of the National Government, conveniently repealing for that purpose a series of previous decrees, PDs 276 and 414, establishing the character of the coconut levy funds as special, fiduciary,

trust and governmental funds; (b) confirming the agreement between Defendant Eduardo Cojuangco, Jr. and PCA on the purchase of FUB by incorporating by reference said private commercial agreement in PD 755;

(iii) To further consolidate his hold on UCPB, Defendant Eduardo Cojuangco, Jr. imposed as consideration and conditions for the purchase that (a) he gets one out of every nine shares given to PCA, and (b) he gets to manage and control UCPB as president for a term of five (5) years renewable for another five (5) years;

(iv) To perpetuate his opportunity to deal with and make use of the coconut levy funds x x x Cojuangco, Jr. caused the issuance by Defendant Ferdinand E. Marcos of an unconstitutional decree (PD 1468) requiring the deposit of all coconut levy funds with UCPB, interest free to the prejudice of the government.

(v) In gross violation of their fiduciary positions and in contravention of the goal to create a bank for the coconut farmers of the country, the capital stock of UCPB as of February 25, 1986 was actually held by the defendants, their lawyers, factotum and business associates, thereby finally gaining control of the UCPB by misusing the names and identities of the so-called "more than one million coconut farmers."

14. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, and unjust enrichment, violation of the constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people.[28]

In no uncertain terms, the Court has upheld the Sandiganbayan's assumption of jurisdiction over the subject matter of Civil Case Nos. 0033-A and 0033-F.[29] The Court wrote:

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[28] *Rollo*, pp. 488-493.

[29] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

Judging from the allegations of the defendants' illegal acts thereat made, it is fairly obvious that both CC Nos. 0033-A and CC 0033-F partake, in the context of EO Nos. 1, 2 and 14, series of 1986, the nature of ill-gotten wealth suits. Both deal with the recovery of sequestered shares, property or business enterprises claimed, as alleged in the corresponding basic complaints, to be ill-gotten assets of President Marcos, his cronies and nominees and acquired by taking undue advantage of relationships or influence and/or through or as a result of improper use, conversion or **diversion** of government funds or property. Recovery of these assets— determined as shall hereinafter be discussed as *prima facie* ill-gotten—falls within the unquestionable jurisdiction of the Sandiganbayan.[30]

P.D. No. 1606, as amended by R.A. 7975 and E.O. No. 14, Series of 1986, vests the Sandiganbayan with, among others, original jurisdiction over civil and criminal cases instituted pursuant to and in connection with E.O. Nos. 1, 2, 14 and 14-A. Correlatively, the PCGG Rules and Regulations defines the term *"Ill-Gotten Wealth"* as *"any asset, property, business enterprise or material possession of persons within the purview of {E.O.} Nos. 1 and 2, acquired by them directly, or indirectly thru* ***dummies, nominees, agents, subordinates and/or business associates*** *by any of the following means or similar schemes"*;

> (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;
>
> (2) x x x
>
> (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;
>
> (4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;
>
> (5) Through the establishment of agricultural, industrial or commercial monopolies or other combinations and/or by the issuance, promulgation and/or implementation of decrees and

[30] *Id.*; citing *San Miguel Corporation v. Sandiganbayan*, G.R. Nos. 104637-38, September 14, 2000, 340 SCRA 289.

orders intended to benefit particular persons or special interests; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit. (Emphasis supplied)

Section 2(a) of E.O. No. 1 charged the PCGG with the task of assisting the President in "*[T]he recovery of all ill-gotten wealth accumulated by former … [President] Marcos, his immediate family, relatives, subordinates and close associates … including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through* ***nominees****, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.*" Complementing the aforesaid Section 2(a) is Section 1 of E.O. No. 2 decreeing the freezing of all assets "*in which the [Marcoses] their close relatives, subordinates, business associates, dummies, agents or nominees have any interest or participation*."

The Republic's averments in the amended complaints, particularly those detailing the alleged wrongful acts of the defendants, sufficiently reveal that the subject matter thereof comprises the recovery by the Government of ill-gotten wealth acquired by then President Marcos, his cronies or their associates and dummies through the unlawful, improper utilization or diversion of coconut levy funds aided by P.D. No. 755 and other sister decrees. President Marcos himself issued these decrees in a brazen bid to legalize what amounts to private taking of the said public funds.

x x x x x x x x x

There was no actual need for Republic, as plaintiff *a quo*, to adduce evidence to show that the Sandiganbayan has jurisdiction over the subject matter of the complaints as it leaned on the averments in the initiatory pleadings to make visible the jurisdiction of the Sandiganbayan over the ill-gotten wealth complaints. As previously discussed, a perusal of the allegations easily reveals the sufficiency of the statement of matters disclosing the claim of the government against the coco levy funds and the assets acquired directly or indirectly through said funds as ill-gotten wealth. Moreover, the Court finds no rule that directs the plaintiff to first prove the subject matter jurisdiction of the court before which the complaint is filed. Rather, such burden falls on the shoulders of defendant in the hearing

of a motion to dismiss anchored on said ground or a preliminary hearing thereon when such ground is alleged in the answer.

x x x x x x x x x

Lest it be overlooked, this Court has already decided that the sequestered shares are *prima facie* ill-gotten wealth rendering the issue of the validity of their sequestration and of the jurisdiction of the Sandiganbayan over the case beyond doubt. In the case of *COCOFED v. PCGG*, We stated that:

> It is of course not for this Court to pass upon the factual issues thus raised. That function pertains to the Sandiganbayan in the first instance. For purposes of this proceeding, all that the Court needs to determine is whether or not there is *prima facie* justification for the sequestration ordered by the PCGG. The Court is satisfied that there is. **The cited incidents, given the public character of the coconut levy funds, place petitioners COCOFED and its leaders and officials, at least *prima facie*, squarely within the purview of Executive Orders Nos. 1, 2 and 14,** as construed and applied in **BASECO,** to wit:
>
> "1. that ill-gotten properties (were) amassed by the leaders and supporters of the previous regime;
>
> "a. more particularly, that '(i) Ill-gotten wealth was accumulated by x x x Marcos, his immediate family, relatives, subordinates and close associates, x x x (and) business enterprises and entities (came to be) owned or controlled by them, during x x x (the Marcos) administration, directly or through nominees, *by taking undue advantage of their public office and using their powers, authority, influence, connections or relationships*';
>
> "b. otherwise stated, that '*there are assets and properties purportedly pertaining to [the Marcoses], their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government x x x or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment x x x*;

x x x x x x x x x

2. The petitioners' claim that the assets acquired with the coconut levy funds are privately owned by the coconut farmers is founded on certain provisions of law, to wit [Sec. 7, RA 6260 and Sec. 5, Art. III, PD 1468]… (Words in bracket added; italics in the original).

x x x x x x x x x

E.O. 1, 2, 14 and 14-A, it bears to stress, were issued precisely to effect the recovery of ill-gotten assets amassed by the Marcoses, their associates, subordinates and cronies, or through their nominees. Be that as it may, it stands to reason that persons listed as associated with the Marcoses refer to those in possession of such ill-gotten wealth but holding the same in behalf of the actual, albeit undisclosed owner, to prevent discovery and consequently recovery. Certainly, it is well-nigh inconceivable that ill-gotten assets would be distributed to and left in the hands of individuals or entities with obvious traceable connections to Mr. Marcos and his cronies. The Court can take, as it has in fact taken, judicial notice of schemes and machinations that have been put in place to keep ill-gotten assets under wraps. These would include the setting up of layers after layers of shell or dummy, but controlled, corporations[31] or manipulated instruments calculated to confuse if not altogether mislead would-be investigators from recovering wealth deceitfully amassed at the expense of the people or simply the fruits thereof. Transferring the illegal assets to third parties not readily perceived as Marcos cronies would be another. So it was that in *PCGG v. Pena*, the Court, describing the rule of Marcos as a "*well entrenched plundering regime of twenty years*," noted the magnitude of the past regime's organized pillage and the ingenuity of the plunderers and pillagers with the assistance of experts and the best legal minds in the market.[32]

Prescinding from the foregoing premises, there can no longer be any serious challenge as to the Sandiganbayan's subject matter jurisdiction. And in connection therewith, the Court wrote in *COCOFED v. Republic*, that the instant petition

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[31] *Id.*; citing *Yuchengco v. Sandiganbayan*, G.R. No. 149802, January 20, 2006, 479 SCRA 1.

[32] *Id.*

shall be decided separately and should not be affected by the January 24, 2012 Decision, "*save for determinatively legal issues directly addressed*" therein.[33] Thus:

> We clarify that PSJ-A is subject of another petition for review interposed by Eduardo Cojuangco, Jr., in G.R. No. 180705 entitled, *Eduardo M. Cojuangco, Jr. v. Republic of the Philippines*, which shall be decided separately by this Court. Said petition should accordingly not be affected by this Decision **save for determinatively legal issues directly addressed herein**.[34] (Emphasis Ours.)

We, therefore, reiterate our holding in *COCOFED v. Republic* respecting the Sandiganbayan's jurisdiction over the subject matter of Civil Case No. 0033-A, including those matters whose adjudication We shall resolve in the present case.

II

PRELIMINARILY, THE AGREEMENT BETWEEN THE PCA AND EDUARDO M. COJUANGCO, JR. DATED MAY 25, 1975 CANNOT BE ACCORDED THE STATUS OF A LAW FOR THE LACK OF THE REQUISITE PUBLICATION.

It will be recalled that Cojuangco's claim of ownership over the UCPB shares is hinged on two contract documents the respective contents of which formed part of and reproduced in their entirety in the aforecited Order[35] of the Sandiganbayan dated March 11, 2003. The first contract refers to the agreement entered into by and between Pedro Cojuangco and his group, on one hand, and Eduardo M. Cojuangco, Jr., on the other, bearing date "May 1975"[36] (hereinafter referred to as "PC-ECJ Agreement"), while the second relates to the accord between the PCA and Eduardo M. Cojuangco, Jr. dated May 25, 1975 (hereinafter referred to as "PCA-Cojuangco Agreement"). The PC-ECJ Agreement allegedly contains, *inter alia*, Cojuangco's personal and exclusive option to acquire the

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[33] *Id.*

[34] *Id.*

[35] *Rollo*, pp. 956-961.

[36] The date of the agreement was left blank.

FUB ("UCPB") shares from Pedro and his group. The PCA-Cojuangco Agreement shows PCA's acquisition of the said option from Eduardo M. Cojuangco, Jr.

Section 1 of P.D. No. 755 incorporated, by reference, the "Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers" executed by the PCA. Particularly, Section 1 states:

> **Section 1.** *Declaration of National Policy.* It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at preferential rates; that this policy can be expeditiously and efficiently realized by the implementation of the **"Agreement for the Acquisition of a Commercial Bank for the benefit of the Coconut Farmers" executed by the Philippine Coconut Authority, the terms of which "Agreement" are hereby incorporated by reference;** and that the Philippine Coconut Authority is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate. (Emphasis Ours.)

It bears to stress at this point that the PCA-Cojuangco Agreement referred to above in Section 1 of P.D. 755 was not reproduced or attached as an annex to the same law. And it is well-settled that laws must be published to be valid. In fact, publication is an indispensable condition for the effectivity of a law. *Tañada v. Tuvera*[37] said as much:

> Publication [of the law] is indispensable in every case x x x.
>
> x x x x x x x x x
>
> We note at this point the conclusive presumption that every person knows the law, which of course presupposes that the law has been published if the presumption is to have any legal justification at all. It is no less important to remember that Section 6 of the Bill of Rights recognizes "the right of the people to information on matters of public concern," and this certainly applies to, among others, and indeed especially, the legislative enactments of the government.
>
> x x x x x x x x x

[37] No. 63915, December 29, 1986, 146 SCRA 446, 452-454.

We hold therefore that *all* statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature, or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.[38]

We even went further in *Tañada* to say that:

Laws must come out in the open in the clear light of the sun instead of skulking in the shadows with their dark, deep secrets. Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed by a valid publication intended to make full disclosure and give proper notice to the people. The furtive law is like a scabbarded saber that cannot feint, parry or cut unless the naked blade is drawn.[39]

The publication, as further held in *Tañada*, must be of the full text of the law since the purpose of publication is to inform the public of the contents of the law. Mere referencing the number of the presidential decree, its title or whereabouts and its supposed date of effectivity would not satisfy the publication requirement.[40]

In this case, while it incorporated the PCA-Cojuangco Agreement by reference, Section 1 of P.D. 755 did not in any way reproduce the exact terms of the contract in the decree. Neither was a copy thereof attached to the decree when published. We cannot, therefore, extend to the said Agreement the status of a law. Consequently, We join the Sandiganbayan in its holding that the PCA-Cojuangco Agreement shall be treated as an ordinary transaction between agreeing minds to be governed by contract law under the Civil Code.

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[38] *Id.*

[39] Id.

[40] *Id.*

III

THE PCA-COJUANGCO AGREEMENT IS A VALID CONTRACT FOR HAVING THE REQUISITE CONSIDERATION.

In PSJ-A, the Sandiganbayan struck down the PCA-Cojuangco Agreement as void for lack of consideration/cause as required under Article 1318, paragraph 3 in relation to Article 1409, paragraph 3 of the Civil Code. The Sandiganbayan stated:

> In sum, the evidence on record relied upon by defendant Cojuangco negates the presence of: (1) his claimed personal and exclusive option to buy the 137,866 FUB shares; and (2) any pecuniary advantage to the government of the said option, which could compensate for generous payment to him by PCA of valuable shares of stock, as stipulated in the May 25, 1975 Agreement between him and the PCA.[41]

On the other hand, the aforementioned provisions of the Civil Code state:

> 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.** (Emphasis supplied)[42]
>
> Art. 1409. The following contracts are inexistent and void from the beginning:
>
> x x x x x x x x x
>
> (3) Those whose cause or object did not exist at the time of the transaction;[43]

The Sandiganbayan found and so tagged the alleged cause for the agreement in question, *i.e.*, Cojuangco's "personal and

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[41] PSJ-A, p. 74; *rollo*, p. 251.

[42] An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, Art. 1318 (1950).

[43] CIVIL CODE, Art. 1409; see also 4 Arturo M. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 629 (2002).

exclusive option to acquire the Option Shares," as fictitious. A reading of the purchase agreement between Cojuangco and PCA, so the Sandiganbayan ruled, would show that Cojuangco was not the only seller; thus, the option was, as to him, neither personal nor exclusive as he claimed it to be. Moreover, as the Sandiganbayan deduced, that option was inexistent on the day of execution of the PCA-Cojuangco Agreement as the Special Power of Attorney executed by Cojuangco in favor of now Senator Edgardo J. Angara, for the latter to sign the PC-ECJ Agreement, was dated May 25, 1975 while the PCA-Cojuangco Agreement was also signed on May 25, 1975. Thus, the Sandiganbayan believed that when the parties affixed their signatures on the second Agreement, Cojuangco's option to purchase the FUB shares of stock did not yet exist. The Sandiganbayan further ruled that there was no justification in the second Agreement for the compensation of Cojuangco of 14,400 shares, which it viewed as exorbitant. Additionally, the Sandiganbayan ruled that PCA could not validly enter, in behalf of FUB/UCPB, into a veritable bank management contract with Cojuangco, PCA having a personality separate and distinct from that of FUB. As such, the Sandiganbayan concluded that the PCA-Cojuangco Agreement was null and void. Correspondingly, the Sandiganbayan also ruled that the sequestered FUB (UCPB) shares of stock in the name of Cojuangco are conclusively owned by the Republic.

After a circumspect study, the Court finds as inconclusive the evidence relied upon by Sandiganbayan to support its ruling that the PCA-Cojuangco Agreement is devoid of sufficient consideration. We shall explain.

Rule 131, Section 3(r) of the Rules of Court states:

Sec. 3. *Disputable presumptions*.—The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(r) That there was a sufficient consideration for a contract;

The Court had the occasion to explain the reach of the above provision in *Surtida v. Rural Bank of Malinao (Albay), Inc.*,[44] to wit:

> Under Section 3, Rule 131 of the Rules of Court, the following are disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) there was sufficient consideration for a contract. A presumption may operate against an adversary who has not introduced proof to rebut it. The effect of a legal presumption upon a burden of proof is to create the necessity of presenting evidence to meet the legal presumption or the *prima facie* case created thereby, and which if no proof to the contrary is presented and offered, will prevail. The burden of proof remains where it is, but by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because **the presumption stands in the place of evidence unless rebutted.**
>
> **The presumption that a contract has sufficient consideration cannot be overthrown by the bare uncorroborated and self-serving assertion** of petitioners **that it has no consideration. To overcome the presumption** of consideration**, the alleged lack of consideration must be shown by preponderance of evidence.** Petitioners failed to discharge this burden x x x. (Emphasis Ours.)

The assumption that ample consideration is present in a contract is further elucidated in *Pentacapital Investment Corporation v. Mahinay*:[45]

> **Under Article 1354 of the Civil Code, it is presumed that consideration exists and is lawful unless the debtor proves the contrary. Moreover, under Section 3, Rule 131 of the Rules of Court, the following are disputable presumptions:** (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and **(3) there was sufficient consideration for a contract**. A presumption may operate against an adversary who has not introduced proof to rebut it. The effect of a legal presumption upon a burden of proof is to create the necessity of presenting evidence to meet the legal presumption or the *prima facie* case created thereby, and which, if no proof to the contrary is presented and offered, will

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[44] G.R. No. 170563, December 20, 2006, 511 SCRA 507.

[45] G.R. Nos. 171736 & 181482, July 5, 2010, 623 SCRA 284, 303.

prevail. The burden of proof remains where it is, but by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because the presumption stands in the place of evidence unless rebutted.[46] (Emphasis supplied.)

The rule then is that the party who stands to profit from a declaration of the nullity of a contract on the ground of insufficiency of consideration—which would necessarily refer to one who asserts such nullity—has the burden of overthrowing the presumption offered by the aforequoted Section 3(r). Obviously then, the presumption contextually operates in favor of Cojuangco and against the Republic, as plaintiff *a quo*, which then had the burden to prove that indeed there was no sufficient consideration for the Second Agreement. The Sandiganbayan's stated observation, therefore, that based on the wordings of the Second Agreement, Cojuangco had no personal and exclusive option to purchase the FUB shares from Pedro Cojuangco had really little to commend itself for acceptance. This, as opposed to the fact that such sale and purchase agreement is memorialized in a notarized document whereby both Eduardo Cojuangco, Jr. and Pedro Cojuangco attested to the correctness of the provisions thereof, among which was that Eduardo had such option to purchase. A notarized document, *Lazaro v. Agustin*[47] teaches, "generally carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the disputable presumption of regularity."

In *Samanilla v. Cajucom*,[48] the Court clarified that the presumption of a valid consideration cannot be discarded on a simple claim of absence of consideration, especially when the contract itself states that consideration was given:

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[46] See also *Union Bank of the Philippines v. Spouses Tiu*, G.R. Nos. 173090-91, September 7, 2011; *Great Asian Sales Center v. Court of Appeals*, 431 Phil. 293 (2002); *Fernandez v. Fernandez*, 416 Phil. 322 (2001); *Gevero v. Intermediate Appellate Court*, G.R. No. 77029, August 30, 1990, 189 SCRA 201; *Spouses Nuguid v. Court of Appeals*, 253 Phil. 207 (1989).

[47] G.R. No. 152364, April 15, 2010, 618 SCRA 298.

[48] 107 Phil. 432 (1960).

x x x **This presumption appellants cannot overcome by a simple assertion of lack of consideration. Especially may not the presumption be so lightly set aside when the contract itself states that consideration was given, and the same has been reduced into a public instrument will all due formalities and solemnities as in this case.** (Emphasis ours.)

A perusal of the PCA-Cojuangco Agreement disclosed an express statement of consideration for the transaction:

NOW, THEREFORE, for and in consideration of the foregoing premises and the other terms and conditions hereinafter contained, **the parties hereby declare and affirm that their principal contractual intent is (1) to ensure that the coconut farmers own at least 60% of the outstanding capital stock of the Bank, and (2) that the SELLER shall receive compensation for exercising his personal and exclusive option to acquire the Option Shares, for transferring such shares to the coconut farmers at the option price of ₱200 per share, and for performing the management services required of him hereunder.**

x x x x x x x x x

4. **As compensation for exercising his personal and exclusive option to acquire the Option Shares and for transferring such shares to the coconut farmers, as well as for performing the management services required of him**, SELLER shall receive equity in the Bank amounting, in the aggregate, to 95,304 fully paid shares in accordance with the procedure set forth in paragraph 6 below. (Emphasis supplied.)

Applying *Samanilla* to the case at bar, the express and positive declaration by the parties of the presence of adequate consideration in the contract makes conclusive the presumption of sufficient consideration in the PCA Agreement. Moreover, the option to purchase shares and management services for UCPB was already availed of by petitioner Cojuangco for the benefit of the PCA. The exercise of such right resulted in the execution of the PC-ECJ Agreement, which fact is not disputed. The document itself is incontrovertible proof and hard evidence that petitioner Cojuangco had the right to purchase the subject FUB (now UCPB) shares. *Res ipsa loquitur*.

The Sandiganbayan, however, pointed to the perceived "lack of any pecuniary value or advantage to the government of the said option, which could compensate for the generous payment to him by PCA of valuable shares of stock, as stipulated in the May 25, 1975 Agreement between him and the PCA."[49]

Inadequacy of the consideration, however, does not render a contract void under Article 1355 of the Civil Code:

> Art. 1355. Except in cases specified by law, lesion **or inadequacy of cause shall not invalidate a contract**, unless there has been fraud, mistake or undue influence. (Emphasis supplied.)

Alsua-Betts v. Court of Appeals[50] is instructive that lack of ample consideration does not nullify the contract:

> **Inadequacy of consideration does not vitiate a contract unless it is proven which in the case at bar was not, that there was fraud, mistake or undue influence.** (Article 1355, New Civil Code). We do not find the stipulated price as so inadequate to shock the court's conscience, considering that the price paid was much higher than the assessed value of the subject properties and considering that the sales were effected by a father to her daughter in which case filial love must be taken into account. (Emphasis supplied.)

Vales v. Villa[51] elucidates why a bad transaction cannot serve as basis for voiding a contract:

> x x x Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. x x x **Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by them – indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a *violation* of law, the commission of what the law knows as an *actionable wrong*, before the courts are authorized to lay hold of the situation and remedy it.** (Emphasis ours.)

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[49] PSJ-A, pp. 73-74.

[50] Nos. L-46430-31, July 30, 1979, 92 SCRA 332; *Morales Development Company, Inc. v. Court of Appeals*, No. L-26572, March 28, 1969, 27 SCRA 484.

[51] 35 Phil. 769, 788 (1916).

While one may posit that the PCA-Cojuangco Agreement puts PCA and the coconut farmers at a disadvantage, the facts do not make out a clear case of violation of any law that will necessitate the recall of said contract. Indeed, the anti-graft court has not put forward any specific stipulation therein that is at war with any law, or the Constitution, for that matter. It is even clear as day that none of the parties who entered into the two agreements with petitioner Cojuangco contested nor sought the nullification of said agreements, more particularly the PCA who is always provided legal advice in said transactions by the Government corporate counsel, and a battery of lawyers and presumably the COA auditor assigned to said agency. A government agency, like the PCA, stoops down to level of an ordinary citizen when it enters into a private transaction with private individuals. In this setting, PCA is bound by the law on contracts and is bound to comply with the terms of the PCA-Cojuangco Agreement which is the law between the parties. With the silence of PCA not to challenge the validity of the PCA-Cojuangco Agreement and the inability of government to demonstrate the lack of ample consideration in the transaction, the Court is left with no other choice but to uphold the validity of said agreements.

While consideration is usually in the form of money or property, it need not be monetary. This is clear from Article 1350 which reads:

> Art. 1350. In onerous contracts the cause is understood to be, for each contracting party, **the prestation or promise of a thing or service by the other;** in remuneratory ones, the **service or benefit which is remunerated;** and in contracts of pure beneficence, the mere liability of the benefactor. (Emphasis supplied.)

Gabriel v. Monte de Piedad y Caja de Ahorros[52] tells us of the meaning of consideration:

> x x x A consideration, in the legal sense of the word, is some **right, interest, benefit, or advantage** conferred upon the promisor, to which he is otherwise not lawfully entitled, **or any detriment, prejudice,**

[52] 71 Phil. 497, 501 (1941).

loss, or disadvantage suffered or undertaken by the promisee other than to such as he is at the time of consent bound to suffer. (Emphasis Ours.)

The Court rules that the transfer of the subject UCPB shares is clearly supported by valuable consideration.

To justify the nullification of the PCA-Cojuangco Agreement, the Sandiganbayan centered on the alleged imaginary option claimed by petitioner to buy the FUB shares from the Pedro Cojuangco group. It relied on the phrase "in behalf of certain other buyers" mentioned in the PC-ECJ Agreement as basis for the finding that petitioner's option is neither personal nor exclusive. The pertinent portion of said agreement reads:

EDUARDO COJUANGCO, JR., Filipino, of legal age and with residence at 136 9th Street corner Balete Drive, Quezon City, represented in this act by his duly authorized attorney-in-fact, **EDGARDO J. ANGARA, for and in his own behalf and in behalf of certain other buyers**, (hereinafter collectively called the "BUYERS"); x x x.

A plain reading of the aforequoted description of petitioner as a party to the PC-ECJ Agreement reveals that petitioner is not only the buyer. He is the named buyer and there are other buyers who were unnamed. This is clear from the word "BUYERS." If petitioner is the only buyer, then his description as a party to the sale would only be "BUYER." It may be true that petitioner intended to include other buyers. The fact remains, however, that the identities of the unnamed buyers were not revealed up to the present day. While one can conjure or speculate that PCA may be one of the buyers, the fact that PCA entered into an agreement to purchase the FUB shares with petitioner militates against such conjecture since there would be no need at all to enter into the second agreement if PCA was already a buyer of the shares in the first contract. It is only the parties to the PC-ECJ Agreement that can plausibly shed light on the import of the phrase "certain other buyers" but, unfortunately, petitioner was no longer allowed to testify on the matter and was precluded from explaining the transactions because of the motion for partial summary judgment and the

eventual promulgation of the July 11, 2003 Partial Summary Judgment.

Even if conceding for the sake of argument that PCA is one of the buyers of the FUB shares in the PC-ECJ Agreement, still it does not necessarily follow that petitioner had no option to buy said shares from the group of Pedro Cojuangco. In fact, the very execution of the first agreement undeniably shows that he had the rights or option to buy said shares from the Pedro Cojuangco group. Otherwise, the PC-ECJ Agreement could not have been consummated and enforced. The conclusion is incontestable that petitioner indeed had the right or option to buy the FUB shares as buttressed by the execution and enforcement of the very document itself.

We can opt to treat the PC-ECJ Agreement as a totally separate agreement from the PCA-Cojuangco Agreement but it will not detract from the fact that petitioner actually acquired the rights to the ownership of the FUB shares from the Pedro Cojuangco group. The consequence is he can legally sell the shares to PCA. In this scenario, he would resell the shares to PCA for a profit and PCA would still end up paying a higher price for the FUB shares. The "profit" that will accrue to petitioner may just be equal to the value of the shares that were given to petitioner as commission. Still we can only speculate as to the true intentions of the parties. Without any evidence adduced on this issue, the Court will not venture on any unproven conclusion or finding which should be avoided in judicial adjudication.

The anti-graft court also inferred from the date of execution of the special power of attorney in favor of now Senator Edgardo J. Angara, which is May 25, 1975, that the PC-ECJ Agreement appears to have been executed on the same day as the PCA-Cojuangco Agreement (dated May 25, 1975). The coincidence on the dates casts "doubts as to the existence of defendant Cojuangco's prior 'personal and exclusive' option to the FUB shares."

The fact that the execution of the SPA and the PCA-Cojuangco Agreement occurred sequentially on the same day

cannot, without more, be the basis for the conclusion as to the non-existence of the option of petitioner. Such conjecture cannot prevail over the fact that without petitioner Cojuangco, none of the two agreements in question would have been executed and implemented and the FUB shares could not have been successfully conveyed to PCA.

Again, only the parties can explain the reasons behind the execution of the two agreements and the SPA on the same day. They were, however, precluded from elucidating the reasons behind such occurrence. In the absence of such illuminating proof, the proposition that the option does not exist has no leg to stand on.

More importantly, the fact that the PC-ECJ Agreement was executed not earlier than May 25, 1975 proves that petitioner Cojuangco had an option to buy the FUB shares *prior* to that date. Again, it must be emphasized that from its terms, the first Agreement did not create the option. It, however, proved the exercise of the option by petitioner.

The execution of the PC-ECJ Agreement on the same day as the PCA-Cojuangco Agreement more than satisfies paragraph 2 thereof which requires petitioner to exercise his option to purchase the FUB shares as promptly as practicable **after**, and not before, the execution of the second agreement, thus:

> 2. **As promptly as practicable after execution of this Agreement, the SELLER shall exercise his option to acquire the Option Shares** and SELLER shall immediately thereafter deliver and turn over to the Escrow Agent such stock certificates as are herein provided to be received from the existing stockholders of the bank by virtue of the exercise on the aforementioned option. The Escrow Agent shall thereupon issue its check in favor of the SELLER covering the purchase price for the shares delivered. (Emphasis supplied.)

The Sandiganbayan viewed the compensation of petitioner of 14,400 FUB shares as exorbitant. In the absence of proof to the contrary and considering the absence of any complaint of illegality or fraud from any of the contracting parties, then

the presumption that "private transactions have been fair and regular"[53] must apply.

Lastly, respondent interjects the thesis that PCA could not validly enter into a bank management agreement with petitioner since PCA has a personality separate and distinct from that of FUB. Evidently, it is PCA which has the right to challenge the stipulations on the management contract as unenforceable. However, PCA chose not to assail said stipulations and instead even complied with and implemented its prestations contained in said stipulations by installing petitioner as Chairman of UCPB. Thus, PCA has waived and forfeited its right to nullify said stipulations and is now estopped from questioning the same.

In view of the foregoing, the Court is left with no option but to uphold the validity of the two agreements in question.

IV

COJUANGCO IS NOT ENTITLED TO THE UCPB SHARES WHICH WERE BOUGHT WITH PUBLIC FUNDS AND HENCE, ARE PUBLIC PROPERTY.

The coconut levy funds were exacted for a special public purpose. Consequently, any use or transfer of the funds that directly benefits private individuals should be invalidated.

The issue of whether or not taxpayers' money, or funds and property acquired through the imposition of taxes may be used to benefit a private individual is once again posed. Preliminarily, the instant case inquires whether the coconut levy funds, and accordingly, the UCPB shares acquired using the coconut levy funds are public funds. Indeed, the very same issue took center stage, discussed and was directly addressed in *COCOFED v. Republic*. And there is hardly any question about the subject funds' public and special character. The following excerpts from *COCOFED v. Republic*,[54] citing *Republic v. COCOFED* and related

[53] RULES OF COURT, Rule 131(p).

[54] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24,

cases, settle once and for all this core, determinative issue:

Indeed, We have hitherto discussed, the coconut levy was imposed in the exercise of the State's inherent power of taxation. As We wrote in *Republic v. COCOFED:*

> Indeed, **coconut levy funds partake of the nature of taxes**, which, in general, are enforced proportional contributions from persons and properties, exacted by the State by virtue of its sovereignty for the support of government and for all public needs.
>
> Based on its definition, a tax has three elements, namely: a) it is an enforced proportional contribution from persons and properties; b) it is imposed by the State by virtue of its sovereignty; and c) it is levied for the support of the government. The coconut levy funds fall squarely into these elements for the following reasons:
>
> (a) They were generated by virtue of statutory enactments imposed on the coconut farmers requiring the payment of prescribed amounts. Thus, PD No. 276, which created the … (CCSF), mandated the following:
>
> > "a. A levy, initially, of ₱15.00 per 100 kilograms of copra resecada or its equivalent in other coconut products, shall be imposed on every first sale, in accordance with the mechanics established under RA 6260, effective at the start of business hours on August 10, 1973.
> >
> > "The proceeds from the levy shall be deposited with the Philippine National Bank or any other government bank to the account of the Coconut Consumers Stabilization Fund, as a separate trust fund which shall not form part of the general fund of the government."
>
> The coco levies were further clarified in amendatory laws, specifically PD No. 961 and PD No. 1468 – in this wise:
>
> > "The Authority (PCA) is hereby empowered to impose and collect a levy, to be known as the Coconut Consumers Stabilization Fund Levy, on every one hundred kilos of

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2012; citing *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 482-484.

> copra resecada, or its equivalent … delivered to, and/or purchased by, copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products. **The levy shall be paid by such copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products** under such rules and regulations as the Authority may prescribe. Until otherwise prescribed by the Authority, the current levy being collected shall be continued."

