PHILIPPINE REPORTS

VOL. 700

DECEMBER 3, 2012 TO DECEMBER 11, 2012

VOLUME 700

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

DECEMBER 3, 2012 TO DECEMBER 11, 2012

SUPREME COURT
MANILA
2015

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

MA. VIRGINIA OLIVIA VILLARUZ-DUEÑAS
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

MARIA CORAZON RACELA MILLARES
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES

HON. MARIA LOURDES P.A. SERENO, Chief Justice
HON. ANTONIO T. CARPIO, Senior Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. ROBERTO A. ABAD, Associate Justice
HON. MARTIN S. VILLARAMA, JR., Associate Justice
HON. JOSE P. PEREZ, Associate Justice
HON. JOSE C. MENDOZA, Associate Justice
HON. BIENVENIDO L. REYES, Associate Justice
HON. ESTELA M. PERLAS-BERNABE, Associate Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Associate Justice

ATTY. ENRIQUETA E.VIDAL, Clerk of Court En Banc
ATTY. FELIPA B. ANAMA, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Maria Lourdes P.A. Sereno

Members

Hon. Teresita J. Leonardo-De Castro
Hon. Lucas P. Bersamin
Hon. Martin S. Villarama, Jr.
Hon. Bienvenido L. Reyes

Division Clerk of Court

Atty. Edgar O. Aricheta

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Arturo D. Brion
Hon. Mariano C. Del Castillo
Hon. Jose P. Perez
Hon. Estela M. Perlas-Bernabe

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Presbitero J. Velasco, Jr.

Members

Hon. Diosdado M. Peralta
Hon. Roberto A. Abad
Hon. Jose C. Mendoza
Hon. Marvic Mario Victor F. Leonen

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 172086. December 3, 2012]

CAREER PHILIPPINES SHIPMANAGEMENT, INC. and/or SAMPAGUITA MARAVE, and SOCIETE ANONYME MONEGASQUE ADMINISTRATIO MARITIME FT. AERIENNEMONACO, *petitioners, vs.* **SALVADOR T. SERNA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF AN ADMINISTRATIVE BODY (NATIONAL LABOR RELATIONS COMMISSION); GENERALLY CONCLUSIVE UPON THE SUPREME COURT ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS; EXCEPTIONS. — As a rule, only questions of law may be raised in a Rule 45 petition. x x x Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court. Nevertheless, there are exceptional cases where we, in the exercise of our discretionary appellate jurisdiction, *may* be urged to look into factual issues raised in a Rule 45 petition. For instance, when the petitioner *persuasively* alleges that there is insufficient or insubstantial

evidence on record to support the factual findings of the tribunal or court *a quo*, as Section 5, Rule 133 of the Rules of Court states in express terms that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established only if supported by substantial evidence.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); CLAIM FOR DISABILITY BENEFITS; ILLNESSES NEED NOT BE SHOWN TO BE WORK-RELATED TO BE COMPENSABLE UNDER THE 1996 POEA-SEC.— In *Remigio v. National Labor Relations Commission*, we expressly declared that illnesses need not be shown to be work-related to be compensable under the 1996 POEA-SEC, which covers *all* injuries or illnesses occurring in the lifetime of the employment contract. We contrast this with the 2000 POEA-SEC which lists the compensable occupational diseases. Even granting that work-relatedness may be considered in this case, we fail to see, too, how the idiopathic character of toxic goiter and/or thyrotoxicosis excuses the petitioners, since it does not negate the probability, indeed the *possibility*, that Serna's toxic goiter was caused by the undisputed work conditions in the petitioners' chemical tankers.

3. ID.; ID.; ID.; AS A RULE, ONLY SUBSTANTIAL EVIDENCE IS REQUIRED TO PROVE THAT THE CONTRACT WORKER ACQUIRED HIS ILLNESS DURING HIS EMPLOYMENT; APPLICATION IN CASE AT BAR.— Under the 1996 POEA-SEC, it is enough that the seafarer proves that his or her injury or illness was acquired during the term of employment to support a claim for disability benefits. x x x We find it significant that Serna was declared fit to work in the pre-employment medical examination for the October 1998 contract. He was not in this same state, however, when he disembarked. x x x We find no arbitrariness in the appellate court's appreciation of the evidence on record and see no reason to disturb its conclusion on its evidentiary weight, specifically, its substantiality. We reiterate that substantial evidence is more than a mere scintilla. It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, *even if other minds, equally reasonable*, might conceivably opine otherwise. x x x We are satisfied, from the discussions of the

labor arbiter, the NLRC, and the CA, that substantial evidence on record exists to support their factual findings on this point. It is inconsequential that Serna's repatriation was due to a finished contract as an employee's claim cannot be defeated by the mere fact of his separation from the service.

4. ID.; ID.; ID.; POST-EMPLOYMENT MEDICAL REPORT; THE MANDATORY REPORTING REQUIREMENT PARTAKES OF THE NATURE OF A RECIPROCAL OBLIGATION OF THE SEAFARER AND HIS EMPLOYER; EFFECT THEREOF, EXPLAINED.— The 1996 POEA-SEC, specifically Section 20(B)(3), requires that a disability claim be supported by a proper post-employment medical report; otherwise, the seafarer forfeits the right to claim the benefits. x x x We note on this point that the obligation imposed by the mandatory reporting requirement under Section 20(B)(3) of the 1996 POEA-SEC is not solely on the seafarer. It requires the employer to likewise act on the report, and in this sense partakes of the nature of a reciprocal obligation. Reciprocal obligations are those which arise from the same cause, and where each party is effectively a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. While the mandatory reporting requirement obliges the seafarer *to be present* for the post-employment medical examination, which must be conducted within three (3) working days upon the seafarer's return, it also poses the employer the implied obligation to conduct a meaningful and timely examination of the seafarer. The petitioners failed to perform their obligation of providing timely medical examination, thus rendering meaningless Serna's compliance with the mandatory reporting requirement. With his July 14, 1999 visit, Serna clearly lived up to his end of the agreement; it was the petitioners who defaulted on theirs. They cannot now be heard to claim that Serna should forfeit the right to claim disability benefits under the POEA-SEC and their CBA.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Bantog & Andaya Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the decision[2] and the resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP. No. 91237. The CA rulings affirmed the resolutions[4] of the National Labor Relations Commission (*NLRC*) in NLRC NCR CA No. 036944-03 on the award of disability benefits to respondent Salvador T. Serna. The NLRC resolutions in turn affirmed the labor arbiter's decision in NLRC OFW Case No. (M) 01-06-1064-00.[5]

Antecedent Facts

On October 20, 1998, Serna entered into a nine-month contract of employment with petitioners Career Philippines Shipmanagement, Inc. (*Career Phils.*) and Societe Anonyme Monegasque Administratio Maritime Ft. Aeriennemonaco (*Aeriennemonaco*). He was employed as a bosun for *M/V Hyde Park*, a chemical tanker, with a basic monthly salary of US$642.00. Serna was pronounced fit to work after the required pre-employment medical examination, and boarded the vessel on October 25, 1998.

Serna had worked for Career Phils. and its foreign principals since 1989, and he had always been hired to board chemical

---

[1] Under Rule 45 of the Rules of Court.

[2] Dated January 12, 2006; penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe (now a member of this Court); *rollo*, pp. 10-22.

[3] Dated March 13, 2006; *id.* at 24-25.

[4] Dated March 17, 2005, *id.* at 156-167; and dated August 22, 2005, *id.* at 168-170; penned by Commissioner Angelita A. Gacutan, and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[5] Dated June 6, 2003; penned by Labor Arbiter Madjayran J. Ajan. *Id.* at 267-282.

tankers. This was his third consecutive contract with Aeriennemonaco whose tankers transport chemicals such as methanol, phenol, ethanol, benzene, and caustic soda.

While on board *M/V Hyde Park*, Serna experienced weakness and shortness of breath. He lost much weight. On several occasions, he requested for medical attention, but his immediate superior, Captain Jyong, denied his requests since the tanker had a busy schedule.

Serna had no choice but to wait for his contract to finish on July 12, 1999. On July 14, 1999, upon his repatriation, he reported to the office of Career Phils. to communicate his physical complaints and to seek medical assistance. He was told that he would be referred to company-designated physicians.

On July 27, 1999, while waiting for the referral and with his condition worsening, Serna visited the University of Perpetual Health Medical Center (*UPHMC*). Dr. Cynthia V. Halili-Manabat diagnosed him to be suffering from toxic goiter, and attended to him from July 27 to August 25, 1999.

On August 3, 1999, Serna received instructions from Career Phils. for him to report to the Seaman's Hospital for a pre-employment medical examination on August 5, 1999. The hospital's company-designated physicians diagnosed him with atrial fibrillation and declared him unfit to work.

In the meantime, he continued with his medical treatment at the UPHMC. A second personal physician, Dr. Edilberto C. Torres, concurred with the toxic goiter diagnosis.

Not fully aware of his rights, Serna sought legal assistance only in March 2001. On April 3, 2001, his counsel sent Career Phils. a written demand for the payment of disability benefits. Denial of the demand prompted him to file a complaint for disability benefits and damages on June 5, 2001.

On June 16, 2001, Serna underwent a medical examination at Supra Care Medical Specialists. Dr. Jocelyn Myra R. Caja stated that he has had a history of goiter with thyrotoxicosis since 1999, and further diagnosed him with thyrotoxic heart

disease, chronic atrial fibrillation, and hypertensive cardiovascular disease. She gave him a disability rating of Grade 3 which — under the parties' collective bargaining agreement (*CBA*)[6] — is classified as permanent medical unfitness that entitles the covered seafarer to a 100% compensation.

The Labor Arbitration Rulings

Serna alleged before the labor arbiter that he acquired his illness during his employment with the petitioners, and that the illness was work-related, considering the toxic chemicals regularly transported by the petitioners' tankers. He sought disability benefits pursuant to the *Philippine Overseas Employment Administration Standard Employment Contract Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels* (*POEA-SEC*) and the CBA that the petitioners had executed with TCCC-Amosup.[7]

The petitioners denied any liability. They emphasized that Serna's repatriation was due to a finished contract; that he performed all his duties under this contract without complaint of any illness; and that the *M/V Hyde Park* logbook did not contain any record that he had suffered or complained of any injury or illness on board the vessel. They presented the *Discharge Receipt and Release of Claim* he had executed to allegedly release them from all liabilities. They claimed that Serna failed to submit himself to a post-employment medical examination by a company-designated physician within three (3) working days from his return, contrary to the terms of the POEA-SEC. They added that in August 1999, Serna sought re-employment but had to be turned away as they had no vacancies. Eventually, on February 15, 2001, Serna tendered them a resignation letter, which the petitioners presented, wherein he asked for his personal documents with the petitioners as he would be seeking employment elsewhere.

Labor Arbiter Madjayran J. Ajan gave credence to Serna's version of events. As company-designated physicians did not

---

[6] *Rollo*, pp. 206-220.

[7] *Ibid.*

issue Serna's impediment grade, the labor arbiter adopted the grading given by his personal physician. He ruled in this wise:

> Thus, considering that there was a showing that the illness of complainant was contracted during the term of his employment contract and such illness continues to exist, resulting to complainant's disability with a grade of 3, Complainant is therefore entitled to 100% compensation in the amount of US$60,000.00 under the reconciled provisions of the TCCC-AMOSUP CBA more particularly the Permanent Medical Unfitness provisions with that of the minimum terms of the POEA Standard Employment Contract.
>
> As to the issue of damages, this office finds the claim of complainant unmeritorious for failure to prove that there was malice, bad faith or fraud in respondents' acts of denying the claim for disability benefits.
>
> However, complainant is entitled to ten percent (10%) of the total award as and by way of attorney's fees.[8]

On the petitioners' appeal, the NLRC affirmed the labor arbiter's decision *in toto*.[9] The labor tribunal added that Serna's resignation letter cannot negate his right to disability benefits.[10] The petitioners moved for the reconsideration of the ruling, but their motion was denied. They elevated the case to the CA by way of a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Ruling

The CA affirmed the award of disability benefits but deleted the award of attorney's fees.[11] It presented several reasons for its ruling. *First.* The factual findings of the labor arbiter when affirmed by the NLRC are given great weight and respect when devoid of arbitrariness and supported by substantial evidence.[12]

---

[8] *Id.* at 280-281.

[9] *Supra* note 4.

[10] *Id.* at 165.

[11] *Supra* note 2, at 21.

[12] *Id.* at 16, citing *Security and Credit Investigation, Inc. v. NLRC*, 403 Phil. 264 (2001).

There is substantial evidence that Serna's illness occurred during the term of his employment. *Second.* Serna's *Discharge Receipt and Release of Claim* does not specifically include an express waiver of disability benefits. *Third.* While no company-designated physician examined Serna within the required period, this was excused by the petitioners' failure to designate the said physician to conduct the examination within the said period. *Fourth.* The attorney's fees must be deleted as the factual basis therefore was not discussed in the labor arbiter's and the NLRC's decisions.

The CA denied the petitioners' motion for reconsideration. Hence, the present petition for review under Rule 45 of the Rules of Court.

The Present Petition

In this petition, we are asked to consider the following question:

Does Section 20(B) of the POEA Standard Employment Contract, which is the governing law between the parties, grant disability benefits to a seafarer who was repatriated due to finished contract, and with no medical records onboard showing that he was ill at the time of disembarkation from the vessel nor was there any request from the seafarer within three (3) working days upon his return for post-employment medical examination?[13] (italics ours)

In the main, the petitioners assail the award of disability benefits to Serna on the ground of his alleged non-compliance with the mandatory reporting requirement of the POEA-SEC.[14] In addition, they insist that no substantial evidence exists (a) that Serna had acquired the illness during the employment contract, and (b) that his illness was work-related.[15]

The Court's Ruling

We affirm the ruling of the CA.

As the subject employment contract is dated October 20, 1998, the POEA-SEC prescribed by POEA Memorandum Circular

[13] *Rollo*, pp. 31, 572-573.

[14] *Id.* at 515.

[15] *Id.* at 45.

No. 5541, series of 1996[16] (*1996 POEA-SEC*) and its related jurisprudence shall aid in our disposition.

The parameters of a Rule 45 appeal on the CA's decision in a labor case

The issues the petitioners raise unavoidably assail common factual findings of the labor arbiter, the NLRC, and the CA.

As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct**. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[17] (citations omitted; italics and emphasis supplied)

Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field.[18] Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence

---

[16] See *Maunlad Transport, Inc. v. Manigo, Jr.*, G.R. No. 161416, June 13, 2008, 554 SCRA 446.

[17] *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343.

[18] *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.*, G.R. No. 166649, November 24, 2006, 508 SCRA 87, 99.

lies or what evidence is credible."[19] The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.[20]

Nevertheless, there are exceptional cases where we, in the exercise of our discretionary appellate jurisdiction, *may* be urged to look into factual issues raised in a Rule 45 petition. For instance, when the petitioner *persuasively* alleges that there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or court *a quo*,[21] as Section 5, Rule 133 of the Rules of Court states in express terms that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established only if supported by substantial evidence.[22]

The petition specifically questions two factual findings made below: *First*, that Serna's illness was acquired during the term of his employment contract; and *second*, that he duly presented himself to Career Phils. for a post-employment medical examination.[23]

Work-relatedness of illness is irrelevant to the 1996 POEA-SEC

We dismiss at the outset the petitioners' contention on the causal connection between Serna's illness and the work for which he was contracted. In support, they cite "The World Book Illustrated Home Medical Encyclopedia," particularly its 1984 Revised Print, in stating that the causes of toxic goiter or thyrotoxicosis are unknown.[24]

---

[19] *Sarocam v. Interorient Maritime Ent., Inc.*, 526 Phil. 448, 454 (2006).

[20] See *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 541.

[21] *Id.* at 541-542.

[22] See *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.*, *supra* note 18, at 100.

[23] *Rollo*, p. 31.

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

The causal connection the petitioners cite is a factual question that we cannot touch in Rule 45.[25] The factual question is also irrelevant to the 1996 POEA-SEC. In *Remigio v. National Labor Relations Commission*,[26] we expressly declared that illnesses need not be shown to be work-related to be compensable under the 1996 POEA-SEC, which covers *all* injuries or illnesses occurring in the lifetime of the employment contract. We contrast this with the 2000 POEA-SEC[27] which lists the compensable occupational diseases. Even granting that work-relatedness may be considered in this case, we fail to see, too, how the idiopathic character of toxic goiter and/or thyrotoxicosis excuses the petitioners, since it does not negate the probability, indeed the *possibility*, that Serna's toxic goiter was caused by the undisputed work conditions in the petitioners' chemical tankers.

Substantial evidence exists that Serna acquired his illness during his employment

Under the 1996 POEA-SEC, it is enough that the seafarer proves that his or her injury or illness was acquired during the term of employment to support a claim for disability benefits.[28] The petitioners claim that there is no substantial evidence on this point.

We do not find this claim to be persuasive.

In support of this point, Serna attached the following to his complaint: (a) the October 1998 contract; (b) the medical certificate issued by Dr. Manabat; (c) the medical certificate issued by Dr. Torres; (d) the August 5, 1999 Seaman's Hospital Pre-Employment Medical Examination; and (e) the medical

---

[25] *Montoya v. Transmed Manila Corporation*, *supra* note 17, at 344.

[26] 521 Phil. 330 (2006).

[27] The 2000 POEA-SEC took effect on June 25, 2000. See *Maunlad Transport, Inc. v. Manigo, Jr.*, *supra* note 16, at 457.

[28] See *NYK-Fil Ship Management, Inc. v. Talavera*, G.R. No. 175894, November 14, 2008, 571 SCRA 183, 197; and *Micronesia Resources v. Cantomayor*, G.R. No. 156573, June 19, 2007, 525 SCRA 42, 49.

certificate issued by Dr. Caja. We find it significant that Serna was declared fit to work in the pre-employment medical examination for the October 1998 contract. He was not in this same state, however, when he disembarked. As the CA explained:

> The presumption that private respondent Serna was healthy and fit at the time he started working for the petitioners gains special prominence, considering that he would not have been employed by the petitioners and would not have passed the required Pre-employment Medical Examination, had he not been "medically and technically qualified." It certainly strains credulity to take petitioners' stance that private respondent Serna's illness was acquired by him after he signed-off their vessels or immediately after his contract of employment with them. Private respondent Serna's illness is not a simple cough or colds that could have been acquired in a matter of days.
>
> This Court finds the evidence in favor of private respondent Serna substantial and convincing. That he was not well and was really ill after his disembarkation from petitioners' vessel is confirmed by the fact that he immediately went to see a doctor, approximately fifteen (15) days after his arrival in the Philippines, *i.e.*[,] July 27, 1999, and was diagnosed of having toxic goiter. Again, when private respondent Serna was examined by a company-designated physician during the pre-employment medical examination on August 5, 1999 at the Seaman's Hospital, he was found to be suffering from Atrial Fibrillation and was declared unfit to work. These facts could only suggest, considering that the tests were conducted closely near to private respondent Serna's disembarkation from the vessel of his latest employment, that the causative circumstances leading to his illness transpired prior to his disembarkation and during the course of his employment with the petitioners.[29] (citations omitted)

We find no arbitrariness in the appellate court's appreciation of the evidence on record and see no reason to disturb its conclusion on its evidentiary weight, specifically, its substantiality. We reiterate that substantial evidence is more than a mere scintilla. It is such relevant evidence as a reasonable mind might accept

---

[29] *Supra* note 2, at 17-18.

as adequate to support a conclusion, *even if other minds, equally reasonable*, might conceivably opine otherwise.[30]

In support of their position, the petitioners insist that Serna was healthy during their contract as he allegedly did not complain of any injury or illness on board *M/V Hyde Park*. They claim that its logbook, supposedly a repository of all its incidents, is bereft of record on this point, and that Captain Jyong, Serna's superior, did not hear any complaint from him. Despite this position, the petitioners, significantly, never presented the logbook to support their claim. Neither did they present proof to support their claim regarding the ship captain. "A party alleging a critical fact must support [the] allegation with substantial evidence."[31] Without such evidence, the petitioners' statements with respect to the vessel logbook and to what Captain Jyong did or did not hear remain hearsay. At any rate, we effectively stated in *Abosta Shipmanagement Corporation vs. National Labor Relations Commission (First Division)*[32] that the Court does not deem a logbook to be a comprehensive and exclusive record of all the incidents in a vessel.