Like other tax measures, they were not voluntary payments or donations by the people. They were enforced contributions exacted on pain of penal sanctions, as provided under PD No. 276:

> "3. Any person or firm who violates any provision of this Decree or the rules and regulations promulgated thereunder, shall, in addition to penalties already prescribed under existing administrative and special law, pay a fine of not less than ₱2,500 or more than ₱10,000, or suffer cancellation of licenses to operate, or both, at the discretion of the Court."

Such penalties were later amended thus: ….

(b) The coconut levies were imposed pursuant to the laws enacted by the proper legislative authorities of the State. Indeed, the CCSF was collected under PD No. 276, …."

(c) They were clearly imposed for a **public purpose**. **There is absolutely no question that they were collected to advance the government's avowed policy of protecting the coconut industry.** This Court takes judicial notice of the fact that the **coconut industry** is one of the great economic pillars of our nation, and coconuts and their byproducts occupy a leading position among the country's export products; ….

Taxation is done not merely to raise revenues to support the government, but also to provide means for the **rehabilitation and the stabilization of a threatened industry**, which is so affected with **public interest** as to be within the police power of the State ….

Even if the money is allocated for a **special purpose** and raised by special means, **it is still public in character**…. In

> *Cocofed v. PCGG,* the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of law of the late dictatorship … with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly." The Court continued: "…. **It cannot be denied that the coconut industry is one of the major industries supporting the national economy.** It is, therefore, the State's concern to make it a strong and secure source **not only** of the livelihood of a significant segment of the population, **but also of export earnings the sustained growth of which is one of the imperatives of economic stability**. (Emphasis Ours.)

The following parallel doctrinal lines from *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan (PKSMMN) v. Executive Secretary*[55] came next:

> The Court was satisfied that the coco-levy funds were raised pursuant to law to support a proper governmental purpose. They were raised with the use of the police and taxing powers of the State for the benefit of the coconut industry and its farmers in general. The COA reviewed the use of the funds. The Bureau of Internal Revenue (BIR) treated them as public funds and the very laws governing coconut levies recognize their public character.
>
> The Court has also recently declared that the coco-levy funds are in the nature of taxes and can only be used for public purpose. Taxes are enforced proportional contributions from persons and property, levied by the State by virtue of its sovereignty for the support of the government and for all its public needs. Here, the coco-levy funds were imposed pursuant to law, namely, R.A. 6260 and P.D. 276. The funds were collected and managed by the PCA, an independent government corporation directly under the President. And, as the respondent public officials pointed out, the pertinent laws used the term levy, which means to tax, in describing the exaction.
>
> Of course, unlike ordinary revenue laws, R.A. 6260 and P.D. 276 did not raise money to boost the government's general funds but to provide means for the rehabilitation and stabilization of a threatened industry, the coconut industry, which is so affected with public

[55] G.R. Nos. 147036-37 & 147811, April 10, 2012.

interest as to be within the police power of the State. The funds sought to support the coconut industry, one of the main economic backbones of the country, and to secure economic benefits for the coconut farmers and far workers. The subject laws are akin to the sugar liens imposed by Sec. 7(b) of P.D. 388, and the oil price stabilization funds under P.D. 1956, as amended by E.O. 137.

From the foregoing, it is at once apparent that any property acquired by means of the coconut levy funds, such as the subject UCPB shares, should be treated as public funds or public property, subject to the burdens and restrictions attached by law to such property. *COCOFED v. Republic*, delved into such limitations, thusly:

We have ruled time and again that taxes are imposed only for a public purpose. "They cannot be used for purely private purposes or for the exclusive benefit of private persons." When a law imposes taxes or levies from the public, with the intent to give undue benefit or advantage to private persons, or the promotion of private enterprises, that law cannot be said to satisfy the requirement of public purpose. In *Gaston v. Republic Planters Bank*, the petitioning sugar producers, sugarcane planters and millers sought the distribution of the shares of stock of the Republic Planters Bank (RPB), alleging that they are the true beneficial owners thereof. In that case, the investment, *i.e.*, the purchase of RPB, was funded by the deduction of PhP 1.00 per picul from the sugar proceeds of the sugar producers pursuant to P.D. No. 388. In ruling against the petitioners, the Court held that to rule in their favor would contravene the general principle that revenues received from the imposition of taxes or levies "cannot be used for purely private purposes or for the exclusive benefit of private persons." The Court amply reasoned that the sugar stabilization fund is to "be utilized for the benefit of the ***entire sugar industry, and all its components, stabilization of the domestic market including foreign market, the industry being of vital importance to the country's economy and to national interest.***"

Similarly in this case, the coconut levy funds were sourced from forced exactions decreed under P.D. Nos. 232, 276 and 582, among others, with the end-goal of developing the entire coconut industry. **Clearly, to hold therefore, even by law, that the revenues received from the imposition of the coconut levies be used purely for private purposes to be owned by private individuals in their private capacity**

and for their benefit, would contravene the rationale behind the imposition of taxes or levies.

Needless to stress, courts do not, as they cannot, allow by judicial fiat the conversion of special funds into a private fund for the benefit of private individuals. In the same vein, We cannot subscribe to the idea of what appears to be an indirect – if not exactly direct – conversion of special funds into private funds, *i.e.*, by using special funds to purchase shares of stocks, which in turn would be distributed for free to private individuals. Even if these private individuals belong to, or are a part of the coconut industry, the free distribution of shares of stocks purchased with special public funds to them, nevertheless cannot be justified. The ratio in *Gaston,* as articulated below, applies *mutatis mutandis* to this case:

> The stabilization fees in question are levied by the State … for a special purpose – that of "financing the growth and development of the sugar industry and all its components, stabilization of the domestic market including the foreign market." **The fact that the State has taken possession of moneys pursuant to law is sufficient to constitute them as state funds even though they are held for a special purpose….**
>
> ***That the fees were collected from sugar producers [etc.], and that the funds were channeled to the purchase of shares of stock in respondent Bank do not convert the funds into a trust fund for their benefit nor make them the beneficial owners of the shares so purchased. It is but rational that the fees be collected from them since it is also they who are benefited from the expenditure of the funds derived from it.*** ….[56]

In this case, the coconut levy funds were being exacted from copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products.[57] Likewise so, the funds here were channeled to the purchase of the shares of stock in UCPB.

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[56] *COCOFED v. Republic,* G.R. Nos. 177857-58 & 178193, January 24, 2012; citing *Gaston v. Republic Planters Bank*, No. 77194, March 15, 1988, 158 SCRA 626, 633-34; see also *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 485-486.

[57] *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 483; citing P.D. No. 961, 1976, Art. III, Sec. 1; P.D. No. 1468, 1978, Art. III, Sec. 1.

Drawing a clear parallelism between *Gaston* and this case, the fact that the coconut levy funds were collected from the persons or entities in the coconut industry, among others, does not and cannot entitle them to be beneficial owners of the subject funds – or more bluntly, owners thereof in their private capacity. ***Parenthetically, the said private individuals cannot own the UCPB shares of stocks so purchased using the said special funds of the government.***[58] (Emphasis Ours.)

As the coconut levy funds partake of the nature of taxes and can only be used for public purpose, and importantly, for the purpose for which it was exacted, *i.e.*, the development, rehabilitation and stabilization of the coconut industry, they cannot be used to benefit—whether directly or indirectly— private individuals, be it by way of a commission, or as the subject Agreement interestingly words it, compensation. Consequently, Cojuangco cannot stand to benefit by receiving, in his private capacity, 7.22% of the FUB shares without violating the constitutional caveat that public funds can only be used for public purpose. Accordingly, the 7.22% FUB (UCPB) shares that were given to Cojuangco shall be returned to the Government, to be used "only for the benefit of all coconut farmers and for the development of the coconut industry."[59]

The ensuing are the underlying rationale for declaring, as unconstitutional, provisions that convert public property into private funds to be used ultimately for personal benefit:

… not only were the laws unconstitutional for decreeing the distribution of the shares of stock for free to the coconut farmers and therefore negating the public purposed declared by P.D. No. 276, *i.e.*, to stabilize the price of edible oil and to protect the coconut industry. They likewise reclassified the coconut levy fund as *private fund*, to be owned by *private individuals* in their *private capacities*, contrary to the original purpose for the creation of such fund. To compound the situation, the offending provisions effectively removed the coconut levy fund away from the cavil of public funds which normally can be paid out only pursuant to an appropriation made

[58] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

[59] *Id.*

by law. The conversion of public funds into private assets was illegally allowed, in fact mandated, by these provisions. Clearly therefore, the pertinent provisions of P.D. Nos. 755, 961 and 1468 are unconstitutional for violating Article VI, Section 29 (3) of the Constitution. In this context, the distribution by PCA of the UCPB shares purchased by means of the coconut levy fund – a special fund of the government – to the coconut farmers is, therefore, void.[60]

It is precisely for the foregoing that impels the Court to strike down as unconstitutional the provisions of the PCA-Cojuangco Agreement that allow petitioner Cojuangco to personally and exclusively own public funds or property, the disbursement of which We so greatly protect if only to give light and meaning to the mandates of the Constitution.

As heretofore amply discussed, taxes are imposed only for a public purpose.[61] They must, therefore, be used for the benefit of the public and not for the exclusive profit or gain of private persons.[62] Otherwise, grave injustice is inflicted not only upon the Government but most especially upon the citizenry—the taxpayers—to whom We owe a great deal of accountability.

In this case, out of the 72.2% FUB (now UCPB) shares of stocks PCA purchased using the coconut levy funds, the May 25, 1975 Agreement between the PCA and Cojuangco provided for the transfer to the latter, by way of compensation, of 10% of the shares subject of the agreement, or a total of 7.22% fully paid shares. In sum, Cojuangco received public assets – in the form of FUB (UCPB) shares with a value then of ten million eight hundred eighty-six thousand pesos (PhP 10,886,000) in 1975, paid by coconut levy funds. In effect, Cojuangco received the aforementioned asset as a result of the PCA-Cojuangco Agreement, and exclusively benefited himself by owning property acquired using solely public funds. Cojuangco, no less, admitted that the PCA paid, out of the CCSF, the entire acquisition price

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[60] *Id.*

[61] *Id.*; citing *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25.

[62] *Id.*

for the 72.2% option shares.[63] This is in clear violation of the prohibition, which the Court seeks to uphold.

We, therefore, affirm, on this ground, the decision of the Sandiganbayan nullifying the shares of stock transfer to Cojuangco. Accordingly, the UCPB shares of stock representing the 7.22% fully paid shares subject of the instant petition, with all dividends declared, paid or issued thereon, as well as any increments thereto arising from, but not limited to, the exercise of pre-emptive rights, shall be reconveyed to the Government of the Republic of the Philippines, which as We previously

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[63] *Republic v. COCOFED*, G.R. Nos. 147062-64, Dec. 14, 2001; 372 SCRA 462, 477.

In the present case before the Court, it is not disputed that the money used to purchase the sequestered UCPB shares came from the Coconut Consumer Stabilization Fund (CCSF), otherwise known, as the coconut levy funds.

This fact was *plainly admitted* by private respondent's counsel, Atty. Teresita J. Hebosa, during the Oral Arguments held on April 17, 2001 in Baguio City, as follows:

"Justice Panganiban:

"In regard to the theory of the Solicitor General that the funds used to purchase [both] the original 28 million and the subsequent 80 million came from the CCSF, Coconut Consumers Stabilization Fund, do you agree with that?

"Atty. Herbosa:

"Yes, Your Honor.

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"Justice Panganiban:

"So it seems that the parties [have] agreed up to that point that the funds used to purchase 72% of the former First United Bank came from the Coconut Consumer Stabilization Fund?

"Atty. Herbosa:

"Yes, Your Honor."

FN40. Transcript of Oral Arguments, April 17, 2001, pp. 171, 173. During the same Oral Argument, Private Respondent Cojuangco similarly admitted that the "entire amount" paid for the shares had come from the Philippine Coconut Authority. TSN, p. 115.

clarified, shall "be used only for the benefit of all coconut farmers and for the development of the coconut industry."[64]

But apart from the stipulation in the PCA-Cojuangco Agreement, more specifically paragraph 4 in relation to paragraph 6 thereof, providing for the transfer to Cojuangco for the UCPB shares adverted to immediately above, other provisions are valid and shall be enforced, or shall be respected, if the corresponding prestation had already been performed. Invalid stipulations that are independent of, and divisible from, the rest of the agreement and which can easily be separated therefrom without doing violence to the manifest intention of the contracting minds do not nullify the entire contract.[65]

WHEREFORE, Part C of the appealed Partial Summary Judgment in Sandiganbayan Civil Case No. 0033-A is **AFFIRMED** with modification. As **MODIFIED**, the dispositive portion in Part C of the Sandiganbayan's Partial Summary Judgment in Civil Case No. 0033-A, shall read as follows:

C. Re: MOTION FOR PARTIAL SUMMARY JUDGMENT (RE: EDUARDO M. COJUANGCO, JR.) dated September 18, 2002 filed by Plaintiff.

1. Sec. 1 of P.D. No. 755 did not validate the Agreement between PCA and defendant Eduardo M. Cojuangco, Jr. dated May 25, 1975 nor did it give the Agreement the binding force of a law because of the non-publication of the said Agreement.

2. The Agreement between PCA and defendant Eduardo M. Cojuangco, Jr. dated May 25, 1975 is a valid contract for having the requisite consideration under Article 1318 of the Civil Code.

3. The transfer by PCA to defendant Eduardo M. Cojuangco, Jr. of 14,400 shares of stock of FUB (later UCPB) from the

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[64] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

[65] CIVIL CODE, Art. 1420 specifically provides, "[I]n case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced."

"Option Shares" and the additional FUB shares subscribed and paid by PCA, consisting of

a. Fifteen Thousand Eight Hundred Eighty-Four (15,884) shares out of the authorized but unissued shares of the bank, subscribed and paid by PCA;

b. Sixty Four Thousand Nine Hundred Eighty (64,980) shares of the increased capital stock subscribed and paid by PCA; and

c. Stock dividends declared pursuant to paragraph 5 and paragraph 11 (iv) (d) of the PCA-Cojuangco Agreement dated May 25, 1975 or the so-called "Cojuangco-UCPB shares"

is declared unconstitutional, hence null and void.

4. The above-mentioned shares of stock of the FUB/UCPB transferred to defendant Cojuangco are hereby declared conclusively owned by the Republic of the Philippines to be used only for the benefit of all coconut farmers and for the development of the coconut industry, and ordered reconveyed to the Government.

5. The UCPB shares of stock of the alleged fronts, nominees and dummies of defendant Eduardo M. Cojuangco, Jr. which form part of the 72.2% shares of the FUB/UCPB paid for by the PCA with public funds later charged to the coconut levy funds, particularly the CCSF, belong to the plaintiff Republic of the Philippines as their true and beneficial owner.

Accordingly, the instant petition is hereby **DENIED**.

Costs against petitioner Cojuangco.

SO ORDERED.

Sereno, C.J., Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Leonen, JJ.,* concur.

Carpio, Leonardo-de Castro, and *Peralta, JJ.,* no part.

Brion, Reyes, and *Perlas-Bernabe, JJ.,* on leave.

THIRD DIVISION

[A.M. No. RTJ-10-2244. November 28, 2012]
(Formerly A.M. No. 10-7-222-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE LYLIHA A. AQUINO, Regional Trial Court, Branch 4, Tuguegarao City, Cagayan,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; PROCEDURAL OMISSIONS IN THE HEARING OF CASES ALTHOUGH NOT MOTIVATED BY BAD FAITH, MALICE AND CAUSE NO HARM TO ANY LITIGANT WILL NOT BE TOLERATED.— Judge Aquino indeed admitted that she had violated the rules when she proceeded to hear some cases despite non-compliance with the requirements. In annulment of marriage cases, the investigation report of the prosecutor is a condition *sine qua non* for the setting of pre-trial. Short-cuts in judicial processes cannot be countenanced by this Court because speed is not the principal objective of trial. Considering that Judge Aquino was not motivated by bad faith, malice and caused no harm to any litigant, the Court will not mete out a serious administrative penalty at this time, but rather, will impose a fine and warn Judge Aquino that procedural omissions in the hearing of cases would not always be tolerated.

R E S O L U T I O N

MENDOZA, *J.*:

In a letter,[1] dated February 6, 2008, a group which calls itself as the Trial Lawyers of Cagayan charged respondent Judge Lyliha A. Aquino *(Judge Aquino)*, Presiding Judge, Branch 4, Regional Trial Court, Tuguegarao City, Cagayan,

[1] *Rollo*, pp. 558-559.

with "nefarious activities and impeachable activities and malpractices." The letter partly reads:

> As a family court Judge, she is so corrupt, asking ₱150,000.00 per case of adoption cases, annulment of marriages, declaration of nullity and ₱50,000.00 for the issuance of a Temporary Protective Order. Judge Jet Aquino and Judge Marivic Beltran know and have personal knowledge of this, but are silent on the issue.
>
> Also, if a client is represented by Atty. McPaul Soriano, Atty. Edmund Quilang, Atty. Luis Donato, Atty. Rowena Guzman and Atty. Raul Morales in her Court, then everything is "*lutong macao*" so to speak. Nobody can ever win against the abovementioned lawyers in the Court of Judge Lyliha. What is worst is that when the cases of these same lawyers are unmeritorious, Judge Lyliha bamboozles/ goes out of her way to convince the adverse counsels to settle with the former. And if the adverse counsels do not settle with her favored lawyers, she gets irritated and mad at the former.

Aside from the foregoing, the complainants also charged her with non-payment of her indebtedness to a staff member, enrichment, selling mangoes and jewelry to litigants, and habitual absenteeism.

The letter, addressed to then Chief Justice Reynato S. Puno, prompted a judicial audit conducted by the Office of the Court Administrator *(OCA)* in July 2009.

In the OCA Memorandum,[2] dated June 21, 2010, it was reported that Judge Aquino heard and decided forty-one (41) cases for annulment or declaration of nullity of marriage from June 2003 to January 2009, without the mandatory requirements of no-collusion report and pre-trial as provided under the Rule on Declaration of Nullity of Void Marriages and Annulment of Voidable Marriages. She likewise failed to require the public prosecutor to conduct an investigation to determine if there was collusion between the parties despite the failure of a respondent to file an answer.

In cases where a respondent failed to file an answer, no investigation report was submitted by the public prosecutor.

[2] *Id*. at 621-629.

Instead of directing the public prosecutor to conduct an investigation to determine if there was collusion between the parties, Judge Aquino would immediately cause the issuance of a notification, setting the case for hearing. The no-collusion reports were submitted by the public prosecutor only after the hearings and the formal offers of exhibits by a petitioner. Where the investigation report of the public prosecutor stated the non-appearance of a respondent, Judge Aquino, nonetheless, proceeded to hear and decide the case in favor of the respondent.

Anent the adoption cases, the audit team found that Judge Aquino proceeded with the hearings and decided twenty-six (26) cases without strict compliance with Sections 11,[3] 14[4] and

[3] Section 11. *Annexes to the Petition.* – The following documents shall be attached to the petition:

A. Birth, baptismal or foundling certificate, as the case may be, and school records showing the name, age and residence of the adoptee;

B. Affidavit of consent of the following:

1. The adoptee, if ten (10) years of age or over;

2. The biological parents of the child, if known, or the legal guardian, or the child-placement agency, child-caring agency, or the proper government instrumentality which has legal custody of the child;

3. The legitimate and adopted children of the adopter and of the adoptee, if any, who are ten (10) years of age or over;

4. The illegitimate children of the adopter living with him who are ten (10) years of age or over; and

5. The spouse, if any, of the adopter or adoptee.

C. Child study report on the adoptee and his biological parents;

D. If the petitioner is an alien, certification by his diplomatic or consular office or any appropriate government agency that he has the legal capacity to adopt in his country and that his government allows the adoptee to enter his country as his own adopted child unless exempted under Section 4(2);

E. Home study report on the adopters. If the adopter is an alien or residing abroad but qualified to adopt, the home study report by a foreign adoption agency duly accredited by the Inter-Country Adoption Board; and

F. Decree of annulment, nullity or legal separation of the adopter as well as that of the biological parents of the adoptee, if any.

[4] Section 14. *Hearing.* - Upon satisfactory proof that the order of hearing has been published and jurisdictional requirements have been complied with, the court shall proceed to hear the petition. The petitioner and the

15[5] of the Rule on Adoption.[6] In one case, it was discovered that Judge Aquino declared that the petitioners had already complied with the jurisdictional requirements, even if the required affidavit of consent of the adoptee, the latter being at least eleven (11) years old already at the time of the filing of the

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adoptee must personally appear and the former must testify before the presiding judge of the court on the date set for hearing.

The court shall verify from the social worker and determine whether the biological parent has been properly counseled against making hasty decisions caused by strain or anxiety to give up the child; ensure that all measures to strengthen the family have been exhausted; and ascertain if any prolonged stay of the child in his own home will be inimical to his welfare and interest.

[5] Sec. 15. *Supervised Trial Custody.* – Before issuance of the decree of adoption, the court shall give the adopter trial custody of the adoptee for a period of at least six (6) months within which the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship. The trial custody shall be monitored by the social worker of the court, the Department, or the social service of the local government unit, or the child-placement or child-caring agency which submitted and prepared the case studies. During said period, temporary parental authority shall be vested in the adopter.

The court may, *motu proprio* or upon motion of any party, reduce the period or exempt the parties if it finds that the same shall be for the best interests of the adoptee, stating the reasons therefor. An alien adopter however must complete the 6-month trial custody except the following:

a) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity; or

b) one who seeks to adopt the legitimate child of his Filipino spouse; or

c) one who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse the latter's relative within the fourth (4th) degree of consanguinity or affinity.

If the child is below seven (7) years of age and is placed with the prospective adopter through a pre-adoption placement authority issued by the Department, the court shall order that the prospective adopter shall enjoy all the benefits to which the biological parent is entitled from the date the adoptee is placed with him.

The social worker shall submit to the court a report on the result of the trial custody within two weeks after its termination.

[6] A.M. No. 02-6-02-SC 2002-08-02.

petition for adoption and the child study report had yet to be filed by the petitioners. The records of adoption cases also lacked the requirements under the rules like the Child Study Reports, Affidavit of Consent of the biological mother, Certification by the United States Consular Office in the Philippines, Home Study Report, and Supervised Trial Custody of the adoptee.

In its Resolution, dated August 2, 2012, the Court directed the Division Clerk of Court to furnish Judge Aquino a copy of the Audit Report and required her to file a comment thereon.

In a letter,[7] dated October 11, 2010, Judge Aquino submitted her Comment by way of a: a) matrix for civil cases consisting of thirty (30) pages with annexes; b) matrix for special proceedings cases consisting of ten (10) pages with annexes; and c) "Final Assay" consisting of five (5) pages with annexes.

In summary, Judge Aquino denied the allegation that she did not order the determination of the existence of collusion between the parties. She submitted to the OCA a copy of an order directing the prosecutor to conduct an investigation to determine whether there was collusion between the parties and to submit a report thereon.

With respect to the documents required in adoption cases, Judge Aquino said that the necessity for the documents depended upon the circumstances of the case. She admitted that she proceeded with the hearing of the cases despite the absence of the investigation report of the prosecutor, explaining that it was in the exercise of her judicial discretion.

In its Memorandum,[8] dated August 29, 2012, the OCA found that Judge Aquino had indeed violated the rules on annulment of marriages and adoption. The memorandum was, however, silent on the matter of corruption. Accordingly, the OCA recommended the penalty of admonition and stern warning against Judge Aquino.

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[7] *Rollo*, pp. 23-61.

[8] *Id.* at 2-14.

With respect to the violation of the rules, the Court agrees with the OCA with regard to its findings.

Judge Aquino indeed admitted that she had violated the rules when she proceeded to hear some cases despite non-compliance with the requirements. In annulment of marriage cases, the investigation report of the prosecutor is a condition *sine qua non* for the setting of pre-trial. Short-cuts in judicial processes cannot be countenanced by this Court because speed is not the principal objective of trial.

Considering that Judge Aquino was not motivated by bad faith, malice and caused no harm to any litigant, the Court will not mete out a serious administrative penalty at this time, but rather, will impose a fine and warn Judge Aquino that procedural omissions in the hearing of cases would not always be tolerated.

WHEREFORE, the Court **RESOLVES** to **ADOPT** and **APPROVE** the findings of fact and conclusions of law of the Office of the Court Administrator. Accordingly, the Court imposes a **FINE** of Ten Thousand Pesos (₱10,000.00) on JUDGE LYLIHA A. AQUINO with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely.

As there is no report on the matter of corruption, the Office of the Court Administrator is hereby **ORDERED** to investigate the matter and report to the Court its findings within sixty (60) days.

SO ORDERED.

Leonardo-de Castro,[*] *Peralta (Acting Chairperson),*[**] *Abad,* and *Leonen, JJ.,* concur.

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[*] Designated acting member, per Special order No. 1361 dated November 19, 2012.

[**] Per Special Order No. 1360 dated November 19, 2012.

FIRST DIVISION

[G.R. No. 158920. November 28, 2012]

REPUBLIC OF THE PHILIPPINES (Represented by the Social Security System), *petitioner, vs.* **MARAWI-MARANTAO GENERAL HOSPITAL, INC. and ATTY. MACAPANTON K. MANGONDATO,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; REDEMPTION; CONTENTION THAT THE DEED OF CONDITIONAL SALE IS A NULLITY BECAUSE THE PERIOD OF REDEMPTION HAD EXPIRED IS WRONG; WHILE THE RIGHT OF LEGAL REDEMPTION MUST BE EXERCISED WITHIN SPECIFIED LIMITS, THE STATUTORY PERIOD OF REDEMPTION CAN BE EXTENDED BY AGREEMENT OF THE PARTIES.— The alleged nullity of the deed of conditional sale because the period of redemption had expired is wrong. When SSC Resolution No. 984-s.96 dated December 10, 1996 approved the proposal of Atty. Mangondato to "redeem/repurchase" the property, the SSC is deemed to have waived, or even agreed to extend, the original limited period of redemption. As this Court held in *Development Bank of the Philippines v. West Negros College, Inc.*: The right of legal redemption must be exercised within specified time limits. However, the statutory period of redemption can be extended by agreement of the parties. x x x. It is also worthy to note that the grounds mentioned in Resolution No. 224.-s.97 dated March 20, 1997 as basis for the declaration of nullity of the deed of conditional sale did not include the alleged expiration of the redemption period. Clearly, the inclusion of that ground has been belatedly made and appears to be a mere afterthought.

2. ID.; ID.; ID.; ASSUMING THAT ATTY. SISON LACKED AUTHORITY WHEN HE SIGNED THE DEED OF CONDITIONAL SALE, THE SSS RATIFIED THE ACT WHEN IT ACCEPTED THE ₱2.7 MILLION PAYMENT MADE BY RESPONDENT MARAWI-MARANTAO GENERAL HOSPITAL, INC. (MMGHI) AND ATTY. MAGONDATO.— Assuming that

Atty. Sison lacked authority when he signed the deed of conditional sale, the SSS ratified his act when it accepted the ₱2.7 million payment made by MMGHI and Atty. Mangondato. In *Tacalinar v. Corro*, this Court considered the act of a father, whose children sold his 40-hectare *hacienda* without his authority, of collecting the purchase price as "ratifying and approving the said sale," and this Court further took such act as a waiver of his right of action to avoid the contract as it "implies the tacit, if not express, confirmation of the said sale."

3. ID.; ID.; ID.; UNDER THE PRINCIPLE OF OBLIGATORINESS OF CONTRACTS, THE SOCIAL SECURITY SYSTEM (SSS) MUST FAITHFULLY COMPLY WITH ITS OBLIGATIONS UNDER THE SAID CONTRACT.— In view of the validity of the redemption made by MMGHI and Atty. Mangondato through the contract of conditional sale between the parties, the SSS must faithfully comply with its obligations under the said contract. This is in accordance with the principle of obligatoriness of contracts, that obligations arising from contract have the force of law between the parties and should be complied with in good faith.

4. ID.; ID.; ID.; WHILE THE CONTRACT IS DENOMINATED AS A DEED OF CONDITIONAL SALE, ITS PROVISIONS IDENTIFIES IT AS BEING A MERE CONTRACT TO SELL.— The provisions of the deed of conditional sale provide that title to the property remains with the seller and will only be transferred to the buyer-redemptioner upon the execution of a final deed of sale and that upon full payment of the purchase price by the buyer-redemptioner, the SSS as seller has the obligation to execute a deed of absolute sale in favor of the former. The above provisions further reveal that the true nature of the deed of conditional sale between the parties is a contract to sell. It is established case law that where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell. Thus, while the contract is denominated as a Deed of Conditional Sale, the presence of the above-quoted provisions identifies the contract as being a mere contract to sell.

5. ID.; ID.; ID.; PURSUANT TO PARAGRAPH 12 OF THE DEED OF CONDITIONAL SALE AND THE NATURE OF THE PARTIES' AGREEMENT AS A CONTRACT TO SELL, THE SSS HAS THE OBLIGATION TO EXECUTE A DEED OF

ABSOLUTE SALE IN FAVOR OF MMGHI/ATTY. MANGONDATO.— A contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the property despite delivery thereof to the prospective buyer, **binds himself to sell the property exclusively to the prospective buyer** upon fulfillment of the condition agreed, *i.e.*, full payment of the purchase price. In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. **What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him**. The SSS acknowledges that the purchase price of ₱2.7 million had already been paid in full. Pursuant to paragraph 12 of the deed of conditional sale and the nature of the parties' agreement as a contract to sell, therefore, the SSS has the obligation to execute a deed of absolute sale in favor of MMGHI/Atty. Mangondato.

6. ID.; ID.; ID.; ID.; THE REPUBLIC FAILED TO POINT TO A SPECIFIC LAW, RULE OR PUBLIC POLICY THAT HAS BEEN VIOLATED BY THE RESALE TO THE PREVIOUS OWNER OF A PROPERTY ACQUIRED BY FORECLOSURE; THE POLICY OF THE LAW IS TO AID RATHER THAN DEFEAT THE RIGHT OF REDEMPTION, THUS, PUBLIC BIDDING IS NOT A CONDITION FOR REDEMPTION.— The violation of an alleged requirement for the conduct of bidding in the sale of an SSS-acquired asset merely referred to "standard operating procedure." The Republic failed to point to a specific law, rule or public policy that has been violated by the resale to the previous owner of a property acquired by foreclosure. In view of such failure on the part of the Republic, the execution of the deed of conditional sale enjoys the presumptions that the ordinary course of business has been followed and that the law has been obeyed. More importantly, the transaction between the parties involves the redemption by MMGHI of the property covered by TCT No. T-379 mortgaged to and foreclosed by the SSS. The policy of the law is to aid rather than defeat the right of redemption; thus, public bidding is not a condition for redemption.

7. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED; ATTY. SISON AS THEN SENIOR DEPUTY ADMINISTRATOR FOR THE SOCIAL SECURITY SYSTEM (SSS) ENJOYS THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF HIS DUTIES.— The alleged lack of authority on the part of Atty. Sison is flimsy. MMGHI and its representative, Atty. Mangondato, could not have been faulted for non-compliance with the so-called office procedure as they could not have been reasonably expected to know that the signature of only one Deputy Administrator is insufficient because the said office procedure seems to be internal in nature. Moreover, even the very resolution invoked by the Republic, SSC Resolution No. 207-s.91 dated April 5, 1991 approving Office Order No. 15-V dated April 2, 1991, negates the contention of the Republic. x x x Atty. Sison as then Senior Deputy Administrator of the SSS enjoys the presumption of regularity in the performance of his duties. In accordance with that presumption, he is presumed to have complied with SSC Resolution No. 207-s.91 dated April 5, 1991 approving Office Order No. 15-V dated April 2, 1991. In the absence of competent countervailing evidence, the presumption stands, especially since the records show that, from the earliest stage of the effort of Atty. Mangondato to redeem the property in October 1992, it has always been Atty. Sison who has represented the SSS thereby giving a reasonable expectation that the subject of the contract is within his area of responsibility and that he may be a sole signatory as the Senior Deputy Administrator because the contract is not over ₱5 million. In other words, the Republic should have presented competent evidence to rebut the presumption of regularity in the performance of duties by Atty. Sison. Unfortunately, other than the bare allegation that Atty. Sison failed to comply with SSC Resolution No. 207-s.91, no evidence was shown to discharge the Republic's burden of proof.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Ron P. Salo for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a "Petition for Partial Review" on *Certiorari*[1] of the Decision[2] dated June 19, 2003 of the Court of Appeals in CA-G.R. CV No. 70928, which affirmed with modification the Decision[3] dated June 17, 1999 of the Regional Trial Court (RTC) of Marawi City, Branch 8 in Civil Case No. 1499-97 by deleting the actual and moral damages, attorney's fees, and costs of litigation awarded to respondents Marawi-Marantao General Hospital, Inc. (MMGHI) and Atty. Macapanton K. Mangondato.

On October 16, 1970, the MMGHI obtained a loan in the total amount of ₱548,000.00 from the Social Security System (SSS). The loan was secured by a mortgage on the property covered by Transfer Certificate of Title (TCT) No. T-379, including the hospital building standing on it. For failure of the MMGHI to pay the monthly amortizations, the SSS extrajudicially foreclosed on the mortgage. The mortgaged property was subsequently sold on March 8, 1991 in a public auction where the SSS was the highest bidder.[4]

On October 16, 1991, the sheriff's certificate of sale was registered. However, the SSS was not able to have a new certificate of title issued in its name.[5]

Sometime in 1992, Atty. Mangondato, Acting Chairman of the MMGHI board of directors and representing MMGHI, negotiated with the SSS for the repurchase of the property and asked for an additional six (6) months within which to make

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 12-31; penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Delilah Vidallon Magtolis and Edgardo F. Sundiam, concurring.

[3] *Id.* at 135-145; penned by Presiding Judge Santos B. Adiong.

[4] *Id.* at 13.

[5] *Id.*

the redemption. As a sign of good faith, Atty. Mangondato tendered ₱200,000.00 as partial payment on November 6, 1992.[6]

After further negotiation, the Social Security Commission (SSC) approved Atty. Mangondato's offer to repurchase/redeem the property during its Regular Meeting No. 42 on December 10, 1996.[7] In particular, the SSC adopted SSC Resolution No. 984-s.96[8] dated December 10, 1996:

> Proposal to repurchase/redeem the Marawi-Marantao General Hospital, approved; Management directed to submit a report on the bidding process for the said property.
>
> Wherefore, on motion duly seconded,
>
> RESOLVED, That the proposal of Atty. Macapanton K. Mang[o]ndato, Acting Chairman of the Board of the Marawi-Marantao General Hospital, Inc.[,] to redeem/repurchase the foreclosed property in the amount of ₱2.7 million with a downpayment of ₱2 Million and the remaining balance of ₱500,000.00 (less the ₱200,000.00 already paid) payable in twenty[-]four (24) equal monthly installments plus the interest/surcharges thereon, if any, until fully paid, be, as it is hereby, approved, as indorsed by the Officer-in-Charge in his 1st Indorsement dated December 3, 1996, based on the memorandum of even date of the SDA for Support Services Group;
>
> RESOLVED, HOWEVER, That Management be, as it is hereby, directed to submit to the Commission a report on the bidding process conducted by Management for the said property.
>
> Approved.

Consequently, on January 16, 1997, a deed of conditional sale[9] of the subject property for ₱2.7 million was executed by MMGHI, through Atty. Mangondato, and the SSS, represented

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[6] *Id.*

[7] *Id.*

[8] *Id.* at 106.

[9] *Id.* at 107-111.

by Atty. Godofredo S. Sison, its Senior Deputy Administrator. The deed of conditional sale reads:

DEED OF CONDITIONAL SALE

KNOW ALL MEN BY THESE PRESENTS:

This contract made and executed by and between:

The **SOCIAL SECURITY COMMISSION** for the **SOCIAL SECURITY SYSTEM**, a government-owned and controlled corporation created pursuant to Republic Act No. 1161, as amended, with principal office at East Avenue, Quezon City, Metro Manila, represented herein by its Senior Deputy Administrator, **GODOFREDO S. SISON**, hereinafter referred to as the **VENDOR**;

- and -

ATTY. MACAPANTON K. MANGONDATO, of legal age, married and with postal address at Bgy. Kalaw, Marantao, Lanao Del Sur referred to as the **VENDEE**.

- WITNESSETH -

WHEREAS, the **VENDOR** is the registered owner in fee simple of certain real property hereinafter described, to wit:

> A parcel of land (lot 2 of the subdivision plan (LRC) Psd-116159, being a portion of the land described on F(VII-5) 2278, LRC (GLRO) Rec. No. F. Pat.), situated in the Barrio of Saduc, City of Marawi, Island of Mindanao. Bounded on the NE., points 2 to 3 by Lot 3 of the subdivision plan; on the SE., points 3 to 4 by National Road and points 4 to 5 by Public Land; on the SW., points 5 to 8 by lot 1 of the subdivision plan; and on the NW., points 1 to 2 by National Road (20.00 m. wide) x x x containing an area of Fourteen Thousand Nine Hundred Fifteen (14,915) square meters, more or less. x x x.

WHEREAS, the VENDEE offered to purchase the above-described real property/ies and the improvements thereon and the Social Security Commission (SSC) per its Resolution No. 984 dated December 10, 1996 has approved the offer of **ATTY. MACAPANTON MANGONDATO,** subject to certain conditions;

NOW, THEREFORE, for and in consideration of the sum of ₱2.7 Million, the **VENDEE** having made a down payment of Two Million Pesos (₱2,000,000.00), plus the previous deposit of Two Hundred

Thousand Pesos (₱200,000), the **VENDOR** hereby SELLS, TRANSFERS and CONVEYS to the **VENDEE**, his heirs and successors-in-interest, by way of Conditional Sale, the above-described parcel of land together with the buildings existing thereon, subject to the following terms and conditions:

1. The **VENDEE** undertakes and agrees to pay the **VENDOR** at its office in the SSS Building, East Avenue, Quezon City, the balance of the purchase price in the amount of ₱500,000.00 pesos which will be paid in 24 equal monthly installments with interests at 1.33% per month, compounded monthly, until fully paid without demand;

2. The **VENDOR** hereby agrees to give the **VENDEE** a 30-day grace period for the payment of the arrearages in case the **VENDEE** for any reason whatsoever defaults in the payment of one installment. In case the **VENDEE** fails to pay and settle all his arrearages within the grace period, the **VENDOR** shall have the right to annul the contract. Any installment due and unpaid shall bear interest at the rate of 1.33% per month, compounded monthly, plus penalty of 16% per annum until the entire amount due shall have been fully paid;

3. Conditions Nos. 1 and 2 notwithstanding, the **VENDEE** may pay in full whatever is due under this contract at any time before the expiration of the above stipulated period in which event, the **VENDEE** shall be entitled to interest rebate or reimbursement of whatever interest payment it may make, if any, in excess of what is legally due by reason of accelerated payment;

4. The **VENDEE** shall pay all taxes, real estate or special assessment that may or shall be levied or may be due on the above land and its improvements. Should the **VENDEE** default in the payment of said taxes, the **VENDOR** may pay the same and charge the amount thereof to the **VENDEE** with interest at 16% per annum. The said amount shall then be added to the current annual installment due and shall form part of such installment and its nonpayment shall entitle the **VENDOR** to the rights granted it under Condition Nos. 8 and 9 hereof;

5. The **VENDEE** shall use and administer the property subject of this Contract to all intents and purposes as if it is the owner thereof, his rights to the possession thereof shall continue as long as the terms of this Contract are faithfully complied with by the **VENDEE**;

6. The **VENDEE** shall keep the improvements on this land in good condition and order during the life of this Contract. Should

the **VENDEE** fail to keep the improvement on this land in good condition during the life of this Contract, the **VENDOR** or its duly authorized agent shall have the right to enter upon the property and make all necessary repairs and improvements which shall be charged to the **VENDEE** and shall be paid within thirty (30) days from demand plus the prescribed interest. Non-payment of the above amount shall entitle the **VENDOR** to the rights granted under paragraphs 8 and 9 of this Contract;

7. The **VENDEE** hereby agrees to insure the building during the life of this Contract with the GSIS. The amount of insurance shall be equal to the appraised value of the buildings. Coverage shall take effect on the date of the execution of this Deed of Conditional Sale and renewable every year thereafter until the total obligation of the **VENDEE** is fully paid. Renewal of the property insurance shall be automatic and paid for by the **VENDEE**, provided, however, that when the latter fails to pay the corresponding insurance premium, the **VENDOR** (SSS) shall pay the same, to be added to the total amount due and demandable from the **VENDEE** and the latter shall be charged 16% per annum, compounded monthly, on the cost of the premium. In the event of loss or damage[,] the **VENDEE** shall give immediate notice by mail or by telegram to the **VENDOR** who may make proof of loss if not made promptly by the **VENDEE** and the insurance proceeds thereof may be applied by the **VENDOR**, at its option, either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged;

8. The Contract shall be further subject to the condition that any default in the monthly installment will cause the immediate cancellation of the Deed of Conditional Sale and make the entire obligation due and demandable at the option of the **VENDOR**;

9. The continued exercise of any power, privileges or right granted to or exercised by the **VENDEE**, despite violation by him of any of the terms and conditions of this [C]ontract, or with respect to any of the above-mentioned defaults, shall in no case be interpreted as a relinquishment/waiver by the **VENDOR** of any of its rights herein contained in case of any subsequent defaults/violations on the part of the **VENDEE**;

10. Title to the property [subject] of this Contract remains with the **VENDOR** and shall pass to, and be transferred in the name of the **VENDEE** only upon the former's execution of the final Deed of Sale mentioned in the next succeeding paragraphs;

11. The **VENDEE** shall, at his own expense, be solely responsible for the ejectment and relocation of the squatters or persons found/ staying in the premises; and

12. Upon the full payment by the **VENDEE** of the purchase price of above referred to, together with all the interests, penalties, taxes and other charges due thereon, and upon his faithful compliance with all the conditions of this Contract, the **VENDOR** agrees to execute in favor of the **VENDEE** or his heirs and successors-in-interest such Deed of Absolute Sale as full performance by the **VENDEE** of the covenants and undertakings in the Contract.

IN WITNESS WHEREOF, both parties have hereunto set their hands this ___ day of _____, 1997 in Quezon City.

(Sgd.)
MACAPANTONK.MANGONDATO
Vendee

SOCIAL SECURITY COMMISSION
for the SOCIAL SECURITY SYSTEM
Vendor

by: (Sgd.)
GODOFREDO S. SISON
TIN: 118455783[10]

On February 17, 1997, Atty. Mangondato issued in favor of the SSS a PNB Check No. 002412 in the amount of ₱500,000.00 representing the full payment of the subject property under the Deed of Conditional Sale.[11]

Thereafter, in a letter dated April 7, 1997, Atty. Mangondato demanded the SSS to immediately implement the transfer of the subject property in his favor considering that he had already paid the purchase price in full.[12]

However, in a letter[13] dated May 5, 1997, the SSS informed Atty. Mangondato about the adoption by the SSC of SSC Resolution No. 224-s.97 dated March 20, 1997 declaring the conditional sale a nullity and directing the return of the ₱2.7

[10] *Id.* at 107-110.

[11] Records, p. 31.

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

[13] *Id.* at 36.

million payment made by Atty. Mangondato. SSC Resolution No. 224-s.97[14] dated March 20, 1997 reads:

> Sale of the foreclosed assets of Marawi-Marantao General Hospital, Inc., pursuant to SSC Resolution No. 984, dated December 10, 1996, declared a nullity based on certain grounds, approved; Rescission of the Deed of Conditional Sale between the SSC for the SSS and Atty. Macapanton K. Mang[o]ndato, approved; Management directed to return the total amount of ₱2.2 million paid by Atty. Mang[o]ndato with effective prevailing interest rate at the time of issuance of the check/s.
>
> RESOLVED, That the sale pursuant to SSC Resolution No. 984, dated December 10, 1996 of the foreclosed assets of Marawi-Marantao General Hospital, Inc. and the Contract executed between the Social Security Commission for the Social Security System and Atty. Macapanton K. Mang[o]ndato, be, as it is hereby declared a nullity based on the following grounds:
>
> 1. There was no full disclosure of facts to the SSCommission.
> 2. Violation of the standard operating procedure requiring the conduct of a bidding in the sale of an SSS-acquired asset.
> 3. Non-compliance with office procedure requiring two signatories in the Deed of Conditional Sale.
> 4. Title to the property has not been consolidated in the name of [the] SSS.
>
> RESOLVED, LIKEWISE, That Management be, as it is hereby, directed to return the total amount of ₱2.2 million tendered by Atty. Mang[o]ndato in partial payment of the selling price of ₱2.7 million, with interest at the prevailing rate at the time the check/s was/were issued to the Social Security System;

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[14] *Rollo*, p. 112.

RESOLVED, FURTHER, That the memorandum-report of then Officer-in-Charge Leopoldo S. Veroy dated March 11, 1997 relative to the sale of the foreclosed assets of Marawi-Marantao General Hospital, Inc., be, as it is hereby, noted.

Approved.[15]

Aggrieved by the action of the SSS, the MMGHI and Atty. Mangondato filed on August 12, 1997 a complaint[16] for specific performance and damages against the SSS in the RTC of Marawi City, Branch 8. The complaint was docketed as Civil Case No. 1499-97.

In its answer,[17] the SSS specifically denied the material allegations in the complaint and averred that the redemption by MMGHI was made long after the expiration of the period of redemption on October 15, 1992.[18] The SSS also alleged that the deed of conditional sale entered into by the parties was subsequently annulled pursuant to SSC Resolution No. 224-s.97 dated March 20, 1997.[19]

After trial, the trial court rendered a Decision dated June 17, 1999 in favor of MMGHI and Atty. Mangondato. Its dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs Marawi-Marantao General Hospital[,] Inc., and Atty. Macapanton K. Mangondato and against defendant Social Security System [SSS] directing the latter (SSS) to:

1. Execute an Absolute [D]eed of Sale in favor of the plaintiffs Hospital and/or Atty. Macapanton K. Mangondato as stipulated in the aforesaid Deed of Conditional Sale;

2. Pay plaintiffs the sum of ₱12,487,271.00 by way of actual damages or unrealized income;

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[15] *Id.*

[16] *Id.* at 113-123.

[17] *Id.* at 124-134.

[18] *Id.* at 129-130.

[19] *Id.*

3. Pay plaintiffs the sum of ₱500,000.00 by way of moral damages;

4. Pay plaintiffs the sum of ₱100,000.00 by way of attorney's fees; and

5. Pay the cost of litigation.[20]

Aggrieved, the SSS appealed the trial court's Decision to the Court of Appeals. The appeal was docketed as CA-G.R. CV No. 70928.[21]

On January 25, 2002, the Republic of the Philippines, represented by the SSS, filed its appellant's brief[22] in CA-G.R. CV No. 70928. It asserted that the trial court erred in directing the SSS to execute a deed of absolute sale in favor of MMGHI and Atty. Mangondato despite the nullity of the conditional sale.[23] It also claimed that the trial court erred in holding the SSS

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[20] *Id.* at 145.

[21] Meanwhile, in Special Order dated June 25, 1999, the trial court granted the motion of MMGHI and Atty. Mangondato for partial execution of the appealed decision dated June 17, 1999. The SSS challenged the Special Order in the Court of Appeals in CA-G.R. SP No. 53502 where it was annulled in a Decision dated August 16, 1999. (Penned by Associate Justice Hector L. Hofileña and concurred in by Associate Justices Omar U. Amin and Jose L. Sabio, Jr., *rollo*, pp. 146-152.)

Also, upon motion of MMGHI and Atty. Mangondato, the trial court issued an Order dated August 16, 1999 declaring its June 17, 1999 decision final and executory as to items 2 (actual damages), 3 (moral damages), 4 (attorney's fees), and 5 (costs of litigation). The SSS assailed this Order in the Court of Appeals in CA-G.R. SP No. 54669 where it was nullified in a Decision dated November 29, 1999. (Penned by Associate Justice Romeo J. Callejo, Sr. and concurred in by Associate Justices Quirino D. Abad Santos, Jr. and Mariano M. Umali, *rollo*, pp. 153-167.) The case was elevated to this Court and docketed as G.R. No. 141008, which was subsequently denied and the Court of Appeals Decision dated November 29, 1999 affirmed. (See *Marawi Marantao General Hospital, Inc. v. Court of Appeals*, 402 Phil. 356 [2001].)

[22] CA *rollo*, pp. 14-98.

[23] *Id.* at 56-76.

liable for actual damages, moral damages, attorney's fees, and costs of litigation.[24]

On the other hand, MMGHI and Atty. Mangondato failed to file their brief. Thus, the Court of Appeals declared the case submitted for decision without the appellees' brief. [25]

Subsequently, the Court of Appeals rendered the assailed Decision dated June 19, 2003 affirming with modification the trial court's Decision dated June 17, 1999:

> **WHEREFORE**, premises considered, the assailed Decision dated June 17, 1999 of the Regional Trial Court, Branch 8, Marawi City in Civil Case No. 1499-97 is **AFFIRMED WITH MODIFICATION**, deleting the awards of damages, attorney's fees and liability to pay costs of litigation, specifically, items nos. 2, 3, 4 and 5 of the dispositive portion.[26]

Hence, this "Petition for Partial Review." It assails the Court of Appeals Decision for failing to nullify the deed of conditional sale and instead directing the Republic to execute an absolute deed of sale in favor of MMGHI and Atty. Mangondato pursuant to the provision of the said deed of conditional sale.

The Republic basically argues in this petition that no valid redemption could have been effected by entering into the deed of conditional sale as the period of redemption had already expired. It further alleges that certain requirements were not complied with, such as the office procedure requiring the counter-signature of another Deputy Administrator in a contract and public bidding.[27]

The Republic states:

> the deed of conditional sale was executed on January 16, 1997, long after the redemption period had expired on December 21, 1992. It will be recalled that the subject property was foreclosed by petitioner

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[24] *Id.* at 76-84.

[25] *Id.* at 120; Resolution dated April 1, 2003.

[26] *Rollo*, p. 30.

[27] *Id.* at 50.

and sold at public auction on March 8, 1991, wherein petitioner was declared the winning bidder. The Sheriff issued a certificate of sale on the same date which was registered on October 16, 1991. In October 1992, respondents manifested their intention to repurchase the subject property and asked for a period of six months within which to repurchase the same. Atty. Godofredo S. Sison, gave respondents instead a period of sixty (60) days or until December 21, 1992, within which to repurchase the subject property. It was only after five (5) years, or on August 5, 1996 that respondents (thru Atty. Macapanton K. Mangondato) reiterated their proposal to repurchase the subject property. The deed of conditional sale was executed on January 16, 1997 between Atty. Sison and Atty. Mangondato. Clearly, redemption was made after the period of redemption had long expired.[28]

The Republic further claims that then SSS Senior Deputy Administrator Atty. Godofredo Sison exceeded his authority when he alone signed the deed of conditional sale which he entered in behalf of the SSS. This was allegedly in violation of SSC Resolution No. 207-s.91 dated April 5, 1999 approving Office Order No. 15-V dated April 2, 1991 which requires the counter-signature of another Deputy Administrator in a contract. Moreover, the redemption or repurchase was made without public bidding.[29]

In their comment,[30] MMGHI and Atty. Mangondato assert that the arguments presented by the Republic in this case have been adequately discussed and disposed of by the Court of Appeals Decision. As regards the issue of Atty. Sison's alleged lack of authority to enter into the deed of conditional sale without the signature of another Deputy Administrator, it simply rendered the contract unenforceable pursuant to Article 1317 of the Civil Code. Unenforceable contracts are susceptible of ratification and the Republic, through the SSS, ratified the deed of conditional sale when it accepted the repurchase price.

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[28] *Id.* at 60.

[29] *Id.* at 51-61.

[30] *Id.* at 405-412.

Had MMGHI and Atty. Mangondato validly redeemed the property under the deed of conditional sale? That is the issue to be determined by this Court in this petition.

Upon careful consideration of the contentions of the parties, this Court answers the issue affirmatively.

The alleged nullity of the deed of conditional sale because the period of redemption had expired is wrong. When SSC Resolution No. 984-s.96 dated December 10, 1996 approved the proposal of Atty. Mangondato to "redeem/repurchase" the property, the SSC is deemed to have waived, or even agreed to extend, the original limited period of redemption.[31] As this Court held in *Development Bank of the Philippines v. West Negros College, Inc.*[32]:

> The right of legal redemption must be exercised within specified time limits. However, the statutory period of redemption can be extended by agreement of the parties. x x x. (Citations omitted.)

Also, this Court's ruling in *Ramirez v. Court of Appeals*[33] is relevant:

> The Court of Appeals unfortunately was not entirely correct since the PNB accepted the redemption price from the petitioner after the one (1) year period had expired. By accepting the redemption price after the statutory period for redemption had expired, PNB is considered to have waived the one (1) year period within which Ramirez could redeem the property. There is nothing in the law which prevents such a waiver. **Allowing a redemption after the lapse of the statutory period, when the buyer at the foreclosure does not object but even consents to the redemption, will uphold the policy of the law** recognized in such cases as *Javellana v. Mirasol and Nuñez*, and in the more

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[31] It is also significant to note here that, when it approved SSC Resolution No. 984-s.96 dated December 21, 1996, the SSC was well aware of the fact that the reckoning point of the one (1) year period to redeem, which is the date of registration of the certificate of sale, was on October 16, 1991. (See Exhibit "A", Excerpts of TSN Re: Repurchase of the Marawi-Marantao General Hospital; records, pp. 82-90.)

[32] G.R. No. 152359, May 21, 2004, 429 SCRA 50, 58.

[33] G.R. No. 98147, March 5, 1993, 219 SCRA 598, 603.

recent case of *Tibajia, et al. v. Honorable Court of Appeals, et al.*, which is to aid rather than defeat the right of redemption. Thus, there is no doubt that the redemption made by petitioner Ramirez is valid. x x x. (Emphasis supplied; citations omitted.)

It is also worthy to note that the grounds mentioned in Resolution No. 224.-s.97 dated March 20, 1997 as basis for the declaration of nullity of the deed of conditional sale did not include the alleged expiration of the redemption period. Clearly, the inclusion of that ground has been belatedly made and appears to be a mere afterthought.

The violation of an alleged requirement for the conduct of bidding in the sale of an SSS-acquired asset merely referred to "standard operating procedure." The Republic failed to point to a specific law, rule or public policy that has been violated by the resale to the previous owner of a property acquired by foreclosure. In view of such failure on the part of the Republic, the execution of the deed of conditional sale enjoys the presumptions that the ordinary course of business has been followed and that the law has been obeyed.[34] More importantly, the transaction between the parties involves the redemption by MMGHI of the property covered by TCT No. T-379 mortgaged to and foreclosed by the SSS. The policy of the law is to aid rather than defeat the right of redemption;[35] thus, public bidding is not a condition for redemption.

The alleged lack of authority on the part of Atty. Sison is flimsy. MMGHI and its representative, Atty. Mangondato, could not have been faulted for non-compliance with the so-called office procedure as they could not have been reasonably expected to know that the signature of only one Deputy Administrator is insufficient because the said office procedure seems to be internal in nature. Moreover, even the very resolution invoked by the Republic, SSC Resolution No. 207-s.91 dated April 5,

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[34] These presumptions are provided under paragraphs (q) and (ff), respectively, of Section 3, Rule 131, Rules of Court.

[35] *Cometa v. Court of Appeals*, 404 Phil. 107, 118 (2001).

1991 approving Office Order No. 15-V dated April 2, 1991, negates the contention of the Republic:

RESOLUTION NO. 207-s.91

Office Order No. 15-V,
dated April 2, 1991,
approved.

This refers to Office Order No. 15-V, dated April 2, 1991, pertaining to the rules to be observed in connection with the signing of contracts entered into by the SSS with other parties, after the same have been approved by the Social Security Commission. The following rules shall be observed.

The Administrator has the authority to sign any contract with or without a co-signatory. However, other officials of the SSS are also delegated the authority to sign contracts.

The Administrator shall sign the contract when:

(1) the amount involved is over ₱10 Million

(2) the signatory of the other contracting party is the head of the government office or the Administrator's counterpart in that office, irrespective of the amount involved. However, the Administrator may designate any official in the SSS to sign in his behalf.

The delegation of the authority to sign contracts to other lower officials are hereby prescribed, requiring two (2) signatories. If the amount involved in the contract is from ₱5 Million to ₱10 Million, the rules below shall apply:

(1) The contract shall be signed by the Senior Deputy Administrator and countersigned by the Deputy Administrator in whose area of responsibility the contract pertains.

(2) In the absence of any of the signatories in the next preceding paragraph, any Deputy Administrator can sign for the absent signatory.

(3) In the absence of all the Deputy Administrators to countersign the contract, any Assistant Administrator can countersign the same.

If the amount involved is not over ₱5 Million, the following shall be observed:

(1) The contract shall be signed by the Deputy Administrator in whose area of responsibility the contract pertains and countersigned by another Deputy Administrator.

(2) In the absence of any of the signatories mentioned in the next preceding paragraph, **the contract shall be signed by the Senior Deputy Administrator** or any Deputy Administrator or any Assistant Administrator available, in the said order of preference.

In the Regional Offices, if the amount involved in the contract is below ₱1 Million, it shall be signed by the Deputy Administrator for Regional Operations or by the Assistant Administrator of the region concerned and to be counter-signed by the Regional Manager or in his absence, by the Assistant Regional Manager, where the contract is to be implemented.

In the absence of the Administrator, contracts already approved by the Social Security Commission may be signed by the Senior Deputy Administrator to be counter-signed by any of the Deputy Administrators.

Wherefore, on motion duly seconded,

RESOLVED, That Office Order No. 15-V, dated April 2, 1991, prescribing the rules to be observed in the signing of contracts with other parties, after the same have been approved by the Social Security Commission, be, as it is hereby, approved (Appendices "25" & "25-a").

Approved. (As amended by Res. 428-s.1991)[36] (Emphases supplied.)

Atty. Sison as then Senior Deputy Administrator of the SSS enjoys the presumption of regularity in the performance of his duties.[37] In accordance with that presumption, he is presumed to have complied with SSC Resolution No. 207-s.91 dated April 5, 1991 approving Office Order No. 15-V dated April 2, 1991.

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[36] Records, pp. 166-168.

[37] This presumption is given in his favor under paragraph (m) of Section 3, Rule 131, Rules of Court. It is confirmed by case law, *e.g.*, *Galvante v.*

In the absence of competent countervailing evidence, the presumption stands,[38] especially since the records show that, from the earliest stage of the effort of Atty. Mangondato to redeem the property in October 1992, it has always been Atty. Sison who has represented the SSS thereby giving a reasonable expectation that the subject of the contract is within his area of responsibility and that he may be a sole signatory as the Senior Deputy Administrator because the contract is not over ₱5 million. In other words, the Republic should have presented competent evidence to rebut the presumption of regularity in the performance of duties by Atty. Sison. Unfortunately, other than the bare allegation that Atty. Sison failed to comply with SSC Resolution No. 207-s.91, no evidence was shown to discharge the Republic's burden of proof.

Furthermore, assuming that Atty. Sison lacked authority when he signed the deed of conditional sale, the SSS ratified his act when it accepted the ₱2.7 million payment made by MMGHI and Atty. Mangondato. In *Tacalinar v. Corro*,[39] this Court considered the act of a father, whose children sold his 40-hectare *hacienda* without his authority, of collecting the purchase price as "ratifying and approving the said sale," and this Court further took such act as a waiver of his right of action to avoid the contract as it "implies the tacit, if not express, confirmation of the said sale."

In view of the validity of the redemption made by MMGHI and Atty. Mangondato through the contract of conditional sale between the parties, the SSS must faithfully comply with its obligations under the said contract. This is in accordance with

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Casimiro (G.R. No. 162808, April 22, 2008, 552 SCRA 304, 318) and *Salma v. Miro* (541 Phil. 685, 696 [2007]).

[38] This Court held in *Magsucang v. Judge Balgos* (446 Phil. 217, 224 [2003]): "The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive."

[39] 34 Phil. 898, 909 (1916).

the principle of obligatoriness of contracts, that obligations arising from contract have the force of law between the parties and should be complied with in good faith.[40]

What obligation must the SSS perform in good faith under the deed of conditional sale? Paragraphs 10 and 12 of the deed hold the answer:

> 10. Title to the property [subject] of this Contract remains with the **VENDOR** and shall pass to, and be transferred in the name of the **VENDEE** only upon the former's execution of the [F]inal Deed of Sale mentioned in the next succeeding paragraphs;
>
> x x x x x x x x x
>
> 12. Upon the full payment by the **VENDEE** of the purchase price of above referred to, together with all the interests, penalties, taxes and other charges due thereon, and upon his faithful compliance with all the conditions of this Contract, the **VENDOR** agrees to execute in favor of the **VENDEE** or his heirs and successors-in-interest such Deed of Absolute Sale as full performance by the **VENDEE** of the covenants and undertakings in the Contract.[41]

The above provisions provide that title to the property remains with the seller and will only be transferred to the buyer-redemptioner upon the execution of a final deed of sale and that upon full payment of the purchase price by the buyer-redemptioner, the SSS as seller has the obligation to execute a deed of absolute sale in favor of the former. The above provisions further reveal that the true nature of the deed of conditional sale between the parties is a contract to sell. It is established case law that where the seller promises to execute a deed of absolute sale upon the completion by the buyer of the payment of the price, the contract is only a contract to sell. Thus, while the contract is denominated as a Deed of Conditional Sale, the presence of the above-quoted provisions identifies the contract as being a mere contract to sell.[42]

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[40] CIVIL CODE, Article 1159.

[41] *Rollo*, p. 110.

[42] *Tan v. Benolirao*, G.R. No. 153820, October 16, 2009, 604 SCRA 36, 49.

A contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the property despite delivery thereof to the prospective buyer, **binds himself to sell the property exclusively to the prospective buyer** upon fulfillment of the condition agreed, *i.e.*, full payment of the purchase price.[43] In a contract to sell, the prospective seller explicitly reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. **What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him**.[44]

The SSS acknowledges that the purchase price of ₱2.7 million had already been paid in full. Pursuant to paragraph 12 of the deed of conditional sale and the nature of the parties' agreement as a contract to sell, therefore, the SSS has the obligation to execute a deed of absolute sale in favor of MMGHI/Atty. Mangondato.

All told, the trial court and the Court of Appeals did not err when they ordered the SSS to execute a deed of absolute sale in favor of MMGHI/Atty. Mangondato.

WHEREFORE, the petition is hereby **DENIED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Perez,*[*] *JJ.,* concur.

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[43] *Id.* at 48.

[44] *Coronel v. Court of Appeals*, 331 Phil. 294, 309 (1996).

[*] Per Special Order No. 1356 dated November 13, 2012.

THIRD DIVISION

[G.R. No. 173773. November 28, 2012]

PARAMOUNT INSURANCE CORPORATION, *petitioner, vs.* **SPOUSES YVES and MARIA TERESA REMONDEULAZ,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; INSURANCE; RESPONDENT'S POLICY CLEARLY UNDERTOOK TO INDEMNIFY THE INSURED AGAINST LOSS OR DAMAGE TO THE SCHEDULED VEHICLE WHEN CAUSED BY THEFT.— Petitioner argues that the loss of respondents' vehicle is not a peril covered by the policy. It maintains that it is not liable for the loss, since the car cannot be classified as stolen as respondents entrusted the possession thereof to another person. We do not agree. Adverse to petitioner's claim, respondents' policy clearly undertook to indemnify the insured against loss of or damage to the scheduled vehicle when caused by theft, to wit: SECTION III – LOSS OR DAMAGE 1. **The Company will**, subject to the Limits of Liability, **indemnify the insured against loss of or damage to the Scheduled Vehicle** and its accessories and spare parts whilst thereon: – (a) by accidental collision or overturning, or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear; (b) by fire, external explosion, self-ignition or lightning or burglary, housebreaking or **theft**; (c) by malicious act; (d) whilst in transit (including the [process] of loading and unloading) incidental to such transit by road, rail, inland waterway, lift or elevator.

2. ID.; ID.; SETTLED RULINGS ON THE INTERPRETATION OF THE "THEFT CLAUSE" IN INSURANCE POLICIES.— Apropos, we now resolve the issue of whether the loss of respondents' vehicle falls within the concept of the "theft clause" under the insurance policy. In *People v. Bustinera*, this Court had the occasion to interpret the "theft clause" of an insurance policy. In this case, the Court explained that when one takes the motor vehicle of another without the latter's consent even if the motor vehicle is later returned, there is theft – there being intent to gain as the use of the thing unlawfully taken constitutes

gain. Also, in *Malayan Insurance Co., Inc. v. Court of Appeals*, this Court held that the taking of a vehicle by another person without the permission or authority from the owner thereof is sufficient to place it within the ambit of the word theft as contemplated in the policy, and is therefore, compensable. Moreover, the case of *Santos v. People* is worthy of note. Similarly in *Santos*, the owner of a car entrusted his vehicle to therein petitioner Lauro Santos who owns a repair shop for carburetor repair and repainting. However, when the owner tried to retrieve her car, she was not able to do so since Santos had abandoned his shop. In the said case, the crime that was actually committed was Qualified Theft. However, the Court held that because of the fact that it was not alleged in the information that the object of the crime was a car, which is a qualifying circumstance, the Court found that Santos was only guilty of the crime of Theft and merely considered the qualifying circumstance as an aggravating circumstance in the imposition of the appropriate penalty. The Court therein clarified the distinction between the crime of Estafa and Theft, to wit: x x x The principal distinction between the two crimes is that in theft the thing is taken while in estafa the accused receives the property and converts it to his own use or benefit. However, there may be theft even if the accused has possession of the property. If he was entrusted only with the material or physical (natural) or *de facto* possession of the thing, his misappropriation of the same constitutes theft, but if he has the juridical possession of the thing, his conversion of the same constitutes embezzlement or estafa.