We are satisfied, from the discussions of the labor arbiter, the NLRC, and the CA, that substantial evidence on record exists to support their factual findings on this point. It is inconsequential that Serna's repatriation was due to a finished contract as an employee's claim cannot be defeated by the mere fact of his separation from the service.[33]

No forfeiture of right to claim disability benefits in this case

With Serna's right to claim disability benefits established, we proceed to the second assailed fact — the determination of

---

[30] *Abosta Shipmanagement Corporation v. National Labor Relations Commission (First Division)*, G.R. No. 163252, July 27, 2011, 654 SCRA 505, 513-514.

[31] *Cootauco v. MMS Phil. Maritime Services, Inc., supra* note 20, at 544.

[32] *Supra* note 30, at 518.

[33] *Ijares v. Court of Appeals*, 372 Phil. 9 (1999).

whether he has forfeited the right to file a claim. The 1996 POEA-SEC, specifically Section 20(B)(3),[34] requires that a disability claim be supported by a proper post-employment medical report;[35] otherwise, the seafarer forfeits the right to claim the benefits.

The labor arbiter, the NLRC, and the CA are one in finding that on July 14, 1999, **or two days after his repatriation**, Serna reported to the office of Career Phils. specifically to report his medical complaints, only to be told to wait for his referral to company-designated physicians. The referral came not on the following day, but nearly three (3) weeks after, on August 3, 1999.

We see no reason to disturb the lower tribunals' finding. While Serna's *verified* claim with respect to his July 14, 1999 visit to the petitioner's office may be seen by some as a bare allegation, we note that the petitioners' corresponding denial is itself also a bare allegation that, worse, is unsupported by other evidence on record. In contrast, the events that transpired after the July 14, 1999 visit, as extensively discussed by the CA above, effectively served to corroborate Serna's claim on the visit's purpose, *i.e.*, to seek medical assistance. Under these circumstances, we find no grave abuse of discretion on the part of the NLRC when it affirmed the labor arbiter ruling and gave credence to Serna on this point. Under the evidentiary rules, a

---

[34] Section 20(B), paragraph 3 of the POEA-SEC reads:

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

[35] *Micronesia Resources v. Cantomayor, supra* note 28, at 52.

positive assertion is generally entitled to more weight than a plain denial.

We note on this point that the obligation imposed by the mandatory reporting requirement under Section 20(B)(3) of the 1996 POEA-SEC is not solely on the seafarer. It requires the employer to likewise act on the report, and in this sense partakes of the nature of a reciprocal obligation. Reciprocal obligations are those which arise from the same cause, and where each party is effectively a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other.[36] While the mandatory reporting requirement obliges the seafarer *to be present* for the post-employment medical examination, which must be conducted within three (3) working days upon the seafarer's return, it also poses the employer the implied obligation to conduct a meaningful and timely examination of the seafarer.

The petitioners failed to perform their obligation of providing timely medical examination, thus rendering meaningless Serna's compliance with the mandatory reporting requirement. With his July 14, 1999 visit, Serna clearly lived up to his end of the agreement; it was the petitioners who defaulted on theirs. They cannot now be heard to claim that Serna should forfeit the right to claim disability benefits under the POEA-SEC and their CBA.

The Court has in the past, *under unique circumstances*, sustained the award of disability benefits even if the seafarer's disability had been assessed by a personal physician. In *Philippine Transmarine Carriers, Inc. v. NLRC*,[37] we affirmed the grant by the CA and by the NLRC of disability benefits to a claimant, based on the recommendation of a physician not designated by the employer. The "claimant consulted a physician of his choice when the company-designated physician refused to examine him."[38]

---

[36] See *Cortes v. Court of Appeals*, 527 Phil. 153, 160 (2006), *citing* Tolentino, Arturo, *Commentaries and Jurisprudence on the Civil Code of the Phils.*, Vol. IV, 1985 edition, p. 175.

[37] 405 Phil. 487 (2001).

[38] *Maunlad Transport, Inc. v. Manigo, Jr.*, *supra* note 16, at 458.

In *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.*,[39] we reinstated the NLRC's decision, affirmatory of that of the labor arbiter, which awarded sickness wages to the petitioner therein even if his disability had been assessed by the Philippine General Hospital, not by a company-designated hospital. Similar to the case at bar, the seafarer in *Cabuyoc* initially sought medical assistance from the respondent employer but it refused to extend him help.[40]

The above cases are in line with the Court's declared liberal stance on the mandatory reporting requirement under the 1996 POEA-SEC and its earlier versions. In *Maunlad Transport, Inc. v. Manigo, Jr.*,[41] we declared:

> However, even prior to its amendment, Section 20-B(3) of the 1996 POEA had long been liberally construed by the Court to mean that while it is a condition *sine qua non* to the filing of claim for disability benefit that, within three working days from his repatriation, the claimant submits himself to medical examination by a company-designated physician, the assessment of said physician is not final, binding or conclusive on the claimant, the labor tribunal or the courts.
>
> In *Crystal Shipping, Inc. v. Natividad*, where the 1996 POEA-SEC was controlling, the Court upheld the medical report issued by the claimant's doctor of choice and disregarded that of the company-designated physician in view of the glaring apparent inconsistency in the latter's medical report between the classification of claimant's disability as Grade 9 and the fact stated that said claimant had been unable to work for three years, which condition makes his disability permanent and total.
>
> Likewise, in *Seagull Maritime Corp. v. Dee*, involving a 1999 overseas contract, the Court sustained the NLRC and CA that the medical reports issued by the physicians of choice of the claimant were more in accord with the evidence, and rejected the one issued by the company-designated physician for inconsistency between the

---

[39] *Supra* note 18.

[40] *Id.* at 90.

[41] *Supra* note 16, at 457-458.

recommendation that the disability of the claimant is at Grade 11 only and the finding explicitly stated therein that "there is no guarantee that [claimant] will be able to return to his previous strenuous work." There the Court categorically ruled that "nowhere x x x did we hold that the company-designated physician's assessment of the nature and extent of a seaman's disability is final and conclusive on the employer company and the seafarer-claimant x x x while it is the company-designated physician who must declare that the seaman suffered a permanent disability during employment, it does not deprive the seafarer the right to seek a second opinion." The Court emphasized this view in *Micronesia Resources v. Cantomayor*. [citations omitted, italics supplied]

Thus, we find it proper that the labor arbiter used the disability grading given by Serna's personal physician in determining his disability compensation. The labor arbiter had no choice; although the petitioners' designated physicians at the Seaman's Hospital declared Serna to be unfit for work on August 5, 1999, they omitted to assess his disability grading.

As a final point, the petitioners' discussion on the distinction between disability benefits under the Labor Code and those under the 1996 POEA-SEC holds no particular significance in this case. The discussion was prompted by the petitioners' observation that while Serna sought benefits under the 1996 POEA-SEC, he alleged that he had been ill for more than 120 days. The mistake, however, cannot defeat Serna's claim. The petitioners omit to mention that Serna claimed disability benefits under the parties' CBA, not simply under the 1996 POEA-SEC.[42] In *Vergara v. Hammonia Maritime Services, Inc.*,[43] we stated that the POEA-SEC is supplemented by the CBA between the owner of the vessel and the covered seafarers. In this case, the pertinent CBA provides:

Permanent Medical Unfitness — A seafarer whose disability is assessed at 50% or more under the POEA Standard Employment Contract, shall for the purpose of this paragraph is regarded as

---

[42] *Id.* at 212.

[43] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

permanently unfit for further sea service in any capacity and entitled to 100% compensation, i.e. US$80,000 for officers and US$60,000 for ratings.[44]

For this reason, what is pertinent to Serna's claim is his proof that he had been issued a disability grading of "3". As the CA correctly noted, an Impediment Grade of 3 under the Schedule of Disability Allowances in Section 30-A of the 1996 POEA-SEC is equivalent to a 78.36% disability assessment.

In light of the above conclusions, we hold that the CA correctly found that the NLRC committed no grave abuse of discretion in awarding disability benefits to Serna.

WHEREFORE, premises considered, we hereby **AFFIRM** the decision of the Court of Appeals in CA-G.R. SP. No. 91237.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173606. December 3, 2012]

VALERIANA VILLONDO, *petitioner, vs.* **CARMEN QUIJANO, ARDIANO ALCANTARA, and MARCELINO EBENA,** *respondents.*

---

[44] *Rollo,* p. 166.

[*] Designated as Additional Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Raffle dated November 26, 2012.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; COURTS MUST RESOLVE ISSUE OF POSSESSION EVEN IF THE PARTIES ARE INFORMAL SETTLERS. — Notably, even public lands can be the subject of forcible entry cases as it has already been held that ejectment proceedings may involve all kinds of land. Thus, in the case at bench, while the parties are fighting over the possession of a government land, the courts below are not deprived of jurisdiction to render judgment thereon. Courts must resolve the issue of possession even if the parties to the ejectment suit are mere informal settlers.

2. ID.; ID.; ID.; FOR A COURT TO RESTORE POSSESSION, TWO THINGS MUST BE PROVEN IN A FORCIBLE ENTRY CASE; ENUMERATED. — For a court to restore possession, two things must be proven in a forcible entry case: prior physical possession of the property and deprivation of the property by means of force, intimidation, threat, strategy, or stealth. "Possession *de facto*, [*i.e.*, the physical possession of a property,] and not possession *de jure* is the only issue in a forcible entry case. This rule holds true regardless of the character of a party's possession, provided that he has in his favor priority in time. x x x" As used in forcible entry and unlawful detainer cases, 'possession' refers to "physical possession, not legal possession in the sense contemplated in civil law."

3. ID.; ID.; ID.; THE RULES OF COURT SPECIFIES WHO MAY BE THE PLAINTIFF IN AN ACTION FOR FORCIBLE ENTRY; APPLICATION IN CASE AT BAR. — "A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." Section 1, Rule 70 of the Rules of Court specifies who may be the plaintiff in an action for forcible entry. x x x *Sans* the presence of the awardee of the Certificate of Stewardship, the provision clearly allows Valeriana to institute the action for the recovery of the physical possession of the property against the alleged usurper. She has a right or interest to protect as she was the one dispossessed and thus, she can file the action for forcible entry. Any judgment rendered by the courts below in the forcible entry action will bind and

definitely affect her claim to possess the subject property. The fact that Valeriana is not the holder of the Certificate of Stewardship is not in issue in a forcible entry case. This matter already delves into the character of her possession. We emphasize that in ejectment suits, it does not even matter if the party's title to the property is questionable. The MTCC correctly considered Valeriana as a real party-in-interest and correctly delved strictly with the issue of physical possession. Notably, the CA, other than dismissing the case for lack of cause of action, did not seem to dispute the MTCC's factual finding of Valeriana's prior physical possession. Absent any evidence of respondents' prior physical possession, Valeriana, who has cogently convinced us that she was dispossessed of the land by force, is entitled to stay on the property until she is lawfully ejected by others who can prove in a separate proceeding that they have a better right.

APPEARANCES OF COUNSEL

Gica Del Socorro Espinoza Tan Villarmia and Fernandez for petitioner.

Gloria Lastimosa-Dalawampu for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"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 the person who has first acquired possession [who] should remain in possession pending this decision x x x."[1]

In a legal battle for forcible entry, two parties assert their alleged right to possess a 2.66-hectare government timberland

[1] *Mediran v. Villanueva,* 37 Phil. 752, 757 (1918).

in Udlom, Sinsin, Cebu City. One of the parties, Valeriana Villondo (Valeriana), prevailed in the Municipal Trial Court in Cities (MTCC) but later lost her case before the Regional Trial Court (RTC) after it rejected her standing as the real party-in-interest. And since the Court of Appeals (CA) affirmed the RTC's ruling, Valeriana now comes to this Court to assail the March 31, 2005 Decision[2] and July 10, 2006 Resolution[3] of the CA in CA-G.R. SP No. 70734.

Factual Antecedents

In her Complaint[4] for forcible entry with preliminary mandatory injunction before the MTCC in Cebu City, Valeriana claimed that in the morning of August 14, 1999, respondent Carmen Quijano (Carmen) and her farm laborers, respondents Adriano Alcantara and Marcelino Ebena, intruded into her land with the help of three policemen and other *barangay* officials. They destroyed the plants therein, harvested the root crops, corn, and banana, built a hut, fenced off the area, and posted a "NO TRESPASSING" sign, thus preventing Valeriana and her family from entering the premises where they have always resided and depriving them of their harvest.

Valeriana argued that Carmen can never assert ownership over the property because it is a government land. She claimed that Carmen's parents, Rufo and Constancia Bacalla, were themselves aware that an ownership claim is worthless. Thus, they ceded their plantations on the subject land to her husband Daniel Villondo (Daniel) for ₱2,000.00 as declared in a "*Kasabutan*".[5]

Valeriana based her and her family's right of possession on Certificate of Stewardship No. 146099 in the name of 'Daniel

[2] CA *rollo*, pp. 116-122; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Arsenio J. Magpale and Enrico A. Lanzanas.

[3] *Id.* at 130-131; penned by Executive Justice Arsenio J. Magpale and concurred in by Associate Justices Vicente L. Yap and Romeo F. Barza.

[4] Records, pp. 1-7.

[5] *Id.* at 252.

T. Villondo',[6] which she claimed to have been awarded to her now-deceased husband whose actual name is 'Daniel P. Villondo'. Said Certificate was issued by the Department of Environment and Natural Resources on February 14, 1994. Valeriana averred that her family had prior possession of the land as her husband started tilling the same even before the war. When she married him in 1948, they continued to occupy and cultivate the land together with their five children. To further support her claim of prior possession and Carmen's alleged intrusion, she submitted, *inter alia*, Carmen's letters that sought police and *barangay* assistance in fencing the subject property,[7] her (Carmen) counsel's demand letter for Valeriana's son Esteban Villondo (Esteban) to leave the property,[8] pictures of a collapsed house on the subject land that Valeriana claims to belong to one of her sons,[9] and an affidavit of Regino Habasa (Regino), a Bureau of Forestry employee and a *Barangay* Sinsin resident, who attested that the Villondo family had been tilling the land since 1951.[10]

On the other hand, Carmen interposed that the alleged "*Kasabutan*" was never brought to her attention by her parents. In any case, she asserted that such allegation of Valeriana even supports her claim of prior possession.

Carmen tacked her possessory right to that of her parents Rufo and Constancia Bacalla who in 1948 purchased[11] from Liberato and Vicente Abellanosa a 4.51 hectare land in Taop, Pardo, Cebu City covered by Tax Declaration No. 92638. According to her, said 4.51 hectare land includes the disputed area which her parents also cultivated and developed. Carmen submitted to the court her tax declarations over the land.[12]

---

[6] *Id.* at 247 and 251.

[7] *Id.* at 257-258.

[8] *Id.* at 260.

[9] *Id.* at 261, 263, 265 and 267.

[10] *Id.* at 134-135.

[11] See Sale of Real Estate dated January 14, 1948, *id.* at 272-273.

[12] *Id.* at 274-275.

The respondents also questioned Valeriana's legal personality to sue, contending that "Daniel T. Villondo,"[13] the named tiller in the Certificate of Stewardship No. 146099, is the real party-in-interest and thus should be the plaintiff in the suit and not Valeriana. They claimed that "Daniel T. Villondo" is actually Valeriana's son Romualdo Villondo (Romualdo), a construction worker who had never even cultivated the subject land. Respondents refuted Valeriana's claim that the named tiller in the Certificate refers to her husband "Daniel P. Villondo,"[14] who was awarded by the government a Certificate of Stewardship over another parcel of land in 1983.[15] Because of this, they asserted that Valeriana is misleading the court by making it appear that she has successional rights from her husband as steward. To support this, respondents submitted the respective stewardship applications[16] as well as other documents[17] indicating that Daniel P. Villondo and Daniel T. Villondo are different persons. Notably, Regino's Affidavit admits that Daniel T. Villondo refers to Romualdo.[18]

Incidentally, Carmen's attempt to have the land surveyed in June 1997 resulted in the filing before the MTCC of Cebu of criminal cases for grave threats and grave coercion docketed as Criminal Case Nos. R-55788-55789[19] against Valeriana, her

---

[13] "T" stands for Tangaro, the middle name supposedly derived from the mother Valeriana Tangaro Villondo.

[14] "P" stands for Pardillo.

[15] Records, p. 277.

[16] *Id.* at 278-284.

[17] See Acceptance dated November 19, 1997, *id.* at 104; Certification dated November 15, 1999, *id.* at 105; Certification of fact of marriage dated December 2, 1997, *id.* at 110; Certificate of Death dated March 16, 1996, *id.* at 111; Certificate of Baptism of Romualdo Villondo dated December 11, 1985, *id.* at 113; Marriage Certificate between Romualdo Villondo and Margarita Barique, *id.* at 114; Complaint Affidavit dated September 20, 1999, *id.* at 287-288.

[18] *Id.* at 134.

[19] *Id.* at 285.

two children Esteban and Trinidad, and a daughter-in-law. Carmen alleged that the four were armed with scythe, bolo, and pieces of wood when they prevented her from entering and surveying the property, and even threatened to kill her if she proceeds with the land survey.[20]

Ruling of the Municipal Trial Court in Cities

After weighing the parties' respective evidence, the MTCC adjudged that the Daniel T. Villondo under whose name the Certificate of Stewardship was issued, is actually Valeriana's son, Romualdo. The MTCC pointed out that the boundaries of the lot as reflected in Romualdo's Certificate of Stewardship are way different from the boundaries mentioned in Tax Declaration No. 92638 that Carmen has been relying upon. In fact, the land covered by Romualdo's Certificate of Stewardship made no mention that it is bounded by Carmen's land or the land of her predecessors-in-interest.[21] This thus disproved respondents' claim that Certificate of Stewardship No. 146099 was issued over a land that constitutes a portion of Carmen's property.

Noting that the ejectment case delves on possession *de facto*, the MTCC also concluded that respondents indeed deprived

---

[20] See Complaint Affidavit dated September 8, 1997, *id.* at 130. She also filed a criminal case for perjury against them, docketed as Criminal Case No. 84355-R, *id.* at 106-109.

[21] *Id.* at 138-139. As noted by the MTCC:

It bears emphasis to state that said land [covered by Certificate of Stewardship] along cor. 1-2 is bounded by Daniel Villondo; cor. 2-3-4-5 is bounded by Romualdo Villondo; cor. 6-7 is bounded by Sabas Alcantara; cor. 7 is bounded by Arcadio Dablo; cor. 7-8 is bounded by Valeriana Villondo; cor. 8-1 is bounded by Daniel Villondo. There is no mention that a corner thereof is bounded by Carmen Quijano or by her predecessors-in-interest (Annex "A"-Complaint)."

On the other hand, the land claimed by Carmen Quijano which is covered by Tax Declaration No. 92638 is bounded on the North by Riachuelo; on the South by Riachuelo; on the East by Tomas Mabala and on the West by Alejandro Ybay (Annex "1"-Answer). Thus, the allegation of Carmen Quijano that said Certificate of Stewardship No. 146099 was issued over a portion of her property appears to be without basis.

Valeriana and her family of the possession of the land. It reasoned that Carmen herself alleged in the pending criminal cases for grave threats and grave coercion that she was prevented by the Villondos from entering the property and this presupposes that Valeriana and her family were in prior possession and occupation of the land in question. Thus, in its March 2, 2001 Decision,[22] the MTCC ruled:

> WHEREFORE, judgment is hereby rendered in favor of [Valeriana] and against the [respondents] ordering the latter to vacate and move out from the premises of the subject land and to restore [Valeriana] to the peaceful possession and occupation thereof and condemning them to pay [Valeriana], jointly and severally, the following:
>
> (a) Actual Damages in the amount of Twenty-Five Thousand (PhP25,000.00) Pesos;
>
> (b) Attorney's fees in the amount of Fifteen Thousand (PhP15,000.00) Pesos; and
>
> (c) Litigation expenses in the amount of Ten Thousand (PhP10,000.00) Pesos.
>
> SO ORDERED.[23]

Ruling of the Regional Trial Court

Dismayed with the judgment, respondents appealed to the RTC of Cebu City and reiterated their claim of prior possession of the property. They also put in issue therein lack of cause of action since Valeriana is not the real party-in-interest. A supersedeas bond was likewise posted.[24]

In its February 11, 2001 Resolution,[25] the RTC found Valeriana's Complaint dismissible for lack of cause of action, *viz.*:

---

[22] *Id.* at 136-140; penned by Judge Oscar D. Andrino.