3. ID.; ID.; THE ACT OF DEPRIVING RESPONDENTS OF THEIR MOTOR VEHICLE AT, OR SOON AFTER THE TRANSFER OF PHYSICAL POSSESSION OF THE MOVABLE PROPERTY, CONSTITUTES THEFT UNDER THE INSURANCE POLICY, WHICH IS COMPENSABLE.— In the instant case, Sales did not have juridical possession over the vehicle. Here, it is apparent that the taking of respondents' vehicle by Sales is without any consent or authority from the former. **Records would show that respondents entrusted possession of their vehicle only to the extent that Sales will introduce repairs and improvements thereon, and not to permanently deprive them of possession thereof.** Since, Theft can also be committed through misappropriation, the fact that Sales failed to return the subject vehicle to respondents constitutes Qualified Theft.

Hence, since respondents' car is undeniably covered by a Comprehensive Motor Vehicle Insurance Policy that allows for recovery in cases of theft, petitioner is liable under the policy for the loss of respondents' vehicle under the "theft clause." All told, Sales' act of depriving respondents of their motor vehicle at, or soon after the transfer of physical possession of the movable property, constitutes theft under the insurance policy, which is compensable.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioner.
MRReyes & Associates for respondents.

D E C I S I O N

PERALTA,[*] *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision[1] dated April 12, 2005 and Resolution[2] dated July 20, 2006 of the Court of Appeals in CA-G.R. CV No. 61490.

The undisputed facts follow.

On May 26, 1994, respondents insured with petitioner their 1994 Toyota Corolla sedan under a comprehensive motor vehicle insurance policy for one year.

During the effectivity of said insurance, respondents' car was unlawfully taken. Hence, they immediately reported the theft to the Traffic Management Command of the PNP who made them accomplish a complaint sheet. In said complaint sheet, respondents alleged that a certain Ricardo Sales (*Sales*)

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[*] Acting Chairperson, per Special Order No. 1360 dated November 19, 2012.

[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court), with Associate Justices Romeo A. Brawner and Edgardo P. Cruz, concurring; *rollo*, pp. 35-43.

[2] *CA rollo*, p. 101.

took possession of the subject vehicle to add accessories and improvements thereon, however, Sales failed to return the subject vehicle within the agreed three-day period.

As a result, respondents notified petitioner to claim for the reimbursement of their lost vehicle. However, petitioner refused to pay.

Accordingly, respondents lodged a complaint for a sum of money against petitioner before the Regional Trial Court of Makati City (*trial court*) praying for the payment of the insured value of their car plus damages on April 21, 1995.

After presentation of respondents' evidence, petitioner filed a Demurrer to Evidence.

Acting thereon, the trial court dismissed the complaint filed by respondents. The full text of said Order[3] reads:

> Before the Court is an action filed by the plaintiffs, spouses Yves and Maria Teresa Remondeulaz against the defendant, Paramount Insurance Corporation, to recover from the defendant the insured value of [the] motor vehicle.
>
> It appears that on 26 May 1994, plaintiffs insured their vehicle, a 1994 Toyota Corolla XL with chassis number EE-100-9524505, with defendant under Private Car Policy No. PC-37396 for Own Damage, Theft, Third-Party Property Damage and Third-Party Personal Injury, for the period commencing 26 May 1994 to 26 May 1995. Then on 1 December 1994, defendants received from plaintiff a demand letter asking for the payment of the proceeds in the amount of PhP409,000.00 under their policy. They alleged the loss of the vehicle and claimed the same to be covered by the policy's provision on "Theft." Defendant disagreed and refused to pay.
>
> It appears, however, that plaintiff had successfully prosecuted and had been awarded the amount claimed in this action, in another action (Civil Case No. 95-1524 entitled Sps. Yves and Maria Teresa Remondeulaz versus Standard Insurance Company, Inc.), which involved the loss of the same vehicle under the same circumstances although under a different policy and insurance company. This,

[3] *Rollo*, p. 83.

considered with the principle that an insured may not recover more than its interest in any property subject of an insurance, leads the court to dismiss this action.

SO ORDERED.[4]

Not in conformity with the trial court's Order, respondents interposed an appeal to the Court of Appeals (*appellate court*).

In its Decision dated April 12, 2005, the appellate court reversed and set aside the Order issued by the trial court, to wit:

Indeed, the trial court erred when it dismissed the action on the ground of double recovery since it is clear that the subject car is different from the one insured with another insurance company, the Standard Insurance Company. In this case, defendant-appellee [herein petitioner] denied the reimbursement for the lost vehicle on the ground that the said loss could not fall within the concept of the "theft clause" under the insurance policy x x x

x x x x x x x x x

WHEREFORE, the October 7, 1998 Order of the Regional Trial Court of Makati City, Branch 63, is hereby REVERSED and SET ASIDE

x x x x x x x x x.

SO ORDERED.[5]

Petitioner, thereafter, filed a motion for reconsideration against said Decision, but the same was denied by the appellate court in a Resolution dated July 20, 2006.

Consequently, petitioner filed a petition for review on *certiorari* before this Court praying that the appellate court's Decision and Resolution be reversed and set aside.

In its petition, petitioner raises this issue for our resolution:

Whether or not the Court of Appeals decided the case *a quo* in a way not in accord with law and/or applicable jurisprudence when

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[4] *Id*.

[5] *Id*. at 39-42.

it promulgated in favor of the respondents Remondeulaz, making Paramount liable for the alleged "theft" of respondents' vehicle.[6]

Essentially, the issue is whether or not petitioner is liable under the insurance policy for the loss of respondents' vehicle.

Petitioner argues that the loss of respondents' vehicle is not a peril covered by the policy. It maintains that it is not liable for the loss, since the car cannot be classified as stolen as respondents entrusted the possession thereof to another person.

We do not agree.

Adverse to petitioner's claim, respondents' policy clearly undertook to indemnify the insured against loss of or damage to the scheduled vehicle when caused by theft, to wit:

SECTION III – LOSS OR DAMAGE

1. The Company will, subject to the Limits of Liability, **indemnify the insured against loss of or damage to the Scheduled Vehicle** and its accessories and spare parts whilst thereon: –

(a) by accidental collision or overturning, or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear;

(b) by fire, external explosion, self-ignition or lightning or burglary, housebreaking or **theft**;

(c) by malicious act;

(d) whilst in transit (including the [process] of loading and unloading) incidental to such transit by road, rail, inland waterway, lift or elevator.[7]

Apropos, we now resolve the issue of whether the loss of respondents' vehicle falls within the concept of the "theft clause" under the insurance policy.

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[6] *Id.* at 16.

[7] *Id.* at 91. (Emphasis supplied.)

In *People v. Bustinera*,[8] this Court had the occasion to interpret the "theft clause" of an insurance policy. In this case, the Court explained that when one takes the motor vehicle of another without the latter's consent even if the motor vehicle is later returned, there is theft – there being intent to gain as the use of the thing unlawfully taken constitutes gain.

Also, in *Malayan Insurance Co., Inc. v. Court of Appeals*,[9] this Court held that the taking of a vehicle by another person without the permission or authority from the owner thereof is sufficient to place it within the ambit of the word theft as contemplated in the policy, and is therefore, compensable.

Moreover, the case of *Santos v. People*[10] is worthy of note. Similarly in *Santos*, the owner of a car entrusted his vehicle to therein petitioner Lauro Santos who owns a repair shop for carburetor repair and repainting. However, when the owner tried to retrieve her car, she was not able to do so since Santos had abandoned his shop. In the said case, the crime that was actually committed was Qualified Theft. However, the Court held that because of the fact that it was not alleged in the information that the object of the crime was a car, which is a qualifying circumstance, the Court found that Santos was only guilty of the crime of Theft and merely considered the qualifying circumstance as an aggravating circumstance in the imposition of the appropriate penalty. The Court therein clarified the distinction between the crime of Estafa and Theft, to wit:

> x x x The principal distinction between the two crimes is that in theft the thing is taken while in estafa the accused receives the property and converts it to his own use or benefit. However, there may be theft even if the accused has possession of the property. If he was entrusted only with the material or physical (natural) or *de facto* possession of the thing, his misappropriation of the same constitutes

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[8] G.R. No. 148233, June 8, 2004, 431 SCRA 284, 297, citing *Villacorta v. Insurance Commission*, G.R. No. 54171, October 28, 1980, 100 SCRA 467.

[9] 230 Phil. 145, 147 (1986).

[10] G.R. No. 77429, January 29, 1990, 181 SCRA 487, 260 Phil. 519 (1990).

theft, but if he has the juridical possession of the thing, his conversion of the same constitutes embezzlement or estafa.[11]

In the instant case, Sales did not have juridical possession over the vehicle. Here, it is apparent that the taking of respondents' vehicle by Sales is without any consent or authority from the former.

Records would show that respondents entrusted possession of their vehicle only to the extent that Sales will introduce repairs and improvements thereon, and not to permanently deprive them of possession thereof. Since, Theft can also be committed through misappropriation, the fact that Sales failed to return the subject vehicle to respondents constitutes Qualified Theft. Hence, since respondents' car is undeniably covered by a Comprehensive Motor Vehicle Insurance Policy that allows for recovery in cases of theft, petitioner is liable under the policy for the loss of respondents' vehicle under the "theft clause."

All told, Sales' act of depriving respondents of their motor vehicle at, or soon after the transfer of physical possession of the movable property, constitutes theft under the insurance policy, which is compensable.[12]

WHEREFORE, the instant petition is **DENIED**. The Decision dated April 12, 2005 and Resolution dated July 20, 2006 of the Court of Appeals are hereby **AFFIRMED** *in toto.*

SO ORDERED.

Leonardo-de Castro,[**] *Abad, Perez,*[***] and *Leonen, JJ.*, concur.

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[11] *Id.* at 492. (Underscoring supplied.)

[12] *People v. Roxas*, 53 O.G. 716 (1956).

[**] Designated Acting Member, per Special Order No. 1361 dated November 19, 2012.

[***] Designated Acting Member, per Special Order No. 1382 dated November 27, 2012.

FIRST DIVISION

[G.R. No. 181699. November 28, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **JERRY BATULA,** ***alias*** **"Cesar,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ISSUE OF CREDIBILITY OF WITNESSES IS BEST RESOLVED BY TRIAL COURTS.— Batula's appeal essentially challenges the credibility of the prosecution witnesses. The issue of credibility of witnesses is resolved primarily by the trial court since it is in a better position to decide the same after having heard the witnesses and observed their conduct, deportment and manner of testifying. Accordingly, the findings of the trial court are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that it overlooked, misunderstood, or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case. There is no exceptional reason herein for us to depart from the general rule.

2. ID.; ID.; ID.; ID.; VICTIM'S TESTIMONY WAS STRAIGHTFORWARD, SINCERE, AND VERY CREDIBLE.— As the RTC declared, AAA was straightforward, sincere, and very credible, as she recounted the rape incident on the witnesses stand . x x x Forced to relive her ordeal all over again, AAA broke down in tears as she was testifying. The crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience. The testimony of AAA was further corroborated by that of Labanda, which was equally adjudged by the RTC as credible. x x x Moreover, the medical evidence likewise lends credence to AAA's testimony. It is well-settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisites of carnal knowledge. Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.

3. ID.; ID.; ID.; ID.; FEW INCONSISTENCIES ON MINOR DETAILS TEND TO STRENGTHEN RATHER THAN WEAKEN CREDIBILITY AS THEY DISCOUNT THE POSSIBILITY OF A REHEARSED TESTIMONY.— The purported inconsistency between the testimonies of AAA and her mother BBB merely refers to a minor detail. The central fact is that Batula, by means of force, threats, and intimidation, and use of a bolo, succeeded in having carnal knowledge of AAA. Whether AAA was able to name Batula as the perpetrator immediately after the rape or AAA was able to identify Batula as her rapist at a later time, does not depart from the fact that Batula raped AAA. We have said time and again that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses. Instead of weakening their testimonies, such inconsistencies tend to strengthen their credibility because they discount the possibility of their being rehearsed testimony.

4. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; RENDERED NAUGHT BY FAILURE OF THE ACCUSED TO PROVE PHYSICAL IMPOSSIBILITY FOR HIM TO BE AT THE CRIME SCENE AT THE TIME OF ITS COMMISSION.— In contrast, Batula's defenses of alibi and denial are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted. They warrant the least credibility or none at all and cannot prevail over the positive identification of the accused by the prosecution witnesses. In addition, Batula's alibi that he was in the forest with his brother Gil does not make it physically impossible for Batula to rape AAA on April 26, 2002 in Barangay Canano. For alibi to prosper, it must be proved that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the crime scene. The RTC pointed out that "the forest where [Batula] claimed to be when the rape occurred is in x x x [B]arangay Dalosduson, Hinabangan, Samar, linked by a road to Barangay Canano, so that impossibility and improbability are rendered naught."

5. CRIMINAL LAW; RAPE; ACCUSED IS GUILTY OF RAPE AND NOT STATUTORY RAPE; THE MINORITY OF THE VICTIM, ALTHOUGH PROVED DURING THE TRIAL, WAS NOT ALLEGED IN THE INFORMATION.— In this case, we are not

holding Batula liable for statutory rape as the fact that AAA was only nine years old at the time of commission of the rape, although proved during the trial, was not alleged in the Information. Nonetheless, Batula can still be convicted for rape as it was properly alleged in the Information, and subsequently proved beyond reasonable doubt during trial, that he had carnal knowledge of AAA by means of force, threats, and intimidation, and armed with a bladed weapon. Batula's use of a bladed weapon qualifies the rape, for which the higher penalty of *reclusion perpetua* to death is prescribed. The prescribed penalty being indivisible, we refer to Article 63 of the Revised Penal Code which provides: x x x **In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof: 1.** When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied. 2.**When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.** x x x There being no aggravating circumstance alleged and proved herein, we follow our pronouncement in *People v. Ayuda*, that "[w]here no aggravating circumstance is alleged in the information and proven during the trial, the crime of rape through the use of a deadly weapon may be penalized **only with *reclusion perpetua***, not death."

6. ID.; ID.; CIVIL LIABILITY; DAMAGES AWARDED, UPHELD.— We leave undisturbed the order of the RTC, affirmed by the Court of Appeals, for Batula to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, such awards being in accordance with law and jurisprudence. An award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering. An award of exemplary damages is also in order pursuant to Article 2230 of the New Civil Code since the qualifying circumstance of use of a deadly weapon attended the commission of the rape. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages is justified. Finally, in addition to the damages awarded, the accused should also pay interest of six percent (6%) per annum from the finality of this judgment until the amount of damages is fully paid.

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.*:

For Our resolution is the appeal filed by accused-appellant Jerry Batula, *alias* Cesar (Batula), from the Decision[1] dated July 30, 2007 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00574, which affirmed with modification the Decision[2] dated December 10, 2003 of the Regional Trial Court (RTC) of Calbiga, Samar, in Criminal Case No. CC-2002-1392, finding Batula guilty of raping AAA.[3]

Criminal Case No. CC-2002-1392 was initiated on October 7, 2002 when the City Prosecution Office of Calbiga, Samar, filed with the RTC an Information[4] charging Batula as follows:

> That on or about the 26th day of April, 2002, at around 7:00 A.M., more or less, in x x x and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon locally known as '*sundang*', with lewd design and lustful intent, by means of force, threats and intimidation, did then and there wil[l]fully, unlawfully and feloniously had carnal knowledge with the helpless complainant, AAA, against her will and consent.

During his arraignment on October 17, 2002, Batula pleaded "not guilty."[5]

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[1] *Rollo*, pp. 4-14; penned by Associate Justice Pampio A. Abarintos with Associate Justices Francisco P. Acosta and Stephen C. Cruz, concurring.

[2] CA *rollo*, pp. 16-33.

[3] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] Records, p. 1.

[5] *Id*. at 24.

Trial proper ensued.

The prosecution presented the testimonies of AAA,[6] the victim; BBB,[7] the mother of AAA; Samuel Labanda (Labanda),[8] an eyewitness to the circumstances immediately following the rape; and Dr. Felino Gualdrapa (Dr. Gualdrapa),[9] the physician who conducted the physical examination of AAA. Their testimonies established the following version of events.

On April 26, 2002, AAA, then nine years old, went with her mother BBB and father CCC to their farm in Barangay Canano, Hinabangan, Samar. Upon arrival at the farm at around 7:00 a.m., BBB ordered AAA to get the lighter from their nipa hut located at the other side of a hill. On her way back to where her parents were, AAA met Batula. Batula asked AAA for directions going to Barangay Canano. After answering Batula's questions, AAA resumed walking but she noticed that Batula was following her. Without any warning, Batula seized AAA and flung AAA to a creek that had nearly dried. AAA felt pain in her back. Batula made stabbing motions with his bolo, at the same time threatening AAA that "[i]f you will not undress yourself, I will stab you." Fearing for her life, AAA stripped off her *sando* and shorts. Batula also stripped himself naked. After lubricating his penis with his own saliva, Batula drove his penis into AAA's vagina. Severe pain wracked AAA's whole body, but unmindful of AAA's agony, Batula moved in a push and pull motion. However, Batula was interrupted when CCC, looking for his daughter, shouted, "Where are you, AAA?" Upon hearing CCC, Batula hurriedly picked up his bolo and clothes and left. AAA quickly dressed up and when she saw CCC, she immediately told her father that she had been raped. CCC searched for the perpetrator while AAA returned to her mother BBB. BBB almost fainted when she removed AAA's shorts and saw blood dripping down AAA's legs.

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[6] TSN, January 13, 2003.

[7] TSN, February 17, 2003.

[8] TSN, May 26, 2003.

[9] TSN, April 4, 2003.

Meanwhile, Labanda, who was in the vicinity, heard a muffled shout. Labanda was searching for the source of the sound when Batula suddenly passed by him naked. Batula was holding his short pants with his left hand to cover his front, and was carrying a bolo with his right hand. CCC thereafter arrived and he informed Labanda that his daughter AAA had been raped. Labanda prevented CCC from pursuing Batula for Batula was armed. Labanda had known Batula for a long time. Labanda and Batula's brother both lived in Barangay San Jose, Hinabangan, Samar, and Batula regularly visited his brother.[10]

Dr. Gualdrapa, a physician at the Samar Provincial Hospital, affirmed before the RTC the results of his physical examination of AAA, as stated in his Medical Report/Certification dated April 26, 2002, to wit:

> Vulva: (+) Redness – Swelling w/ blood clots noted; (+) lacerations approx. 0.75 cm at midline.
>
> I/E : (+) Hymenal lacerated wounds, fresh at 12:00, 1:00, 4:00, 6:00, 8:00, 9:00, [and] 11:00 o'clock positions.[11]

Dr. Gualrapa opined that the hymenal lacerations were inflicted within 48 hours preceding AAA's examination because of the presence of blood clots; and that said lacerations could have been caused by a blunt object such as a penis.

Batula and his brother, Gil Batula (Gil), testified for the defense. However, Gil's testimony was expunged from the records as he was killed sometime in August 2003, before he could be cross-examined by the prosecution.[12]

Batula denied the charges against him. He claimed that on April 25, 2002, he went to the mountain forest with his brother Gil to gather pieces of wood they could use as posts, and they stayed on the mountain for three days. They even passed a marijuana plantation on the mountain on the second day, but

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[10] TSN, May 26, 2003, pp. 4-5.

[11] Records, p. 8; Exhibit "B".

[12] *Id.* at 133.

they did not report what they had discovered to the police authorities. When they returned home, Batula learned from a certain Oday Cabigayan that somebody was raped and that he (Batula) was the suspect.[13]

The RTC rendered its Decision on December 10, 2003 finding Batula guilty beyond reasonable doubt of raping AAA. The dispositive portion of the said decision reads:

> The ineluctable conclusion is that, the accused, **JERRY BATULA *Y* SABLAN *alias* "Cesar"** is found **guilty** of **RAPE** as charged in the Information, beyond reasonable doubt, and he is sentenced to the penalty of **DEATH** through ***LETHAL INJECTION***; to indemnify the victim, AAA, in the amount of Php50,000.00; to pay moral damages, in the amount of Php50,000.00 and exemplary damages in the amount of Php30,000.00 and to pay the costs.
>
> Let the aforenamed accused be detained at the New Bilibid Prisons, Muntinlupa[,] Manila, until further orders.
>
> The Acting Branch Clerk of Court is advised to proceed accordingly, in so far as the record herein is concerned.[14]

When the record of the case was forwarded to us for review, we remanded the same to the Court of Appeals, conformably with our decision in *People v. Mateo*.[15]

The Court of Appeals, in its Decision dated July 30, 2007, affirmed Batula's conviction by the RTC, but modified the penalty by reducing the death sentence to *reclusion perpetua*, without eligibility for parole, pursuant to Republic Act No. 9346. The appellate court decreed:

> **WHEREFORE**, premises considered, the Decision dated December 10, 2003 and promulgated on January 8, 2004 of Branch 33, Regional Trial Court of Calbiga, Samar is **AFFIRMED WITH MODIFICATION** by reducing the meted penalty of death to *reclusion perpetua*, without eligibility to parole pursuant to R.A. No. 9346.[16]

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[13] TSN, September 2, 2003, pp. 6-10.

[14] CA *rollo*, p. 33.

[15] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

[16] *Rollo*, p. 14.

Hence, Batula appeals before us with the same assignment of errors raised before the Court of Appeals:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PROSECUTION'S WITNESSES, MOTHER AND DAUGHTER X X X.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[17]

Batula assails the conflicting statements of AAA and her mother BBB. AAA testified that she did not know the name of the man who ravished her as that was the first time that she saw him. Yet, BBB narrated on the witness stand that AAA told her that she (AAA) had been raped by a man named Cesar. Batula asserts that such contradiction reveals the malicious intent of AAA's parents in implicating him in AAA's rape. Batula further imputes ill motive on the part of AAA's parents, averring that it was CCC, AAA's father, who was taking care of the marijuana plantation which Batula and his brother Gil discovered on the mountain, and that BBB and CCC were afraid that Batula might report the marijuana plantation to the authorities.[18]

The Office of the Solicitor General, representing the State, insists that Batula's guilt was established beyond reasonable doubt by the credible testimonies of the prosecution witnesses.

Batula's appeal essentially challenges the credibility of the prosecution witnesses. The issue of credibility of witnesses is resolved primarily by the trial court since it is in a better position to decide the same after having heard the witnesses and observed their conduct, deportment and manner of testifying. Accordingly,

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[17] CA *rollo*, p. 64.

[18] *Id.* at 72.

the findings of the trial court are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that it overlooked, misunderstood, or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case.[19] There is no exceptional reason herein for us to depart from the general rule.

As the RTC declared, AAA was straightforward, sincere, and very credible, as she recounted the rape incident on the witnesses stand:

Q You said, when you were going back to where your father and mother were, you met a person, and what did this person do when you met him?

x x x x x x x x x

A The person asked me where the way to Brgy. Kanano is.

x x x x x x x x x

Q And so, after that, what happened next?
A After that, while I proceeded on my way, I noticed that he was following me at my back.

Q After that, what happened next, if any?
A After that, I rested and suddenly, I was carried (*ginsakmi*), and I was thrown to a creek.

x x x x x x x x x

Q Were you wet when you were thrown to the creek?
A Yes, sir.

Q After that, what did this person do?
A The person told me to undress myself and I obeyed because he was attempting to stab me.

Q Why? What was he armed or carrying then when you said he was trying to stab you?
A Sir, he was armed with a bolo.

x x x x x x x x x

[19] *People v. Purazo*, 450 Phil. 651, 673 (2003).

Q Why did you say that he was attempting to stab you, why, what was he doing?
A Because he said to me, "If you will not undress yourself, I will stab you."

Q So, what did you do with your clothing?
A So, I obeyed him and I undressed myself because I am afraid I might be stabbed.

x x x x x x x x x

Q When you have already undressed yourself, what did this male person do, if any?
A I was held by this person to the place where there was no water and he also undressed himself.

x x x x x x x x x

Q After this person undressed himself, what did this person do?
A The person put saliva to his penis.

Q After placing saliva into his penis, what did this person do?
A He inserted his penis to my vagina.

Q And what did you feel when he inserted his penis to your sexual organ?
A I felt so much pain. (At this juncture, the voice of the witness has changed and the witness is now crying. The witness is wiping the tears with her dress while the public prosecutor continue asking the question)

Q What did he do while his penis was inside your sexual organ?
A While his penis was inside my vagina, the person continuously made his push and pull movement (*sakyod*), and I heard a call from my father. (Witness continue crying)

Q You said, while you were on that situation, you heard your father calling?
A Yes, sir.

Q What were the words used by your father in calling?
A He said: "Where are you [AAA]?"

Q When you heard your father calling, what did this person do?
A He immediately got his bolo and his clothes and jumped to the creek.[20]

Forced to relive her ordeal all over again, AAA broke down in tears as she was testifying. The crying of a victim during her testimony is evidence of the truth of the rape charges, for the display of such emotion indicates the pain that the victim feels when asked to recount her traumatic experience.[21]

The testimony of AAA was further corroborated by that of Labanda, which was equally adjudged by the RTC as credible:

> The credible and straight forward testimony of the victim, and the equally credible testimony of Samuel Labanda who saw Jerry Batula passed him by immediately after the rape when the former hid when he heard a voice being suppressed, but a little of it came out corroborated the fact, of the presence of accused thereat. Samuel Labanda saw Jerry Batula covering his front with his right hand while the left, held the bolo, squares with the recollection of the minor-victim to that effect. The testimony of the victim that the accused had a bolo which was also corroborated by Samuel Labanda, is therefore true. And this court takes cognizance that in mountain barangay in this province, men carry bolo/knife the least, and/or a gun at most. Although, there is a slight contradiction which hand of the accused held what, it however does not affect the prosecution's cause, the same being only on minor point.[22]

Moreover, the medical evidence likewise lends credence to AAA's testimony. It is well-settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisites of carnal knowledge. Lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[23]

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[20] TSN, January 13, 2003, pp. 10-15.

[21] *People v. Ancheta*, 464 Phil. 360, 371 (2004).

[22] CA *rollo*, pp. 30-31.

[23] *People v. Belen*, 432 Phil. 881, 893 (2002).

The purported inconsistency between the testimonies of AAA and her mother BBB merely refers to a minor detail. The central fact is that Batula, by means of force, threats, and intimidation, and use of a bolo, succeeded in having carnal knowledge of AAA. Whether AAA was able to name Batula as the perpetrator immediately after the rape or AAA was able to identify Batula as her rapist at a later time, does not depart from the fact that Batula raped AAA. We have said time and again that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses. Instead of weakening their testimonies, such inconsistencies tend to strengthen their credibility because they discount the possibility of their being rehearsed testimony.[24]

In contrast, Batula's defenses of alibi and denial are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted. They warrant the least credibility or none at all and cannot prevail over the positive identification of the accused by the prosecution witnesses.[25] In addition, Batula's alibi that he was in the forest with his brother Gil does not make it physically impossible for Batula to rape AAA on April 26, 2002 in Barangay Canano. For alibi to prosper, it must be proved that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the crime scene.[26] The RTC pointed out that "the forest where [Batula] claimed to be when the rape occurred is in x x x [B]arangay Dalosduson, Hinabangan, Samar, linked by a road to Barangay Canano, so that impossibility and improbability are rendered naught."[27]

Batula's imputation of ill motive on the part of AAA's parents is just as specious. There is no independent and competent

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[24] *People v. Givera*, 402 Phil. 547, 566 (2001).

[25] *People v. Dacoba*, 352 Phil. 70, 78 (1998).

[26] *People v. Pruna*, 439 Phil. 440, 463-464 (2002).

[27] CA *rollo*, p. 32.

proof of the existence of such marijuana plantation or that it was being taken care of by CCC, the father of AAA. The RTC disregarded Batula's accusation against AAA's parents, observing that if indeed Batula and his brother Gil discovered the marijuana plantation together, why then did AAA's parents not similarly file rape charges against Gil? In answer to its own question, the RTC ruled that it was simply because Gil had no participation at all in the rape of AAA, which was committed by Batula alone. Also, the alleged concoction by AAA's parents of a sensational lie against Batula and the resulting public hearings of their daughter's rape case run counter to the supposed intention of AAA's parents to keep the existence of the marijuana plantation secret as Batula was more likely to talk, trapped as he was in a corner. In *People v. Geraban*,[28] we held:

> It is unnatural for a parent, more so for a mother, to use her offspring as an engine of malice especially if it will subject her child to the humiliation, disgrace and even stigma attendant to a prosecution for rape, if she were not motivated solely by the desire to incarcerate the person responsible for her child's defilement. x x x.

All told, we find no reason to reverse the judgment of conviction rendered by both the Court of Appeals and the RTC against Batula.

We now come to the propriety of the penalties imposed on Batula.

Article 335 of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti Rape Law of 1997,[29] which was renumbered as Art. 266-A and 266-B of the Revised Penal Code, describes how the crime of rape is committed:

> ART. 266-A. *Rape; when and how committed*. - Rape is committed –
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

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[28] 410 Phil. 450, 461 (2001).

[29] Took effect on October 22, 1997.

a) Through force, threat or intimidation;

x x x x x x x x x

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

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

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

In this case, we are not holding Batula liable for statutory rape as the fact that AAA was only nine years old at the time of commission of the rape, although proved during the trial, was not alleged in the Information. Nonetheless, Batula can still be convicted for rape as it was properly alleged in the Information, and subsequently proved beyond reasonable doubt during trial, that he had carnal knowledge of AAA by means of force, threats, and intimidation, and armed with a bladed weapon. Batula's use of a bladed weapon qualifies the rape, for which the higher penalty of *reclusion perpetua* to death is prescribed. The prescribed penalty being indivisible, we refer to Article 63 of the Revised Penal Code which provides:

ART. 63. *Rules for the application of indivisible penalties*. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation. (Emphases supplied.)

There being no aggravating circumstance alleged and proved herein, we follow our pronouncement in *People v. Ayuda*,[30] that "[w]here no aggravating circumstance is alleged in the information and proven during the trial, the crime of rape through the use of a deadly weapon may be penalized **only with *reclusion perpetua***, not death."

Lastly, we leave undisturbed the order of the RTC, affirmed by the Court of Appeals, for Batula to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, such awards being in accordance with law and jurisprudence. An award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.[31] An award of exemplary damages is also in order pursuant to Article 2230 of the New Civil Code since the qualifying circumstance of use of a deadly weapon attended the commission of the rape. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages is justified.[32]

Finally, in addition to the damages awarded, the accused should also pay interest of six percent (6%) per annum from

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[30] 459 Phil. 173, 185 (2003).

[31] *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 348.

[32] *People v. Macapanas*, G.R. No. 187049, May 4, 2010, 620 SCRA 54, 76-77.

the finality of this judgment until the amount of damages is fully paid.[33]

WHEREFORE, the instant appeal is **DENIED** and the Decision dated July 30, 2007 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00574 is hereby **AFFIRMED** with modification that the accused shall pay six percent (6%) interest per annum on the damages awarded from the finality of this judgment until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Perez,*[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 183100. November 28, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO ABRENCILLO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S EVALUATION OF CREDIBILITY IS BINDING ON THE COURT; TRIAL COURTS ARE IN THE BEST POSITION TO OBSERVE THE CONDUCT AND DEMEANOR OF WITNESSES IN COURT.— Firstly, the findings of the RTC and the CA deserve respect mainly because the RTC as the trial court was in the best position to observe the demeanor and conduct of AAA when she incriminated the accused by her recollection of the incident in court. The personal

[33] *People v. Atadero*, *supra* note 31 at 349.

[*] Per Special Order No. 1356 dated November 13, 2012.

observation of AAA's conduct and demeanor enabled the trial judge to discern whether she was telling the truth or inventing it. The trial judge's evaluation, which the CA affirmed, now binds the Court, leaving to the accused the burden to bring to the Court's attention facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted by the lower courts but would materially affect the disposition of the case differently if duly considered. Alas, the accused made no showing that the RTC, in the first instance, and the CA, on review, ignored, misapprehended, or misinterpreted any facts or circumstances supportive of or crucial to his defense.