[23] *Id.* at 140.

[24] *Id.* at 366-377.

[25] *Id.* at 437-440; penned by Judge Ireneo Lee Gako, Jr.

Based on the foregoing findings of the court *a quo*, the complaint should have been initiated by Romualdo Villondo, who is using the name of Daniel T. Villondo, because he is the real party-in-interest and not by his mother, the herein appellee Valeriana Villondo. There is also no showing that Romualdo Villondo is a minor or an incompetent who needs the assistance of his mother as guardian *ad litem*. Because of this fatal defect, this case is dismissible under Section 1, Rule 16 of the Rules of Court because the herein appellee Valeriana Villondo is not the real party-in-interest but Romualdo Villondo, and therefore the complaint does not state a cause of action.[26]

In any event, the RTC gave more credence to Carmen's tax declarations over Valeriana's assertion of long-time possession which to it, was never established.

The dispositive portion of the said Resolution reads:

WHEREFORE, in view of the foregoing, the Decision appealed from is hereby reversed in favor of the [respondents] since the [petitioner] Valeriana Villondo is not a real party-in-interest or beneficiary of the Certificate of Stewardship x x x but her son Romualdo Villondo, who used the name of Daniel T. Villondo, Jr. Hence, the court *a quo* should have dismissed the complaint since it does not state a cause of action.

Cost [*de*] *oficio*.

IT IS SO ORDERED.[27]

Valeriana filed a Motion for Reconsideration[28] but the same was denied in an Order[29] dated March 12, 2002.

Ruling of the Court of Appeals

When Valeriana elevated the case to the CA,[30] she proffered that the only issue that the courts should consider in forcible

---

[26] *Id.* at 440.

[27] *Id.*

[28] *Id.* at 448-551.

[29] *Id.* at 462.

[30] CA *rollo*, pp. 2-21.

entry cases is actual possession. She highlighted the fact that the RTC did not overturn the MTCC's factual finding of her actual possession of the disputed property. She therefore claimed that the RTC erred in dismissing her Complaint for the sole reason that she is not a real party-in-interest and likewise prayed for the issuance of a writ of execution/possession.

The CA however was not convinced. In its March 31, 2005 Decision,[31] it ruled:

> [Valeriana's] allegation that she and her family were deprived of their possession, cultivation and enjoyment of the subject land may be true; however, it is equally important, in order for her case to prosper, to show that she has the right or interest to protect. One who has no right or interest to protect cannot invoke the jurisdiction of the court as party-plaintiff in an action for it is jurisprudentially ordained that every action must be prosecuted or defended in the name of the real party in interest. A "real party in interest" is one who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. We agree with the RTC that petitioner is not the real party in interest in the case at bench.
>
> x x x x x x x x x
>
> WHEREFORE, the petition is DENIED. The assailed February 11, 2002 Resolution and the March 12, 2002 Order of Branch 5, Regional Trial Court, Cebu City, are hereby AFFIRMED.[32]

In her Motion for Reconsideration,[33] Valeriana maintained that she is a real party-in-interest since she was one of those dispossessed of the property. However, the CA, in its July 10, 2006 Resolution,[34] ignored her plea for a reconsideration.

The Sole Issue

Pleading before us for a review of the CA ruling, Valeriana underscores her rightful personality as plaintiff and stressed

---

[31] *Id.* at 116-122.

[32] *Id.* at 121-122.

[33] *Id.* at 123-127.

[34] *Id.* at 130-131.

that the CA erred in affirming the RTC when it ruled that only Romualdo can be the plaintiff in the forcible entry case.

Hence, the central issue to be resolved is: *Whether Valeriana is a real party-in-interest in the forcible entry case she filed.*

Our Ruling

Notably, even public lands can be the subject of forcible entry cases as it has already been held that ejectment proceedings may involve all kinds of land.[35] Thus, in the case at bench, while the parties are fighting over the possession of a government land, the courts below are not deprived of jurisdiction to render judgment thereon.[36] Courts must resolve the issue of possession even if the parties to the ejectment suit are mere informal settlers.[37]

For a court to restore possession, two things must be proven in a forcible entry case: prior physical possession of the property and deprivation of the property by means of force, intimidation, threat, strategy, or stealth.[38] "Possession *de facto*, [*i.e.*, the physical possession of a property,] and not possession *de jure* is the only issue in a forcible entry case. This rule holds true regardless of the character of a party's possession, provided that he has in his favor priority in time. x x x"[39] As used in forcible entry and unlawful detainer cases, 'possession' refers to "physical possession, not legal possession in the sense contemplated in civil law."[40]

Here, Valeriana is one of those in prior physical possession of the land who was eventually dispossessed.

---

[35] *Lee v. Dela Paz,* G.R. No. 183606, October 27, 2009, 604 SCRA 522, 534-535, citing *David v. Cordova*, 502 Phil. 626, 645 (2005).

[36] *Pitargue v. Sorilla*, 92 Phil. 5, 11-15 (1952).

[37] *Pajuyo v. Court of Appeals,* G.R. No. 146364, June 3, 2004, 430 SCRA 492, 511.

[38] *Domalsin v. Spouses Valenciano*, 515 Phil. 745, 766-767 (2006).

[39] *Bunyi v. Factor,* G.R. No. 172547, June 30, 2009, 591 SCRA 350, 358.

[40] *De Grano v. Lacaba*, G.R. No. 158877, June 16, 2009, 589 SCRA 148, 158-159 citing *Spouses Tirona v. Hon. Alejo*, 419 Phil. 285, 298 (2001).

Carmen failed to present evidence that she was in actual physical possession of the land she claims. Her "[t]ax declarations are not conclusive proofs of ownership, or even of possession."[41] They only constitute proofs of a claim of title over the declared property.[42] Her acts betray her claim of prior possession. Her counsel wrote Valeriana's son Esteban and demanded that the subject land be vacated. Carmen had to seek help from the authorities in order to fence the lot. Furthermore, by filing criminal cases for grave threats and grave coercion, she herself acknowledged that Valeriana, together with Esteban, another son and daughter-in-law, were the ones occupying the subject property and who allegedly prevented her from conducting a land survey. These circumstances are indicative of the Villondo family's possession of the premises.

With this in mind, is Valeriana the appropriate party to file a forcible entry case against the respondents? We rule that the CA has no reason to withhold the relief she prays for on the ground of a lack of cause of action.

"A real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."[43] As we have explained:

> '*Interest*' within the meaning of the rules means material interest, an interest in issue and to be affected by the decree as distinguished from mere interest in the question involved, or a mere incidental interest. A real party-in-interest is one who has a legal right. x x x The action must be brought by the person who, by substantive law, possesses the right sought to be enforced. x x x[44]

Section 1, Rule 70 of the Rules of Court specifies who may be the plaintiff in an action for forcible entry, *viz*:

---

[41] *Estrella v. Robles Jr.*, G.R. No. 171029, November 22, 2007, 538 SCRA 60, 74.

[42] *Lee v. Dela Paz*, *supra* note 35 at 539, citing *Republic v. Court of Appeals*, 328 Phil. 238, 248 (1996).

[43] RULES OF COURT, Rule 3, Section 2.

[44] *Vidal v. Escueta*, 463 Phil. 314, 337 (2003).

Section 1. *Who may institute proceedings, and when.* — x x x **a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth**, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, **may,** at any time within one (1) year after such unlawful deprivation or withholding of possession, **bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession**, **or any person or persons claiming under them**, **for the restitution of such possession, together with damages and costs.** (Emphasis supplied.)

Sans the presence of the awardee of the Certificate of Stewardship, the provision clearly allows Valeriana to institute the action for the recovery of the physical possession of the property against the alleged usurper. She has a right or interest to protect as she was the one dispossessed and thus, she can file the action for forcible entry. Any judgment rendered by the courts below in the forcible entry action will bind and definitely affect her claim to possess the subject property. The fact that Valeriana is not the holder of the Certificate of Stewardship is not in issue in a forcible entry case. This matter already delves into the character of her possession. We emphasize that in ejectment suits, it does not even matter if the party's title to the property is questionable.[45]

The MTCC correctly considered Valeriana as a real party-in-interest and correctly delved strictly with the issue of physical possession. Notably, the CA, other than dismissing the case for lack of cause of action, did not seem to dispute the MTCC's factual finding of Valeriana's prior physical possession. Absent any evidence of respondents' prior physical possession, Valeriana, who has cogently convinced us that she was dispossessed of the

---

[45] *Arbizo v. Santillan*, G.R. No. 171315, February 26, 2008, 546 SCRA 610, 623 citing *Pajuyo v. Court of Appeals*, *supra* note 37 at 510. Also cited in *David v. Cordova*, *supra* note 35 at 645.

land by force, is entitled to stay on the property until she is lawfully ejected by others who can prove in a separate proceeding that they have a better right.

We then end by highlighting the principle behind ejectment proceedings:

> x x x Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence, or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.[46]

WHEREFORE, the instant petition is hereby **GRANTED.** The assailed March 31, 2005 Decision and July 10, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 70734 are hereby **ANNULLED and SET ASIDE.** The Decision of the Municipal Trial Court in Cities in Cebu, Branch 5, is **REINSTATED and AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176898. December 3, 2012]

GEORGE S. H. SY, doing business under the name and style of OPM INTERNATIONAL CORPORATION, *petitioner, vs.* **AUTOBUS TRANSPORT SYSTEMS, INC.,** *respondent.*

---

[46] *Pajuyo v. Court of Appeals, supra* note 37 at 510.

[*] Per raffle dated September 17, 2012.

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION, ISSUANCE OF; REQUISITES; PROPER IN CASE AT BAR. — A preliminary injunction may be issued at any time before judgment or final order. It may be a prohibitory injunction, which requires a party to refrain from doing a particular act, or a mandatory injunction, which commands a party to perform a positive act to correct a wrong in the past. A writ of preliminary mandatory injunction, however, is more cautiously regarded because it commands the performance of an act. Accordingly, it must be issued only upon a clear showing that the following requisites are established: (1) the applicant has a clear and unmistakable right that must be protected; (2) there is a material and substantial invasion of such right; and (3) there is an urgent need for the writ to prevent irreparable injury to the applicant. x x x We find that the RTC had sufficient bases to issue the writ of preliminary mandatory injunction as all the requisites for the issuance of such writ were established. We agree with the RTC that respondent has a right to recover the five titles because petitioner failed to comply with his obligation to respondent. It bears stressing that respondent was compelled to directly pay CMC to avoid the foreclosure of the chattel mortgages, which respondent executed in favor of CMC. Considering that respondent has paid most, if not all, of its obligations to CMC, there is no reason for petitioner to hold on to the titles.

2. ID.; APPEALS; GRAVE ABUSE OF DISCRETION, AS A GROUND; DEFINED; NOT PRESENT IN CASE AT BAR. — Grave abuse of discretion is defined as "capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law." No grave abuse of discretion exists in this case. The contentions of petitioner regarding the fixing of the bond and the denial of his offer to post a counter bond likewise have no merit. As we have said, all these depend on the sound discretion of the trial court, which shall not be disturbed in the absence of grave abuse of discretion on the part of the trial court.

APPEARANCES OF COUNSEL

Añover & Añover & San Diego for petitioner.
Mendoza Dizon Purugganan & Partners Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A writ of preliminary mandatory injunction will not be set aside unless it was issued with grave abuse of discretion.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated September 21, 2006 and the Resolution[3] dated March 6, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 90926.

Factual Antecedents

Petitioner George S. H. Sy is doing business under the name and style of OPM International Corporation (OPM), which is engaged in the sale and installation of bus air conditioning units.[4]

Sometime in July 1996, petitioner entered into a verbal agreement with respondent Autobus Transport Systems, Inc.,[5] a public utility bus company plying the northern Luzon routes from Manila.[6] Under their agreement, respondent would purchase Konvecta air conditioning units from petitioner and petitioner would finance respondent's acquisition of twenty-two (22) units

---

[1] *Rollo,* pp. 9-46.

[2] *Id.* at 48-56; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Renato C. Dacudao and Estela M. Perlas-Bernabe (now a member of this Court).

[3] *Id.* at 58.

[4] *Id.* at 13.

[5] *Id.* at 60.

[6] *Id.* at 13.

of bus engine and chassis from Commercial Motors Corporation (CMC) and twenty-two (22) bus deluxe bodies to be built by Almazora Motors Corporation (AMC).[7] The parties agreed that respondent would amortize the payments for the Konvecta air conditioning units and the bus units separately;[8] that petitioner would settle respondent's account with CMC starting on the fourteenth (14th) month from the time of the first delivery of the bus engines and chassis; and that respondent would pay petitioner the acquisition cost of the 22 units of bus engines and chassis in 36 monthly installments, starting on the fifteenth (15th) month from the time of the first delivery of the bus engines and chassis.[9] As security, respondent would execute Chattel Mortgages over the buses in favor of CMC.[10] Once petitioner has fully paid the amortizations to CMC, respondent would execute new Chattel Mortgages over the buses, this time, in favor of petitioner.[11] In the meantime, respondent would deliver to petitioner titles to five properties in Caloocan City registered under the name of Gregorio Araneta III, the chairman of respondent, as security for petitioner's advances to CMC.[12]

The 22 bus units were delivered to respondent by CMC in three batches: 10 in November 1996, five in March 1997 and seven in October 1997.[13] After the delivery of the first batch, respondent delivered to petitioner Transfer Certificates of Title (TCT) Nos. 292199, 292200, 292201, 292202, and 292203.[14]

Petitioner, however, defaulted in paying the amortizations to CMC, forcing the latter to demand payment from respondent.[15]

---

[7] *Id.* at 49.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 50 and 60.

[13] *Id.* at 49.

[14] *Id.* at 50.

[15] *Id.*

Consequently, respondent was compelled to pay some of the obligations directly to CMC.[16]

On November 26, 1998, respondent, through counsel, issued a letter to petitioner demanding that he settle the obligations with CMC or return the five titles to respondent.[17]

On December 5, 1998, petitioner, in a letter, apologized for the delay and requested for an extension until January 31, 1999 to settle respondent's obligations with CMC.[18]

On January 28, 1999, respondent, through counsel, again sent a letter to petitioner reminding him of his promise to settle the obligations by January 31, 1999.[19]

On the same date, petitioner, thru a letter, asked respondent for another extension of 10 days or until February 10, 1999.[20]

On March 12, 1999, due to the failure of petitioner to settle the obligations with CMC, respondent filed a complaint for Specific Performance[21] against petitioner.[22] The case was docketed as Civil Case No. 99-93127 and raffled to Branch 45 of the Regional Trial Court (RTC) of Manila. Respondent prayed that a decision be rendered:

1. Ordering [petitioner] to perform all his obligations under the verbal agreement by way of paying the balance of [respondent's] loan to CMC;

2. Ordering [petitioner] to return to [respondent] the mortgaged five (5) Transfer Certificates of Title Nos. 292199, 292200, 292201, 292202 and 292203;

---

[16] *Id.*

[17] *Id.* at 64-65.

[18] *Id.* at 66.

[19] *Id.* at 67.

[20] *Id.* at 68.

[21] *Id.* at 59-63.

[22] *Id.* at 51.

3. Ordering [petitioner] to pay [respondent] attorney's fees amounting to ₱50,000.00 plus ₱2,000.00 per hearing attended and pleadings submitted in Court.[23]

In his Answer,[24] petitioner interposed the defense of lack of cause of action, contending that respondent has no right to institute the present action because the controversy is between petitioner and CMC.[25] Petitioner also alleged that he failed to settle respondent's obligations with CMC because respondent stopped paying its amortizations.[26] Thus, petitioner prayed that respondent be ordered to pay the amount of ₱56,000,000.00, representing respondent's alleged unpaid balance for the entire transaction.[27]

On the scheduled pre-trial, petitioner and his counsel failed to appear, prompting the RTC to declare petitioner in default.[28] Upon petitioner's motion,[29] the RTC reconsidered the order of default.[30]

On the next scheduled pre-trial, petitioner and his counsel again failed to appear.[31] Thus, petitioner was declared in default and respondent was allowed to present its evidence *ex-parte*.[32]

On May 16, 2000, the RTC rendered a Decision[33] in favor of respondent, to wit:

WHEREFORE, and as prayed for by [respondent], judgment is hereby rendered for the [respondent], as follows:

---

[23] *Id.* at 61.

[24] *Id.* at 69-74.

[25] *Id.* at 72.

[26] *Id.*

[27] *Id.* at 73.

[28] Records, p. 52.

[29] *Id.* at 58-59.

[30] *Id.* at 77.

[31] *Id.* at 93.

[32] *Id.*

[33] *Id.* at 167-169; penned by Judge Marcelino L. Sayo, Jr.

1) ordering the [petitioner] to perform all his obligations under the verbal agreement by way of paying the balance of [respondent's] loan to CMC;

2) ordering [petitioner] to return to [respondent] the five (5) Transfer Certificates of Title Nos. 292199, 292200, 292201, 292202, and 29203;

3) ordering [petitioner] to pay [respondent] reasonable attorney's fees in the reduced amount of ₱20,000.00, plus the costs of suit.

The counterclaim of the [petitioner] is dismissed for lack of bases and merit.

SO ORDERED.[34]

Feeling aggrieved, petitioner filed a Petition for Relief from Judgment[35] citing the death of his counsel as excusable negligence.[36] Finding the petition meritorious, the RTC set aside its Decision and set the case for trial.[37]

On September 16, 2004, respondent filed a Motion to Order [Petitioner] to Return the Five (5) Transfer Certificates of Title to [Respondent].[38] The RTC denied the motion in an Order[39] dated December 9, 2004.

On January 11, 2005, respondent filed a Motion for the Issuance of a Writ of Preliminary Mandatory Injunction,[40] praying for the issuance of a Writ of Preliminary Mandatory Injunction commanding petitioner to return to respondent the five titles.[41]

---

[34] *Id.* at 169.

[35] *Id.* at 187-200.

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

[37] *Id.* at 258.

[38] *Rollo*, pp. 78-81.

[39] *Id.* at 96-97.

[40] *Id.* at 98-103.

[41] *Id.* at 101.

Ruling of the Regional Trial Court

On April 11, 2005, the RTC issued an Order[42] granting respondent's Motion. The RTC ordered petitioner to return the five titles to respondent since he failed to comply with the agreement he made with respondent, *i.e.* to finance respondent's obligations with CMC.[43] In granting the Motion, the RTC took into consideration respondent's fear that petitioner might use these titles to obtain a loan from Metrobank given that petitioner already admitted that he turned over the possession of the five titles to the said bank.[44] Thus:

> Wherefore, premises considered, and upon the posting by [respondent] of a bond in the amount of TWO MILLION (₱2,000,000.00) PESOS to be approved by this Court, to answer all the damages and costs which the [petitioner] may suffer by reason of the injunction, if the Court will finally decide that the [respondent] was not entitled thereto, let a writ of preliminary mandatory injunction be issued commanding the [petitioner] to return to the [respondent] the five (5) Transfer Certificates of Title Nos. 292199, 292200, 292201, 292202 and 292203.
>
> **SO ORDERED.**[45]

Petitioner filed a Motion for Reconsideration with Motion to Post Counter bond[46] but the RTC denied the same in its Order[47] dated July 26, 2005.

This prompted petitioner to elevate the case to the CA *via* a Petition for *Certiorari*,[48] imputing grave abuse of discretion on the part of the RTC in issuing the Writ of Preliminary Mandatory Injunction.

---

[42] *Id.* at 117-120.

[43] *Id.* at 118.

[44] *Id.* at 119.

[45] *Id.* at 120.

[46] *Id.* at 121-130.

[47] *Id.* at 149.

[48] *Id.* at 150-180.

Ruling of the Court of Appeals

The CA, however, found no grave abuse of discretion on the part of the RTC.[49] The CA agreed with the RTC that respondent delivered the five titles to petitioner as security for petitioner's advances to CMC.[50] Hence, the dispositive portion of the Decision[51] dated September 21, 2006 reads:

WHEREFORE, the petition is DENIED, the two (2) assailed Orders of the Regional Trial Court, Branch 45, dated 11 April 2005 and 26 July 2005, are hereby **AFFIRMED**.

SO ORDERED.[52]

Petitioner moved for reconsideration[53] but the CA denied his motion in a Resolution[54] dated March 6, 2007.

Issues

Hence, this petition raising the following issues:

I.

WHETHER XXX THE HONORABLE [CA] COMMITTED A GRAVE AND SERIOUS ERROR WHEN IT FOUND THE ISSUANCE OF THE WRIT OF PRELIMINARY MANDATORY INJUNCTION TO BE IN ORDER, AND, CONSEQUENTLY, DECLARING THAT OPM NO LONGER HAD ANY REASON TO HOLD ON TO THE FIVE (5) TITLES.

II.

WHETHER XXX THE HONORABLE [CA] COMMITTED A GRAVE AND SERIOUS ERROR WHEN IT DID NOT FIND JUSTIFIABLE GROUNDS TO WARRANT THE WRIT'S

---

[49] *Id.* at 55.

[50] *Id.* at 53-54.

[51] *Id.* at 48-56.

[52] *Id.* at 55.

[53] *Id.* at 294-305.

[54] *Id.* at 58.

DISSOLUTION BY OPM'S OFFER TO POST A COUNTER BOND UNDER SECTION 6, RULE 58 OF THE 1997 RULES OF COURT.

III.

WHETHER THE FINDINGS OF FACT OF THE [CA] COMMITTED WITH GRAVE ABUSE OF DISCRETION MAY BE REVIEWED BY THE SUPREME COURT ON APPEAL BY *CERTIORARI*.[55]

Summed up, the issues boil down to whether the RTC committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing a writ of preliminary mandatory injunction commanding petitioner to return to respondent TCT Nos. 292199, 292200, 292201, 292202, and 292203, and in denying petitioner's offer to post a counter bond.

Petitioner's Arguments

Petitioner claims that respondent is not entitled to a writ of preliminary mandatory injunction because it failed to show that it has a clear legal right[56] and that it would suffer grave and irreparable damage if a writ were not issued.[57] Petitioner alleges that respondent delivered the titles to him as security for respondent's entire obligation to OPM in the total amount of more than ₱81 million, inclusive of interest.[58] He insists that respondent still owes OPM the amount of ₱30 million, inclusive of interest.[59] Considering that respondent's obligation to OPM is not yet fully paid, respondent is not entitled to a writ of preliminary mandatory injunction.[60] Petitioner likewise claims that the ₱2 million bond posted by respondent is insufficient to protect the interest of OPM in the event that judgment is rendered in its favor.[61] Lastly, petitioner imputes grave abuse of discretion

---

[55] *Id.* at 363.

[56] *Id.* at 372-376.

[57] *Id.* at 369-371.

[58] *Id.* at 365-367.

[59] *Id.* at 367-369.

[60] *Id.* at 369.

[61] *Id.* at 376-377.

on the part of the CA in not allowing OPM to post a counter bond.[62]

Respondent's Arguments

Respondent, on the other hand, maintains that the RTC validly issued the writ of preliminary mandatory injunction.[63] Respondent insists that it has a legal right to recover the five titles since petitioner defaulted in his obligation, exposing respondent to damages and financial burden.[64] It claims that it had to pay interest and penalty charges to CMC because of petitioner's delay in paying the amortizations.[65] Respondent also contends that it was able to show the possibility of an "irreparable injury."[66] Since the titles are in the possession of Metrobank, there is a possibility that petitioner would use these titles to obtain a loan with Metrobank.[67] As to the bond and counter bond, respondent emphasizes that the fixing of the amount of bond and the granting of a motion for filing a counter bond are discretionary upon the trial court.[68]

Our Ruling

Section 3, Rule 58 of the Rules of Court reads:

SEC. 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

---

[62] *Id.* at 378-381.

[63] *Id.* at 390.

[64] *Id.* at 390-393.

[65] *Id.* at 392.

[66] *Id.* at 393.

[67] *Id.* at 393-394.

[68] *Id.* at 394-395.

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

A preliminary injunction may be issued at any time before judgment or final order.[69] It may be a prohibitory injunction, which requires a party to refrain from doing a particular act, or a mandatory injunction, which commands a party to perform a positive act to correct a wrong in the past.[70] A writ of preliminary mandatory injunction, however, is more cautiously regarded because it commands the performance of an act.[71] Accordingly, it must be issued only upon a clear showing that the following requisites are established: (1) the applicant has a clear and unmistakable right that must be protected; (2) there is a material and substantial invasion of such right; and (3) there is an urgent need for the writ to prevent irreparable injury to the applicant.[72]

In this case, the RTC, in granting respondent's Motion for the Issuance of a Writ of Preliminary Mandatory Injunction, explained that:

From the verified complaint filed in this case as well as the [respondent's] verified Motion for the Issuance of a Writ of Preliminary Mandatory Injunction, it is clear that the five (5) land titles registered in the name of Gregorio Araneta III were delivered by the [respondent] to the [petitioner] to secure the latter's advances to CMC for the financing of the twenty two (22) bus chassis which [respondent]

---

[69] *City Government of Butuan v. Consolidated Broadcasting System, (CBS), Inc.*, G.R. No. 157315, December 1, 2010, 636 SCRA 320, 336.

[70] *Id.*

[71] *Dela Rosa v. Heirs of Juan Valdez*, G.R. No. 159101, July 27, 2011, 654 SCRA 467, 479.

[72] *Pacsports Phils., Inc. v. Niccolo Sports, Inc.*, 421 Phil. 1019, 1030-1031 (2001).

purchased from CMC. However, [petitioner] defaulted in his obligations to CMC which compelled the [respondent] to directly pay CMC some of the obligations of the [petitioner]. **Since the condition for the delivery of the land titles which is the payment by the [petitioner] of the obligations of the [respondent] to CMC has not been complied with by the [petitioner], there is no further justification for the [petitioner] to hold on to the possession of the land titles.**

In this connection, extant in the records of this case are the two (2) letters of the [petitioner] to the lawyers of the [respondent] wherein he expressly admitted his failure to comply with his obligations to CMC on behalf of the [respondent] x x x. These letters were not denied by the [petitioner]; in fact, it was admitted by him in his Answer x x x.

It must be noted that the land titles are in the name of Gregorio Araneta III who is not a party to the transaction between the [respondent] and the [petitioner] and that there is no document between the parties concerning the terms and conditions behind the possession of the said titles by the [petitioner]. There is no Deed of Mortgage over the properties covered by the said titles. The only document on record is the acknowledgement receipt dated March 18, 1997 signed by the [petitioner] x x x but other than the acknowledgment of the receipt of the titles, there is nothing else to show the terms and conditions under which [petitioner] is to possess the same. At best, therefore, the [petitioner] is merely a depository of the said titles. He cannot foreclose, dispose of, assign or otherwise deal with the same. **Thus, the damages that he may suffer if the land titles are returned to the [respondent] is practically inexistent compared to the damages which [respondent] and the owners of the land titles have suffered due to the continuous possession of the [petitioner] of the said titles, as they cannot exercise their proprietary rights to the properties covered by the titles.**[73] (Emphasis supplied)

The CA affirmed the Order[74] since it found no grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of the RTC. It said:

---

[73] *Rollo,* pp. 118-119.

[74] *Id.* at 117-120.

x x x we find the issuance of the writ to be in order. FIRST, there is no denying that the titles to the subject five (5) properties belonged to and were in fact registered under the name of Mr. Gregorio Ma. Araneta III of AUTOBUS. NEXT, as stated in AUTOBUS' complaint and admitted in OPM's answer, the purpose in handing over the five (5) titles to OPM was to secure the advances to be made by the latter to CMC. Hence, when OPM failed to meet its obligations with CMC, AUTOBUS' rights over the twenty-two (22) buses were materially and substantially compromised by a threatened foreclosure of the chattel mortgage. Again, this cannot be denied for a chattel mortgage was executed by AUTOBUS over the buses in favor of CMC which shall be transferred to OPM once CMC is paid by OPM, although claimed by OPM as additional collateral. AUTOBUS in its Comment and Memorandum asserts that it has paid all its obligations to CMC which is not denied by OPM. Consequently, OPM no longer had any reason to hold on to the five (5) titles for its failure to pay CMC. THIRDLY, the urgency of the situation necessitating the issuance of the mandatory writ was sufficiently established by AUTOBUS before the trial court, thus:

> [Respondent] has expressed fear that the [petitioner] (OPM) has turned over the possession of the said titles to Metrobank in order to obtain a loan from the bank or to secure an existing loan from the said bank. [Petitioner] has admitted that Metrobank has possession of the titles, but according to him, it is only for safekeeping. Considering this admission, this Court gives credence to the [respondent's] fear.

We x x x agree with the trial court for it is very unlikely that the purpose for handing over the titles to the bank was merely for safekeeping when the bank itself conducted inspections and appraisals on the subject five (5) properties of Mr. Araneta.

As regards OPM's offer to post a counter bond, the same on its own does not however warrant the [writ's] dissolution.[75]

Based on the foregoing disquisition, we find that the RTC had sufficient bases to issue the writ of preliminary mandatory injunction as all the requisites for the issuance of such writ were established. We agree with the RTC that respondent has a right to recover the five titles because petitioner failed to comply

---

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

with his obligation to respondent. It bears stressing that respondent was compelled to directly pay CMC to avoid the foreclosure of the chattel mortgages, which respondent executed in favor of CMC. Considering that respondent has paid most, if not all, of its obligations to CMC, there is no reason for petitioner to hold on to the titles.

Petitioner's allegation that respondent delivered the five titles to him as security, not only for the refinancing of the 22 bus chassis from CMC, but for the entire obligation deserves scant consideration.

In respondent's demand letter[76] dated November 26, 1998, respondent's counsel reminded petitioner that "the sole purpose of the mortgage on the properties was to secure the refinancing of [respondent's] buses with CMC."[77] Thus, respondent's counsel demanded petitioner to settle his obligations with CMC or return the titles to respondent. In his letter-reply[78] dated December 5, 1998, petitioner did not deny that respondent delivered the titles to him solely as security for the refinancing of the buses. Instead, he admitted his failure to settle his obligations with CMC and asked that he be given additional time to settle the same.[79] In respondent's demand letter[80] dated January 28, 1999, respondent's counsel again reminded petitioner to settle the obligations with CMC or return the titles, which serves "as security for [petitioner's] refinancing of buses."[81] Again, in his letter[82] dated January 28, 1999, petitioner did not refute the statement of respondent's counsel. Once more, he admitted his failure and asked for a final extension.[83] The communication between the

---

[76] *Id.* at 64-65.

[77] *Id.* at 65.

[78] *Id.* at 66.

[79] *Id.*

[80] *Id.* at 67.

[81] *Id.*

[82] *Id.* at 68.

[83] *Id.*

parties clearly proves that the respondent delivered the five titles to petitioner solely as security for the refinancing of the buses purchased by respondent from CMC.

In addition, we need not belabor that the issuance of a writ of preliminary injunction is discretionary upon the trial court because "the assessment and evaluation of evidence towards that end involve findings of facts left to the said court for its conclusive determination."[84] For this reason, the grant or the denial of a writ of preliminary injunction shall not be disturbed unless it was issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.[85] Grave abuse of discretion is defined as "capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law."[86] No grave abuse of discretion exists in this case.

The contentions of petitioner regarding the fixing of the bond and the denial of his offer to post a counter bond likewise have no merit. As we have said, all these depend on the sound discretion of the trial court, which shall not be disturbed in the absence of grave abuse of discretion on the part of the trial court.

Finally, as to whether respondent still owes OPM the amount of ₱30 million, we believe that this is a factual issue best left to the determination of the RTC where the main case is pending.

WHEREFORE, the petition is hereby **DENIED.** The assailed Decision dated September 21, 2006 and the Resolution dated March 6, 2007 of the Court of Appeals in CA-G.R. SP No. 90926 are hereby **AFFIRMED.**

---

[84] *Dela Rosa v. Heirs of Juan Valdez, supra* note 71 at 480.

[85] *Yap v. International Exchange Bank*, G.R. No. 175145, March 28, 2008, 550 SCRA 395, 411.

[86] *Dela Rosa v. Heirs of Juan Valdez, supra* note 71 at 480.

SO ORDERED.

Carpio (Chairperson), Brion, Peralta,[*] and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 181138. December 3, 2012]

RICKY "TOTSIE" MARQUEZ, ROY BERNARDO, and JOMER MAGALONG, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY IN AN UNINHABITED PLACE OR IN A PRIVATE BUILDING; WHEN COMMITTED; APPLICATION IN CASE AT BAR. — "Article 293 of the [RPC] defines robbery to be one committed by any 'person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything . . .' Robbery may thus be committed in two ways: (a) with violence against, or intimidation of persons and (b) by the use of force upon things." With respect to robbery by the use of force upon things, same is contained under Section Two, Chapter 1, Title Ten of the RPC. Falling under said section two, among others, are Article 299 which refers to *robbery in an inhabited house or public building or edifice devoted to worship* and Article 302, to *robbery in an uninhabited place or in a private building.* x x x Meanwhile, Article 301 of the RPC defines an inhabited house, public building, or building dedicated to religious worship and their dependencies. x x x Here, the Information did not specify whether the robbery with

---

[*] Per raffle dated November 26, 2012.

force upon things was committed in an inhabited house or uninhabited place. x x x The Court, however, notes at the outset that the CA erred in applying Article 299 of the RPC. The records show that the store alleged to have been robbed by petitioners is not an inhabited house, public building or building dedicated to religious worship and their dependencies under Article 299 and as defined under Article 301. From Valderosa's testimony, it can be deduced that the establishment allegedly robbed was a store not used as a dwelling. In fact, after the robbery took place, there was a need to inform Valderosa of the same as she was obviously not residing in the store. "If the store was not actually occupied at the time of the robbery and was not used as a dwelling, since the owner lived in a separate house, the robbery committed therein is punished under Article 302." Neither was the place where the store is located owned by the government. It was actually just a stall rented by Valderosa from a private person. Hence, the applicable provision in this case is Article 302 and not Article 299 of the RPC.

2. ID.; ID.; IMPOSABLE PENALTY. — Article 302 of the RPC provides that when the robbery is committed in an uninhabited place or in a private building and the value of the property exceeds ₱250.00, the penalty shall be *prision correccional* in its medium and maximum periods provided that, among other circumstances, any wall, roof, floor, or the outside door or window has been broken. Considering that petitioners burglarized the store of Valderosa which was not used as a dwelling, by breaking its door and stealing property therein with a total value of ₱42,000.00, the penalty that must be imposed in *prision correccional* in its medium and maximum periods, which has a prison term of two (2) years, four (4) months and one (1) day to six (6) years. There being no aggravating or mitigating circumstances, the range of the penalty that must be imposed as maximum penalty is three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days. Applying the Indeterminate Sentence Law, the minimum penalty that should be imposed upon petitioners is *arresto mayor* in its maximum period to *prision correccional* in its minimum period with a range of four (4) months and one (1) day to two (2) years and four (4) months. Consequently, there is a need to modify the prison term imposed by the trial court.

3. ID.; ID.; CONSPIRACY; THE RESPONSIBILITY OF CONSPIRATORS IS COLLECTIVE, RENDERING ALL OF THEM EQUALLY LIABLE REGARDLESS OF THE EXTENT OF THEIR RESPECTIVE PARTICIPATION; CASE AT BAR. — Marquez was the one who proposed the robbery. When all acceded, he then provided Magalong with a lead pipe, who, together with Bernardo, smashed and destroyed the padlock of the store and which likewise caused the door to be broken. All petitioners and Benzon then entered the store and took things, with the intention to sell the items stolen and share among themselves the proceeds thereof. It is therefore clear from the testimony of Mallari that petitioners acted in conspiracy in the commission of the robbery. It must be stressed that what is important in conspiracy is that all conspirators "performed specific acts with such closeness and coordination as to indicate an unmistakably common purpose or design to commit the crime." The responsibility of the conspirators is therefore collective rendering all of them equally liable regardless of the extent of their respective participations.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBILITY IS NOT AFFECTED BY THE NON-INCLUSION OF A STATE WITNESS AS ACCUSED IN THE INFORMATION; RATIONALE. — Mallari's credibility was not adversely affected by his non-inclusion as an accused in the Information. This was not an attempt to escape criminal liability. Rather, the prosecution merely availed of its legal option to immediately utilize him as a state witness instead of undergoing the judicial procedure of charging him as a co-conspirator then moving for his discharge as a witness.

5. ID.; ID.; ID.; ASSESSMENT OF CREDIBILITY IS A FUNCTION BEST DISCHARGED BY THE TRIAL COURT; EXCEPTION. — It is established that the assessment on the credibility of witnesses is a function best discharged by the trial court due to its position to observe the behavior and demeanor of the witness in court. This rule is set aside only when the trial court's evaluation was reached arbitrarily, or when it "overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case." Here, no such situation occurred.

6. ID.; ID.; ID.; POSITIVE IDENTIFICATION OF PETITIONERS AS PERPETRATORS OF THE ROBBERY PREVAIL

OVER THEIR DENIAL AND ALIBI; SUSTAINED. — Mallari's positive identification of petitioners as the perpetrators of the robbery and the absence of any ill-motive on his part to testify falsely against them prevail over petitioners' denial and alibi. As repeatedly held, alibi is the weakest defense since it can easily be fabricated and difficult to disprove. Hence as a rule, the defenses of denial and alibi can only prosper if there is evidence that the accused were not only in another place at the time of the commission of the crime, but also that it was physically impossible for them to be within the immediate vicinity. Here, while petitioners denied being at the scene of the crime at the time of its commission, they failed to prove that it was physically impossible for them to be in the store at the time of the robbery. In fact, they testified that they were in a place only about 15 meters away from the scene of the crime.

7. ID.; ID.; ID.; TESTIMONY OF A CO-CONSPIRATOR, EVEN IF UNCORROBORATED, WILL BE CONSIDERED SUFFICIENT IF GIVEN IN A STRAIGHTFORWARD MANNER AND CONTAINS DETAILS WHICH COULD NOT BE A RESULT OF DELIBERATE AFTERTHOUGHT; PRESENT IN CASE AT BAR. — While the Court is well-aware of the general rule that "the testimony of a co-conspirator is not sufficient for the conviction of the accused unless such testimony is supported by evidence," there is, however, an exception. Thus, "the testimony of a co-conspirator, even if uncorroborated, will be considered sufficient if given in a straightforward manner and it contains details which could not have been the result of deliberate afterthought," as in this case. A review of the transcript of stenographic notes of the testimony of Mallari showed that same was sincere since it was given without hesitation and in a simple manner. His recollection of the events was detailed and candid such that it could not have been a concoction from a polluted mind. Thus, Mallari's testimony, even if uncorroborated, deserves full weight and credence and, therefore, sufficient to establish petitioners' commission of the crime charged.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"[T]he testimony of a co-conspirator, even if uncorroborated, will be considered sufficient if given in a straightforward manner and it contains details which could not have been the result of a deliberate afterthought."[1]

Factual Antecedents

For our review is the July 27, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR No. 28814 which affirmed the June 30, 2004 Decision[3] of the Regional Trial Court (RTC) of Caloocan City, Branch 121 in Criminal Case No. C-65837 finding herein petitioners Ricky "Totsie" Marquez (Marquez), Roy Bernardo (Bernardo), Jomer Magalong (Magalong) and accused Ryan Benzon (Benzon), guilty beyond reasonable doubt of the crime of Robbery With Force Upon Things and sentencing them to imprisonment of six (6) years of *prision correccional* to nine (9) years of *prision mayor* and to pay the private complainant Sonia Valderosa (Valderosa) the amount of ₱42,000.00.