2. CRIMINAL LAW; RAPE; RAPE IS CONSUMMATED ONCE THE PENIS OF THE ACCUSED TOUCHES EITHER *LABIA* OF THE *PUDENDUM*.— Carnal knowledge of AAA as an element of rape was proved although Dra. Mecija's findings indicated no physical injuries on the body of AAA. Rather than disproving the commission of the rape, the absence of a finding of physical injuries on AAA corroborated her testimony that she became petrified with fear and could not offer any physical resistance to his sexual assault after he poked the sharp tip of the *bolo* unto her neck. It is relevant to mention that carnal knowledge as an element of rape does not require penetration. Carnal knowledge is simply the act of a man having sexual bodily connections with a woman. Indeed, all that is necessary for rape to be consummated, according to *People v. Campuhan*, is for the penis of the accused to come into contact with the lips of the *pudendum* of the victim. Hence, rape is consummated once the penis of the accused touches either *labia* of the *pudendum*.

3. ID.; ID.; PROOF OF PRESENCE OF HYMENAL LACERATION IN THE VICTIM IS NEITHER INDISPENSABLE NOR NECESSARY IN ORDER TO ESTABLISH THE COMMISSION OF RAPE.— We reject the posture of the accused that AAA's old-healed hymenal lacerations, as Dra. Mecija found, disproved the recent commission of the rape charged. Proof of the presence of hymenal laceration in the victim is neither indispensable nor necessary in order to establish the commission of rape. Hence, whether the hymenal lacerations of AAA were fresh or healed was not decisive. In this connection, it is timely to remind that the commission of rape may be proved by evidence *other than* the physical manifestations of force being applied on the victim's

genitalia, like the presence of hymenal laceration. For sure, even the sole testimony of the victim, if found to be credible, suffices to prove the commission of rape. This rule avoids the situation of letting the rapist escape punishment and go scot-free should he commit the rape with only himself and the victim as the witnesses to its commission.

4. ID.; ID.; PENALTY OF *RECLUSION PERPETUA*, PROPERLY IMPOSED.— the CA correctly prescribed *reclusion perpetua*. The rape that was committed was not qualified rape because the accused and BBB were not legally married to each other. What the records show, instead, was that they were in a common-law relationship, which meant that he was not the stepfather of AAA, contrary to the allegation of the information. Under Article 266-B of the *Revised Penal Code*, rape through force, threat or intimidation of a woman 12 years or over in age is punished by *reclusion perpetua*. Article 266-B of the *Revised Penal Code* prescribes the penalty of *reclusion perpetua* to death whenever the rape is committed with the use of a deadly weapon. Although the information alleged the use by the accused of a deadly weapon (*bolo*) in the commission of the rape, the CA still correctly prescribed the lesser penalty of *reclusion perpetua* because the information did not allege the attendance of any aggravating circumstances. With the intervening revision of the *Rules of Criminal Procedure* (*i.e.*, effective on December 1, 2000) in order to now require the information to state the "acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances xxx in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstance and for the court to pronounce judgment," the Prosecution became precluded from establishing any act or circumstance not specifically alleged in the information if such act or circumstance would increase the penalty to the maximum period.

5. ID.; ID.; CIVIL LIABILITY; AWARDED INDEMNITY OF ₱75,000.00 REDUCED TO ₱50,000.00 IN VIEW OF THE CRIME ACTUALLY PROVED BEING SIMPLE RAPE;

EXEMPLARY DAMAGES, AWARDED.— The Court reduces the indemnity from ₱75,000.00 to ₱50,000.00 in view of the crime actually proved being simple rape. However, the RTC and the CA did not award exemplary damages to AAA, despite her being entitled to such damages by reason of her minority under 18 years at the time of the rape, and because of the use by the accused of the *bolo*, a deadly weapon. This recognition of her right accords with the perceptive pronouncement in *People v. Catubig* to the effect that exemplary damages were justified regardless of whether or not the generic or qualifying aggravating circumstances were alleged in the information because the grant of such damages pursuant to Article 2230 of the *Civil Code* was intended for the sole benefit of the victim and did not concern the criminal liability, the exclusive concern of the State. For that purpose, therefore, exemplary damages of ₱25,000.00 are hereby fixed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

This appeal seeks to undo the conviction of the accused for the rape he had committed against AAA,[1] the 15-year-old daughter of BBB, his common-law wife. The Regional Trial Court, Branch 61, in Gumaca, Quezon (RTC) sentenced him to death on March 4, 2002 on the ground that the crime was qualified by his being the step-father of the victim and her minority under 18 years. By its January 29, 2008 decision rendered in CA-G.R. CR-HC No. 01123,[2] however, the Court of Appeals

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[1] The real name of the victim and her immediate family are withheld per R.A. No. 7610 and R.A. No. 9262 "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-422.

[2] *Rollo*, pp. 4-10; penned by Associate Justice Mario L. Guariña III

(CA) affirmed the conviction but found the crime to be simple rape, reducing the penalty to *reclusion perpetua*.

The records show that the accused and BBB started their cohabitation when AAA and CCC, who were twin sisters, were only about three years of age; that the common-law partners lived with BBB's daughters in the same house for the next 12 years; that a father-daughter relationship developed between the accused and BBB's daughters, with AAA and CCC even considering him as their own father and addressing him as *itay* (father); that AAA frequently accompanied him when he gathered wood and made charcoal in a hut in the nearby forest; that on March 1, 1999, BBB left the house early to sell fish; that AAA was left alone in the house and had lunch by herself because he went out to chat with neighbors; that after her lunch, AAA took a nap in the house, but his return to the house awakened her; that taking advantage of AAA being alone in the house, he took off his pants and laid down beside her; that he embraced her, but she brushed away his arms; that he then got up and started taking her shorts off; that she resisted and held on to her shorts; that in frustration, he went to take his *bolo* and poked its sharp tip unto her throat while threatening to kill her; that she became petrified with fear and could not do anything more after that; that he then undress her, went on top of her, and inserted his penis into her vagina; that the penile insertion caused her pain; that he then made push and pull motions until he spent himself inside her; that she could only beg for him to stop but he paid no heed to her pleas; that she cried later on; and that he left her alone afterwards.

The records further show that once the accused left her alone, she ran to the house of her *Lolo Armin* and reported what the accused had just done to her; that *Lolo Armin* accompanied her to the police station to report the rape; that she narrated in her complaint affidavit that the accused had raped her even before that time, when she was still younger; and that she underwent physical examination by the municipal

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(retired), with Associate Justice Japar B. Dimaampao and Associate Justice Sixto C. Marella, Jr. (deceased), concurring.

health officer, Dra. Constancia Mecija, about two hours after the commission of the rape.

Dra. Mecija rendered the following findings in the medico-legal report relevant to AAA's physical examination, *viz*:

x x x x x x x x x

Genital Examination:

Pubic hair fully grown, moderate labia majora and minora coaptated, fourchette lax, Vestibular mucosa pinkish.Hymen, tall, thin with old healed complete laceration at 3:00 o'clock and 9:00 o'clock position; corresponding to the face of a watch. Edges rounded, Hymenal orifice – admits a tube of 2.5 cm. in diameter with moderate resistance, vaginal walls tight. Rugosities prominent.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted in the body of the subject at the timeof examination.
2. Old healed hymenal laceration, present.[3]

x x x x x x x x x

The Provincial Prosecutor of Quezon filed in the RTC the information dated March 26, 1999 charging the accused with qualified rape allegedly committed as follows:

That on or about the 1st day of March 1999, at Barangay No. 8 Poblacion, in the Municipality of Gen. Luna, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, with lewd design, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, his step-daughter, and a minor, 15 years of age, against her will.

CONTRARY TO LAW.[4]

The accused pleaded *not guilty* to the information on September 6, 2000.

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[3] Records, p. 142.

[4] *Id.* at 2.

During the trial, the accused denied having sexual intercourse with AAA, although he admitted being in the house at the alleged time of the rape. He insisted that nobody was in the house when he returned that afternoon from his chore of gathering wood in the nearby forest; that upon learning from a neighbor that AAA had left the house with her *kabarkada*, he himself did the cooking and waited for her to return home; and that he scolded her, causing her to run away from home.

After trial, the RTC rendered judgment, convicting the accused for qualified rape and prescribing the death penalty. It considered AAA's testimony as credible and reliable because the medico-legal findings corroborated her accusation. It found that the rape was qualified by relationship, the accused being her stepfather, and by her minority, she being 15 years of age at the time of the commission of the crime. It ruled as follows:

> **WHEREFORE**, based on the foregoing, the Court finds the accused **ROGELIO ABRENCILLO** guilty beyond reasonable doubt for rape under Article 266-A and 266-B of the Revised Penal Code as amended by RA 8353 and sentencing him the penalty of **DEATH**. He is further ordered to pay the amount of ₱75,000.00 to AAA as indemnity and moral damages in the amount of ₱50,000.00.
>
> **SO ORDERED.**[5]

On intermediate review, the accused claimed that the medico-legal evidence did not prove recent sexual intercourse in view of the finding of old healed laceration that indicated the non-virgin state of AAA.

Nonetheless, the CA, upholding the conviction but downgrading the offense to simple rape because the accused was not AAA's stepfather due to him and BBB not having been legally married, disposed thus:

> IN VIEW OF THE FOREGOING, the decision appealed from is AFFIRMED with the modification that the accused shall suffer the penalty of *reclusion perpetua*, in addition to the indemnity and damages awarded therein.

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[5] *Id.* at 138.

SO ORDERED.[6]

In his appeal, the accused reiterated his arguments in the CA,[7] still assailing the credibility of AAA's accusation of a recent coerced sexual encounter with him.

We affirm the conviction.

Firstly, the findings of the RTC and the CA deserve respect mainly because the RTC as the trial court was in the best position to observe the demeanor and conduct of AAA when she incriminated the accused by her recollection of the incident in court. The personal observation of AAA's conduct and demeanor enabled the trial judge to discern whether she was telling the truth or inventing it.[8] The trial judge's evaluation, which the CA affirmed, now binds the Court, leaving to the accused the burden to bring to the Court's attention facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted by the lower courts but would materially affect the disposition of the case differently if duly considered.[9] Alas, the accused made no showing that the RTC, in the first instance, and the CA, on review, ignored, misapprehended, or misinterpreted any facts or circumstances supportive of or crucial to his defense.[10]

Secondly, carnal knowledge of AAA as an element of rape was proved although Dra. Mecija's findings indicated no physical injuries on the body of AAA.[11] Rather than disproving the commission of the rape, the absence of a finding of physical injuries on AAA corroborated her testimony that she became

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[6] CA *rollo*, p. 104.

[7] *Id.* at 36-47.

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

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

[10] *People v. Felan*, G.R. No. 176631, February 2, 2011, 641 SCRA 449, 453.

[11] TSN, February 1, 2001, p. 7.

petrified with fear and could not offer any physical resistance to his sexual assault after he poked the sharp tip of the *bolo* unto her neck.

It is relevant to mention that carnal knowledge as an element of rape does not require penetration. Carnal knowledge is simply the act of a man having sexual bodily connections with a woman.[12] Indeed, all that is necessary for rape to be consummated, according to *People v. Campuhan*,[13] is for the penis of the accused to come into contact with the lips of the *pudendum* of the victim. Hence, rape is consummated once the penis of the accused touches either *labia* of the *pudendum*.

Thirdly, we reject the posture of the accused that AAA's old-healed hymenal lacerations, as Dra. Mecija found, disproved the recent commission of the rape charged. Proof of the presence of hymenal laceration in the victim is neither indispensable nor necessary in order to establish the commission of rape. Hence, whether the hymenal lacerations of AAA were fresh or healed was not decisive.[14] In this connection, it is timely to remind that the commission of rape may be proved by evidence *other than* the physical manifestations of force being applied on the victim's genitalia, like the presence of hymenal laceration. For sure, even the sole testimony of the victim, if found to be credible, suffices to prove the commission of rape. This rule avoids the situation of letting the rapist escape punishment and go scot-free should he commit the rape with only himself and the victim as the witnesses to its commission.

Fourthly, the CA correctly prescribed *reclusion perpetua*. The rape that was committed was not qualified rape because the accused and BBB were not legally married to each other. What the records show, instead, was that they were in a common-law relationship, which meant that he was not the stepfather of AAA, contrary to the allegation of the information. Under Article 266-B of the *Revised Penal Code*, rape through force,

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[12] *Black's Law Dictionary* 193 (5th ed., 1979).

[13] G.R. No. 129433, March 30, 2000, 329 SCRA 270, 280-281.

[14] *People v. Domantay*, G.R. No. 130612, May 11, 1999, 307 SCRA 1.

threat or intimidation of a woman 12 years or over in age is punished by *reclusion perpetua*.

Article 266-B of the *Revised Penal Code* prescribes the penalty of *reclusion perpetua* to death whenever the rape is committed with the use of a deadly weapon. Although the information alleged the use by the accused of a deadly weapon (*bolo*) in the commission of the rape, the CA still correctly prescribed the lesser penalty of *reclusion perpetua* because the information did not allege the attendance of any aggravating circumstances. With the intervening revision of the *Rules of Criminal Procedure* (*i.e.*, effective on December 1, 2000) in order to now require the information to state the "acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances xxx in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstance and for the court to pronounce judgment,"[15] the Prosecution became precluded from establishing any act or circumstance not specifically alleged in the information if such act or circumstance would increase the penalty to the maximum period.[16]

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[15] Section 9, Rule 110, *Rules of Criminal Procedure*.

[16] *E.g.*, *Catiis v. Court of Appeals*, G.R. No. 153979, February 9, 2006, 482 SCRA 71, 84, where the RTC granted bail despite the offense charged being *estafa* (Article 315, *Revised Penal Code*, in conjunction with Presidential Decree 1689) and the penalty prescribed was *reclusion temporal* to *reclusion perpetua* if the amount involved exceeded ₱100,000.00. The RTC justified the grant of bail by holding that because the information had averred no qualifying or aggravating circumstance that would justify the imposition of the maximum of *reclusion perpetua* in the case, and because the omission already precluded the State from proving the aggravating circumstance during the trial, the crime was bailable. The bail grant was assailed by the private complainant in the CA, which upheld the RTC. The SC sustained the CA because "it is now a requirement that the aggravating as well as the qualifying circumstances be expressly and specifically alleged in the complaint or information (; o)therwise, they cannot be considered by the trial court in their judgment, even if they are subsequently proved during trial. A reading of the Information shows that there was no allegation of any aggravating circumstance, thus (the trial judge) is correct when he found that the lesser penalty, *i.e.*, *reclusion temporal*, is imposable in case of conviction."

Lastly, the Court reduces the indemnity from ₱75,000.00 to ₱50,000.00 in view of the crime actually proved being simple rape. However, the RTC and the CA did not award exemplary damages to AAA, despite her being entitled to such damages by reason of her minority under 18 years at the time of the rape, and because of the use by the accused of the *bolo*, a deadly weapon. This recognition of her right accords with the perceptive pronouncement in *People v. Catubig*[17] to the effect that exemplary damages were justified regardless of whether or not the generic or qualifying aggravating circumstances were alleged in the information because the grant of such damages pursuant to Article 2230 of the *Civil Code* was intended for the sole benefit of the victim and did not concern the criminal liability, the exclusive concern of the State. For that purpose, therefore, exemplary damages of ₱25,000.00 are hereby fixed.

WHEREFORE, we **AFFIRM** the decision promulgated on January 29, 2008, subject to the **MODIFICATION** that Rogelio Abrencillo is ordered to pay AAA the reduced amount of ₱50,000.00 as civil indemnity, and the further amount of ₱25,000.00 as exemplary damages in addition to the moral damages of ₱50,000.00 awarded by the trial court.

The accused shall pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Perez,*[*] *JJ.*, concur.

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

[*] Vice Associate Justice Bienvenido L. Reyes, who is on Wellness Leave, per Special Order No. 1356 dated November 13, 2012.

FIRST DIVISION

[G.R. No. 187732. November 28, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FELIX MORANTE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; JURISPRUDENTIAL PRINCIPLE OF AFFORDING GREAT RESPECT AND EVEN FINALITY TO THE TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF WITNESSES.— We reiterate the jurisprudential principle of affording great respect and even finality to the trial court's assessment of the credibility of witnesses. In *People v. Arpon*, we stated: [W]hen the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. Her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" are all useful aids for an accurate determination of a witness' honesty and sincerity. **The trial judge, therefore, can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies.** Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. **The rule finds an even more stringent application where said findings are sustained by the [Court of Appeals]**.

2. ID.; ID.; ID.; A FEW INCONSISTENT REMARKS IN RAPE CASES WILL NOT NECESSARILY IMPAIR THE TESTIMONY OF THE OFFENDED PARTY; A RAPE VICTIM IS NOT EXPECTED TO MAKE AN ERRORLESS RECOLLECTION OF THE INCIDENT SO HUMILIATING AND PAINFUL THAT SHE MIGHT IN FACT BE TRYING TO OBLITERATE IT FROM HER MEMORY.— Given that in the present case, the courts *a*

quo have sufficiently addressed the question on the alleged inconsistencies in the testimony of AAA and appellant does not present to this Court any scintilla of evidence to prove that the testimony of the witness was not credible, the Court must uphold the assessment of the RTC as affirmed by the Court of Appeals. In any event, we agree with the Court of Appeals when it said: It is also notable that AAA was able to reconcile such inconsistency during her re-direct examination when she explained that the house she was referring to, when she was with CCC and the latter's children, was also the same house she slept in with her mother and siblings because they all live in one (1) house. x x x. Alleged inconsistencies do not detract from AAA's credibility as a witness. A rape victim is not expected to make an errorless recollection of the incident, so humiliating and painful that she might in fact be trying to obliterate it from her memory. Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.

3. ID.; ID.; ID.; AWARD OF MORAL AND EXEMPLARY DAMAGES, MODIFIED.— In line with current jurisprudence, we modify the award for moral damages and exemplary damages for each count of rape awarded by the Court of Appeals in Criminal Cases No. 2277-M-00 to 2282-M-00, we increase the award for moral damages to ₱75,000.00 and the award for exemplary damages to ₱30,000 for each count of rape. In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% *per annum* from date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is an appeal of the November 6, 2008 **Decision**[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02815[2] affirming with modification the April 20, 2007 **Decision**[3] of the Regional Trial Court (RTC), Branch 13, Malolos, Bulacan in Crim. Case Nos. 2277-M-00 to 2283-M-00, entitled *People of the Philippines v. Felix Morante*, finding appellant Felix Morante guilty beyond reasonable doubt of the crimes of violation of Section 5(b)[4] of Republic Act No. 7610[5] and six counts of rape as defined in Article 266-A of the Revised Penal Code.

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[1] *Rollo*, pp. 2-24; penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring.

[2] Entitled *People of the Philippines v. Felix Morante*.

[3] CA *rollo*, pp. 58-66; penned by Judge Andres B. Soriano.

[4] Republic Act No. 7610, Section 5 provides:

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[.]

[5] AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES

The facts as found by the RTC follow.

On August 8, 2000, seven informations were filed against appellant for the following crimes:

A) Violation of Section 5, Republic Act No. 7610:

In Criminal Case No. 2283-M-00:

That [o]n or about the month of December, 1999, in x x x and within the jurisdiction of this Honorable Court, the above-named [appellant], taking advantage of the minority of the complainant AAA who was then twelve (12) years of age and of his moral ascendancy and influence over her as common-law husband of her mother, did then and there wil[l]fully, unlawfully and feloniously, by means of force and intimidation and with lewd designs, fondle the breasts of said AAA, kiss her and take other unwarranted liberties of her body which degraded and demeaned her intrinsic worth and dignity as a human being.[6]

B) Six separate counts of rape as defined under Article 266-B of the Revised Penal Code uniformly stating:

In Criminal Case Nos. 2277-M-00 / 2278-M-00 / 2279-M-00 / 2280-M-00 / 2281-M-00 / 2282-M-00:

That on or about the 10th day of January, 2000,[7] in x x x and within the jurisdiction of this Honorable Court, the above-named [appellant] did then and there wil[l]fully, unlawfully and feloniously, with lewd designs and by means of force, violence and intimidation have carnal knowledge of AAA, a girl of twelve years of age and daughter of his common-law wife, BBB, against her will and consent.[8]

On arraignment, appellant pleaded not guilty for all crimes charged.[9] After pre-trial was conducted, the cases were consolidated and trial ensued.

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[6] Records of Crim. Case No. 2283-M-00.

[7] 11th day of January, 2000 in Crim. Case No. 2278-M-00; 12th day of January, 2000 in Crim. Case No. 2279-M-00; 13th day of January, 2000 in Crim. Case No. 2280-M-00; 14th day of January, 2000 in Crim. Case No. 2281-M-00 and 15th day of January, 2000 in Crim. Case No. 2282-M-00.

[8] Records, p. 1.

[9] *Id.* at 13.

The prosecution presented AAA as its witness. It also presented AAA's birth certificate[10] and medical certificate[11] by Dr. Ivan Richard Viray (Dr. Viray).

AAA testified that appellant is her stepfather. AAA and her siblings lived with their mother, BBB, and appellant in a one-storey house/apartment. Sometime in December 1999, at midnight, while she was sleeping and her mother and siblings were not one foot away from her, she was suddenly awakened as somebody heavy settled on top of her. She awoke to find appellant on top of her, kissing her cheeks, and feeling her up. Appellant thereafter removed his clothing and had carnal knowledge of her. She was not able to alert her mother for fear that appellant might kill them. After the deed, appellant got off her and went back to sleep.[12]

AAA also testified that every night from January 10 to 15, 2000, appellant, despite living with the family in close quarters, repeatedly violated her, all the while threatening to kill her if she made any noise or reported the incident to anyone else.[13]

On cross-examination, however, AAA testified that on January 10 to 15, 2000 she lived with her aunt in Masuso, Calumpit, Bulacan and while staying there, she slept beside her aunt and woke up early morning the following day.[14]

On redirect examination, AAA clarified that she and her mother lived in the same house as her aunt and her children, together with appellant. She maintained that appellant had carnal knowledge of her despite living in close quarters and with several people around.[15]

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[10] *Id.* at 89.

[11] *Id.* at 91.

[12] CA *rollo*, p. 60.

[13] *Id.* at 60-62.

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

[15] *Id.* at 62.

AAA's testimony was corroborated by the findings of Dr. Viray. He testified that upon his examination of AAA, he found that she sustained healed lacerations at two (2), seven (7), nine (9) and ten (10) o'clock positions and deep lacerations at three (3) and eleven (11) o'clock positions. The examination revealed that AAA was in a non-virgin state physically; that she had no external signs of application of any form of trauma; and that the probable date of laceration could be "more than one week, month, or year" and might be considered permanent. He said that the probable cause of the lacerations could be the insertion of a hard object or erected penis.[16]

Appellant, in his defense, presented his testimony as well as that of his daughter, Nora, as evidence.

Appellant denied all the charges against him. He stated that AAA was the daughter of his common-law wife. He, however, disclaimed any knowledge of sexual abuse committed in December 1999 and from January 10, 2000 to January 15, 2000. He said that AAA, BBB, and CCC, AAA's aunt, harbored ill feelings against him for intervening in an alleged fight among the three ladies involving the salary earned by AAA from her baby-sitting job. They thus orchestrated his downfall. He said that he treated AAA as he would his own daughter. He added that it was impossible for him to have done anything to AAA since she worked as a helper in Bocaue, Bulacan for four months, from January 13, 2000 to April 6, 2000.[17]

Appellant's natural daughter, Nora Morante, testified that AAA was her father's stepdaughter and she treated AAA as a sister. She stated that on January 10 and 11, 2000, AAA was at her employer's house in Bocaue, Bulacan.[18]

After considering the evidence presented by both parties, the RTC rendered the April 20, 2007 Decision finding appellant guilty of the crimes charged, to wit:

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[16] *Id.*

[17] *Id.* at 63-64.

[18] *Id.* at 64.

After a careful consideration of the evidences presented herein both by the prosecution as well as the defense, the Court is of the opinion and so holds that the prosecution has successfully established beyond reasonable doubt the commission of the offenses charged therein. The testimony of [AAA] herein is consistent in all material respects and there is no showing that said witness, in testifying against [appellant] herein could have been motivated by any ill or grudge against the [appellant]. Her testimony is supported by the medical findings herein which showed that [AAA] was no longer a virgin weeks after the incident.

The Court therefore finds as established facts that in the months of December 1999 and January 2000, [appellant] and his stepdaughter, [AAA] (aged 12 years old) having been born on December 30, 1987 were living together under one roof with the latter's mother; that one evening in the month of December 1999, while [AAA] was asleep in their house at Bunsuran, Pandi, Bulacan, she was awakened by the heavy weight of the accused who was then fondling her breasts, touching and kissing her, that on the same evening, the accused managed to undress her and insert his penis into her vagina even as they were lying beside the mother of [AAA]; that [AAA] could [neither] complain nor resist as she was afraid that the [appellant] might kill her and her mother; that the incident was repeated on six (6) other occasions, particularly in the evenings of January 10, 11, 12, 13, 14 and 15, all in the year 2000, this time in the residence of [AAA's] auntie in Masuso, Pandi, Bulacan.

The Court is not unaware of the apparent contradiction in the testimony of [AAA] when put on cross where she apparently stated that in the evening of January 10, 2000 to January 15, 2000, she slept with her Tita and the latter's siblings continuously thru the night such that nothing untoward happened to her. On redirect however, she managed to explain and confirm that indeed she was raped by the [appellant] herein in those evenings.

The Court [is] likewise x x x not unmindful of the defense raised by the accused that on some of the material dates given, particularly January 11, 2000 onwards to January 15, 2000, he could not have raped [AAA] because the latter was already actually employed and living as a babysitter in Bocaue, Bulacan. Other than his own self-serving testimony and that of [his] natural child, no other witness came forward to support the defense raised by the [appellant]. x x x.

The defense of denial raised therefore cannot be considered strong enough to debunk the positive identification made by [AAA] against him.

WHEREFORE, premises considered, the Court finds the [appellant] guilty beyond reasonable doubt, as follows:

(a) In Crim. Case No. 2283-M-00, Violation of Sec. 5 RA 7610, and hereby sentences him to suffer the indeterminate penalty of ten (10) years of *prision mayor* as minimum to fifteen (15) years of *reclusion temporal* as maximum.

(b) In Crim. Case Nos. 2277-M-00 to 2282-M-00, on six (6) counts of Rape punished under the Revised Penal Code, and hereby sentences him to suffer the penalty of *reclusion perpetua* on each count.

The accused is likewise directed to indemnify [AAA] in the amount of ₱50,000.00 for each count of the offenses (total amount of ₱350,000.00).[19] (Italicization added.)

Appellant filed his notice of appeal on May 22, 2007.[20]

The Court of Appeals in its November 6, 2008 Decision found no merit in the appellant's appeal. It noted that while there seemed to be inconsistencies between AAA's testimony in the direct and cross-examinations, she was able to explain these during the redirect examination.[21] It, thus, affirmed the findings of the trial court but modified the penalty imposed and award of damages, to wit:

WHEREFORE, the appealed decision is **AFFIRMED** with **MODIFICATION**, in that, the maximum penalty in Crim. Case No. 2283-M-2000 is increased to seventeen (17) years, four (4) months and one (1) day, the civil indemnity for each count of rape in Crim. Cases Nos. 2277-M-2000 up to 2282-M-2000 is increased to Seventy-Five Thousand Pesos (Php75,000.00), and the moral and exemplary damages in the amounts of Fifty Thousand (Php50,000.00) and Twenty-

[19] *Id.* at 65-66.

[20] *Id.* at 18.

[21] *Rollo*, p. 14.

Five Thousand Pesos (Php25,000.00), respectively, for each count of rape are awarded.[22]

Appellant filed his notice of appeal on November 19, 2008.[23]

Appellant's confinement was confirmed on August 28, 2009.[24] Both the Office of the Solicitor General (OSG) and appellant manifested that they would adopt the pleadings filed in the Court of Appeals in lieu of supplemental briefs.[25]

Appellant basically argues that his guilt for the crimes charged was not proven beyond reasonable doubt because of alleged inconsistencies in AAA's testimony and was thus rendered without basis.

The appeal must be dismissed for lack of merit.

The pertinent provisions of law in this case are found in Section 5(b), Republic Act No. 7610, which provides that:

> Section 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> 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 subject 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

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

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

[24] *Id.* at 35.

[25] *Id.* at 32-34 and 40-42.

> 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[.]

Likewise applicable is Article 266-A of the Revised Penal Code, which states that:

> Art. 266-A. *Rape, When and How Committed.* – Rape is committed –
>
> 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a. Through force, threat or intimidation;
>
> b. When the offended party is deprived of reason or is otherwise unconscious;
>
> c. By means of fraudulent machination or grave abuse of authority;
>
> d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

We reiterate the jurisprudential principle of affording great respect and even finality to the trial court's assessment of the credibility of witnesses. In *People v. Arpon*,[26] we stated:

> [W]hen the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. Her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" are all useful aids for an accurate determination of a witness' honesty and sincerity. **The trial judge,**

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[26] G.R. No. 183563, December 14, 2011, 662 SCRA 506, 523.

therefore, can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. **The rule finds an even more stringent application where said findings are sustained by the [Court of Appeals]**. (Citation omitted, emphases added.)

We have also stated in *People v. Dion*[27] that:

Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. **Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape**. **The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding**. x x x. (Citations omitted, emphasis added.)

Given that in the present case, the courts *a quo* have sufficiently addressed the question on the alleged inconsistencies in the testimony of AAA and appellant does not present to this Court any scintilla of evidence to prove that the testimony of the witness was not credible, the Court must uphold the assessment of the RTC as affirmed by the Court of Appeals.

In any event, we agree with the Court of Appeals when it said:

It is also notable that AAA was able to reconcile such inconsistency during her re-direct examination when she explained that the house she was referring to, when she was with CCC and

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[27] G.R. No. 181035, July 4, 2011, 653 SCRA 117, 133.

the latter's children, was also the same house she slept in with her mother and siblings because they all live in one (1) house. x x x.[28]

Alleged inconsistencies do not detract from AAA's credibility as a witness. A rape victim is not expected to make an errorless recollection of the incident, so humiliating and painful that she might in fact be trying to obliterate it from her memory. Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.[29]

However, in line with current jurisprudence, we modify the award for moral damages and exemplary damages for each count of rape awarded by the Court of Appeals in Criminal Cases No. 2277-M-00 to 2282-M-00, we increase the award for moral damages to ₱75,000.00 and the award for exemplary damages to ₱30,000 for each count of rape. In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% *per annum* from date of finality of this Decision until fully paid.[30]

WHEREFORE, the appeal is **DISMISSED**. The November 6, 2008 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02815 is **AFFIRMED WITH MODIFICATION**. Appellant Felix Morante is **GUILTY** beyond reasonable doubt of **Violation of Section 5, Republic Act No. 7610** and **six (6) counts of RAPE as defined in Article 266-A and penalized in Article 266-B of the Revised Penal Code.** In addition to civil indemnity of Seventy-Five Thousand Pesos (₱75,000.00) awarded by the Court of Appeals, appellant is also ordered to pay AAA moral damages of Seventy-Five Thousand Pesos (₱75,000.00) and exemplary damages of Thirty Thousand Pesos (₱30,000.00) for each count of rape. All monetary awards for damages shall earn interest at the legal

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[28] *Rollo*, p. 14.

[29] *People v. Rubio*, G.R. No. 195239, March 7, 2012, 667 SCRA 753, 762.

[30] *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 163-165.

rate of 6% per annum from date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Perez,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 188225. November 28, 2012]

SHIRLEY F. TORRES, *petitioner, vs.* **IMELDA PEREZ and RODRIGO PEREZ,** *respondents.*

[G.R. No. 198728. November 28, 2012]

SHIRLEY F. TORRES, *petitioner, vs.* **IMELDA PEREZ and RODRIGO PEREZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; THE JUDGE'S FINDING THAT THERE WAS PROBABLE CAUSE TO INDICT RESPONDENTS FOR UNFAIR COMPETITION, ALTHOUGH ERRONEOUS, CANNOT BE REGARDED AS CAPRICIOUS AND WHIMSICAL; THE JUDGE ACTED WELL WITHIN THE EXERCISE OF HIS JUDICIAL DISCRETION.— At the outset, it is worth noting that Judge Untalan acted well within the exercise of his judicial discretion when he denied the Motion to Dismiss and/or Withdraw Information filed by the prosecution. His finding that

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[*] Per Special Order No. 1356 dated November 13, 2012.

there was probable cause to indict respondents for unfair competition, and that the findings of the DOJ would be better appreciated in the course of a trial, was based on his own evaluation of the evidence brought before him. It was an evaluation that was required of him as a judge. Thus, in *Yambot v. Armovit*, this Court reiterated the mandate of judges to make a personal evaluation of records submitted in support of criminal complaints filed before their respective *salas*: *Crespo v. Mogul* instructs in a very clear manner that once a complaint or information is filed in court, any disposition of the case as to its dismissal, or the conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it. While the resolution of the prosecutorial arm is persuasive, it is not binding on the court. **It may therefore grant or deny at its option a motion to dismiss or to withdraw the information based on its own assessment of the records of the preliminary investigation submitted to it, in the faithful exercise of judicial discretion and prerogative**, and not out of subservience to the prosecutor. x x x. Judge Untalan stood firm on this finding in his denial of the motion for reconsideration and even initially after the CA had made a ruling on the matter. He only performed a task he was called upon to do, and his judgment on the matter – although erroneous – cannot be regarded as capricious and whimsical. Thus, he did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.