The Information[4] filed against petitioners and Benzon contained the following accusatory allegations:

> That on or about the 6th day of April, 2002 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused confederating together and mutually aiding each other, with intent of gain by means of force upon things, that is, by destroying the door lock of the stall of one SONIA VALDEROSA and passing/entering thru the same, once inside, did then and there willfully, unlawfully and feloniously take, rob and carry away the following items, to wit:

---

[1] *People v. Sala*, 370 Phil. 323, 363 (1999).

[2] CA *rollo*, pp. 90-105; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Edgardo F. Sundiam.

[3] Records, pp. 219-224; penned by Presiding Judge Adoracion G. Angeles.

[4] *Id.* at 2.

Two (2) pieces Rice Cooker (heavy duty)
One (1) piece of [Teppanyaki] (big)
1,000 pieces of Boxes (printed)
Kitchen Utensils
Fresh Meat (48 kls)
Three (3) boxes of Ter[i]yaki Sauce
One (1) Heavy duty blender
One (1) Programmer Calculator
One (1) Transistor Radio

all belonging to the said complainant, to the damage and prejudice of the latter in the total amount of ₱42,000.00.

CONTRARY TO LAW.[5]

All of them pleaded "not guilty" during arraignment.[6] After the pre-trial conference was held and terminated,[7] trial ensued. In the course of the trial, however, Benzon failed to appear despite due notice.[8] The trial court therefore ordered the issuance of a warrant for his arrest and the cancellation of his bail bond.[9] Benzon was then tried *in absentia*.[10]

Prosecution's Version

At around 2:30 a.m. of April 6, 2002, Marlon Mallari (Mallari) was with petitioners and Benzon in front of the University of the East (U.E.), Caloocan City. Marquez suggested that the group rob the Rice-in-a-Box store located at the corner of U.E.[11] Marquez then got a lead pipe and handed it to Magalong, which he and Bernardo used to destroy the padlock of the store.[12] Mallari was designated as the look-out while petitioners and Benzon

---

[5] *Id.*

[6] *Id.* at 144.

[7] *Id.* at 152.

[8] *Id.* at 200.

[9] *Id.*

[10] *Id.*

[11] TSN, June 17, 2003, p. 4.

[12] *Id.* at 5.

entered the store and carried away all the items inside it which consisted of rice cookers, a blender and food items.[13] They then brought the stolen items to the house of Benzon's uncle.[14] Apprehensive that Mallari might squeal,[15] the group promised to give him a share if they could sell the stolen items.[16]

At 9:30 a.m. of the same day, Valderosa received information from the daughter of the owner of the premises where her Rice-in-a- Box franchise store was located, that her store had been forcibly opened and its padlock destroyed.[17] Upon her arrival thereat, she discovered that the contents of her freezer were missing along with other items inside the store, such as two rice cookers valued at ₱3,900.00 each, teppanyaki worth ₱2,700.00, a thousand pieces of rice boxes at ₱5.00 a piece, kitchen utensils valued at ₱4,500.00, an estimated 48 kilos of fresh meat at ₱250.00 per kilo, three boxes of teriyaki sauce worth ₱3,600.00, a blender costing ₱2,200.00, a programmer calculator valued at ₱3,500.00, and a transistor radio worth ₱1,500.00. The total value of these stolen items was approximately ₱42,000.00.[18] She reported the robbery to the police.[19]

Meanwhile, on April 7, 2002, Mallari informed his older brother of his involvement in the said robbery.[20] At around 4:00 p.m. of the next day, he again confessed but this time to Valderosa.[21]

Petitioners' Version

From 11:00 p.m. of April 5, 2002 until 2:00 a.m. of April 6, 2002, petitioners and Ferdie Dela Cruz (Dela Cruz), Jay

---

[13] *Id.* at 5-6.

[14] *Id.* at 6.

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

[16] *Id.* at 7.

[17] TSN, March 5, 2003, p 3.

[18] *Id.* at 3-4.

[19] *Id.* at 4.

[20] TSN, June 17, 2003, p. 7.

[21] *Id.* at 8.

Maranan (Maranan) and Randy Badian, were enjoying a videoke session in the house of Gerard "Boy Payat" Santiago, which was just near U.E.[22] Before going home, they decided to eat *lugaw* at a rolling eatery in the Monumento Circle, Caloocan City.[23] While on their way to the *lugawan*, they passed by Mallari, who was standing in front of the Rice-in-a-Box store.[24] They later went home aboard a jeepney.[25] Maranan alighted first while Benzon and Dela Cruz followed.[26] When it was petitioners' turn to get off the jeepney, they saw the Rice-in-a-Box store already opened.[27] However, they did not report the incident to the police or *barangay* authorities.[28]

The Regional Trial Court's Decision

On June 30, 2004, the trial court rendered a Decision[29] in favor of the prosecution. It ruled that Mallari's personal identification of petitioners and Benzon, and his narration of their individual participation in the robbery were sufficient to establish their guilt beyond reasonable doubt.[30] The trial court disregarded the petitioners' denial and alibi considering that it was not physically impossible for them to be in the crime scene or its vicinity at the time of the commission of the crime.[31] It stressed that the place petitioners claimed to be in was a mere walking distance from the site of the burglary.[32] Moreover, the

---

[22] TSN, September 8, 2003, pp. 2-3; TSN, February 4, 2004, p. 3; TSN, November 24, 2004, pp. 2-3.

[23] *Id.* at 2; *id.* at 4; *id.* at 3.

[24] *Id.* at 5; *id.* at 5; *id.* at 3.

[25] TSN, February 4, 2004, p. 6.

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

[27] *Id.*; TSN, November 24, 2004, p. 4.

[28] *Id.* at 7; *id.*

[29] Records, pp. 219-224.

[30] *Id.* at 223.

[31] *Id.*

[32] *Id.* at 223-224.

RTC found Mallari's testimony more worthy of credence than that of petitioners since Bernardo and Magalong themselves admitted that Mallari had no motive to falsely testify against them.[33] The dispositive portion of the trial court's Decision reads:

> WHEREFORE, premises considered, this Court finds accused ***RICKY "TOTSIE" MARQUEZ, RYAN BENZON, ROY BERNARDO and JOMER MAGALONG GUILTY*** beyond reasonable doubt of the crime of ***Robbery With Force Upon Things*** and sentences each of them to suffer the penalty of imprisonment of **SIX (6) YEARS of *Prision Correctional*** [sic] to **NINE (9) YEARS Of *Prision Mayor*** and to indemnify private complainant Sonia Valderosa the amount of ₱42,000.00 representing the value of the stolen articles. With costs.
>
> SO ORDERED.[34]

Petitioners filed a Notice of Appeal which was given due course by the trial court.[35]

The Court of Appeal's Decision

Before the CA, petitioners imputed error upon the trial court in finding them guilty beyond reasonable doubt of the crime charged. According to them, the trial court should not have given credence to Mallari's testimony because he is not a credible witness. They likewise contended that even assuming that they committed the crime, the trial court erred in ruling that there was conspiracy since the participation of Bernardo in the alleged robbery was vague.

In its assailed Decision of July 27, 2007,[36] the appellate court did not find merit in petitioners' appeal. Its review of the transcript of Mallari's testimony only resulted in the affirmation of the trial court's ruling that he was a credible witness. The CA held that while Mallari was a co-conspirator and his testimony was

---

[33] *Id.* at 224.

[34] *Id.* Emphases in the original.

[35] *Id.* at 229.

[36] CA *rollo*, pp. 90-105.

uncorroborated, same was still sufficient to convict petitioners since it "carries the hallmarks of honesty and truth."[37] It clearly established Bernardo's participation in the conspiracy in that he, together with another petitioner, carried away from the store all the stolen items.[38]

The dispositive portion of the CA Decision reads:

> **WHEREFORE,** the decision appealed from finding all the accused guilty beyond reasonable doubt of the crime of robbery with force upon things is hereby **AFFIRMED**. Considering that Ryan Benson was tried *in absentia*, the trial court is directed to issue an *alias* warrant of arrest against him.
>
> **SO ORDERED.**[39]

Hence, this Petition for Review on *Certiorari.*[40]

Issue

In their Memorandum, petitioners raised the sole issue of:

> WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING THE PETITIONERS, IN CONSPIRACY WITH EACH OTHER, GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[41]

Petitioners argue that their defense of denial and alibi should not have been disregarded since the prosecution's case was based solely on the uncorroborated testimony of a co-conspirator, Mallari.[42] And while Mallari admitted to participating in the commission of the crime, he was not charged together with petitioners in the Information for robbery and was instead utilized

---

[37] *Id.* at 102.

[38] *Id.* at 100.

[39] *Id.* at 105.

[40] *Rollo*, pp. 17-37.

[41] *Id.* at 159.

[42] *Id.* at 161-162.

as a state witness.[43] It is therefore in this light that petitioners assert that Mallari's testimony does not deserve any credence since he merely concocted his testimony in order to save himself and escape criminal liability.[44] Moreover, petitioners claim that the prosecution failed to prove conspiracy.[45]

The Office of the Solicitor General, on the other hand, insists through its Memorandum[46] that Mallari is a credible witness and that his testimony is sufficient to establish petitioners' guilt beyond reasonable doubt.[47] It explains that Mallari's confession to the crime immediately after its commission resulted in petitioners' arrests prior to the filing of the Information.[48] For the said reason, the former was not indicted and was merely utilized as a prosecution witness.[49] Be that as it may, Mallari's testimony, though uncorroborated, can stand by itself and also deserves credence since it was "given in a straightforward manner and contained details which could not have been the result of deliberate afterthought."[50] Also, Mallari's positive identification of petitioners as the perpetrators of the crime, without evil motive on his part, prevails over the latter's defense of denial and alibi.[51]

Our Ruling

There is no merit in the petition.

Robbery with force upon things in an uninhabited place under Article 302 of the Revised Penal Code (RPC)

---

[43] *Id.* at 163.

[44] *Id.*

[45] *Id.* at 164-165.

[46] *Id.* at 171-182.

[47] *Id.* at 176-179.

[48] *Id.* at 177-178.

[49] *Id.* at 178.

[50] *Id.*

[51] *Id.* at 179-180.

"Article 293 of the [RPC] defines robbery to be one committed by any 'person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything . . .' Robbery may thus be committed in two ways: (a) with violence against, or intimidation of persons and (b) by the use of force upon things."[52]

With respect to robbery by the use of force upon things, same is contained under Section Two, Chapter 1,[53] Title Ten[54] of the RPC. Falling under said section two, among others, are Article 299 which refers to *robbery in an inhabited house or public building or edifice devoted to worship* and Article 302, to *robbery in an uninhabited place or in a private building.* Said articles provide, to wit:

ART. 299. *Robbery in an inhabited house or public building or edifice devoted to worship*. — Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by *reclusion temporal*, if the value of the property taken shall exceed 250 pesos, and if —

(a) The malefactors shall enter the house or building in which the robbery is committed, by any of the following means:

1. Through an opening not intended for entrance or egress;

2. By breaking any wall, roof, or floor or breaking any door or window;

3. By using false keys, picklocks, or similar tools;

4. By using any fictitious name or pretending the exercise of public authority.

Or if —

(b) The robbery be committed under any of the following circumstances:

---

[52] *People v. Alcantara*, 471 Phil. 690, 702 (2004).

[53] Robbery in General.

[54] Crimes Against Property.

1. By breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle;

2. By taking such furniture or objects away to be broken or forced open outside the place of the robbery.

When the offenders do not carry arms, and the value of the property taken exceeds 250 pesos, the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed 250 pesos.

When the said offenders do not carry arms and the value of the property taken does not exceed 250 pesos, they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period.

If the robbery committed in one of the dependencies of an inhabited house, public building or building dedicated to religious worship, the penalties next lower in degree than those prescribed in this article shall be imposed.

ART. 302. *Robbery in an uninhabited place or in a private building.* — Any robbery committed **in an uninhabited place or in a building other than those mentioned in the first paragraph of Article 299**, if the value of the property taken exceeds 250 pesos shall be punished by *prision correccional* in its medium and maximum periods, provided that any of the following circumstances is present:

1. If the entrance has been effected through any opening not intended for entrance or egress;

2. **If any wall, roof, floor, or outside door or window has been broken**;

3. If the entrance has been effected through the use of false keys, picklocks, or other similar tools;

4. If any door, wardrobe, chest, or any sealed or closed furniture or receptacle has been broken;

5. If any closed or sealed receptacle, as mentioned in the preceding paragraph, has been removed, even if the same be broken open elsewhere.

When the value of the property taken does not exceed 250 pesos, the penalty next lower in degree shall be imposed.

x x x x x x x x x

(Emphasis supplied.)

Meanwhile, Article 301 of the RPC defines an inhabited house, public building, or building dedicated to religious worship and their dependencies as follows:

Inhabited house means any shelter, ship, or vessel constituting the dwelling of one or more persons, even though the inhabitants thereof shall temporarily be absent therefrom when the robbery is committed.

All interior courts, corrals, warehouses, granaries, barns, coach-houses, stables, or other departments, or inclosed places contiguous to the building or edifice, having an interior entrance connected therewith and which form part of the whole, shall be deemed dependencies of an inhabited house, public building, or building dedicated to religious worship.

Orchards and other lands used for cultivation or production are not included in the terms of the next preceding paragraph, even if closed, contiguous to the building, and having direct connection therewith.

The term "public building" includes every building owned by the Government or belonging to a private person but used or rented by the Government, although temporarily unoccupied by the same.

Here, the Information did not specify whether the robbery with force upon things was committed in an inhabited house or uninhabited place. It merely stated that petitioners committed the robbery "*by means of force upon things, that is, by destroying the door lock of the stall of one of SONIA VALDEROSA and passing/entering thru the same, once inside, did then and there willfully, unlawfully and feloniously take, rob and carry away the [earlier mentioned] items x x x.*"[55]

Likewise, the trial court, in its judgment of conviction, did not discuss whether the robbery in this case was committed in

[55] Records, p. 2.

an inhabited house or in an uninhabited place. It was different, though, when the case was decided by the CA. Unlike the trial court, the appellate court discussed about robbery in an inhabited house under the above-quoted Article 299 of the RPC in its assailed Decision.[56] Pursuant to the same provision, it then proceeded to affirm the penalty imposed by the trial court upon the petitioners after finding them guilty of the crime charged.[57]

The Court, however, notes at the outset that the CA erred in applying Article 299 of the RPC. The records show that the store alleged to have been robbed by petitioners is not an inhabited house, public building or building dedicated to religious worship and their dependencies under Article 299 and as defined under Article 301. From Valderosa's testimony, it can be deduced that the establishment allegedly robbed was a store not used as a dwelling. In fact, after the robbery took place, there was a need to inform Valderosa of the same as she was obviously not residing in the store.[58] "If the store was not actually occupied at the time of the robbery and was not used as a dwelling, since the owner lived in a separate house, the robbery committed therein is punished under Article 302."[59] Neither was the place where the store is located owned by the government. It was actually just a stall rented by Valderosa from a private person.[60] Hence, the applicable provision in this case is Article 302 and not Article 299 of the RPC.

Petitioners committed the crime charged and acted in conspiracy

Under Article 293 of the RPC, robbery is committed by any person who, with intent to gain, shall take any personal property belonging to another by using force upon anything. When

---

[56] CA *rollo*, p. 97.

[57] *Id.* at 104.

[58] TSN, March 5, 2003, p. 3.

[59] Reyes, Luis, B., *THE REVISED PENAL CODE, Criminal Law*, Book Two, Seventeenth Edition, 2008, p. 718.

[60] TSN, March 5, 2003, p. 3.

committed in an uninhabited place or a private building with the circumstance, among others, that any wall, roof, floor, or outside door or window has been broken, the same is penalized under Article 302.

As testified to by Valderosa, she rented the premises located at No. 269 corner Samson Road, Caloocan City and therein operated her Rice-in-a-Box store.[61] On April 6, 2002, burglars destroyed the store's padlock and broke into the store. The burglars then went inside the store through the broken door and took various items valued at ₱42,000.00. As she was not living therein and only utilized it as a store, Valderosa only learned of the burglary after being informed about it by the daughter of the owner of the building where her store was located.

Save from the identities of the perpetrators, Valderosa's testimony clearly indicates that a robbery under Article 293 in relation to Article 302 of the RPC was committed. Luckily for her, it was not long before a co-conspirator to the crime, Mallari, revealed the identities of his companions and the details of the crime to complete the picture.

Mallari testified that he participated in the commission of the crime after petitioners told him to be the look-out while they entered and burglarized the store. He first confessed to his brother his participation in the crime and later reported the incident to the store owner herself, Valderosa.

In clear and concise language, Mallari narrated the incident as follows:

Q: On April 6, 2002 at 2:30 in the morning, where were you?
A: In front of the University of the East, Caloocan City.

Q: Who were with you at that time?
A: Ryan Benzon, Ricky Marquez, Jomer Magalong and Roy Bernardo, ma'am.

Q: While you were with them, what happened?
A: Totsie invited us to stage a robbery in the rice box.

---

[61] *Id.*

Q: You said Totsie, are you referring to accused Ricky Marquez?
A: Yes, ma'am.

Q: What is this rice box?
A: A store selling viands and rice, ma'am.

Q: [W]here is it located?
A: At the corner of University of the East.

Q: How far was this rice box from the place where you were standing with the four accused?
A: About 5 meters (as stipulated by counsel for both parties).

Q: When Totsie or Ricky Marquez invited you to stage a robbery in the rice box, what did you do together with the group?
A: Totsie got a lead pipe and handed it to Jomer.

Q: You are referring to [Jomer] Magalong, one of the accused in this case?
A: Yes, ma'am.

Q: After Totsie Marquez handed a lead pipe to Jomer Magalong, what happened?
A: The lock was removed, ma'am.

Q: Who destroyed the lock?
A: Roy and Jomer, ma'am.

Q: What happened when Ryan [sic] and Jomer were destroying the padlock of the rice box?
A: None sir, I was just looking and then afterwards, it was opened.

Q: After opening the store by destroying the padlock, what did you and your companions do?
A: I was instructed to be the look-out.

Q: What did the four accused do inside the store?
A: Ryan and Totsie entered x x x the store.

Q: What did you do inside the store?
A: They took all the things inside.

Q: What were the things taken inside the store?
A: Two (2) rice cookers, one (1) big as if a rice cooker, blender and foods.

Q: What did Roy and Jomer do after the padlock was destroyed and the door was already opened?
A: They carried all the things robbed.

Q: Where did they bring those items taken from the said store?
A: [To] the house of the uncle of Ryan in Marcela, ma'am.

Q: What happened after that?
A: They cooked foods but I remained [seated].

Q: What did the accused tell you if any while they were cooking in the house of the uncle of Ryan?
A: "*Baka raw kumanta ako*."

Q: What else did they tell you?
A: According to them, they will give me my share if they would be able to sell [them].[62]

To recall, Marquez was the one who proposed the robbery. When all acceded, he then provided Magalong with a lead pipe, who, together with Bernardo, smashed and destroyed the padlock of the store and which likewise caused the door to be broken. All petitioners and Benzon then entered the store and took things, with the intention to sell the items stolen and share among themselves the proceeds thereof. It is therefore clear from the testimony of Mallari that petitioners acted in conspiracy in the commission of the robbery. It must be stressed that what is important in conspiracy is that all conspirators "performed specific acts with such closeness and coordination as to indicate an unmistakably common purpose or design to commit the crime."[63] The responsibility of the conspirators is therefore collective rendering all of them equally liable regardless of the extent of their respective participations.[64]

Mallari's testimony deserves full weight and credence

Contrary to the petitioners' argument, Mallari's credibility was not adversely affected by his non-inclusion as an accused

[62] TSN, June 17, 2003, pp. 4-7.

[63] *People v. Caraang*, 463 Phil. 715, 759 (2003).

[64] *People v. Castro*, 434 Phil. 206, 221 (2002).

in the Information. This was not an attempt to escape criminal liability. Rather, the prosecution merely availed of its legal option to immediately utilize him as a state witness instead of undergoing the judicial procedure of charging him as a co-conspirator then moving for his discharge as a witness.

Besides, it is established that the assessment on the credibility of witnesses is a function best discharged by the trial court due to its position to observe the behavior and demeanor of the witness in court.[65] This rule is set aside only when the trial court's evaluation was reached arbitrarily, or when it "overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case."[66] Here, no such situation occurred.

Also, Mallari's positive identification of petitioners as the perpetrators of the robbery and the absence of any ill-motive on his part to testify falsely against them prevail over petitioners' denial and alibi. As repeatedly held, alibi is the weakest defense since it can easily be fabricated and difficult to disprove.[67] Hence as a rule, the defenses of denial and alibi can only prosper if there is evidence that the accused were not only in another place at the time of the commission of the crime, but also that it was physically impossible for them to be within the immediate vicinity.[68] Here, while petitioners denied being at the scene of the crime at the time of its commission, they failed to prove that it was physically impossible for them to be in the store at the time of the robbery. In fact, they testified that they were in a place only about 15 meters away from the scene of the crime.

Moreover, while the Court is well-aware of the general rule that "the testimony of a co-conspirator is not sufficient for the conviction of the accused unless such testimony is supported

---

[65] *People v. Macapal, Jr.*, 501 Phil. 675, 687 (2005).

[66] *Id.*

[67] *People v. De Guzman*, G.R. No. 173477, February 4, 2009, 578 SCRA 54, 64-65.

[68] *People v. Abundo*, 402 Phil. 616, 628, (2001).

by evidence,"[69] there is, however, an exception. Thus, "the testimony of a co-conspirator, even if uncorroborated, will be considered sufficient if given in a straightforward manner and it contains details which could not have been the result of deliberate afterthought,"[70] as in this case. A review of the transcript of stenographic notes of the testimony of Mallari showed that same was sincere since it was given without hesitation and in a simple manner. His recollection of the events was detailed and candid such that it could not have been a concoction from a polluted mind. Thus, Mallari's testimony, even if uncorroborated, deserves full weight and credence and, therefore, sufficient to establish petitioners' commission of the crime charged.

Penalty

Article 302 of the RPC provides that when the robbery is committed in an uninhabited place or in a private building and the value of the property exceeds ₱250.00, the penalty shall be *prision correccional* in its medium and maximum periods provided that, among other circumstances, any wall, roof, floor, or the outside door or window has been broken. Considering that petitioners burglarized the store of Valderosa which was not used as a dwelling, by breaking its door and stealing property therein with a total value of ₱42,000.00, the penalty that must be imposed is *prision correccional* in its medium and maximum periods, which has a prison term of two (2) years, four (4) months and one (1) day to six (6) years. There being no aggravating or mitigating circumstances, the range of the penalty that must be imposed as maximum penalty is three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days. Applying the Indeterminate Sentence Law, the minimum penalty that should be imposed upon petitioners is *arresto mayor* in its maximum period to *prision correccional* in its minimum period with a range of four (4) months and one (1) day to two (2) years and four (4) months. Consequently, there is a need to modify the prison term imposed by the trial court.

---

[69] *People v. Sala, supra* note 1.

[70] *Id.*

Anent the amount to be indemnified, the trial court and the CA correctly held that petitioners must indemnify Valderosa the sum of ₱42,000.00 representing the value of the goods taken.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED.** The July 27, 2007 Decision of the Court of Appeals in CA-G.R. CR No. 28814, which affirmed the June 30, 2004 Decision of the Regional Trial Court of Caloocan City, Branch 121, in Criminal Case No. C-65837, is **AFFIRMED with the MODIFICATION** that petitioners are sentenced to an indeterminate prison term of one (1) year and eight (8) months to four (4) years, nine (9) months and ten (10) days of *prision correccional.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191660. December 3, 2012]

DELIA T. SUTTON, *petitioner, vs.* **ROMANITO P. LIM, EFREN C. LIM and ALLAN C. LIM, MUNICIPAL AGRARIAN REFORM OFFICER OF AROROY, MASBATE, PROVINCIAL AGRARIAN REFORM OFFICER OF MASBATE, and THE REGISTER OF DEEDS FOR THE PROVINCE OF MASBATE,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); JURISDICTION THEREOF IS CONFINED TO AGRARIAN DISPUTE. — While the

DARAB may entertain petitions for cancellation of CLOAs, as in this case,its jurisdiction is, however, confined only to agrarian disputes. As explained in the case of *Heirs of Dela Cruz v. Heirs of Cruz* and reiterated in the recent case of *Bagongahasa v. Spouses Cesar Caguin,* for the DARAB to acquire jurisdiction, the controversy must relate to an agrarian dispute between the landowners and tenants in whose favor CLOAs have been issued by the DAR Secretary. x x x Thus, it is not sufficient that the controversy involves the cancellation of a CLOA already registered with the Land Registration Authority. What is of primordial consideration is the existence of an agrarian dispute between the parties. x x x Consequently, the DARAB is bereft of jurisdiction to entertain the herein controversy, rendering its decision null and void. Jurisdiction lies with the Office of the DAR Secretary to resolve the issues of classification of landholdings for coverage (whether the subject property is a private or government owned land), and identification of qualified beneficiaries. Hence, no error can be attributed to the CA in dismissing the case without prejudice to its re-filing, in accordance to DAR Administrative Order No. 6, Series of 2000.

2. ID.; R.A. 6657 (COMPREHENSIVE AGRARIAN REFORM PROGRAM); AGRARIAN DISPUTE, DEFINED. — As defined in Section 3(d) of R.A. No. 6657, an agrarian dispute relates to "any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship, or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under the said Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee." x x x Verily, an agrarian dispute must be a controversy relating to a tenurial arrangement over lands devoted to agriculture. Tenurial arrangements pertain to agreements which set out the rights between a landowner and a tenant, lessee, farm worker or other agrarian reform beneficiary involving agricultural land.

Traditionally, tenurial arrangements are in the form of tenancy or leasehold arrangements. However, other forms such as a joint production agreement to effect the implementation of CARP have been recognized as a valid tenurial arrangement.

3. ID.; ID.; TENURIAL, LEASEHOLD, OR AGRARIAN RELATIONS; WHEN ESTABLISHED; REQUISITES. — It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context — particularly, that every part of the statute must be interpreted together with the other parts, and kept subservient to the general intent of the whole enactment. Therefore, in line with the purpose of recognizing the right of farmers, farmworkers and landowners under the agrarian reform program, both paragraphs 1 and 2 of Section 3(d) of R.A. No. 6657 should be understood within the context of tenurial arrangements, else the intent of the law be subverted. To be sure, the tenurial, leasehold, or agrarian relations referred to may be established with the concurrence of the following: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the agricultural relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between the landowner and the tenant or agricultural lessee.

APPEARANCES OF COUNSEL

Padlan Sutton & Associates for petitioner.
Cidarwinda Arriesgado-Catamora for public respondents.
Rosalito B. Apoya for private respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, Delia Sutton (petitioner) seeks to reverse

[1] *Rollo,* pp. 8-32.

and set aside the July 23, 2009 Decision[2] and March 23, 2010 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 91971, which dismissed on jurisdictional grounds the Department of Agrarian Reform Adjudication Board (DARAB) Regional Adjudicator Case No. 05-004-98 and DARAB Case No. 8902 for cancellation of the Certificate of Land Ownership Award (CLOA) No. 00122354 and Original Certificate of Title (OCT) No. CLOA 0-1615[4] issued in the names of private respondents Romanito P. Lim and his sons, namely: Efren C. Lim and Allan C. Lim (private respondents).

The Factual Antecedents

On December 7, 1993, private respondents applied for the issuance of a CLOA over a parcel of land with an area of 73,105 square meters located in Barangay Amotag, Aroroy, Masbate, described as Lot No. 1493 of Cadastral Survey No. Pls-77 of Aroroy Public Subdivision, before the Department of Agrarian Reform (DAR) Secretary.[5] Upon the recommendation of the Municipal Agrarian Reform Officer (MARO) of Aroroy, Masbate, the application was granted and they were issued CLOA No. 00122354. Subsequently, on January 31, 1994, the Register of Deeds of Masbate issued the corresponding OCT No. CLOA 0-1615.

On November 23, 1994, petitioner filed a petition for the cancellation of the said CLOA and title before the Office of the Provincial Agrarian Reform Adjudicator (PARAD), docketed as DARAB Case No. 05-077, assailing the validity of the said issuances on the ground that the subject parcel of land is a private land devoted to cattle raising which she inherited from her deceased father, Samuel Sutton, who, in turn, previously bought the subject parcel of land from Romanito P. Lim and his wife, Lolita L.

---

[2] Penned by Associate Justice Noel G. Tijam, with Associate Justices Arturo G. Tayag and Ricardo R. Rosario, concurring. *Id.* at 34-45.

[3] Penned by Associate Justice Noel G. Tijam, with Associate Justices Sesinando E. Villon and Ricardo R. Rosario, concurring. *Id.* at 47-50.

[4] CA *rollo*, pp. 54-55.

[5] *Id.* at 90.

Cedillo, on August 7, 1958.[6] Petitioner also claimed to have been denied due process for not receiving any notice of private respondents' application proceedings for CLOA. On March 5, 1998, the petition was amended[7] to include the MARO of Aroroy, Masbate, Provincial Agrarian Reform Officer (PARO) of Masbate and the Register of Deeds of Masbate as additional respondents, and was re-docketed as DARAB Case No. 05-004-98.

In their answer,[8] private respondents averred that, being the actual occupants and qualified beneficiaries of the subject lot which formed part of the alienable and disposable portion of the public domain, the DAR Secretary correctly issued the CLOA in their favor. While admitting having sold a lot in favor of Samuel Sutton from whom petitioner purportedly inherited the subject parcel of land, they asserted that the lot sold was different from Lot No. 1493. Moreover, they interposed the defense of prescription since the petition for cancellation was filed after the subject title became indefeasible.

On the other hand, the MARO and PARO, in their Answer with Motion to Dismiss,[9] invoked the presumption of regularity in the performance of their official functions in issuing the CLOA, which according to them was issued in accordance with the implementing rules and regulations of Republic Act (R.A.) No. 6657.[10] They also clarified that the subject parcel of land has been classified as Government Owned Land (GOL) or Kilusang Kabuhayan at Kaunlaran (KKK) areas pursuant to Presidential Proclamation No. 2282,[11] hence, subject to the Comprehensive

---

[6] Deed of Sale dated August 7, 1958. *Id.* at 56-57.

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

[8] *Id.* at 58-62.

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

[10] Otherwise known as the "Comprehensive Agrarian Reform Law of 1988."

[11] Reclassifying Certain Portions of the Public Domain as Agricultural Land and Declaring the same Alienable and Disposable for Agricultural and Resettlement Purposes of the Kilusang Kabuhayan at Kaunlaran Land Resource Management Program of the Kilusang Kabuhayan at Kaunlaran of the Ministry of Human Settlements.

Agrarian Reform Program's immediate coverage (CARP coverage). Moreover, petitioner was not able to prove that she is the registered owner of the subject parcel of land and that it is exempt from the CARP coverage.

The RARAD Ruling

In its May 4, 1999 Decision,[12] the Regional Agrarian Reform Adjudicator (RARAD) ordered, among others, the cancellation of CLOA No. 00122354 and the corresponding OCT No. CLOA 0-1615 issued in the names of private respondents. The RARAD found that public respondents failed to exercise due care in identifying the lots of the public domain and their actual occupants, and accordingly, restored the ownership and possession of the subject parcel of land to petitioner.

The DARAB Ruling

In its December 29, 2004 Decision,[13] the DARAB reversed the ruling of the RARAD. It found no irregularities in the issuance of the subject CLOA or lawful ground to warrant its cancellation, under Administrative Order No. 02, Series of 1994.[14] It did not find the issue of ownership consequential in the implementation of the land reform program and brushed aside petitioner's claim that since the landholding is devoted to cattle raising, it is exempt from the CARP coverage. It also emphasized that the issue of whether or not the landholding is exempt from the CARP coverage falls within the exclusive jurisdiction of the Office of the DAR Secretary in the exercise of its administrative function to implement R.A. No. 6657. Aggrieved, petitioner elevated the matter to the CA on petition for review.

The CA Ruling

In its July 23, 2009 Decision, the CA denied the petition on jurisdictional grounds and dismissed the case without prejudice to its re-filing. It held that the DARAB does not have jurisdiction

---

[12] Penned by Regional Adjudicator Isabel E. Florin. CA *rollo*, pp. 118-123.

[13] *Id.* at 26-33.

[14] Rules of Procedure for Agrarian Law Implementation (ALI) Cases.

over the instant controversy due to the absence of a landlord-tenant relationship or any agrarian relations between the parties. It also ruled that since the issuance of the subject CLOA was made in the exercise of the DAR Secretary's administrative powers and function to implement agrarian reform laws, the jurisdiction over the petition for its cancellation lies with the Office of the DAR Secretary.

The Issues

Hence, the instant petition ascribing to the CA the following errors:

I. WHEN IT HELD THAT THE DAR PROVINCIAL/ REGIONAL ADJUDICATOR (PARAD/RARAD) AND DARAB DO NOT HAVE JURISDICTION TO ENTERTAIN THE PETITION FOR CANCELLATION OF THE CLOA AND CORRESPONDING TITLE ISSUED THEREFOR;

II. WHEN IT FOUND THAT SINCE NO LANDLORD-TENANT RELATIONSHIP EXISTED BETWEEN THE PARTIES, THERE IS NO "AGRARIAN DISPUTE" INVOLVED; and

III. WHEN IT DISREGARDED PETITIONER'S UNDISPUTED OWNERSHIP AND POSSESSION OVER LOT 1493 AND DENIAL OF DUE PROCESS OVER SAID LOT.[15]

The Ruling of the Court

The petition is without merit.

Section 1, Rule II of the 1994 DARAB Rules of Procedure, the rule in force at the time of the filing of the petition, provides:

Section 1. *Primary and Exclusive Original and Appellate Jurisdiction.* The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, 229 and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically,

[15] *Rollo*, p. 12.

such jurisdiction shall include but not be limited to cases involving following:

x x x x x x x x x

f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

x x x x x x x x x

While the DARAB may entertain petitions for cancellation of CLOAs, as in this case, its jurisdiction is, however, confined only to agrarian disputes. As explained in the case of *Heirs of Dela Cruz v. Heirs of Cruz*[16] and reiterated in the recent case of *Bagongahasa v. Spouses Cesar Caguin*,[17] for the DARAB to acquire jurisdiction, the controversy must relate to an agrarian dispute between the landowners and tenants in whose favor CLOAs have been issued by the DAR Secretary, to wit:

> The Court agrees with the petitioners' contention that, under Section 2(f), Rule II of the DARAB Rules of Procedure, the DARAB has jurisdiction over cases involving the issuance, correction and cancellation of CLOAs which were registered with the LRA. However, for the DARAB to have jurisdiction in such cases, they must relate to an agrarian dispute between landowner and tenants to whom CLOAs have been issued by the DAR Secretary. **The cases involving the issuance, correction and cancellation of the CLOAs by the DAR in the administrative implementation of agrarian reform laws, rules and regulations to parties who are not agricultural tenants or lessees are within the jurisdiction of the DAR and not the DARAB.** (Emphasis supplied)

Thus, it is not sufficient that the controversy involves the cancellation of a CLOA already registered with the Land Registration Authority. What is of primordial consideration is the existence of an agrarian dispute between the parties.

---

[16] G.R. No. 162890, November 22, 2005, 475 SCRA 743, 759-760.

[17] G.R. No. 179844, March 23, 2011, 646 SCRA 338, 349.

As defined in Section 3(d) of R.A. No. 6657, an agrarian dispute relates to "any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship, or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under the said Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."

Based on the above-cited provision, however, petitioner posits that an agrarian dispute can be dissected into purely tenurial (paragraph 1 of Section 3[d]) and non-tenurial arrangements (paragraph 2, Section 3[d]). This theory deserves no credence.

Verily, an agrarian dispute must be a controversy relating to a tenurial arrangement over lands devoted to agriculture.[18] Tenurial arrangements pertain to agreements which set out the rights between a landowner and a tenant, lessee, farm worker or other agrarian reform beneficiary involving agricultural land. Traditionally, tenurial arrangements are in the form of tenancy[19] or leasehold arrangements.[20] However, other forms such as a

---

[18] See *Isidro v. CA*, G.R. No. 105586, December 15, 1993, 228 SCRA 503, 510.

[19] Tenancy relationship is a juridical tie which arises between a landowner and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landowner, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land. See *Adriano v. Tanco*, G.R. No. 168164, July 5, 2010, 623 SCRA 218, 228; citing R.A. No. 1199, Section 6, or the Agricultural Tenancy Act of the Philippines.

[20] Under Sec. 2.2 of DAR Administrative Order No. 6, Series of 2003, an agricultural leasehold contract is defined as a formal tenurial arrangement reduced into writing between a lessor-landholder and lessee-farmer where the former consents to the latter's personal cultivation in consideration for a fixed rental either in money or produce or both.

joint production agreement to effect the implementation of CARP have been recognized as a valid tenurial arrangement.[21]

Accordingly, paragraph 2 of Section 3(d), by its explicit reference to controversies between landowners and farmworkers, tenants and other agrarian reform beneficiaries with respect to the compensation of lands acquired under R.A. No. 6657 or other terms and conditions relating to the transfer of such lands, undoubtedly implies the existence of a tenurial arrangement. Also, the phrase "whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee" in paragraph 2 lists certain forms of tenurial arrangements consistent with the phrase "whether leasehold, tenancy or stewardship, or otherwise" stated in paragraph 1 of the same section.

Moreover, it is a rule in statutory construction that every part of the statute must be interpreted with reference to the context — particularly, that every part of the statute must be interpreted together with the other parts, and kept subservient to the general intent of the whole enactment.[22] Therefore, in line with the purpose of recognizing the right of farmers, farmworkers and landowners under the agrarian reform program, both paragraphs 1 and 2 of Section 3(d) of R.A. No. 6657 should be understood within the context of tenurial arrangements, else the intent of the law be subverted.

To be sure, the tenurial, leasehold, or agrarian relations referred to may be established with the concurrence of the following: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the agricultural relationship is to bring about agricultural production; 5) there is personal cultivation on the

---

[21] *Islanders Carp-Farmers Beneficiaries Multi-Purpose Cooperative, Inc. v. Lapanday Agricultural and Development Corporation*, G.R. No. 159089, May 3, 2006, 489 SCRA 80, 88-90.

[22] *Enriquez v. Enriquez*, 505 Phil. 193, 199 (2005); citing *Paras v. Comelec*, 332 Phil. 56 (1996).

part of the tenant or agricultural lessee; and 6) the harvest is shared between the landowner and the tenant or agricultural lessee.[23]

In this case, a punctilious examination reveals that petitioner's allegations are solely hinged on the erroneous grant by the DAR Secretary of CLOA No. 00122354 to private respondents on the grounds that she is the lawful owner and possessor of the subject lot and that it is exempt from the CARP coverage. In this regard, petitioner has not alleged any tenurial arrangement between the parties, negating the existence of any agrarian dispute and consequently, the jurisdiction of the DARAB. Indisputably, the controversy between the parties is not agrarian in nature and merely involves the administrative implementation of the agrarian reform program which is cognizable by the DAR Secretary. Section 1, Rule II of the 1994 DARAB Rules of Procedure clearly provides that "matters involving strictly the administrative implementation of R.A. No. 6657, and other agrarian reform laws and pertinent rules, shall be the exclusive prerogative of and cognizable by the DAR Secretary."

Furthermore, it bears to emphasize that under the new law, R.A. No. 9700,[24] which took effect on July 1, 2009, all cases involving the cancellation of CLOAs and other titles issued under any agrarian reform program are now within the exclusive and original jurisdiction of the DAR Secretary. Section 9 of the said law provides:

Section 9. Section 24 of Republic Act No. 6657, as amended, is further amended to read as follows:

x x x x x x x x x

All cases involving the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of the DAR.

---

[23] *Morta, Sr. v. Occidental*, G.R. No. 123417, 367 Phil. 438 (1999).

[24] An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the "Comprehensive Agrarian Reform Law of 1988, As Amended, and Appropriating Funds Therefor."

Consequently, the DARAB is bereft of jurisdiction to entertain the herein controversy, rendering its decision null and void. Jurisdiction lies with the Office of the DAR Secretary to resolve the issues of classification of landholdings for coverage (whether the subject property is a private or government owned land), and identification of qualified beneficiaries. Hence, no error can be attributed to the CA in dismissing the case without prejudice to its re-filing, in accordance to DAR Administrative Order No. 6, Series of 2000.