2. ID.; ID.; ID.; THERE WAS NO PROBABLE CAUSE TO INDICT RESPONDENTS BECAUSE THE CRIME OF UNFAIR COMPETITION WAS NOT COMMITTED; THE DETERMINATION OF EXISTENCE OF PROBABLE CAUSE NECESSITATES THE PRIOR DETERMINATION OF WHETHER A CRIME OR AN OFFENSE WAS COMMITTED IN THE FIRST PLACE.— Probable cause, for purposes of filing a criminal information, is described as "such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." Thus, the determination of the existence of probable cause necessitates the prior determination of whether a crime or an offense was committed in the first place. Here, we find that there was no probable cause to indict respondents, because the crime of unfair competition was not committed.

3. ID.; ID.; ID.; HAVING BOUGHT PETITIONERS OUT OF THE PARTNERSHIP, RESPONDENTS WERE ALREADY ITS EXCLUSIVE OWNERS WHO, AS SUCH, HAS THE RIGHT TO USE THE "NATURALS" BRAND.— In positing that respondents were guilty of unfair competition, petitioner makes a lot of the fact that they used the vendor code of RGP in marketing the "Naturals" products. She argues that they passed off the "Naturals" products, which they marketed under RGP, as those of SCC; thus, they allegedly prejudiced the rights of SCC as owner of the trademark. She also claims that she has the personality to prosecute respondents for unfair competition on behalf of SCC. When Judge Untalan denied the Motion to Dismiss and/or Withdraw Information filed by the prosecution and thereby sustained the position of petitioner, his error lay in the fact that his focus on the crime of unfair competition was unwarranted. In this case, much more important than the issue of protection of intellectual property is the change of ownership of SCC. The arguments of petitioner have no basis, because respondents are the exclusive owners of SCC, of which she is no longer a partner. Based on the findings of fact of the CA and the DOJ, respondents have completed the payments of the share of petitioner in the partnership affairs. Having bought her out of SCC, respondents were already its exclusive owners who, as such, had the right to use the "Naturals" brand. The use of the vendor code of RGP was resorted to only for the practical purpose of ensuring that SM's payments for the "Naturals" products would go to respondents, who were the actual suppliers.

4. MERCANTILE LAW; INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES (R.A. 8293); UNFAIR COMPETITION; ELEMENTS THEREOF NOT PRESENT IN CASE AT BAR.— Even if we were to assume that the issue of protection of intellectual property is paramount in this case, the criminal complaint for unfair competition against respondents cannot prosper, for the elements of the crime were not present. We have enunciated in *CCBPI v. Gomez* that the key elements of unfair competition are "deception, passing off and fraud upon the public." No deception can be imagined to have been foisted on the public through different vendor codes, which are used by SM only for the identification of suppliers' products.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Cruz Artes So & Partners for respondents.

D E C I S I O N

SERENO, *C.J.*:

These are Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court. The petition docketed as G.R. No. 188225 assails the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 103846 dated 11 March 2009. The CA Decision nullified the Orders dated 12 February 2008[2] and 11 April 2008[3] of the Regional Trial Court (RTC) of Makati, Branch 149. The RTC Orders had denied the Motion to Dismiss and/or Withdraw Information filed against respondents for unfair competition (violation of Section 168 in relation to Section 170)[4] under

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[1] *Rollo* (G.R. No. 188225), pp. 62-83. The Decision of the Court of Appeals (CA) Special Second Division in CA-G.R. SP No. 103846 dated 11 March 2009 was penned by Justice Ramon M. Bato, Jr. and concurred in by Justices Portia Alino-Hormachuelos and Vicente S. E. Veloso.

[2] *Id.* at 225-226.

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

[4] Sec. 168. *Unfair Competition, Rights, Regulation and Remedies*. - 168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

Republic Act No. (R.A.) 8293 (Intellectual Property Code of the Philippines).

On the other hand, the petition docketed as G.R. No. 198728 assails the Decision[5] in CA-G.R. SP No. 111903 dated 29 September 2011, which affirmed the RTC Orders dated 29 July 2009[6] and 19 October 2009,[7] this time quashing the Information against respondents.

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a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Sections 156, 157 and 161 shall apply *mutatis mutandis*.

Sec. 170. *Penalties*. - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (₱50,000) to Two hundred thousand pesos(₱200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1. (Arts. 188 and 189, Revised Penal Code)

[5] *Rollo* (G.R. No. 198728), pp. 26-39. The Decision of the CA Special Fifteenth Division in CA-G.R. SP No. 111903 dated 29 September 2011 was penned by Justice Francisco P. Acosta and concurred in by Justices Vicente S. E. Veloso and Michael P. Elbinias.

[6] *Id.* at 41.

[7] *Id.* at 43.

Respondents Imelda and Rodrigo are spouses who own RGP Footwear Manufacturing (RGP), which supplies ladies' shoes to Shoe Mart (SM).[8] They met petitioner when she sold them business-class plane tickets to the United States in 2002.[9] She was also interested in doing business with SM, and they suggested that she form a partnership with their daughter Sunshine, nicknamed Sasay.[10]

Petitioner and Sunshine formed Sasay's Closet Co. (SCC), a partnership registered with the Securities and Exchange Commission on 17 October 2002. SCC was engaged in the supply, trading, retailing of garments such as underwear, children's wear, women's and men's wear, and other incidental activities related thereto.[11]

For its products, SCC used the trademark "Naturals with Design," which it filed with the Intellectual Property Office on 24 August 2005 and registered on 26 February 2007.[12] These products were primarily supplied to SM,[13] which assigned to them the vendor code "190501" for purposes of identification.[14]

SCC used the facilities and equipment owned by RGP, as well as the latter's business address (No. 72 Victoria Subdivision, *Barangay* Dela Paz, Biñan, Laguna), which was also the residential address of respondents.[15]

In August 2003, Sunshine pulled out of the partnership, because she was hired to work in an international school.[16] Respondent Imelda took over Sunshine's responsibilities in the partnership.[17]

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[8] *Id.* at 81.

[9] *Id.*

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

[11] *Id.* at 45-49.

[12] *Id.* at 51-52.

[13] *Id.* at 5.

[14] *Id.*

[15] *Id.* at 82.

[16] *Id.*

[17] *Id.*

On 14 December 2005, petitioner sent an email to respondent Imelda asking to be reimbursed for expenses incurred in the former's travel to China.[18] Respondent Imelda replied the following day, stating that the partnership could not reimburse petitioner, because the trip was personal and not business-related.[19] In the same email, respondent Imelda vented her frustration over the fact that she, together with respondent Rodrigo, had been doing all the work for SCC and incurring expenses that they did not charge to the partnership.[20] Respondent Imelda then informed petitioner of the former's decision to dissolve the partnership.[21] Despite the objections of petitioner to the dissolution of SCC, various amounts were paid to her by respondents from January to April 2006 representing her share in the partnership assets.[22]

Meanwhile, on 27 March 2006, petitioner established Tezares Enterprise, a sole proprietorship engaged in supplying and trading of clothing and accessories except footwear.[23] Also in March 2006, she discovered that underwear products bearing the brand "Naturals" were being sold in SM with vendor code "180195."[24] This code was registered to RGP,[25] a fact confirmed by test buys conducted by her lawyers on 13 and 14 May 2006.[26]

On 5 June 2006, a search warrant for unfair competition under Section 168 in relation to Section 170 of R.A. 8293 was issued by the RTC of Manila, Branch 24, against respondents at their address.[27] The search warrant called for the seizure

[18] *Rollo* (G.R. No. 188225), pp. 65-66.

[19] *Id.* at 66.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Rollo* (G.R. No. 198728), p. 85.

[24] *Id* at 5.

[25] *Id.*

[26] *Id.* at 54-67.

[27] *Id.* at 69-70.

of women's undergarments bearing the brand "Naturals," as well as equipment and papers having the vendor code "180195" or the inscription "RGP." The search warrant was implemented on the same day. However, it was quashed by the same court on 20 October 2006 upon motion of respondents. The trial court ruled that respondents did not pass off "Naturals" as the brand of another manufacturer. On the contrary, they used the brand in the honest belief that they owned SCC, the owner of the brand.

On 9 June 2006, petitioner filed a criminal complaint for unfair competition against respondents and Sunshine before the City Prosecution Office of Makati City.[28] Assistant City Prosecutor Imelda P. Saulog found probable cause to indict respondents for unfair competition.[29] She ruled that they had clearly passed off the "Naturals" brand as RGP's even if the brand was owned by SCC. According to the prosecutor, SCC was indeed dissolved when respondent Imelda manifested her intention to cease from the partnership in an email sent to petitioner on 15 December 2005.[30] The prosecutor said, however, that it remained operational, since the process of winding up its business had not been completed. Thus, SCC remained the owner of the "Naturals" brand, and petitioner – being a legitimate partner thereof – had a right to file the complaint against respondents. The prosecutor found no probable cause against Sunshine, as it was established that she had withdrawn from SCC as of August 2003.

The indictment was raffled to RTC Makati City, Branch 149. On 23 October 2006, it issued an Order finding probable cause for the issuance of a warrant of arrest against respondents.[31]

Respondents filed a petition for review of the prosecutor's resolution before the Department of Justice (DOJ), which on

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[28] *Id.* at 75-79.

[29] *Id.* at 133-139, Resolution dated 5 October 2006.

[30] *Id.* at 84.

[31] *Id.* at 143.

13 December 2006 issued its own Resolution[32] reversing the finding of existence of probable cause against them. Contrary to the prosecutor's finding, the DOJ found that SCC had effectively wound up the latter's partnership affairs on 24 April 2006 when petitioner was reimbursed for her trip to China. That was the last of the payments made to her to cover her share in the partnership affairs, which started after respondent Imelda manifested her intention to cease from the partnership business on 15 December 2005. Thus, when the criminal complaint for unfair competition was filed on 9 June 2006, there was "no longer any competition, unfair or otherwise, involving the partnership."[33]

Furthermore, the DOJ ruled that even if SCC had not yet terminated its business and therefore still existed, respondents had the right to use the "Naturals" brand, as they were already the exclusive owners of SCC following the completion of payments of petitioner's share in the partnership affairs. Also, the establishment by petitioner of Tezares Enterprise – which directly competed with SCC in terms of products – and its subsequent accreditation as supplier of intimate apparel for SM in April 2006 were regarded by the DOJ as apparent indications that she no longer had any share in SCC. Thus, the petition for review was granted, and the city prosecutor of Makati was ordered to withdraw the Information against respondents for unfair competition.

The DOJ denied the motion for reconsideration filed by petitioner on 28 March 2007.[34] Hence, she filed a petition for *certiorari* before the CA, where it was docketed as CA-G.R. SP No. 98861. In her petition, she questioned the DOJ Resolution, but later withdrew the same on 6 December 2007 for an unknown reason.[35]

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[32] *Id.* at 145-153.

[33] *Id.* at 150.

[34] *Rollo* (G.R. No. 188225), p. 69.

[35] *Id.*

Following the directive of the DOJ, the prosecutor filed before the RTC of Makati City, Branch 149, a Motion to Dismiss and/or Withdraw Information on 3 April 2007.[36] The trial court denied the motion in an Order[37] dated 12 February 2008. It maintained the correctness of its finding of existence of probable cause in the case and ruled that the findings of the DOJ would be better appreciated and evaluated in the course of the trial.

Respondents moved for reconsideration,[38] but their motion was denied[39] by the RTC. Aggrieved, they filed a Petition for *Certiorari* (with Prayer for the Issuance of a Temporary Restraining Order and thereafter a Preliminary Injunction)[40] before the CA. They argued that probable cause for the issuance of a warrant of arrest is different from probable cause for holding a person for trial. The first is the function of the judge, while the second is the prosecutor's.[41] Thus, respondents claimed that it was wrong for Presiding Judge Cesar O. Untalan to deny the prosecutor's motion to dismiss for lack of probable cause on the basis of the judge's own finding that there was probable cause to issue a warrant of arrest against respondents. Furthermore, the Judge Untalan based his finding solely on the evidence submitted by petitioner without evaluating the evidence of respondents.

In the first assailed Decision in CA-G.R. SP No. 103846[42] dated 11 March 2009, the CA granted the petition. It found that the trial judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when he denied the prosecutor's motion to dismiss for lack of probable cause. The CA sustained the position of respondents that the finding of probable cause

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[36] *Rollo* (G.R. No. 198728), pp. 155-156.

[37] *Id.* at 158-159.

[38] *Id.* at 161-169.

[39] *Id.* at 171-172.

[40] *Id.* at 174-257.

[41] *Id.* at 342.

[42] *Id.* at 474-495.

for the filing of an information is an executive function lodged with the prosecutor. It also found that the trial judge did not make an independent assessment of the evidence on record in determining the existence of probable cause for the offense of unfair competition, as opposed to the exhaustive study made by the DOJ before arriving at its finding of lack of probable cause.

The CA also ruled that in determining probable cause, the essential elements of the crime charged must be considered, for their absence would mean that there is no criminal offense. In determining probable cause for unfair competition, the question is "whether or not the offenders by the use of deceit or any other means contrary to good faith passes off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result."[43] The CA affirmed the findings of the DOJ and the RTC of Manila, Branch 24 that respondents used the "Naturals" brand because they believed that they were the owners of SCC, which owned the brand. Furthermore, the partnership had been terminated as of April 2006; hence, the filing of the criminal complaint on 9 June 2006 could no longer prosper. Even if SCC had not yet terminated its business, respondents, having bought petitioner out of SCC, were already its exclusive owners and, as such, had the right to use the "Naturals" brand.

According to the CA, the filing of the criminal complaint for unfair competition was nothing but an offshoot of the misunderstanding and quarrel that arose when respondents initially refused to reimburse the expenses incurred by petitioner in her trip to China and further escalated when respondent Imelda decided to dissolve SCC.

Petitioner moved for reconsideration[44] of the CA Decision, but the motion was denied on 1 June 2009.[45] She then brought

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[43] *Rollo* (G.R. No. 188225), p. 80.

[44] *Id.* at 565-576.

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

the matter before this Court via a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court and docketed as G.R. No. 188225.[46] Without giving due course to the petition, the Court required[47] respondents to comment thereon. Upon their compliance,[48] petitioner was required[49] to file a reply,[50] which was later received on 11 December 2009. On 19 May 2011, she filed her Memorandum.[51]

Meanwhile, following the promulgation of the Decision in CA-G.R. SP No. 103846, respondents filed an Urgent Motion to Dismiss the criminal complaint for unfair competition before the RTC on 1 April 2009.[52] The motion was duly opposed by petitioner, arguing that the CA Decision had not yet attained finality in view of her pending petition before this Court; thus, the motion was premature.[53] The RTC denied the motion to dismiss for lack of merit.[54] However, upon motion for reconsideration[55] filed by respondents, it issued the Order dated 29 July 2009[56] ordering the quashal of the Information against them. The trial court issued another Order on 19 October 2009[57] denying petitioner's Motion for Reconsideration.[58]

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[46] *Id.* at 18-59, Petition for Review.

[47] *Id.* at 577, First Division Resolution dated 24 August 2009.

[48] *Id.* at 578-690, Comment/Opposition (to Petitioner's Petition for Review on *Certiorari*).

[49] *Id.* at 691.

[50] *Id.* at 692-717.

[51] *Id.* at 731-748.

[52] *Rollo* (G.R. No. 198728), pp. 499-500.

[53] *Id.* at 502-504.

[54] *Id.* at 518.

[55] *Id.* at 520-522.

[56] *Id.* at 41.

[57] *Id.* at 43.

[58] *Id.* at 574-622.

Petitioner filed a Petition for *Certiorari*[59] before the CA on the ground that the trial judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when he quashed the Information against respondents based on a CA Decision that was not yet final and executory, being the subject of a petition still pending before this Court.

On 29 September 2011, the CA issued the second assailed Decision in CA-G.R. SP No. 111903 affirming the RTC Orders dated 29 July 2009 and 19 October 2009. The appellate court ruled that while its Decision in CA-G.R. SP No. 103846 was still under review before this Court, neither court had issued a restraining order or injunction that would prevent the RTC from implementing the said Decision ordering the dismissal of the information against respondents. Furthermore, the CA ruled that since petitioner had withdrawn her petition in CA-G.R. SP No. 98861 questioning the DOJ Resolution, the issue of whether there was probable cause had "already been resolved with finality in the negative."[60] Thus, the trial court cannot be faulted for following the CA directive to dismiss the Information against respondents.

Opting not to file a motion for reconsideration,[61] petitioner again comes before us on a Petition for Review on *Certiorari* questioning the Decision in CA-G.R. SP No. 111903.[62] In her petition docketed as G.R. No. 198728, she argues that Presiding Judge Cesar O. Untalan committed grave abuse of discretion amounting to lack or excess of jurisdiction when he dismissed the criminal case against respondents for unfair competition based on CA findings that were not yet final. The trial judge was fully aware that those findings were still subject to a pending petition before this Court.

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[59] *Id.* at 624-641.

[60] *Id.* at 37.

[61] *Id.* at 4.

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

On 23 November 2011, the Court consolidated G.R. Nos. 198728 and 188225.[63]

ISSUE

Despite the extensive legal battle that petitioner and respondents have waged heretofore, these petitions will be settled simply through a ruling on whether there exists probable cause to indict respondents for unfair competition (violation of Section 168 in relation to Section 170) under R.A. 8293.

OUR RULING

No probable cause to indict respondents

At the outset, it is worth noting that Judge Untalan acted well within the exercise of his judicial discretion when he denied the Motion to Dismiss and/or Withdraw Information filed by the prosecution. His finding that there was probable cause to indict respondents for unfair competition, and that the findings of the DOJ would be better appreciated in the course of a trial, was based on his own evaluation of the evidence brought before him. It was an evaluation that was required of him as a judge.

Thus, in *Yambot v. Armovit*,[64] this Court reiterated the mandate of judges to make a personal evaluation of records submitted in support of criminal complaints filed before their respective *salas*:

> *Crespo v. Mogul* instructs in a very clear manner that once a complaint or information is filed in court, any disposition of the case as to its dismissal, or the conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it. While the resolution of the prosecutorial arm is persuasive, it is not binding on the court. **It may therefore grant or deny at its option a motion to dismiss or to withdraw the information based on its own assessment of the records of the preliminary investigation submitted to it, in the faithful exercise of judicial discretion and prerogative**, and not out of subservience to the prosecutor.[65] x x x. (Emphasis supplied)

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[63] *Id.* at 718.

[64] G.R. No. 172677, 12 September 2008, 565 SCRA 177.

[65] *Id.* at 180.

Judge Untalan stood firm on this finding in his denial of the motion for reconsideration and even initially after the CA had made a ruling on the matter. He only performed a task he was called upon to do, and his judgment on the matter – although erroneous – cannot be regarded as capricious and whimsical. Thus, he did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.

However, while we recognize that Judge Untalan did not commit grave abuse of discretion, we take note of his apparent loss of steam when he issued the Order dated 29 July 2009 granting respondents' motion for reconsideration of his earlier ruling denying the Urgent Motion to Dismiss. The good judge yielded, even though he was well aware that the CA Decision had not yet attained finality pending review by this Court.

We now rule on the issue of probable cause.

Probable cause, for purposes of filing a criminal information, is described as "such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[66]

Thus, the determination of the existence of probable cause necessitates the prior determination of whether a crime or an offense was committed in the first place. Here, we find that there was no probable cause to indict respondents, because the crime of unfair competition was not committed.

In positing that respondents were guilty of unfair competition, petitioner makes a lot of the fact that they used the vendor code of RGP in marketing the "Naturals" products. She argues that they passed off the "Naturals" products, which they marketed under RGP, as those of SCC; thus, they allegedly prejudiced the rights of SCC as owner of the trademark. She also claims that she has the personality to prosecute respondents for unfair competition on behalf of SCC.

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[66] *Alejandro v. Bernas*, G.R. No. 179243, 7 September 2011, 657 SCRA 255, 264-265.

When Judge Untalan denied the Motion to Dismiss and/or Withdraw Information filed by the prosecution and thereby sustained the position of petitioner, his error lay in the fact that his focus on the crime of unfair competition was unwarranted. In this case, much more important than the issue of protection of intellectual property is the change of ownership of SCC. The arguments of petitioner have no basis, because respondents are the exclusive owners of SCC, of which she is no longer a partner.

Based on the findings of fact of the CA and the DOJ, respondents have completed the payments of the share of petitioner in the partnership affairs. Having bought her out of SCC, respondents were already its exclusive owners who, as such, had the right to use the "Naturals" brand.

The use of the vendor code of RGP was resorted to only for the practical purpose of ensuring that SM's payments for the "Naturals" products would go to respondents, who were the actual suppliers.

Furthermore, even if we were to assume that the issue of protection of intellectual property is paramount in this case, the criminal complaint for unfair competition against respondents cannot prosper, for the elements of the crime were not present. We have enunciated in *CCBPI v. Gomez*[67] that the key elements of unfair competition are "deception, passing off and fraud upon the public."[68] No deception can be imagined to have been foisted on the public through different vendor codes, which are used by SM only for the identification of suppliers' products.

WHEREFORE, the Decisions dated 11 March 2009 in CA-G.R. SP No. 103846 and 29 September 2011 in CA-G.R. SP No. 111903, finding lack of probable cause for respondents' alleged violation of Section 168 in relation to Section 170 of Republic Act No. 8293 (unfair competition), are **AFFIRMED**. The Information against respondents for unfair competition is **DISMISSED**.

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[67] G.R. No. 154491, 14 November 2008, 571 SCRA 18.

[68] *Id.* at 35.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 189330. November 28, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LOUIE CATALAN *y* DEDALA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); CHAIN OF CUSTODY RULE; REQUIRES THE DUE RECORDING OF THE AUTHORIZED MOVEMENT AND CUSTODY OF THE SEIZED DRUGS OR CONTROLLED CHEMICALS OR PLANT SOURCES OF DANGEROUS DRUGS TO BE SURE THAT THE SEIZED DRUGS ARE THEMSELVES THE *CORPUS DELICTI* OR THE BODY OF THE CRIME.— Section 21(1) of Republic Act No. 9165 provides the procedure to be followed in the seizure and custody of dangerous drugs. Section 21(a) of Article II, the Implementing Rules and Regulations (IRR) of Republic Act No. 9165, states: x x x (a) The apprehending office/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. x x x The procedure underscores the value of preserving the chain of custody *vis-à-vis* the dangerous drugs. Towards that end, the Dangerous Drugs Board (DDB) – the

policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy – has defined *chain of custody* involving the dangerous drugs and other substances in Section 1(b) of DDB Regulation No. 1, Series of 2002. x x x Based on this statutory concern for the due recording of the authorized movement and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment, the presentation as evidence in court of the dangerous drugs subject of the illegal sale is material in every prosecution for the illegal sale of dangerous drugs. To be sure, the dangerous drugs are themselves the *corpus delicti*, which, literally translated from Latin, refers to the *body of the crime*, or the actual commission by someone of the particular offense charged. x x x To discharge its duty of establishing the guilt of the accused beyond reasonable doubt, therefore, the Prosecution must prove the *corpus delicti*. That proof is vital to a judgment of conviction. On the other hand, the Prosecution does not comply with the indispensable requirement of proving the violation of Section 5 of Republic Act No. 9165 when the dangerous drugs are missing but also when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court.

2. ID.; ID.; ID.; THE BUY-BUST TEAM COMMITTED SERIOUS LAPSES THAT BROKE THE CHAIN OF CUSTODY; THE MARKING OF THE PLASTIC SACHET OF *SHABU* WAS NOT DONE BY THE ARRESTING OFFICER.— A review of the records exposes the abject failure of the buy-bust team to comply with the statutory procedure laid down by Republic Act No. 9165 and its IRR on ensuring the integrity of the chain of custody. First of all, PO1 Ignacio himself did not do the marking despite being the arresting officer taking initial custody of the plastic sachet of *shabu* the accused handed to him. Instead, he said that it was the investigator who marked the plastic sachet of *shabu*, and that the investigator did so only after the accused had been brought to the police station. To us, that marking by the investigator, not by the arresting officer, was irregular, because the investigator was not the person who had taken initial custody of the plastic sachet of *shabu* right after the

seizure. Moreover, even granting that the marking by the investigator was legally acceptable, it was definitely not enough for PO1 Ignacio to simply declare that the investigator had made the marking. PO1 Ignacio should also have described the circumstances of *how* (including saying if the accused actually witnessed the marking) and *when* the investigator had actually made the marking, because such circumstances were precisely the details necessary to uphold the integrity of the chain of custody.

3. ID.; ID.; ID.; IMPORTANCE OF MARKING THE SEIZED ITEMS AS THE STARTING POINT OF THE CHAIN OF CUSTODY; NON-COMPLIANCE WITH THE REQUIREMENT TO PRESERVE THE INITIAL LINK IN THE CHAIN OF CUSTODY THOROUGHLY UNDERMINED THE LINK BETWEEN THE PLASTIC SACHET OF *SHABU* SOLD AND THE PLASTIC SACHET OF *SHABU* OFFERED IN COURT.— Aside from being aware that the marking would be the starting point in the chain of custody to which the succeeding handlers of the seized drugs would refer, PO1 Ignacio and his team knew that the marking would also segregate the seized *shabu* from the mass of all other similar or related evidence from the moment of their seizure until their disposition at the end of the criminal proceedings, obviating switching, as well as the "planting" or contamination of evidence, the very evil that the requirement for preserving the chain of custody sought to prevent. However, the identity between the plastic sachet of *shabu* sold and the plastic sachet of *shabu* offered as evidence would no longer be credibly shown because there were no details on the making of the marking by the investigator. In short, the non-compliance with the requirement to preserve the initial link in the chain of custody thoroughly undermined the link between the plastic sachet of *shabu* sold and the plastic sachet of *shabu* offered as evidence.

4. ID.; ID.; ID.; THE REQUIREMENT FOR THE PRESENCE OF A MEDIA OR DEPARTMENT OF JUSTICE REPRESENTATIVE, OR AN ELECTED PUBLIC OFFICIAL AT THE TIME OF THE SEIZURE AND INVENTORY WAS NOT COMPLIED WITH.— The requirement for the presence of a media or Department of Justice representative, or an elected public official at the time of the seizure and inventory was to insulate the seizure from any taint of illegitimacy or irregularity. But that lofty objective could not be achieved here after PO1 Ignacio did not mention

the presence of either such representative or of the elected public official during the buy-bust operation or at the time of the seizure of the *shabu* or even in the police station. Although the fact that the arrest of the accused and the seizure of the *shabu* were warrantless could possibly excuse the absence of the representative or official from the scene of the transaction, we have to wonder why the Prosecution did not bother to explain the absence of such representative or official. That is another serious lapse that broke the chain of custody.

5. ID.; ID.; ID.; THE PROSECUTION DID NOT PRESENT THE INVESTIGATOR AS ITS WITNESS TO DIRECTLY VALIDATE HIS MARKING IN COURT; THE BUY-BUST TEAM ALSO DID NOT CONDUCT A PHYSICAL INVENTORY AND DID NOT TAKE ANY PHOTOGRAPH OF THE SEIZED *SHABU* EITHER AT THE PLACE OF SEIZURE, OR IN THE POLICE STATION.— The Prosecution did not present the investigator as its witness to directly validate his marking of "BLCO 020804" in court. The omission diminished the importance of the marking as the reference point for the subsequent handling of the evidence. As a consequence, an objective person could now justifiably suspect the *shabu* ultimately presented as evidence in court to be planted or contaminated. x x x The buy-bust team did not conduct a physical inventory and did not take any photograph of the seized *shabu* either at the place of seizure, or in the police station. This omission was also fatal because the conduct of the physical inventory and the taking of a photograph were also measures designed by the law to preserve the integrity of the chain of custody of the seized *shabu*.

6. ID.; ID.; ID.; THE SAVING CLAUSE OF THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF R.A. 9165 WILL NOT HELP THE CAUSE OF THE PROSECUTION.— It is true that the last paragraph of Section 21(*a*) of the IRR has a saving proviso to ensure that not every non-compliance irreversibly weakens the Prosecution's evidence. But the saving proviso would not help the cause of the Prosecution at all. The application of the saving proviso has been conditioned upon the arresting lawmen recognizing their non-compliance with the procedure and then rendering a plausible explanation or two for the non-compliance. Here, however, that the members of the buy-bust team did not own up their lapses. How, then, could the Prosecution tender any explanation of the lapses committed

by the buy-bust team? Given the foregoing, the accused deserves exculpation, not because we accord credence to his defense of frame-up but because the Prosecution did not establish his guilt beyond reasonable doubt.

7. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTONS; THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY COULD NOT BE A FACTOR TO ADJUDGE AN ACCUSED GUILTY OF THE CRIME CHARGED.— Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment. We hold that both lower courts committed gross error in relying on the presumption of regularity. Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

8. ID.; ID.; ID.; THE REGULARITY OF THE PERFORMANCE OF THEIR DUTY COULD NOT BE PROPERLY PRESUMED IN FAVOR OF THE POLICEMEN BECAUSE THE RECORDS WERE REPLETE WITH INDICIA OF THEIR SERIOUS LAPSES.— Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted,

there can be no presumption of regularity of performance in their favor.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

The accused is entitled to an acquittal from the charge of illegal sale of dangerous drugs in violation of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) if the Prosecution does not establish that the links in the chain of custody from the time of the seizure of the dangerous drugs until the time of their presentation as evidence in court are unbroken. The arresting officer cannot thereby be presumed to have regularly performed his duty. Hence, the guilt of the accused is not established beyond reasonable doubt.

Louie Catalan *y* Dedala was arrested during a buy-bust operation conducted at a billiard hall for selling *shabu*, a dangerous drug, to a police officer poseur-buyer. On September 25, 2007, the Regional Trial Court, Branch 31, in San Pedro, Laguna (RTC) convicted him for violating Section 5 of Republic Act No. 9165, as charged, and imposed life imprisonment and a fine of ₱500,000.00.[1] On appeal, the Court of Appeals (CA) affirmed his conviction through the decision promulgated on June 2, 2009.[2] Hence, this appeal, whereby he seeks his exoneration and acquittal.

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[1] Original Records, pp. 73-77.

[2] *Rollo*, pp. 2-11; penned by Associate Justice Monina Arevalo-Zenarosa (retired), with Associate Justice Prescilla Baltazar-Padilla and Associate Justice Mariano C. Del Castillo (now a Member of this Court), concurring.

ANTECEDENTS

The information filed in the RTC charged the accused as follows:

> That on or about February 8, 2004 in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court the said accused without any legal authority, did then and there willfully, unlawfully and feloniously sell, pass and deliver to a police poseur-buyer in consideration of one (1) piece one hundred peso bill, two (2) heat-sealed transparent plastic sachet of METHAMPHETAMINE HYDROCHLORIDE weighing zero point thirty eight (0.38) gram.
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> CONTRARY TO LAW.[3]

On March 8, 2004, the accused pleaded *not guilty* to the information.[4]

I.
Version of the Prosecution

At the trial, the Prosecution presented PO1 Alaindelon Ignacio, the poseur- buyer, as it only witness. It dispensed with presenting the forensic chemist as another witness,[5] after the Defense admitted the existence of the Request for Laboratory Examination, Chemistry Report No. D-139-04, and the plastic sachet containing white crystalline substance bearing the markings "B LCD 020804." Its evidence is summarized hereunder.

On February 8, 2004, a civilian informant told PO1 Alvin Echipare of the Police Sub-Station at the Pacita Complex in San Pedro, Laguna that a certain Louie was engaged in selling *shabu* in a billiard hall in Barangay San Roque, San Pedro, Laguna. At 10:00 p.m. of the same day, PO1 Ignacio and PO1 Echipare, along with three other police officers, proceeded to the billiard hall in Barangay San Roque to conduct a buy-bust operation against Louie. PO1 Ignacio was designated as the

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[3] Original Records, p. 1.

[4] *Id.* at 13-15.

[5] *Id.* at 32.

poseur-buyer to buy *shabu* with the use of a ₱100.00 bill as buy-bust money.