WHEREFORE, the instant petition is **DENIED** and the assailed July 23, 2009 Decision and March 23, 2010 Resolution of the Court of Appeals in CA G.R. SP No. 91971 are **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 194270. December 3, 2012]

LORETO BOTE, *petitioner, vs.* **SPOUSES ROBERT VELOSO and GLORIA VELOSO,** *respondents.*

SYLLABUS

REMEDIAL LAW; APPEALS; ISSUES NOT AVERRED IN THE COMPLAINT NOR BROUGHT UP DURING TRIAL CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; EXCEPTION; NOT PRESENT IN CASE AT BAR. — Section 15, Rule 44 of the Rules of Court limits the questions that may be raised on appeal. x x x In *Union Bank of the Philippines v. Court of Appeals*, the Court clarified

this provision of the Rules of Court stating that, "It is settled jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process." This principle forbids the parties from changing their theory of the case. x x x Nevertheless, such rule admits of an exception as enunciated in *Canlas v. Tubil*, to wit: x x x when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory. x x x To stress, the issue of whether or not the spouses Veloso were builders in good faith is a factual question that was never alleged, let alone proven. x x x Thus, in order to refute the spouses Veloso's contention that they are builders in good faith, it is necessary that Bote present evidence that they acted in bad faith. Understandably, Bote did not present such evidence before the trial court because good faith was not an issue then. It was only on appeal that the spouses Veloso belatedly raised the issue that they were builders in good faith. Justice and fair play dictate that the spouses Veloso's change of their theory of the case on appeal be disallowed and the instant petition granted.

APPEARANCES OF COUNSEL

Quijano & Padilla for petitioner.
Mondragon & Montoya Law Offices for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to annul the May 17, 2010 Decision[1] and

[1] *Rollo*, pp. 20-36. Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Normandie B. Pizarro and Ruben C. Ayson.

October 22, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 69606 entitled *Spouses Robert Veloso and Gloria Veloso v. Loreto Bote and Carlos De Leon*. The assailed CA Decision modified the Decision dated December 8, 2000[3] of the Regional Trial Court, Branch 273 in Marikina City (Marikina RTC) in Civil Case No. 96-282-MK entitled *Spouses Robert Veloso and Gloria Veloso v. Loreto Bote and Carlos De Leon* which dismissed the case for lack of cause of action.

The Facts

On September 21, 1951, Pedro T. Baello (Baello) and his sister, Nicanora Baello-Rodrgiuez (Rodriguez), filed an application for registration of their property in Caloocan City with the then Court of First Instance of Rizal consisting of 147,972 square meters. On November 2, 1953, the land was successfully registered under their names under Original Certificate of Title No. (OCT) (804) 53839.[4] On July 27, 1971, the lot was subdivided into Lot A covering 98,648 square meters in favor of Baello and Lot B covering 49,324 square meters in favor of Rodriguez.[5] On December 3, 1971, Baello died intestate leaving thirty two (32) surviving heirs while Rodriguez died intestate on August 22, 1975 without issue.[6]

The subject property was included in the *Dagat-Dagatan* Project launched in 1976 by the then First Lady Imelda R. Marcos. Sometime thereafter, armed military personnel forcibly evicted the caretaker of the heirs of Baello and Rodriguez from the property, destroying the residential structure and the fishponds thereon. Thereafter, the National Housing Authority (NHA), as the government agency tasked to undertake the *Dagat-Dagatan* Project, took possession of the property preparatory to its subdivision and awarded the lots to chosen beneficiaries.

---

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

[3] CA *rollo*, pp. 37-40. Penned by Judge Olga Palanca Enriquez.

[4] *Rollo*, p. 21.

[5] Records, p. 211.

[6] *National Housing Authority v. Baello*, G.R. No. 143230, August 20, 2004, 437 SCRA 86, 91.

After the fall of the Marcos regime, the heirs of Baello executed, on February 23, 1987, an extrajudicial partition of their share of the property.

Then, on August 18, 1987, the NHA filed a complaint with the RTC of Caloocan City, Branch 120 (Caloocan RTC), for the expropriation of the subject land. The case was docketed as Civil Case No. C-169.

In the meantime, Lot A of OCT (804) 53839 was subdivided and on August 7, 1989, TCTs 191069, 191070, 191071, 191072, 191073 and 191074 were issued in the name of Baello. While TCTs 191062, 191063, 191064, 191065,191066, 191067 and 191068 were issued in the name of Rodriguez covering Lot B of OCT (804) 53839.[7]

Thereafter, the Baello and Rodriguez heirs filed separate motions to dismiss Civil Case No. C-169 which the Caloocan RTC granted on the grounds of *res judicata* and lack of cause of action.[8] The NHA appealed the ruling of the RTC to the CA which rendered a Decision dated August 21, 1992[9] affirming the ruling of the trial court. The case was elevated to this Court which denied due course to the petition in a Resolution dated May 3, 1993.[10] The Resolution attained finality in an Entry of Judgment dated July 7, 1993.[11]

Unperturbed, on November 5, 1993, the NHA filed another complaint against the Baello and Rodriguez heirs with another RTC of Caloocan, this time for the declaration of nullity of OCT (804) 53839. The case was eventually dismissed on the grounds of estoppel and *res judicata*. The NHA appealed the case to the CA which affirmed the ruling of the trial court. On August 24, 2004, this Court denied NHA's appeal of the CA decision.[12]

---

[7] Records, pp. 212-213.

[8] *Rollo*, p. 22.

[9] Records, pp. 207-221.

[10] *Id.* at 206.

[11] *Id.* at 205.

[12] *Rollo*, pp. 22-23.

In the meantime, on August 12, 1985, one Gloria Veloso (Gloria) was awarded a residential lot at the *Dagat-Dagatan* Project for the price of PhP 37,600 as evidenced by an Individual Notice of Award dated August 12, 1985.[13] The award was subject to the conditions that Gloria commence construction of a residential house on the property within six (6) months from the date of allocation and complete the same within one (1) year from the commencement of construction, and that she occupy the house also within one (1) year from allocation.[14]

Thus, Gloria constructed a two (2)-storey house on the property awarded to her and resided therein until 1991. In 1995, Gloria leased the house to Loreto Bote (Bote) from October to December.[15] On February 5, 1996, Bote executed a Promissory Note[16] undertaking to pay Gloria Veloso and her husband Robert Veloso (spouses Veloso) the amount of eight hundred fifty thousand pesos (PhP 850,000) on or before March 31, 1996 as purchase price for property. The Promissory Note effectively assigned to the spouses Veloso, Bote's credit with a certain Carlos De Leon who indicated his conforme in the note. Bote failed to pay the purchase price indicated in the Promissory Note. Thus, the spouses Veloso, through counsel, issued a Demand Letter dated April 15, 1996[17] demanding the payment of the purchase price of PhP 850,000. Despite such demand letter, Bote still failed to pay the purchase price.

Thus, the spouses Veloso filed a Complaint dated June 3, 1996[18] against Bote for Sum of Money and/or Recovery of Possession of Real Property with Damages. Notably, the case was filed at the Marikina RTC, thereat docketed as Civil Case No. 96-282-MK and raffled to Branch 273.

---

[13] Records, p. 164.

[14] *Rollo*, pp. 23-24.

[15] *Id.* at 24.

[16] Records, p. 4.

[17] *Id.* at 5.

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

In his Answer dated November 21, 1996,[19] Bote alleged, as Special/Affirmative Defenses, that the Marikina RTC had no territorial jurisdiction to try a case for recovery of possession of real property located in Caloocan City and that the subject property is not owned by the spouses Veloso but by Cynthia T. Baello (Cynthia) as shown in TCT No. 290183 covering the subject property, an alleged heir of Pedro Baello. He further alleged that he purchased the property from Cynthia as evidenced by a Contract to Sell dated May 9, 1996.[20]

It is noteworthy that, at the Pre-Trial Conference, and as reflected in the Pre-Trial Order dated December 9, 1997,[21] the parties agreed that the complaint would only be one for sum of money and no longer for recovery of possession of the subject property. The Pre-Trial Order reads:

STIPULATION OF FACTS

1) That the present action shall be treated as one for Sum of Money and not for Recovery of Possession of Lot;

2) That defendant Loreto Bote is the one presently occupying the house and lot; and

3) That plaintiffs are not the registered owners of the subject lot. (Emphasis supplied.)[22]

Notably, during the hearing of the case, Cynthia testified before the trial court claiming to be one of the heirs of Pedro Baello.[23] Such contention was never rebutted by the spouses Veloso.

After hearing, the RTC issued its Decision dated December 8, 2000,[24] the dispositive portion of which reads:

---

[19] *Id.* at 25-27.

[20] *Id.* at 28-29.

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

[22] *Id.* at 78.

[23] Transcript of Stenographic Notes, February 15, 2000, p. 7.

[24] Records, pp. 235-239.

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint.

With Costs againt (sic) the plaintiffs.

SO ORDERED.

In the Decision, the trial court ruled that the spouses Veloso failed to adduce evidence to show a rightful claim over the subject property. Further, the RTC noted that the spouses Veloso's reliance on the award made by the NHA is misplaced, the expropriation case filed by the NHA having been dismissed by the CA in a Decision dated August 21, 1992 in CA-G.R. CV No. 29042. This Court denied the petition for review on *certiorari* filed by the NHA from the CA Decision in a Resolution dated May 3, 1993. This Resolution, in turn, attained finality as evidenced by an Entry of Judgment dated July 7, 1993. The trial court, thus, concluded that because the NHA failed to expropriate the property, the spouses Veloso could not derive any right from the award.

Thereafter, the spouses Veloso appealed the RTC Decision to the CA. In their Appellant's Brief dated May 23, 2001,[25] they interposed for the first time their status as builders in good faith and are, thus, entitled to possession of the house that Gloria built.

Later, the CA issued its assailed Decision dated May 17, 2010, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is PARTLY GRANTED. The assailed decision of the court *a quo* is hereby AFFIRMED WITH MODIFICATION that a proper determination of the value of the controverted residential house constructed by the plaintiff-appellant Gloria in the lot, now owned by the defendant-appellee shall be made.

In line with the doctrinal pronouncement in the cited *Pecson v. Court of Appeals*, the present case is hereby REMANDED to the court *a quo* for it to determine the current market value of the residential house in the aforesaid lot. For this purpose, the parties

[25] CA *rollo*, pp. 19-36.

shall be allowed to adduce evidence on the current market value of the said residential house. The value so determined shall be forthwith paid by the defendant-appellee to the plaintiffs-appellants, otherwise, the latter shall be restored to the possession of the said residential house until payment of the required indemnity.

No pronouncement as to costs.

SO ORDERED.

The CA denied Bote's Motion for Reconsideration in its October 22, 2010 Resolution.

Hence, We have this petition.

The Issues

Petitioner raises the following issues in the petition:

I

Whether or not *Pecson v. CA et al.* is applicable since that case is a real action for recovery of possession of lot and apartments — while [sic] instant case is a personal action for Sum of Money.

II

Whether or not the prayer for PhP850,000.00 as full payment for house and lot — should be the controlling amount.

III

Whether or not the amount of PhP329,000.00 — paid for the lot — should be deducted from the PhP850,000.00 promissory note.

IV

Whether or not the value of improvements on the house introduced by petitioner-appellant should benefit respondent.[26]

Our Ruling

This petition is meritorious.

Anent the first issue, Bote's argument is that:

---

[26] *Rollo*, p. 11.

Although the original Complaint in Civil Case No. 96-282-MK is entitled: "For: Sum of Money and/or Recovery of Possession of Real Property With Damages" — the allegations and the prayer both do not sustain the Recovery part of the title. **It should, therefore, be ignored**. The allegations and the prayer of the Complaint only support the Sum of Money case. Additionally, during the pre-trial of the case before the RTC — **the parties stipulated to treat the case purely as a sum of money**.[27] (Emphasis supplied.)

In essence, Bote claims that the spouses Veloso did not raise the issue of their being builders in good faith before the trial court; thus, they are precluded from raising the issue for the first time on appeal. Pushing the point, Bote argues that the spouses Veloso, in fact, stipulated in the Pre-Trial that the issue of possession was being withdrawn from the complaint. Thus, Bote concludes, the CA erred in considering and passing on the new issue.

We agree.

Section 15, Rule 44 of the Rules of Court limits the questions that may be raised on appeal:

Section 15. *Questions that may be raised on appeal*. — Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors **any question of law or fact that has been raised in the court below and which is within the issues framed by the parties**. (Emphasis supplied.)

In *Union Bank of the Philippines v. Court of Appeals*,[28] the Court clarified this provision of the Rules of Court stating that, "It is settled jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process."

This principle forbids the parties from changing their theory of the case.

---

[27] *Id.* at 12.

[28] G.R. No. 134068, June 25, 2001, 359 SCRA 480, 488.

The "theory of the case" is defined in Black's Law Dictionary as:

> A comprehensive and orderly mental arrangement of principle and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision maker's mind a definite result or conclusion favored by the advocate.[29]

The same term is defined in Agpalo's Legal Words and Phrases as:

> It is the legal basis of the cause of action or defense, which a party is not permitted to change on appeal. (San Agustin *v.* Barrios, 68 Phil. 475 [1939])
>
> A party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal. (*Arroyo v. House of Representatives Electoral Tribunal*, 246 SCRA 384 [1995])[30]

In *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)*,[31] the Court reiterated the thrust of the theory-of-the-case principle in this wise:

> It is already well-settled in this jurisdiction that a party may not change his theory of the case on appeal. Such a rule has been expressly adopted in **Rule 44, Section 15 of the 1997 Rules of Civil Procedure**, which provides —
>
> SEC. 15. Questions that may be raised on appeal. — Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any

---

[29] *BLACK'S LAW DICTIONARY* 1616 (9th ed.).

[30] R.E. AGPALO, *AGPALO'S WORDS AND PHRASES* 743 (1997).

[31] G.R. No. 159593, October 12, 2006, 504 SCRA 484, 494-495.

question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

Thus, in *Carantes v. Court of Appeals*, this Court emphasized that —

> **The settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.**

In the more recent case of *Mon v. Court of Appeals*, this Court again pronounced that, in this jurisdiction, the settled rule is that a party cannot change his theory of the case or his cause of action on appeal. **It affirms that "courts of justice have no jurisdiction or power to decide a question not in issue." Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests on the fundamental tenets of fair play.** (Emphasis supplied.)

Nevertheless, such rule admits of an exception as enunciated in *Canlas v. Tubil*,[32] to wit:

> As a rule, a change of theory cannot be allowed. However, when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory, as in this case, the Court may give due course to the petition and resolve the principal issues raised therein.

The instant case does not fall under this exception.

To stress, the issue of whether or not the spouses Veloso were builders in good faith is a factual question that was never alleged, let alone proven. And as aptly stated by the spouses Veloso themselves in their Appellant's Brief dated May 23, 2001,[33]

---

[32] G.R. No. 184285, September 25, 2009, 601 SCRA 147, 156.

[33] CA *rollo*, pp. 19-36.

"under Article 527 of the Civil Code, good faith is even always presumed and upon him who alleges bad faith on the part of a possessor rests the burden of proof."[34] Thus, in order to refute the spouses Veloso's contention that they are builders in good faith, it is necessary that Bote present evidence that they acted in bad faith.

Understandably, Bote did not present such evidence before the trial court because good faith was not an issue then. It was only on appeal that the spouses Veloso belatedly raised the issue that they were builders in good faith. Justice and fair play dictate that the spouses Veloso's change of their theory of the case on appeal be disallowed and the instant petition granted.

As such, the other issues raised in the petition need no longer be discussed.

WHEREFORE, the petition is **GRANTED.** The May 17, 2010 Decision and October 22, 2010 Resolution of the CA in CA-G.R. CV No. 69606 are hereby **REVERSED** and **SET ASIDE,** and the Decision dated December 8, 2000 of the RTC, Branch 273 in Marikina City in Civil Case No. 96-282-MK is hereby **REINSTATED.**

No costs.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

---

[34] *Id.* at 30.

SECOND DIVISION

[G.R. No. 195670. December 3, 2012]

WILLEM BEUMER, *petitioner, vs.* **AVELINA AMORES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; LANDS OF THE PUBLIC DOMAIN; PROHIBITION AGAINST FOREIGN OWNERSHIP; CLAIM FOR REIMBURSEMENT ON THE GROUND OF EQUITY, NOT PROPER; SUSTAINED IN CASE AT BAR. — [P]etitioner's actuations showed his palpable intent to skirt the constitutional prohibition. On the basis of such admission, the Court finds no reason why it should not apply the *Muller* ruling and accordingly, deny petitioner's claim for reimbursement. x x x It held that Helmut Muller cannot seek reimbursement on the ground of equity where it is clear that he willingly and knowingly bought the property despite the prohibition against foreign ownership of Philippine land enshrined under Section 7, Article XII of the 1987 Philippine Constitution. x x x As also explained in *Muller*, the time-honored principle is that he who seeks equity must do equity, and he who comes into equity must come with clean hands. Conversely stated, he who has done inequity shall not be accorded equity. Thus, a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful. x x x The Court cannot, even on the grounds of equity, grant reimbursement to petitioner given that he acquired no right whatsoever over the subject properties by virtue of its unconstitutional purchase. It is well-established that equity as a rule will follow the law and will not permit that to be done indirectly which, because of public policy, cannot be done directly. Surely, a contract that violates the Constitution and the law is null and void, vests no rights, creates no obligations and produces no legal effect at all. Corollary thereto, under Article 1412 of the Civil Code, petitioner cannot have the subject properties deeded to him or allow him to recover the money he had spent for the purchase thereof. The law will not aid

either party to an illegal contract or agreement; it leaves the parties where it finds them. Indeed, one cannot salvage any rights from an unconstitutional transaction knowingly entered into.

2. ID.; ID.; ID.; CLAIM FOR REIMBURSEMENT ON THE BASIS OF UNJUST ENRICHMENT CANNOT PROSPER; RATIONALE. — Neither can the Court grant petitioner's claim for reimbursement on the basis of unjust enrichment. As held in *Frenzel v. Catito*, a case also involving a foreigner seeking monetary reimbursement for money spent on purchase of Philippine land, the provision on unjust enrichment does not apply if the action is proscribed by the Constitution. x x x It may be unfair and unjust to bar the petitioner from filing an *accion in rem verso* over the subject properties, or from recovering the money he paid for the said properties, but, as Lord Mansfield stated in the early case of *Holman v. Johnson*: "The objection that a contract is immoral or illegal as between the plaintiff and the defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff."

3. ID.; ID.; ID.; CONSTITUTIONAL BAN APPLIES ONLY TO OWNERSHIP OF PHILIPPINE LAND AND NOT TO IMPROVEMENTS BUILT THEREON. — Nor would the denial of his claim amount to an injustice based on his foreign citizenship. Precisely, it is the Constitution itself which demarcates the rights of citizens and non-citizens in owning Philippine land. To be sure, the constitutional ban against foreigners applies only to ownership of Philippine land and not to the improvements built thereon, such as the two (2) houses standing on Lots 1 and 2142 which were properly declared to be co-owned by the parties subject to partition. Needless to state, the purpose of the prohibition is to conserve the national patrimony and it is this policy which the Court is duty-bound to protect.

APPEARANCES OF COUNSEL

Hermosa Law Office for petitioner.
Dupio Dupio & Señires for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the October 8, 2009 Decision[2] and January 24, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 01940, which affirmed the February 28, 2007 Decision[4] of the Regional Trial Court (RTC) of Negros Oriental, Branch 34 in Civil Case No. 12884. The foregoing rulings dissolved the conjugal partnership of gains of Willem Beumer (petitioner) and Avelina Amores (respondent) and distributed the properties forming part of the said property regime.

The Factual Antecedents

Petitioner, a Dutch National, and respondent, a Filipina, married in March 29, 1980. After several years, the RTC of Negros Oriental, Branch 32, declared the nullity of their marriage in the Decision[5] dated November 10, 2000 on the basis of the former's psychological incapacity as contemplated in Article 36 of the Family Code.