Arriving at the target area, the buy-bust team first surveyed the billiard hall from inside their vehicle, which they parked only ten feet from the billiard hall. Seeing two persons having a suspected transaction in *shabu*, PO1 Ignacio alighted and approached them, telling the person who appeared to be the seller that he was buying *shabu* worth ₱100.00,[6] simultaneously tendering the ₱100.00 buy-bust money to the seller. The latter handed a plastic sachet to PO1 Ignacio.[7] Upon receiving the plastic sachet, PO1 Ignacio introduced himself as a police officer and moved to seize the seller, but the latter was able to run away.[8] PO1 Ignacio caught up with the suspect, frisked him, and recovered from him another plastic sachet and the buy-bust money.[9] The team brought the suspect with them to the police station where he identified himself as Louie Catalan, the accused herein.

At the police station, PO1 Ignacio turned the two plastic sachets and their contents over to the investigator, who placed the marking "BLCO 020804" on the sachet handed to him by the accused in exchange for the ₱100.00.[10] The confiscated articles were brought to the PNP Crime Laboratory for forensic examination.[11] The substances contained in the two sachets weighed 0.38 gram and tested positive for the presence of methylamphetamine hydrochloride, or *shabu*,[12] a dangerous drug.

2.
Version of the Defense

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6 TSN of August 16, 2004, p. 5.

7 *Id*.

8 *Id*.

9 *Id.* at 5-6.

10 *Id*. at 6.

11 Original Records, p. 7.

12 *Id*. at 11.

On its part, the Defense also had the accused as lone witness. The accused insisted that he had been framed.

According to the accused, he and his live-in partner were having dinner in his house in Barangay San Roque, San Pedro, Laguna in the evening of February 8, 2004 when three men barged into his house and ordered him to get up. They frisked him and searched his house but did not find what they were looking for.[13] His live-in partner demanded to know what they were looking for, but they simply replied that the accused was selling drugs.[14] Later on, the men put handcuffs on him and brought him with them to their office in the Pacita Complex in San Pedro, Laguna, where PO1 Echipare told the accused in the presence of his live-in partner to come up with ₱40,000.00 in exchange for his release.[15] After the accused did not accede to the demand,[16] the policemen took him to the San Pedro Police Station for investigation. By then, he had been in the Pacita Complex for already five hours.[17]

3.
Ruling of the RTC

On September 25, 2007, the RTC convicted the accused, *viz*:

> xxx the Court is not convinced with the accused's denial that he was not selling *shabu* on 8 February 2004 for he was with his live-in partner eating dinner when he was arrested by the policemen and prohibited drug was not his as it was only planted by the police officers. Except for his denial, the accused failed to offer any good explanation to justify his possession of the prohibited drug. In fact, he did not present his live-in partner to corroborate his claim. Neither did he file any case against the policemen for the alleged filing of

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13 TSN of June 9, 2006, pp. 3-4.

14 *Id.* at 4.

15 *Id.* at 5.

16 *Id.*

17 *Id.* at 6-7.

fabricated charge against him. This failure on the part of the accused only bolsters the fact that the buy bust operation team was motivated by a duty to curb the sale of dangerous drugs. Furthermore, there is no proof of any ill motive or odious intent on the part of the police authorities to impute falsely such a serious crime to the accused. Accordingly, the accused denial, like alibi, had been invariably viewed by the courts with disfavor for it is well-established rule that denial and alibi are self-serving negative evidence. They cannot prevail over the spontaneous, positive and credible testimony of the prosecution witness who pointed to and identified the accused as the malefactors. This is especially true were the testimony of the prosecution was corroborated by the inventory/receipt of property, stating that, indeed, that illegal sale of "*shabu*" took place and the accused was the seller thereof. The police officers are presumed to have performed their duties in good faith, in accordance with law. A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummates the buy-bust transaction between the entrapping officers and the accused. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimony on the operation deserves full faith and credit.

WHEREFORE, the Court finds the accused, Louie D. Catalan, GUILTY beyond reasonable doubt of the crime of violation of Sec. 5, R.A. 9165 or otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

The prohibited drug and paraphernalia seized from the accused are hereby confiscated in favor of the government and should be turned over to the Philippine Drug Enforcement Agency for disposition in accordance with law.

SO ORDERED.[18]

4.
Ruling of the CA

The accused appealed to the CA, contending that:

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[18] Original Records, pp. 76-77.

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY OF THE PROHIBITED DRUG WHICH CONSTITUTE THE CORPUS DELICTI OF THE CRIME.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Nonetheless, on June 2, 2009, the CA affirmed the RTC,[19] holding:

To sustain a conviction under a single prosecution witness, such testimony needs only to establish sufficiently: 1) the identity of the buyer, seller, object and consideration; and 2) the delivery of the thing sold and the payment thereof.

As correctly ruled by the court *a quo*, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the substance seized as evidence. In this case, PO1 Ignacio being the poseur-buyer was the most competent person to testify on the fact of sale. The testimony of Ignacio deserves full faith and credit, given that police officers involved in buy-bust operations are presumed to have performed their duties regularly. This presumption can only be overcome through clear and convincing evidence that show either of two things: 1) that they were not properly performing their duty, or 2) that they were inspired by any improper motive. Petitioner failed to show either of these two conditions.

Appellant complains that Ignacio made contradictory statement in his affidavit that he was the one who signed the plastic sachet while in court he testified that it was Investigator Alzona who made the markings in his presence.

Appellant insists that the prosecution thus failed to prove the first link in the chain of custody because of such contradictory

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[19] *Supra* note 1, at 2-10.

statement as to who made the markings in the confiscated plastic sachets of *shabu*.

This inconsistency does not make his testimony less credible because as a witness he is not always expected to give a perfectly precise testimony, considering the frailty of human memory such that honest inconsistencies on minor and trivial matters serve to strengthen rather than destroy the credibility of a witness.

Slight contradictions show that the testimony was not rehearsed but are badges against memorized perjury.

Besides, a "Sinumpaang Salaysay" or a sworn statement is merely a short narration of an affiant and not expected to be exhaustive. Affidavits are generally subordinated in importance to open court declaration.

This minor inconsistency does not deviate from the fact that indeed a buy-bust operation was conducted and the sale of *shabu* consummated.

On the other hand, all that the accused could offer is denial and alibi that he was eating at home when he was arrested.

The defense of alibi and denial is considered inherently weak and constitutes an "unstable sanctuary for felons" because of the facility with which it can be concocted. Between the positive and categorical narration made by Ignacio and the negative averments of the appellant, the former is entitled to a greater weight.

WHEREFORE, the decision appealed from is hereby AFFIRMED *in toto*.

SO ORDERED.[20]

ISSUE

Whether the CA erred in finding the accused guilty beyond reasonable doubt of a violation of Section 5 of Republic Act No. 9165.

RULING

The appeal is meritorious.

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[20] *Id*. at 8-10.

1.
The buy-bust team committed serious lapses that broke the chain of custody

Section 21(1) of Republic Act No. 9165 provides the procedure to be followed in the seizure and custody of dangerous drugs, to wit:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
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> x x x x x x x x x

Section 21(a) of Article II, the Implementing Rules and Regulations (IRR) of Republic Act No. 9165, states:

> x x x x x x x x x
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> (a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of

the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

The procedure underscores the value of preserving the chain of custody *vis-à-vis* the dangerous drugs. Towards that end, the Dangerous Drugs Board (DDB) – the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy[21] – has defined *chain of custody* involving the dangerous drugs and other substances in Section 1(b) of DDB Regulation No. 1, Series of 2002[22] in the following manner, to wit:

b. "Chain of Custody" means the **duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction**. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody 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;

Based on this statutory concern for the due recording of the authorized movement and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment, the presentation as evidence in court of the dangerous drugs subject of the illegal sale is material in every prosecution

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[21] Section 77, Republic Act No. 9165.

[22] *Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.*

for the illegal sale of dangerous drugs.[23] To be sure, the dangerous drugs are themselves the *corpus delicti*, which, literally translated from Latin, refers to the *body of the crime*, or the actual commission by someone of the particular offense charged.[24] *Corpus delicti*, as the Court puts it in *People v. Roluna*,[25] is:

> xxx the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. As applied to a particular offense, it means *the actual commission by someone of the particular crime charged*. **The *corpus delicti* is a compound fact made up of two (2) things, *viz*: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result.** [26]

To discharge its duty of establishing the guilt of the accused beyond reasonable doubt, therefore, the Prosecution must prove the *corpus delicti*. That proof is vital to a judgment of conviction.[27] On the other hand, the Prosecution does not comply with the indispensable requirement of proving the violation of Section 5 of Republic Act No. 9165 when the dangerous drugs are missing but also when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court.[28]

A review of the records exposes the abject failure of the buy-bust team to comply with the statutory procedure laid down

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[23] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 718.

[24] 9A Words & Phrases, p. 517, citing *Hilyard v. State*, 214 P. 2d 953, 28 A.L.R. 2d 961.

[25] G.R. No. 101797, March 24, 1994, 231 SCRA 446, 452.

[26] Citing 23 C.J.S. 623-624 (italicized portions are found in the original text, but bold emphasis is supplied).

[27] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 631-632.

[28] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

by Republic Act No. 9165 and its IRR on ensuring the integrity of the chain of custody.

First of all, PO1 Ignacio himself did not do the marking despite being the arresting officer taking initial custody of the plastic sachet of *shabu* the accused handed to him. Instead, he said that it was the investigator who marked the plastic sachet of *shabu*, and that the investigator did so only after the accused had been brought to the police station.[29] To us, that marking by the investigator, not by the arresting officer, was irregular, because the investigator was not the person who had taken initial custody of the plastic sachet of *shabu* right after the seizure. Moreover, even granting that the marking by the investigator was legally acceptable, it was definitely not enough for PO1 Ignacio to simply declare that the investigator had made the marking. PO1 Ignacio should also have described the circumstances of *how* (including saying if the accused actually witnessed the marking) and *when* the investigator had actually made the marking, because such circumstances were precisely the details necessary to uphold the integrity of the chain of custody.

Aside from being aware that the marking would be the starting point in the chain of custody to which the succeeding handlers of the seized drugs would refer, PO1 Ignacio and his team knew that the marking would also segregate the seized *shabu* from the mass of all other similar or related evidence from the moment of their seizure until their disposition at the end of the criminal proceedings, obviating switching, as well as the "planting" or contamination of evidence,[30] the very evil that the requirement for preserving the chain of custody sought to prevent. However, the identity between the plastic sachet of *shabu* sold and the plastic sachet of *shabu* offered as evidence would no longer be credibly shown because there were no details on the making of the marking by the investigator. In short, the non-compliance

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[29] TSN of August 16, 2004, p. 6.

[30] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

with the requirement to preserve the initial link in the chain of custody thoroughly undermined the link between the plastic sachet of *shabu* sold and the plastic sachet of *shabu* offered as evidence.

Secondly, the requirement for the presence of a media or Department of Justice representative, or an elected public official at the time of the seizure and inventory was to insulate the seizure from any taint of illegitimacy or irregularity. But that lofty objective could not be achieved here after PO1 Ignacio did not mention the presence of either such representative or of the elected public official during the buy-bust operation or at the time of the seizure of the *shabu* or even in the police station. Although the fact that the arrest of the accused and the seizure of the *shabu* were warrantless could possibly excuse the absence of the representative or official from the scene of the transaction, we have to wonder why the Prosecution did not bother to explain the absence of such representative or official. That is another serious lapse that broke the chain of custody.

Thirdly, the Prosecution did not present the investigator as its witness to directly validate his marking of "BLCO 020804" in court. The omission diminished the importance of the marking as the reference point for the subsequent handling of the evidence. As a consequence, an objective person could now justifiably suspect the *shabu* ultimately presented as evidence in court to be planted or contaminated.

And, fourthly, the buy-bust team did not conduct a physical inventory and did not take any photograph of the seized *shabu* either at the place of seizure, or in the police station. This omission was also fatal because the conduct of the physical inventory and the taking of a photograph were also measures designed by the law to preserve the integrity of the chain of custody of the seized *shabu*.

It is true that the last paragraph of Section 21(*a*) of the IRR has a saving proviso to ensure that not every non-compliance irreversibly weakens the Prosecution's evidence. But the saving

proviso would not help the cause of the Prosecution at all. The application of the saving proviso has been conditioned upon the arresting lawmen recognizing their non-compliance with the procedure and then rendering a plausible explanation or two for the non-compliance.[31] Here, however, that the members of the buy-bust team did not own up their lapses. How, then, could the Prosecution tender any explanation of the lapses committed by the buy-bust team?

Given the foregoing, the accused deserves exculpation, not because we accord credence to his defense of frame-up but because the Prosecution did not establish his guilt beyond reasonable doubt. As we declared in *Patula v. People*:[32]

> xxx in all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. **In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.**[33]

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[31] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 211-212.

[32] G.R. No. 164457, April 11, 2012.

[33] Bold emphasis supplied.

2.
The lower courts should not rely on the presumption of regularity in the performance of duty by the arresting lawmen

Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.

We hold that both lower courts committed gross error in relying on the presumption of regularity.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance.[34] Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.

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[34] I *Jones on Evidence*, Seventh Edition (1992), §4:3.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on June 2, 2009; **ACQUITS LOUIE CATALAN *y* DEDALA** for failure of the State to establish his guilt beyond reasonable doubt; and **ORDERS** his immediate release from detention at the National Penitentiary, unless there are other lawful causes warranting his continued detention.

The Director of the Bureau of Corrections is directed to forthwith implement this decision and to report to this Court his action hereon within 10 days from receipt.

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Perez,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 193857. November 28, 2012]

MA. MERCEDES L. BARBA, *petitioner, vs.* **LICEO DE CAGAYAN UNIVERSITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE PROHIBITION AGAINST THE FILING OF A SECOND MOTION FOR RECONSIDERATION APPLIES WHERE A SECOND MOTION FOR RECONSIDERATION IS FILED BY THE SAME PARTY ASSAILING THE SAME JUDGMENT OF RESOLUTION; THE RULE DOES NOT APPLY IN CASES WHERE THE JUDGMENT OR RESOLUTION PREVIOUSLY

[*] Vice Associate Justice Bienvenido L. Reyes, who is on Wellness Leave, per Special order No. 1356 dated November 13, 2013.

ASSAILED WAS AMENDED.— Prefatorily, we first discuss the procedural matter raised by respondent that the present petition is filed out of time. Respondent claims that petitioner's motion for reconsideration from the Amended Decision is a second motion for reconsideration which is a prohibited pleading. Respondent's assertion, however, is misplaced for it should be noted that the CA's Amended Decision totally reversed and set aside its previous ruling. Section 2, Rule 52 of the 1997 Rules of Civil Procedure, as amended, provides that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. This contemplates a situation where a second motion for reconsideration is filed by the same party assailing the same judgment or final resolution. Here, the motion for reconsideration of petitioner was filed after the appellate court rendered an Amended Decision totally reversing and setting aside its previous ruling. Hence, petitioner is not precluded from filing another motion for reconsideration from the Amended Decision which held that the labor tribunals lacked jurisdiction over petitioner's complaint for constructive dismissal. The period to file an appeal should be reckoned not from the denial of her motion for reconsideration of the original decision, but from the date of petitioner's receipt of the notice of denial of her motion for reconsideration from the Amended Decision. And as petitioner received notice of the denial of her motion for reconsideration from the Amended Decision on September 23, 2010 and filed her petition on November 8, 2010, or within the extension period granted by the Court to file the petition, her petition was filed on time.

2. ID.; ID.; JURISDICTION; SINCE RESPONDENT ACTIVELY PARTICIPATED IN THE PROCEEDINGS BEFORE THE LABOR ARBITER AND NATIONAL LABOR RELATIONS COMMISSION (NLRC), IT IS ALREADY ESTOPPED FROM BELATEDLY RAISING THE ISSUE OF LACK OF JURISDICTION.— We agree with the CA's earlier pronouncement that since respondent actively participated in the proceedings before the Labor Arbiter and the NLRC, it is already estopped from belatedly raising the issue of lack of jurisdiction. In this case, respondent filed position papers and other supporting documents to bolster its defense before the labor tribunals but in all these pleadings, the issue of lack of jurisdiction was never raised. It was only in its Supplemental Petition filed before the CA that respondent first brought the

issue of lack of jurisdiction. We have consistently held that while jurisdiction may be assailed at any stage, a party's active participation in the proceedings will estop such party from assailing its jurisdiction. It is an undesirable practice of a party participating in the proceedings and submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse.

3. ID.; ID.; FORUM SHOPPING; NOT COMMITTED IN CASE AT BAR; WHILE THERE IS IDENTITY OF THE PARTIES IN THE TWO CASES, THE CAUSES OF ACTION AND THE RELIEFS SOUGHT ARE DIFFERENT.— As to whether respondent was guilty of forum shopping when it failed to inform the appellate court of the pendency of Civil Case No. 2009-320, a complaint for breach of contract filed by respondent against petitioner, we rule in the negative. Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. While there is identity of parties in the two cases, the causes of action and the reliefs sought are different. The issue raised in the present case is whether there was constructive dismissal committed by respondent. On the other hand, the issue in the civil case pending before the RTC is whether petitioner was guilty of breach of contract. Hence, respondent is not guilty of forum shopping.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR ARBITERS AND THE NLRC HAVE NO JURISDICTION OVER CORPORATE OFFICERS.— After a careful review and examination of the records, we find that the CA's previous ruling that petitioner was respondent's employee and not a corporate officer is supported by the totality of the evidence and more in accord with law and prevailing jurisprudence. Corporate officers are elected or appointed by the directors or stockholders, and are those who are given that

character either by the Corporation Code or by the corporation's by-laws. Section 25 of the Corporation Code enumerates corporate officers as the president, the secretary, the treasurer and such other officers as may be provided for in the by-laws. In *Matling Industrial and Commercial Corporation v. Coros*, the phrase "such other officers as may be provided for in the by-laws" has been clarified, thus: Conformably with Section 25, **a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office.** Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. *Guerrea v. Lezama*, the first ruling on the matter, held that the only officers of a corporation were those given that character either by the *Corporation Code* or by the By-Laws; **the rest of the corporate officers could be considered only as employees of subordinate officials.** Thus, it was held in *Easycall Communications Phils., Inc. v. King*: **An "office" is created by the charter of the corporation** and the officer is elected by the directors or stockholders. On the other hand, an **employee occupies no office and generally is employed** not by the action of the directors or stockholders but **by the managing officer of the corporation who also determines the compensation to be paid to such employee.** In declaring petitioner a corporate officer, the CA considered respondent's by-laws and gave weight to the certifications of respondent's secretary attesting to the resolutions of the board of directors appointing the various academic deans for the School Years 1991-2002 and 2002-2005, including petitioner. However, an assiduous perusal of these documents does not convince us that petitioner occupies a corporate office position in respondent university.

5. ID.; ID.; ID.; A COLLEGE DEAN IS NOT AMONG THE CORPORATE OFFICERS MENTIONED IN RESPONDENT'S BY-LAWS; THE ACT OF THE BOARD OF DIRECTORS IN APPROVING THE APPOINTMENT OF PETITIONER AS DEAN OF THE COLLEGE OF THERAPY DID NOT MAKE HER A CORPORATE OFFICER OF THE CORPORATION.— In respondent's by-laws, there are four officers specifically mentioned, namely, a president, a vice president, a secretary and a treasurer. In addition, it is provided that there shall be other appointive officials, a College Director and heads of departments whose appointments, compensations, powers and duties shall be determined by the board of directors. It is

worthy to note that a College Dean is not among the corporate officers mentioned in respondent's by-laws. Petitioner, being an academic dean, also held an administrative post in the university but not a corporate office as contemplated by law. Petitioner was not directly elected nor appointed by the board of directors to any corporate office but her appointment was merely approved by the board together with the other academic deans of respondent university in accordance with the procedure prescribed in respondent's Administrative Manual. The act of the board of directors in approving the appointment of petitioner as Dean of the College of Therapy did not make her a corporate officer of the corporation.

6. ID.; ID.; ID.; THE APPOINTIVE OFFICIALS MENTIONED IN ARTICLE V OF RESPONDENT'S BY-LAWS ARE NOT CORPORATE OFFICERS UNDER THE CONTEMPLATION OF THE LAW.— Moreover, the CA, in its amended decision erroneously equated the position of a College Director to that of a College Dean thereby concluding that petitioner is an officer of respondent. It bears stressing that the appointive officials mentioned in Article V of respondent's by-laws are not corporate officers under the contemplation of the law. Though the board of directors may create appointive positions other than the positions of corporate officers, the persons occupying such positions cannot be deemed as corporate officers as contemplated by Section 25 of the Corporation Code. On this point, the SEC Opinion dated November 25, 1993 quoted in the case of *Matling Industrial and Commercial Corporation v. Coros*, is instructive: Thus, pursuant to the above provision (Section 25 of the Corporation Code), whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate By-laws. **However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers,** except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/Trustees.

7. ID.; ID.; ID.; NOWHERE IN PETITIONER'S APPOINTMENT LETTER WAS IT STATED THAT PETITIONER WAS DESIGNATED AS THE COLLEGE DIRECTOR OR THAT PETITONER WAS TO ASSUME THE FUNCTIONS AND DUTIES OF A COLLEGE DIRECTOR; NEITHER CAN IT BE INFERRED IN RESPONDENT'S BY-LAWS THAT A DEAN OF A COLLEGE IS THE SAME AS A COLLEGE DIRECTOR OF RESPONDENT.— But even assuming that a College Director may be considered a corporate officer of respondent, a review of the records as well as the other documents submitted by the parties fails to persuade that petitioner was the "College Director" mentioned in the by-laws of respondent. Nowhere in petitioner's appointment letter was it stated that petitioner was designated as the College Director or that petitioner was to assume the functions and duties of a College Director. Neither can it be inferred in respondent's by-laws that a dean of a college is the same as a College Director of respondent.

8. ID.; ID.; ID.;APPLYING THE FOUR-FOLD TEST, PETITIONER IS NOT A CORPORATE OFFICER BUT AN EMPLOYEE OF RESPONDENT; BEING AN EMPLOYEE OF RESPONDENT, HER COMPLAINT FOR ILLEGAL/CONSTRUCTIVE DISMISSAL AGAINST RESPONDENT WAS PROPERLY WITHIN THE JURISDICTION OF THE LABOR ARBITER AND THE NLRC.— Undoubtedly, petitioner is not a College Director and she is not a corporate officer but an employee of respondent. Applying the four-fold test concerning (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished, it is clear that there exists an employer-employee relationship between petitioner and respondent. Records show that petitioner was appointed to her position as Dean by Dr. Golez, the university president and was paid a salary of ₱32,500 plus transportation allowance. It was evident that respondent had the power of control over petitioner as one of its deans. It was also the university president who informed petitioner that her services as Dean of the College of Physical Therapy was terminated effective March 31, 2005 and she was subsequently directed to report to the Acting Dean of the College of Nursing for assignment of teaching load. Thus, petitioner, being an employee of

respondent, her complaint for illegal/constructive dismissal against respondent was properly within the jurisdiction of the Labor Arbiter and the NLRC.

9. ID.; ID.; ID.; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; NOT ESTABLISHED; PETITIONER'S TRANSFER IS NOT UNREASONABLE, INCONVENIENT, OR PREJUDICIAL TO THE EMPLOYEE.— In constructive dismissal cases, the employer has the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee. In this case, petitioner's transfer was not unreasonable, inconvenient or prejudicial to her. On the contrary, the assignment of a teaching load in the College of Nursing was undertaken by respondent to accommodate petitioner following the closure of the College of Physical Therapy. Respondent further considered the fact that petitioner still has two years to serve the university under the Scholarship Contract.

10. ID.; ID.; ID.; PETITIONER'S SUBSEQUENT TRANSFER TO ANOTHER DEPARTMENT OR COLLEGE IS NOT TANTAMOUNT TO DEMOTION AS IT WAS A VALID TRANSFER AND ALSO A VALID EXERCISE OF MANAGEMENT PREROGATIVE ON THE PART OF RESPONDENT.— Petitioner's subsequent transfer to another department or college is not tantamount to demotion as it was a valid transfer. There is therefore no constructive dismissal to speak of. That petitioner ceased to enjoy the compensation, privileges and benefits as College Dean was but a logical consequence of the valid revocation or termination of such fixed-term position. Indeed, it would be absurd and unjust for respondent to maintain a deanship position in a college or department that has ceased to exist. Under the circumstances, giving petitioner a teaching load in another College/Department that is related to Physical Therapy — thus enabling her to serve and complete her remaining two years under the Scholarship Contract — is a valid exercise of management prerogative on the part of respondent.

APPEARANCES OF COUNSEL

Lagamon Law Office and *Barba and Associates* for petitioner.

Ceballos Law Firm for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court is a petition for review on *certiorari* assailing the March 29, 2010 Amended Decision[1] and September 14, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 02508-MIN. The CA had reconsidered its earlier Decision[3] dated October 22, 2009 and set aside the September 25, 2007 and June 30, 2008 Resolutions[4] of the National Labor Relations Commission (NLRC) as well as the September 29, 2006 Decision[5] of the Labor Arbiter. The CA held that the Labor Arbiter and NLRC had no jurisdiction over the illegal dismissal case filed by petitioner against respondent because petitioner's position as Dean of the College of Physical Therapy of respondent is a corporate office.

The facts follow.

Petitioner Dr. Ma. Mercedes L. Barba was the Dean of the College of Physical Therapy of respondent Liceo de Cagayan University, Inc., a private educational institution with school campus located at Carmen, Cagayan de Oro City.

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[1] *Rollo*, pp. 77-94. Penned by Associate Justice Leoncia R. Dimagiba with Associate Justices Rodrigo F. Lim, Jr. and Danton Q. Bueser, concurring.

[2] *Id*. at 166-172. Penned by Associate Justice Leoncia R. Dimagiba with Associate Justices Rodrigo F. Lim, Jr. and Ramon Paul L. Hernando, concurring.

[3] *Id*. at 54-76. Penned by Associate Justice Ruben C. Ayson with Associate Justices Rodrigo F. Lim, Jr. and Leoncia Real-Dimagiba, concurring.

[4] *Id*. at 42-48, 50-52.

[5] *Id*. at 34-41.

Petitioner started working for respondent on July 8, 1993 as medical officer/school physician for a period of one school year or until March 31, 1994. In July 1994, she was chosen by respondent to be the recipient of a scholarship grant to pursue a three-year residency training in Rehabilitation Medicine at the Veterans Memorial Medical Center (VMMC). The Scholarship Contract[6] provides:

> 5. That the SCHOLAR after the duration of her study and training shall serve the SCHOOL in whatever position the SCHOOL desires related to the SCHOLAR's studies for a period of not less than ten (10) years;

After completing her residency training with VMMC in June 1997, petitioner returned to continue working for respondent. She was appointed as Acting Dean of the College of Physical Therapy and at the same time designated as Doctor-In-Charge of the Rehabilitation Clinic of the Rodolfo N. Pelaez Hall, City Memorial Hospital.

On June 19, 2002, petitioner's appointment as Doctor-In-Charge of the Rehabilitation Clinic was renewed and she was appointed as Dean of the College of Physical Therapy by respondent's President, Dr. Jose Ma. R. Golez. The appointment letter[7] reads:

> x x x x x x x x x
>
> Dear Dr. Barba:
>
> You are hereby re-appointed Dean of the College of Physical Therapy and Doctor-In-Charge of the Rehabilitation Clinic at Rodolfo N. Pelaez Hall, City Memorial Hospital and other rehabilitation clinics under the management of Liceo de Cagayan University for a period of three years effective July 1, 2002 unless sooner revoked for valid cause or causes.
>
> Your position is one of trust and confidence and the appointment is subject to the pertinent provisions of the University Administrative Personnel and Faculty Manuals, and Labor Code.

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[6] Annex "A", records, Vol. I, pp. 20-21.

[7] Annex "E", CA *rollo*, p. 31.

x x x x x x x x x

Petitioner accepted her appointment and assumed the position of Dean of the College of Physical Therapy. In the school year 2003 to 2004, the College of Physical Therapy suffered a dramatic decline in the number of enrollees from a total of 1,121 students in the school year 1995 to 1996 to only 29 students in the first semester of school year 2003 to 2004. This worsened in the next year or in school year 2004 to 2005 where a total of only 20 students enrolled.[8]

Due to the low number of enrollees, respondent decided to freeze the operation of the College of Physical Therapy indefinitely. Respondent's President Dr. Rafaelita Pelaez-Golez wrote petitioner a letter[9] dated March 16, 2005 informing her that her services as dean of the said college will end at the close of the school year. Thereafter, the College of Physical Therapy ceased operations on March 31, 2005, and petitioner went on leave without pay starting on April 9, 2005. Subsequently, respondent's Executive Vice President, Dr. Mariano M. Lerin, through Dr. Glory S. Magdale, respondent's Vice President for Academic Affairs, sent petitioner a letter[10] dated April 27, 2005 instructing petitioner to return to work on June 1, 2005 and report to Ma. Chona Palomares, the Acting Dean of the College of Nursing, to receive her teaching load and assignment as a full-time faculty member in that department for the school year 2005-2006.

In reply, petitioner informed Dr. Lerin that she had not committed to teach in the College of Nursing and that as far as she can recall, her employment is not dependent on any teaching load. She then requested for the processing of her separation benefits in view of the closure of the College of Physical Therapy.[11] She did not report to Palomares on June 1, 2005.

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[8] Records, Vol. I, p. 39.

[9] Annex "B", *id*. at 23.

[10] Annex "E", *id*. at 61.

[11] *Id*. at 25.

On June 8, 2005, petitioner followed up her request for separation pay and other benefits but Dr. Lerin insisted that she report to Palomares; otherwise, sanctions will be imposed on her. Thus, petitioner through counsel wrote Dr. Golez directly, asking for her separation pay and other benefits.

On June 21, 2005, Dr. Magdale wrote petitioner a letter[12] directing her to report for work and to teach her assigned subjects on or before June 23, 2005. Otherwise, she will be dismissed from employment on the ground of abandonment. Petitioner, through counsel, replied that teaching in the College of Nursing is in no way related to her scholarship and training in the field of rehabilitation medicine. Petitioner added that coercing her to become a faculty member from her position as College Dean is a great demotion which amounts to constructive dismissal.[13]

Dr. Magdale sent another letter[14] to petitioner on June 24, 2005 ordering her to report for work as she was still bound by the Scholarship Contract to serve respondent for two more years. But petitioner did not do so. Hence, on June 28, 2005, Dr. Magdale sent petitioner a notice terminating her services on the ground of abandonment.

Meanwhile, on June 22, 2005, prior to the termination of her services, petitioner filed a complaint before the Labor Arbiter for illegal dismissal, payment of separation pay and retirement benefits against respondent, Dr. Magdale and Dr. Golez. She alleged that her transfer to the College of Nursing as a faculty member is a demotion amounting to constructive dismissal.

Respondent claimed that petitioner was not terminated and that it was only petitioner's appointment as College Dean in the College of Physical Therapy that expired as a necessary consequence of the eventual closure of the said college. Respondent further averred that petitioner's transfer as full-time professor in the College of Nursing does not amount to

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[12] Annex "I", *id*. at 65.

[13] *Id*. at 66.

[14] Annex "L", *id*. at 68.

constructive dismissal since the transfer was without loss of seniority rights and without diminution of pay. Also, respondent added that pursuant to the Scholarship Contract, petitioner was still duty bound to serve respondent until 2007 in whatever position related to her studies the school desires.

Labor Arbiter's Ruling

In a Decision[15] dated September 29, 2006, the Labor Arbiter found that respondent did not constructively dismiss petitioner; therefore, she was not entitled to separation pay. The Labor Arbiter held that petitioner's assignment as full-time professor in the College of Nursing was not a demotion tantamount to constructive dismissal. The dispositive portion of the Labor Arbiter's decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing the complaint for illegal dismissal for utter lack of merit, but ordering the respondent Liceo de Cagayan University to reinstate complainant to an equivalent position without loss of seniority rights, but without back wages.
>
> However, if reinstatement is no longer feasible or if there is no equivalent position to which complainant may be reinstated, respondent may opt to pay complainant her separation pay equivalent to one-half (1/2) month pay for every year of service or in the sum of ₱195,000.00, subject to deduction for advances or accountabilities which complainant may have had.
>
> Other claims are ordered dismissed for lack of merit.
>
> SO ORDERED.[16]

NLRC's Ruling

Petitioner appealed the above decision to the NLRC. On September 25, 2007, the NLRC issued a Resolution[17] reversing the Labor Arbiter's decision and holding that petitioner was constructively dismissed. The NLRC held that petitioner was

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[15] *Supra* note 5.

[16] *Id*. at 41.

[17] *Supra* note 4 at 42-48.

demoted when she was assigned as a professor in the College of Nursing because there are functions and obligations and certain allowances and benefits given to a College Dean but not to an ordinary professor. The NLRC ruled:

> WHEREFORE, in view of the foregoing, the assailed decision is hereby MODIFIED in that complainant is hereby considered as constructively dismissed and thus entitled to backwages and separation pay of one (1) month salary for every year of service, plus attorney's fees, which shall be computed at the execution stage before the Arbitration Branch of origin.
>
> SO ORDERED.[18]

The NLRC denied respondent's motion for reconsideration in a Resolution[19] dated June 30, 2008.

Ruling of the Court of Appeals

Respondent went to the CA on a petition for *certiorari* alleging that the NLRC committed grave abuse of discretion when it declared that petitioner's transfer to the College of Nursing as full-time professor but without diminution of salaries and without loss of seniority rights amounted to constructive dismissal because there was a demotion involved in the transfer and because petitioner was compelled to accept her new assignment.

Respondent also filed a Supplemental Petition[20] raising for the first time the issue of lack of jurisdiction of the Labor Arbiter and the NLRC over the case. Respondent claimed that a College Dean is a corporate officer under its by-laws and petitioner was a corporate officer of respondent since her appointment was approved by the board of directors. Respondent posited that petitioner was a corporate officer since her office was created by the by-laws and her appointment, compensation, duties and functions were approved by the board of directors.

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[18] *Id*. at 47.

[19] *Id*. at 50-52.

[20] *Id*. at 179-209.

Thus, respondent maintained that the jurisdiction over the case is with the regular courts and not with the labor tribunals.

In its original Decision[21] dated October 22, 2009, the CA reversed and set aside the NLRC resolutions and reinstated the decision of the Labor Arbiter. The CA did not find merit in respondent's assertion in its Supplemental Petition that the position of petitioner as College Dean was a corporate office. Instead, the appellate court held that petitioner was respondent's employee, explaining thus:

> Corporate officers in the context of PD 902-A are those officers of a corporation who are given that character either by the Corporation Code or by the corporation's By-Laws. Under Section 25 of the Corporation Code, the "corporate officers" are the president, secretary, treasurer and such other officers as may be provided for in the By-Laws.
>
> True, the By-Laws of LDCU provides that there shall be a College Director. This means a College Director is a corporate officer. However, contrary to the allegation of petitioner, the position of Dean does not appear to be the same as that of a College Director.
>
> Aside from the obvious disparity in name, the By-Laws of LDCU provides for only **one** College Director. But as shown by LDCU itself, **numerous** persons have been appointed as Deans. They could not be the College Director contemplated by the By-Laws inasmuch as the By-Laws **authorize** only the appointment of **one** not many. **If it is indeed the intention of LDCU to give its many Deans the rank of College Director, then it <u>exceeded</u> the authority given to it by its By-Laws because only one College Director is authorized to be appointed**. It must amend its By-Laws. Prior to such an amendment, the office of College Dean is not a corporate office.
>
> Another telling sign that a College Director is not the same as a Dean is the manner of appointment. **A College Director is directly appointed by the Board of Directors**. However, **a College Dean is appointed by the President** upon the recommendation of the Vice President for Academic Affairs and the Executive Vice President and approval of the Board of Directors. There is a clear distinction on

[21] *Supra* note 3.

the manner of appointment indicating that the offices are not one and the same.

x x x x x x x x x

This shows that it was not the intention of LDCU to make Dr. Barba a corporate officer as it was stated in her letter of appointment that the same shall be subject to the provisions of the Labor Code. Otherwise, the appointment letter should have stated that her appointment is governed by the Corporation Code. Thus, We find the arguments in the Supplemental Petition on the matter of lack of jurisdiction of the Labor Arbiter and the NLRC to be without merit. Dr. Barba, being a College Dean, was not a corporate officer.[22] (Emphasis not ours)

The CA further found that no constructive dismissal occurred nor has petitioner abandoned her work. According to the CA, a transfer amounts to constructive dismissal when the transfer is unreasonable, unlikely, inconvenient, impossible, or prejudicial to the employee or it involves a demotion in rank or a diminution of salary and other benefits. In the case of petitioner, the CA held that she was never demoted and her transfer, being a consequence of the closure of the College of Physical Therapy, was valid.

The CA also noted that petitioner's appointment as Dean of the College of Physical Therapy was for a term of three years. Hence, when her appointment as College Dean was no longer renewed on June 1, 2005 or after her three-year term had expired, it cannot be said that there was a demotion or that she was dismissed. Her term as Dean had expired and she can no longer claim to be entitled to the benefits emanating from such office.

On the issue of alleged lack of jurisdiction, the CA observed that respondent never raised the issue of jurisdiction before the Labor Arbiter and the NLRC and respondent even actively participated in the proceedings below. Hence, respondent is estopped from questioning the jurisdiction of the labor tribunals.

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[22] *Id*. at 64-66.

Unsatisfied, both petitioner and respondent sought reconsideration of the CA decision. Petitioner prayed for the reversal of the ruling that there was no constructive dismissal. Respondent meanwhile maintained that the labor tribunals have no jurisdiction over the case, petitioner being a corporate officer.

On March 29, 2010, the CA issued the assailed Amended Decision[23] setting aside its earlier ruling. This time the CA held that the position of a College Dean is a corporate office and therefore the labor tribunals had no jurisdiction over the complaint for constructive dismissal. The CA noted that petitioner's appointment as Dean of the College of Physical Therapy was approved by the respondent's board of directors thereby concluding that the position of a College Dean is a corporate office. Also, the CA held that the College Director mentioned in respondent's by-laws is the same as a College Dean and no one has ever been appointed as College Director. The CA added that in the Administrative Manual the words "college" and "department" were used in the same context in the section on the Duties and Responsibilities of the College Dean, and that there could not have been any other "head of department" being alluded to in the by-laws but the college dean.

The dispositive portion of the Amended Decision reads:

WHEREFORE, in view of the foregoing, We reconsider Our Decision on October [22], 2009, and declare that the position of College Dean is a corporate office of Petitioner [Liceo de Cagayan University], thereby divesting the Labor Arbiter and the National Labor Relations Commission of jurisdiction over the instant case. Hence, the Resolutions of the Public Respondent dated September 25, 2007 and June 30, 2008 as well as that of the Regional Labor Arbiter dated 29 September 2006 are **VACATED** and **SET ASIDE** as they were rendered by tribunals that had no jurisdiction over the case.

SO ORDERED.[24]

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[23] *Supra* note 1.

[24] *Id*. at 93.

Petitioner filed a motion for reconsideration from the above decision, but her motion was denied by the CA in its Resolution[25] dated September 14, 2010. Hence, petitioner filed the present petition.

Petitioner argues that the CA erred in ruling that she was a corporate officer and asserts that the CA's previous finding that she was respondent's employee is more in accord with law and jurisprudence. Petitioner adds that the appellate court erred when it ruled that the labor tribunals had no jurisdiction over her complaint for illegal dismissal against respondent. She faults the CA for allowing respondent to raise the issue of jurisdiction in a Supplemental Petition after respondent has actively participated in the proceedings before the labor tribunals. Petitioner also asserts that the CA erred in denying her motion for reconsideration from its Amended Decision on the ground that it is a second motion for reconsideration which is a prohibited pleading. Lastly, petitioner claims that respondent violated the rule against forum shopping when it failed to inform the CA of the pendency of the complaint for breach of contract which it filed against petitioner before the Regional Trial Court of Misamis Oriental, Branch 23.

Respondent, for its part, counters that the petition was filed out of time and petitioner's motion for reconsideration from the Amended Decision was a prohibited pleading since petitioner has already filed a motion for reconsideration from the original decision of the CA. It is respondent's posture that an Amended Decision is not really a new decision but the appellate court's own modification of its prior decision. More importantly, respondent points out that the arguments raised by petitioner do not justify a reversal of the Amended Decision of the appellate court. Respondent insists on the correctness of the Amended Decision and quotes the assailed decision in its entirety.

Issue

The decisive issue in the present petition is whether petitioner was an employee or a corporate officer of respondent university.

[25] *Supra* note 2.

Resolution of this issue resolves the question of whether the appellate court was correct in ruling that the Labor Arbiter and the NLRC had no jurisdiction over petitioner's complaint for constructive dismissal against respondent.

Our Ruling

We grant the petition.

Prefatorily, we first discuss the procedural matter raised by respondent that the present petition is filed out of time. Respondent claims that petitioner's motion for reconsideration from the Amended Decision is a second motion for reconsideration which is a prohibited pleading. Respondent's assertion, however, is misplaced for it should be noted that the CA's Amended Decision totally reversed and set aside its previous ruling. Section 2, Rule 52 of the 1997 Rules of Civil Procedure, as amended, provides that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. This contemplates a situation where a second motion for reconsideration is filed by the same party assailing the same judgment or final resolution. Here, the motion for reconsideration of petitioner was filed after the appellate court rendered an Amended Decision totally reversing and setting aside its previous ruling. Hence, petitioner is not precluded from filing another motion for reconsideration from the Amended Decision which held that the labor tribunals lacked jurisdiction over petitioner's complaint for constructive dismissal. The period to file an appeal should be reckoned not from the denial of her motion for reconsideration of the original decision, but from the date of petitioner's receipt of the notice of denial of her motion for reconsideration from the Amended Decision. And as petitioner received notice of the denial of her motion for reconsideration from the Amended Decision on September 23, 2010 and filed her petition on November 8, 2010, or within the extension period granted by the Court to file the petition, her petition was filed on time.

Now on the main issue.

As a general rule, only questions of law may be allowed in a petition for review on *certiorari*.[26] Considering, however, that the CA reversed its earlier decision and made a complete turnaround from its previous ruling, and consequently set aside both the findings of the Labor Arbiter and the NLRC for allegedly having been issued without jurisdiction, it is necessary for the Court to reexamine the records and resolve the conflicting rulings.

After a careful review and examination of the records, we find that the CA's previous ruling that petitioner was respondent's employee and not a corporate officer is supported by the totality of the evidence and more in accord with law and prevailing jurisprudence.

Corporate officers are elected or appointed by the directors or stockholders, and are those who are given that character either by the Corporation Code or by the corporation's by-laws.[27] Section 25[28] of the Corporation Code enumerates corporate officers as the president, the secretary, the treasurer

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[26] *Uy v. Centro Ceramica Corporation*, G.R. No. 174631, October 19, 2011, 659 SCRA 604, 614.

[27] *Gomez v. PNOC Development and Management Corporation (PDMC)*, G.R. No. 174044, November 27, 2009, 606 SCRA 187, 194.

[28] SEC. 25. *Corporate officers, quorum.* – Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by[-]laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by[-]laws of the corporation. Unless the articles of incorporation or the by[-]laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

Directors or trustees cannot attend or vote by proxy at board meetings.

and such other officers as may be provided for in the by-laws. In *Matling Industrial and Commercial Corporation v. Coros*,[29] the phrase "such other officers as may be provided for in the by-laws" has been clarified, thus:

> Conformably with Section 25, **a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office.** Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. *Guerrea v. Lezama*, the first ruling on the matter, held that the only officers of a corporation were those given that character either by the *Corporation Code* or by the By-Laws; **the rest of the corporate officers could be considered only as employees of subordinate officials.** Thus, it was held in *Easycall Communications Phils., Inc. v. King*:
>
> > **An "office" is created by the charter of the corporation** and the officer is elected by the directors or stockholders. On the other hand, an **employee occupies no office and generally is employed** not by the action of the directors or stockholders but **by the managing officer of the corporation who also determines the compensation to be paid to such employee.** (Emphasis supplied)

In declaring petitioner a corporate officer, the CA considered respondent's by-laws and gave weight to the certifications of respondent's secretary attesting to the resolutions of the board of directors appointing the various academic deans for the School Years 1991-2002 and 2002-2005, including petitioner. However, an assiduous perusal of these documents does not convince us that petitioner occupies a corporate office position in respondent university.

The relevant portions of respondent's by-laws[30] are hereby quoted as follows:

Article III
The Board of Directors

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[29] G.R. No. 157802, October 13, 2010, 633 SCRA 12, 26.

[30] *Rollo*, pp. 211-218.

Sec. 3. The Board of Directors shall appoint a College Director, define his powers and duties, and determine his compensation; approve or disapprove recommendations for appointment or dismissal of teachers and employees submitted to it by the College Director; and exercise other powers and perform such duties as may be required of it hereafter for the proper functioning of the school.

x x x x x x x x x

Article IV
Officers

Sec. 1. The officers of the corporation shall consist of a **President, a Vice President, and a Secretary-Treasurer,** who shall be chosen from the directors and by the directors themselves. They shall be elected annually at the first meeting of the directors immediately after their election, and shall hold office for one (1) year and until their successors are elected and qualified.

x x x x x x x x x

Article V
Other Appointive Officials

Sec. 1. The Liceo de Cagayan shall have a **College Director** and such heads of departments as may exist in the said college whose appointments, compensations, powers and duties shall be determined by the Board of Directors.[31] (Emphasis supplied)

On the other hand, the pertinent portions of the two board resolutions appointing the various academic deans in the university including petitioner, read as follows:

x x x x x x x x x

RESOLVE, as it is hereby resolved, that pursuant to Section 3[,] Article III and Section 1[,] Article V of the Corporation's By-laws, the various academic deans for the school years 1999-2002 of the University, as recommended by the President of the Corporation, are hereby appointed, whose names are enumerated hereunder and their respective colleges and their honoraria are indicated opposite their names, all of them having a three (3) year term, to wit:

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[31] *Id*. at 212-215.

Name and College	Honorarium
Ma. Mercedes Vivares Physical Therapy	2,660.00

x x x x x x x x x

RESOLVE, as it is hereby resolved, that pursuant to Section 3[,] Article III and Section 1[,] Article V of the Corporation's By-laws, the various academic deans for the school years 2002-2005 of the University, as recommended by the President of the Corporation, are hereby appointed, whose names are enumerated hereunder and their respective colleges and their honoraria are indicated opposite their names, all of them having a three (3) year term, to wit:

Name and College	Honorarium
Ma. Mercedes Vivares	2,450.00
Physical Therapy	

x x x x x x x x x[32]

In respondent's by-laws, there are four officers specifically mentioned, namely, a president, a vice president, a secretary and a treasurer. In addition, it is provided that there shall be other appointive officials, a College Director and heads of departments whose appointments, compensations, powers and duties shall be determined by the board of directors. It is worthy to note that a College Dean is not among the corporate officers mentioned in respondent's by-laws. Petitioner, being an academic dean, also held an administrative post in the university but not a corporate office as contemplated by law. Petitioner was not directly elected nor appointed by the board of directors to any corporate office but her appointment was merely approved by the board together with the other academic deans of respondent university in accordance with the procedure prescribed in respondent's Administrative Manual.[33] The act of the board of directors in

[32] CA *rollo*, pp. 191-193.

[33] 4.2. Academic Deans

x x x

4.2.2.1. Appointed by: The President upon the recommendation of the VPAA and EVP and upon approval of the Board of Directors for a definite term not to exceed three (3) years and subject to reappointment. (*Rollo*, p. 83).

approving the appointment of petitioner as Dean of the College of Therapy did not make her a corporate officer of the corporation.

Moreover, the CA, in its amended decision erroneously equated the position of a College Director to that of a College Dean thereby concluding that petitioner is an officer of respondent.

It bears stressing that the appointive officials mentioned in Article V of respondent's by-laws are not corporate officers under the contemplation of the law. Though the board of directors may create appointive positions other than the positions of corporate officers, the persons occupying such positions cannot be deemed as corporate officers as contemplated by Section 25 of the Corporation Code. On this point, the SEC Opinion dated November 25, 1993 quoted in the case of *Matling Industrial and Commercial Corporation v. Coros,*[34] is instructive:

> Thus, pursuant to the above provision (Section 25 of the Corporation Code), whoever are the corporate officers enumerated in the by-laws are the exclusive Officers of the corporation and the Board has no power to create other Offices without amending first the corporate By-laws. **However, the Board may create appointive positions other than the positions of corporate Officers, but the persons occupying such positions are not considered as corporate officers within the meaning of Section 25 of the Corporation Code and are not empowered to exercise the functions of the corporate Officers,** except those functions lawfully delegated to them. Their functions and duties are to be determined by the Board of Directors/ Trustees.

But even assuming that a College Director may be considered a corporate officer of respondent, a review of the records as well as the other documents submitted by the parties fails to persuade that petitioner was the "College Director" mentioned in the by-laws of respondent. Nowhere in petitioner's appointment letter was it stated that petitioner was designated as the College Director or that petitioner was to assume the functions and duties of a College Director. Neither can it be inferred in

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[34] *Supra* note 29 at 27.

respondent's by-laws that a dean of a college is the same as a College Director of respondent. Respondent's lone surviving incorporating director Yolanda Rollo even admitted that no College Director has ever been appointed by respondent. In her affidavit, Yolanda also explained the reason for the creation of the position of a College Director, to wit:

> 4. At the time we signed the By-Laws of the Corporation, we, as directors, did envision to form only a college of law as that was the main thrust of our president, the late Atty. Rodolfo N. Pelaez. The original plan then was to have a "College Director" as the head of the college of law and below him within the college were heads of departments. The appointments, remuneration, duties and functions of the "College Director" and the heads of departments were to be approved by the Board of Directors. x x x[35]

Notably, the CA has sufficiently explained why petitioner could not be considered a College Director in its previous decision. The appellate court explained:

> True, the By-Laws of [Liceo de Cagayan University] provides that there shall be a College Director. This means a College Director is a corporate officer. However, contrary to the allegation of petitioner, the position of Dean does not appear to be the same as that of a College Director.
>
> Aside from the obvious disparity in name, the By-Laws of [Liceo de Cagayan University] provides for only **one** College Director. But as shown by [Liceo de Cagayan University] itself, **numerous** persons have been appointed as Deans. They could not be the College Director contemplated by the By-Laws inasmuch as the By-Laws **authorize** only the appointment of **one** not many. **If it is indeed the intention of [Liceo de Cagayan University] to give its many Deans the rank of College Director, then it <u>exceeded</u> the authority given to it by its By-Laws because only one College Director is authorized to be appointed.** It must amend its By-Laws. Prior to such amendment, the office of [the] College Dean is not a corporate office.
>
> Another telling sign that a College Director is not the same as a Dean is the manner of appointment. **A College Director is directly appointed by the Board of Directors.** However, **a College Dean is**

[35] CA *rollo*, p. 195.

appointed by the President upon the recommendation of the Vice President for Academic Affairs and the Executive Vice President and **approval** of the Board of Directors. There is a clear distinction on the manner of appointment indicating that the offices are not one and the same.[36] (Additional emphasis supplied)

Undoubtedly, petitioner is not a College Director and she is not a corporate officer but an employee of respondent. Applying the four-fold test concerning (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished, it is clear that there exists an employer-employee relationship between petitioner and respondent. Records show that petitioner was appointed to her position as Dean by Dr. Golez, the university president and was paid a salary of ₱32,500 plus transportation allowance. It was evident that respondent had the power of control over petitioner as one of its deans. It was also the university president who informed petitioner that her services as Dean of the College of Physical Therapy was terminated effective March 31, 2005 and she was subsequently directed to report to the Acting Dean of the College of Nursing for assignment of teaching load.

Thus, petitioner, being an employee of respondent, her complaint for illegal/constructive dismissal against respondent was properly within the jurisdiction of the Labor Arbiter and the NLRC. Article 217 of the Labor Code provides:

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 xxx the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. Termination disputes;

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[36] *Rollo*, p. 65.

3. If accompanied with a claim for reinstatement, those cases that workers may file involving wage, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

x x x x x x x x x

Moreover, we agree with the CA's earlier pronouncement that since respondent actively participated in the proceedings before the Labor Arbiter and the NLRC, it is already estopped from belatedly raising the issue of lack of jurisdiction. In this case, respondent filed position papers and other supporting documents to bolster its defense before the labor tribunals but in all these pleadings, the issue of lack of jurisdiction was never raised. It was only in its Supplemental Petition filed before the CA that respondent first brought the issue of lack of jurisdiction. We have consistently held that while jurisdiction may be assailed at any stage, a party's active participation in the proceedings will estop such party from assailing its jurisdiction. It is an undesirable practice of a party participating in the proceedings and submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse.[37]

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[37] *Philippine Veterans Bank v. National Labor Relations Commission (Fourth Division)*, G.R. No. 188882, March 30, 2010, 617 SCRA 204, 211.

Under Section 6, Rule 10 of the 1997 Rules of Civil Procedure, as amended, governing supplemental pleadings, the court "may" admit supplemental pleadings, such as the supplemental petition filed by respondent before the appellate court, but the admission of these pleadings remains in the sound discretion of the court. Nevertheless, we have already found no credence in respondent's claim that petitioner is a corporate officer, consequently, the alleged lack of jurisdiction asserted by respondent in the supplemental petition is bereft of merit.

On the issue of constructive dismissal, we agree with the Labor Arbiter and the appellate court's earlier ruling that petitioner was not constructively dismissed. Petitioner's letter of appointment specifically appointed her as Dean of the College of Physical Therapy and Doctor-in-Charge of the Rehabilitation Clinic "*for a period of three years effective July 1, 2002 unless sooner revoked for valid cause or causes.*" Evidently, petitioner's appointment as College Dean was for a fixed term, subject to reappointment and revocation or termination for a valid cause. When respondent decided to close its College of Physical Therapy due to drastic decrease in enrollees, petitioner's appointment as its College Dean was validly revoked and her subsequent assignment to teach in the College of Nursing was justified as it is still related to her scholarship studies in Physical Therapy.

As we observed in *Brent School, Inc. v. Zamora*,[38] also cited by the CA, it is common practice in educational institutions to have fixed-term contracts in administrative positions, thus:

> Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, **but to which a fixed term is an essential and natural appurtenance:** overseas employment contracts, for one, to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied, Article 280 of the Labor Code notwithstanding; **also appointments to the positions of dean, assistant dean, college secretary, principal, and other administrative offices**

[38] G.R. No. L-48494, February 5, 1990, 181 SCRA 702, 714.

in educational institutions, which are by practice or tradition rotated among the faculty members, and where fixed terms are a necessity without which no reasonable rotation would be possible. x x x (Emphasis supplied)

In constructive dismissal cases, the employer has the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity.[39] Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee. In this case, petitioner's transfer was not unreasonable, inconvenient or prejudicial to her. On the contrary, the assignment of a teaching load in the College of Nursing was undertaken by respondent to accommodate petitioner following the closure of the College of Physical Therapy. Respondent further considered the fact that petitioner still has two years to serve the university under the Scholarship Contract.

Petitioner's subsequent transfer to another department or college is not tantamount to demotion as it was a valid transfer. There is therefore no constructive dismissal to speak of. That petitioner ceased to enjoy the compensation, privileges and benefits as College Dean was but a logical consequence of the valid revocation or termination of such fixed-term position. Indeed, it would be absurd and unjust for respondent to maintain a deanship position in a college or department that has ceased to exist. Under the circumstances, giving petitioner a teaching load in another College/Department that is related to Physical Therapy — thus enabling her to serve and complete her remaining two years under the Scholarship Contract — is a valid exercise of management prerogative on the part of respondent.

Lastly, as to whether respondent was guilty of forum shopping when it failed to inform the appellate court of the pendency of Civil Case No. 2009-320, a complaint for breach of contract filed by respondent against petitioner, we rule in the negative. Forum shopping exists when the elements of *litis pendentia*

[39] See *Julie's Bakeshop v. Arnaiz*, G.R. No. 173882, February 15, 2012, 666 SCRA 101, 115.

are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[40]

While there is identity of parties in the two cases, the causes of action and the reliefs sought are different. The issue raised in the present case is whether there was constructive dismissal committed by respondent. On the other hand, the issue in the civil case pending before the RTC is whether petitioner was guilty of breach of contract. Hence, respondent is not guilty of forum shopping.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Amended Decision dated March 29, 2010 and Resolution dated September 14, 2010 of the Court of Appeals in CA-G.R. SP No. 02508-MIN are hereby **SET ASIDE**. The earlier Decision dated October 22, 2009 of the Court of Appeals in said case is **REINSTATED and UPHELD**.

No pronouncement as to costs.

SO ORDERED.

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

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[40] *Yu v. Lim*, G.R. No. 182291, September 22, 2010, 631 SCRA 172, 184.

[*] Designated additional member per Special Order No. 1356 dated November 13, 2012.

INDEX

INDEX

buy-bust operation as there is no textbook method of conducting the same. (People of the Phils. *vs*. Robelo *y* Tungala, G.R. No. 184181, Nov. 26, 2012) p. 392

— Police operatives are not required to secure a search warrant because the violator is caught *in flagrante delicto* and the police officers, in the course of the operation, are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime. (People of the Phils. *vs.* Aneslag *y* Andrade, G.R. No. 185386, Nov. 21, 2012) p. 146

Chain of custody rule — Crucial in proving that the chain of custody is the marking of the seized dangerous drugs or other related items immediately after they are seized from the accused, for the marking upon seizure is the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point. (People of the Phils. *vs*. Zakaria *y* Makasulay, G.R. No. 181042, Nov. 26, 2012) p. 367

— Due recording of the authorized movement and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs to ensure that the seized drugs are themselves the *corpus delicti* or the body of the crime. (People of the Phils. *vs*. Catalan *y* Dedala, G.R. No. 189330, Nov. 28, 2012) p. 603

— Importance of marking the seized items as the starting point in the chain of custody; non-compliance with the requirement to preserve the initial link in the chain of custody thoroughly undermined the link between the plastic sachet of shabu sold and the plastic sachet of shabu offered as evidence. *(Id.)*

— In every prosecution for the illegal sale of dangerous drugs, the presentation of the seized dangerous drugs as evidence in court is indispensable; essential to establish the identity of the dangerous drugs beyond doubt and the fact that the dangerous drugs bought during the buy-

— Transfers or reassignments per se are valid and fall within the ambit of management prerogatives, but the exercise of these rights must remain within the boundaries of justice and fair play; should not be unreasonable, nor inconvenient, or prejudicial to the employee. *(Id.)*

Willful disobedience of lawful directive — The requisites are: the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; and the order violated must have been reasonable, lawful and made known to the employee, and must pertain to the duties which he had been engaged to discharge. (Mirant [Phils.] Corp. *vs*. Sario, G.R. No. 197598, Nov. 21, 2012) p. 241

EVIDENCE

Expert witness — Before opinions of handwriting experts may be accepted and given probative value, it is indispensable to first establish satisfactorily the integrity and soundness of the procedures undertaken by the expert in arriving at his conclusion, as well as his qualifications. (Mercado *vs*. Commission on Higher Education, G.R. No. 178630, Nov. 27, 2012) p. 419

— Full faith on the correctness of the two PNP signature analyses, as expert opinions on handwriting, cannot be accorded in view of the fact that the integrity of the comparisons made therein were never really tested and verified satisfactorily. *(Id.)*

— Opinions of handwriting experts, like signature analyses of the Philippine National Police, are not conclusive upon courts or tribunals on the issue of authenticity of signatures. *(Id.)*

Presentation of — Due execution and authenticity of public documents need not be proved to make them admissible in evidence; their existence may be evidenced by an official publication or by a copy attested by the officer having the legal custody of the record. (Del Rosario *vs*. Limcaoco, G.R. No. 177392, Nov. 26, 2012) p. 354

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Recruitment/placement agency — If a juridical being, the corporate officers and directors shall themselves be jointly and solidarily liable with the corporation for any claims and damages that may be due to the overseas workers. (Sameer Overseas Placement Agency, Inc. *vs*. Bajaro, G.R. No. 170029, Nov. 21, 2012) p. 37

Section 10 of — The clause "or for three months for every year of the unexpired term, whichever is less" declared unconstitutional by the Court en banc, for being violative of the Constitutionally-guaranteed rights to equal protection and due process of the overseas workers. (Sameer Overseas Placement Agency, Inc. *vs*. Bajaro, G.R. No. 170029, Nov. 21, 2012) p. 37

— The declaration of the unconstitutionality of the clause "or for three months for every year of the unexpired term, whichever is less" applies retroactively. *(Id.)*

MORTGAGES

Right of redemption — The policy of the law is to aid rather than defeat the right of redemption; public bidding is not a condition for redemption. (Rep. of the Phils. *vs*. Marawi-Marantao General Hospital, Inc., G.R. No. 158920, Nov. 28, 2012) p. 519

— The right of legal redemption must be exercised within specified time limits; however, the statutory period of redemption can be extended by agreement of the parties. *(Id.)*

MOTION FOR RECONSIDERATION

Second motion for reconsideration — The prohibition against the filing of a second motion for reconsideration applies where it is filed by the same party assailing the same judgment or final resolution. (Barba *vs*. Liceo De Cagayan University, G.R. No. 193857, Nov. 28, 2012) p. 622

PLEADINGS

Sufficiency of documents — The Court of Appeals determines whether the documents attached by a party are sufficient to make out a prima facie case since the acceptance of a petition as well as the grant of due course thereto are addressed to the sound discretion of the appellate court. (Auza, Jr. *vs.* Mol Phils., Inc., G.R. No. 175481, Nov. 21, 2012) p. 62

Verification and certification of non-forum shopping — Subsequent and substantial compliance by petitioners may call for the relaxation of the rules in order not to frustrate the ends of justice. (Auza, Jr. *vs.* Mol Phils., Inc., G.R. No. 175481, Nov. 21, 2012) p. 62

POSSESSION

Recovery of possession of real property — Three kinds of actions, distinguished. (Cano *vda. de* Viray *vs.* Sps. Jose and Amelita Usi, G.R. No. 192486, Nov. 21, 2012) p. 205

PRESUMPTIONS

Presumption of regularity in the performance of official duty — Could not be properly presumed in favor of the policemen; records were replete with indicia of their serious lapses. (People of the Phils. *vs.* Catalan *y* Dedala, G.R. No. 189330, Nov. 28, 2012) p. 603

— Could not prevail over the stronger presumption of innocence favoring the accused. *(Id.)*

— Stands in the absence of competent countervailing evidence. (Rep. of the Phils. *vs.* Marawi-Marantao General Hospital, Inc., G.R. No. 158920, Nov. 28, 2012) p. 519

Presumptions — Presumption that private transactions have been fair and regular must apply in the absence of proof to the contrary and considering the absence of any complaint of illegality or fraud from the contracting parties. (Cojuangco, Jr. *vs.* Rep. of the Phils., G.R. No. 180705, Nov. 27, 2012) p. 443

must show at all times utmost dedication to duty. (Seville *vs*. COA, G.R. No. 177657, Nov. 20, 2012) p. 27

— An occupant of a high office must act in accordance with the demands of the responsibility that attaches to the office he is occupying and must be more circumspect in his actions or in the discharge of his official duties. (Amit *vs*. COA, G.R. No. 176172, Nov. 20, 2012) p. 9

— Full reliance on the acts of subordinates is antithetical to the duties imposed upon those occupying high positions; they are duty-bound to check whether these acts are regular, lawful and valid. *(Id.)*

Grave misconduct — Corruption, as an element of grave misconduct, consists in the official or employee's act of unlawfully or wrongfully using his position to gain benefit for one's self. (Seville *vs*. COA, G.R. No. 177657, Nov. 20, 2012) p. 27

— Grave misconduct of petitioner present considering the presence of the qualifying elements of corrupt motive and flagrant disregard of the rules. (Amit *vs*. COA, G.R. No. 176172, Nov. 20, 2012) p. 9

— The elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest; corruption consists in the official's unlawful and wrongful use of his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. *(Id.)*

Gross dishonesty — Error in judgment cannot be equated with gross dishonesty. (Seville *vs*. COA, G.R. No. 177657, Nov. 20, 2012) p. 27

Misconduct and dishonesty — Defined; misconduct, in the administrative sense, is a transgression of some established and definite rule of action; dishonesty is intentionally making a false statement in any material fact or the disposition to lie, cheat, deceive or defraud; both considered grave offenses. (Seville *vs*. COA, G.R. No. 177657, Nov. 20, 2012) p. 27

in fact be trying to obliterate it from her memory. (People of the Phils. *vs.* Morante, G.R. No. 187732, Nov. 28, 2012) p. 575

— Alleged inconsistencies are minor or trivial which serve to strengthen, rather than destroy, the credibility of the said witnesses as they erase doubts that the said testimonies had been coached or rehearsed. (People of the Phils. *vs.* Batula, G.R. No. 181699, Nov. 28, 2012) p. 549

(People of the Phils. *vs*. Aneslag *y* Andrade, G.R. No. 185386, Nov. 21, 2012) p. 146

— 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*. Morante, G.R. No. 187732, Nov. 28, 2012) p. 575

— Great respect is accorded to the findings of the trial judge who is in a better position to observe the demeanor, facial expression, and manner of testifying of witnesses, and to decide who among them is telling the truth. (People of the Phils. *vs*. Abrencillo, G.R. No. 183100, Nov. 28, 2012) p. 564

(People of the Phils. *vs*. Batula, G.R. No. 181699, Nov. 28, 2012) p. 549

— In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner. (People of the Phils. *vs*. Eyam *y* Watang, G.R. No. 184056, Nov. 26, 2012) p. 384

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

C. OTHERS

D. BOOKS
(Local)

II. FOREIGN AUTHORITIES

B. BOOKS