Consequently, petitioner filed a Petition for Dissolution of Conjugal Partnership[6] dated December 14, 2000 praying for the distribution of the following described properties claimed

---

[1] *Rollo,* pp. 11-25.

[2] Penned by Acting Executive Justice Franchito N. Diamante, with Associate Justices Edgardo L. Delos Santos and Samuel H. Gaerlan, concurring. *Id.* at 26-38.

[3] Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Agnes Reyes-Carpio and Eduardo B. Peralta, Jr., concurring. *Id.* at 45-46.

[4] Penned by Judge Rosendo B. Bandal, Jr. *Id.* at 80-86.

[5] See Annex "E" of the Petition. Penned by Judge Eleuterio E. Chiu (Civil Case No. 11754). *Id.* at 53-62.

[6] Annex "E" of the Petition. *Id.* at 47-52.

to have been acquired during the subsistence of their marriage, to wit:

By Purchase:

a. Lot 1, Block 3 of the consolidated survey of Lots 2144 & 2147 of the Dumaguete Cadastre, covered by Transfer Certificate of Title (TCT) No. 22846, containing an area of 252 square meters (sq.m.), including a residential house constructed thereon.

b. Lot 2142 of the Dumaguete Cadastre, covered by TCT No. 21974, containing an area of 806 sq.m., including a residential house constructed thereon.

c. Lot 5845 of the Dumaguete Cadastre, covered by TCT No. 21306, containing an area of 756 sq.m.

d. Lot 4, Block 4 of the consolidated survey of Lots 2144 & 2147 of the Dumaguete Cadastre, covered by TCT No. 21307, containing an area of 45 sq.m.

By way of inheritance:

e. 1/7 of Lot 2055-A of the Dumaguete Cadastre, covered by TCT No. 23567, containing an area of 2,635 sq.m. (the area that appertains to the conjugal partnership is 376.45 sq.m.).

f. 1/15 of Lot 2055-I of the Dumaguete Cadastre, covered by TCT No. 23575, containing an area of 360 sq.m. (the area that appertains to the conjugal partnership is 24 sq.m.).[7]

In defense,[8] respondent averred that, with the exception of their two (2) residential houses on Lots 1 and 2142, she and petitioner did not acquire any conjugal properties during their marriage, the truth being that she used her own personal money to purchase Lots 1, 2142, 5845 and 4 out of her personal funds and Lots 2055-A and 2055-I by way of inheritance.[9] She submitted

---

[7] *Id.* at 48-49a.

[8] See attached as Annex "E" of the Petitioner. Respondent's Answer. *Id.* at 76-79.

[9] *Id.* at 76.

a joint affidavit executed by her and petitioner attesting to the fact that she purchased Lot 2142 and the improvements thereon using her own money.[10] Accordingly, respondent sought the dismissal of the petition for dissolution as well as payment for attorney's fees and litigation expenses.[11]

During trial, petitioner testified that while Lots 1, 2142, 5845 and 4 were registered in the name of respondent, these properties were acquired with the money he received from the Dutch government as his disability benefit[12] since respondent did not have sufficient income to pay for their acquisition. He also claimed that the joint affidavit they submitted before the Register of Deeds of Dumaguete City was contrary to Article 89 of the Family Code, hence, invalid. [13]

For her part, respondent maintained that the money used for the purchase of the lots came exclusively from her personal funds, in particular, her earnings from selling jewelry as well as products from Avon, Triumph and Tupperware.[14] She further asserted that after she filed for annulment of their marriage in 1996, petitioner transferred to their second house and brought along with him certain personal properties, consisting of drills, a welding machine, grinders, clamps, *etc*. She alleged that these tools and equipment have a total cost of ₱500,000.00.[15]

The RTC Ruling

On February 28, 2007, the RTC of Negros Oriental, Branch 34 rendered its Decision, dissolving the parties' conjugal partnership, awarding all the parcels of land to respondent as her paraphernal properties; the tools and equipment in favor of petitioner as his exclusive properties; the two (2) houses standing

---

[10] *Id.* at 79.

[11] *Id.* at 77.

[12] *Id.* at 81.

[13] *Id.* at 82.

[14] *Id*.

[15] *Id*.

on Lots 1 and 2142 as co-owned by the parties, the dispositive of which reads:

> WHEREFORE, judgment is hereby rendered granting the dissolution of the conjugal partnership of gains between petitioner Willem Beumer and [respondent] Avelina Amores considering the fact that their marriage was previously annulled by Branch 32 of this Court. The parcels of land covered by Transfer Certificate of Titles Nos. 22846, 21974, 21306, 21307, 23567 and 23575 are hereby declared paraphernal properties of respondent Avelina Amores due to the fact that while these real properties were acquired by onerous title during their marital union, Willem Beumer, being a foreigner, is not allowed by law to acquire any private land in the Philippines, except through inheritance.
>
> The personal properties, *i.e.,* tools and equipment mentioned in the complaint which were brought out by Willem from the conjugal dwelling are hereby declared to be exclusively owned by the petitioner.
>
> The two houses standing on the lots covered by Transfer Certificate of Title Nos. 21974 and 22846 are hereby declared to be co-owned by the petitioner and the respondent since these were acquired during their marital union and since there is no prohibition on foreigners from owning buildings and residential units. Petitioner and respondent are, thereby, directed to subject this court for approval their project of partition on the two house[s] aforementioned.
>
> The Court finds no sufficient justification to award the counterclaim of respondent for attorney's fees considering the well settled doctrine that there should be no premium on the right to litigate. The prayer for moral damages are likewise denied for lack of merit.
>
> No pronouncement as to costs.
>
> SO ORDERED.[16]

It ruled that, regardless of the source of funds for the acquisition of Lots 1, 2142, 5845 and 4, petitioner could not have acquired any right whatsoever over these properties as petitioner still attempted to acquire them notwithstanding his knowledge of the constitutional prohibition against foreign ownership of private

---

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

lands.[17] This was made evident by the sworn statements petitioner executed purporting to show that the subject parcels of land were purchased from the exclusive funds of his wife, the herein respondent.[18] Petitioner's plea for reimbursement for the amount he had paid to purchase the foregoing properties on the basis of equity was likewise denied for not having come to court with clean hands.

The CA Ruling

Petitioner elevated the matter to the CA, contesting only the RTC's award of Lots 1, 2142, 5845 and 4 in favor of respondent. He insisted that the money used to purchase the foregoing properties came from his own capital funds and that they were registered in the name of his former wife only because of the constitutional prohibition against foreign ownership. Thus, he prayed for reimbursement of one-half (½) of the value of what he had paid in the purchase of the said properties, waiving the other half in favor of his estranged ex-wife.[19]

On October 8, 2009, the CA promulgated a Decision[20] affirming *in toto* the judgment rendered by the RTC of Negros Oriental, Branch 34. The CA stressed the fact that petitioner was "well-aware of the constitutional prohibition for aliens to acquire lands in the Philippines."[21] Hence, he cannot invoke equity to support his claim for reimbursement.

Consequently, petitioner filed the instant Petition for Review on *Certiorari* assailing the CA Decision due to the following error:

UNDER THE FACTS ESTABLISHED, THE COURT ERRED IN NOT SUSTAINING THE PETITIONER'S ATTEMPT AT

---

[17] *Id.* at 84, citing *Cheesman v. Intermediate Appellate Court,* G.R. No. 74833, January 21, 1991, 193 SCRA 93, 103.

[18] *Id.*

[19] *Id.* at 91.

[20] *Id.* at 26-38.

[21] *Id.* at 33.

SUBSEQUENTLY ASSERTING OR CLAIMING A RIGHT OF HALF OR WHOLE OF THE PURCHASE PRICE USED IN THE PURCHASE OF THE REAL PROPERTIES SUBJECT OF THIS CASE.[22] (Emphasis supplied)

The Ruling of the Court

The petition lacks merit.

The issue to be resolved is not of first impression. In *In Re: Petition For Separation of Property-Elena Buenaventura Muller v. Helmut Muller*[23] the Court had already denied a claim for reimbursement of the value of purchased parcels of Philippine land instituted by a foreigner Helmut Muller, against his former Filipina spouse, Elena Buenaventura Muller. It held that Helmut Muller cannot seek reimbursement on the ground of equity where it is clear that he willingly and knowingly bought the property despite the prohibition against foreign ownership of Philippine land[24] enshrined under Section 7, Article XII of the 1987 Philippine Constitution which reads:

> Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

Undeniably, petitioner openly admitted that he "is well aware of the [above-cited] constitutional prohibition"[25] and even asseverated that, because of such prohibition, he and respondent registered the subject properties in the latter's name.[26] Clearly, petitioner's actuations showed his palpable intent to skirt the constitutional prohibition. On the basis of such admission, the Court finds no reason why it should not apply the *Muller* ruling and accordingly, deny petitioner's claim for reimbursement.

---

[22] *Id.* at 17.

[23] G.R. No. 149615, August 29, 2006, 500 SCRA 65.

[24] *Id.* at 72.

[25] *Rollo,* p. 17.

[26] *Id.* at 18.

As also explained in *Muller,* the time-honored principle is that he who seeks equity must do equity, and he who comes into equity must come with clean hands. Conversely stated, he who has done inequity shall not be accorded equity. Thus, a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful. [27]

In this case, petitioner's statements regarding the real source of the funds used to purchase the subject parcels of land dilute the veracity of his claims: While admitting to have previously executed a joint affidavit that respondent's personal funds were used to purchase Lot 1,[28] he likewise claimed that his personal disability funds were used to acquire the same. Evidently, these inconsistencies show his untruthfulness. Thus, as petitioner has come before the Court with unclean hands, he is now precluded from seeking any equitable refuge.

In any event, the Court cannot, even on the grounds of equity, grant reimbursement to petitioner given that he acquired no right whatsoever over the subject properties by virtue of its unconstitutional purchase. It is well-established that equity as a rule will follow the law and will not permit that to be done indirectly which, because of public policy, cannot be done directly.[29] Surely, a contract that violates the Constitution and the law is null and void, vests no rights, creates no obligations and produces no legal effect at all.[30] Corollary thereto, under Article 1412 of the Civil Code,[31] petitioner cannot have the

---

[27] *Supra* note 23 at 73, citing *University of the Philippines v. Catungal, Jr.*, 338 Phil. 728, 734-744 (1997).

[28] *Id.* at 82.

[29] *Frenzel v. Catito*, G.R. No. 143958, July 11, 2003, 406 SCRA 55, 70.

[30] *Id.* at 69-70, citing *Chavez vs. Presidential Commission on Good Government*, 307 SCRA 394 (1998).

[31] Re: Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

subject properties deeded to him or allow him to recover the money he had spent for the purchase thereof. The law will not aid either party to an illegal contract or agreement; it leaves the parties where it finds them.[32] Indeed, one cannot salvage any rights from an unconstitutional transaction knowingly entered into.

Neither can the Court grant petitioner's claim for reimbursement on the basis of unjust enrichment.[33] As held in *Frenzel v. Catito*, a case also involving a foreigner seeking monetary reimbursement for money spent on purchase of Philippine land, the provision on unjust enrichment does not apply if the action is proscribed by the Constitution, to wit:

> Futile, too, is petitioner's reliance on Article 22 of the New Civil Code which reads:
>
> > Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.
>
> The provision is expressed in the maxim: "*MEMO CUM ALTERIUS DETER DETREMENTO PROTEST*" (No person should unjustly enrich himself at the expense of another). An action for recovery of what has been paid without just cause has been designated as an *accion in rem verso*. This provision does not apply if, as in this case, the action is proscribed by the Constitution or by the application of the *pari delicto* doctrine. It may be unfair and unjust to bar the petitioner from filing an *accion in rem verso* over the subject properties, or from recovering the money he paid for the said properties, but, as Lord Mansfield stated in the early case of *Holman v. Johnson*: "The objection that a contract is immoral or illegal as between the plaintiff and the defendant, sounds at all times very ill in the mouth of the

---

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking

x x x x x x x x x

[32] *Id.*, citing *Rellosa v. Hun*, 93 Phil. 827 (1953).

[33] *Rollo*, p. 20.

defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff."[34] (Citations omitted)

Nor would the denial of his claim amount to an injustice based on his foreign citizenship.[35] Precisely, it is the Constitution itself which demarcates the rights of citizens and non-citizens in owning Philippine land. To be sure, the constitutional ban against foreigners applies only to ownership of Philippine land and not to the improvements built thereon, such as the two (2) houses standing on Lots 1 and 2142 which were properly declared to be co-owned by the parties subject to partition. Needless to state, the purpose of the prohibition is to conserve the national patrimony[36] and it is this policy which the Court is duty-bound to protect.

WHEREFORE, the petition is **DENIED.** Accordingly, the assailed October 8, 2009 Decision and January 24, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 01940 are **AFFIRMED.**

SO ORDERED.

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

---

[34] *Supra* note 29 at 74, citing I. Tolentino, *Civil Code of the Philippines* (1990), p. 85 and *Marissey v. Bologna,* 123 So. 2d 537 (1960).

[35] *Rollo,* pp. 19-21.

[36] See *Krivenko v. Register of Deeds,* 79 Phil. 461 (1947).

SECOND DIVISION

[G.R. No. 199481. December 3, 2012]

ILDEFONSO S. CRISOLOGO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and CHINA BANKING CORPORATION,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; TRUST RECEIPTS LAW; VIOLATION MADE BY A CORPORATION, PENALTY MAY BE IMPOSED UPON THE DIRECTORS. — Section 13 of the Trust Receipts Law explicitly provides that if the violation or offense is committed by a corporation, as in this case, the penalty provided for under the law shall be imposed upon the directors, officers, employees or other officials or person responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense. In this case, petitioner was acquitted of the charge for violation of the Trust Receipts Law in relation to Article 315 1(b) of the RPC. As such, he is relieved of the corporate criminal liability as well as the corresponding civil liability arising therefrom. However, as correctly found by the RTC and the CA, he may still be held liable for the trust receipts and L/C transactions he had entered into in behalf of Novachem.

2. ID.; CORPORATION CODE; CORPORATION; DEBTS INCURRED BY CORPORATE AGENTS ARE NOT THEIR DIRECT LIABILITY BUT OF THE CORPORATION; EXCEPTION; NOT APPLICABLE IN CASE AT BAR. — Settled is the rule that debts incurred by directors, officers, and employees acting as corporate agents are not their direct liability but of the corporation they represent, except if they contractually agree/stipulate or assume to be personally liable for the corporation's debts, as in this case. x x x However, a review of the records shows that petitioner signed only the guarantee clauses of the Trust Receipt dated May 24, 1989 and the corresponding Application and Agreement for Commercial Letter of Credit No. L/C No. 89/0301. With respect to the Trust Receipt dated August 31, 1989 and Irrevocable Letter of Credit No. L/C No. DOM-33041 issued to SMC for the glass containers, the second pages of these documents that

would have reflected the guarantee clauses were missing and did not form part of the prosecution's formal offer of evidence. In relation thereto, Chinabank stipulated before the CA that the second page of the August 31, 1989 Trust Receipt attached to the complaint before the court *a quo* would serve as the missing page. A perusal of the said page, however, reveals that the same does not bear the signature of the petitioner in the guarantee clause. Hence, it was error for the CA to hold petitioner likewise liable for the obligation secured by the said trust receipt (L/C No. DOM-33041). Neither was sufficient evidence presented to prove that petitioner acted in bad faith or with gross negligence as regards the transaction that would have held him civilly liable for his actions in his capacity as President of Novachem.

3. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; AFFIRMATIVE DEFENSES; IN CIVIL CASES, THE PARTY WHO ASSERTS THE AFFIRMATIVE OF AN ISSUE HAS THE ONUS TO PROVE HIS ASSERTION IN ORDER TO OBTAIN FAVORABLE JUDGMENT; NOT SATISFIED IN CASE AT BAR. — On the matter of interest, while petitioner assailed the unilateral imposition of interest at rates above the stipulated 18% p.a., he failed to submit a summary of the pertinent dates when excessive interests were imposed and the purported over-payments that should be refunded. Having failed to prove his affirmative defense, the Court finds no reason to disturb the amount awarded to Chinabank. Settled is the rule that in civil cases, the party who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. Thus, the burden rests on the debtor to prove payment rather than on the creditor to prove non-payment.

APPEARANCES OF COUNSEL

Elmar G. Pedregosa for petitioner.

The Solicitor General for public respondent.

Lim Vigilia Alcala Dumlao Alameda & Casiding for private respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the November 23, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 80350, which affirmed the December 4, 2002 Decision[3] of the Regional Trial Court (RTC), Manila, Branch 21. The RTC Decision acquitted petitioner Ildefonso S. Crisologo (petitioner) of the charges for violation of Presidential Decree (P.D.) No. 115 (Trust Receipts Law) in relation to Article 315 1(b) of the Revised Penal Code (RPC), but adjudged him civilly liable under the subject letters of credit.

The Factual Antecedents

Sometime in January and February 1989, petitioner, as President of Novachemical Industries, Inc. (Novachem), applied for commercial letters of credit from private respondent China Banking Corporation (Chinabank) to finance the purchase of 1,600[4] kgs. of amoxicillin trihydrate micronized from Hyundai Chemical Company based in Seoul, South Korea and glass containers from San Miguel Corporation (SMC). Subsequently, Chinabank issued Letters of Credit Nos. 89/0301[5] and DOM-33041[6] in the respective amounts of US$114,400.00[7] (originally US$135,850.00)[8] with a peso equivalent of ₱2,139,119.80[9] and

---

[1] *Rollo,* pp. 9-35.

[2] Penned by Associate Justice Noel G. Tijam, with Associate Justices Romeo F. Barza and Edwin D. Sorongon, concurring. *Id.* at 38-50.

[3] *Id.* at 56-70.

[4] Trust Receipt dated May 24, 1989. RTC records, p. 268.

[5] *Id.* at 260.

[6] *Id.* at 261.

[7] Bill of Exchange. *Id.* at 267.

[8] *Id.* at 268.

[9] Disclosure Statement on Loan/Credit Transaction. *Id.* at 275.

₱1,712,289.90. After petitioner received the goods, he executed for and in behalf of Novachem the corresponding trust receipt agreements dated May 24, 1989 and August 31, 1989 in favor of Chinabank.

On January 28, 2004, Chinabank, through its Staff Assistant, Ms. Maria Rosario De Mesa (Ms. De Mesa), filed before the City Prosecutor's Office of Manila a Complaint-Affidavit[10] charging petitioner for violation of P.D. No. 115 in relation to Article 315 1(b) of the RPC for his purported failure to turn-over the goods or the proceeds from the sale thereof, despite repeated demands. It averred that the latter, with intent to defraud, and with unfaithfulness and abuse of confidence, misapplied, misappropriated and converted the goods subject of the trust agreements, to its damage and prejudice.

In his defense, petitioner claimed that as a regular client of Chinabank, Novachem was granted a credit line and letters of credit (L/Cs) secured by trust receipt agreements. The subject L/Cs were included in the special term-payment arrangement mutually agreed upon by the parties, and payable in installments. In the payment of its obligations, Novachem would normally give instructions to Chinabank as to what particular L/C or trust receipt obligation its payments would be applied. However, the latter deviated from the special arrangement and misapplied payments intended for the subject L/Cs and exacted unconscionably high interests and penalty charges.

The City Prosecutor found probable cause to indict petitioner as charged and filed the corresponding informations before the RTC of Manila, docketed as Criminal Case Nos. 94-139613 and 94-139614.

The RTC Ruling

After due proceedings, the RTC rendered a Decision[11] dated December 4, 2002 acquitting petitioner of the criminal charges for failure of the prosecution to prove his guilt beyond reasonable

---

[10] *Id.* at 9-14.

[11] *Supra* note 3.

doubt. It, however, adjudged him civilly liable to Chinabank, without need for a separate civil action, for the amounts of ₱1,843,567.90 and ₱879,166.81 under L/C Nos. 89/0301 and DOM-33041, respectively, less the payment of ₱500,000.00 made during the preliminary investigation, with legal interest from the filing of the informations on October 27, 1994 until full payment, and for the costs.

The CA Ruling

On appeal of the civil aspect, the CA affirmed[12] the RTC Decision holding petitioner civilly liable. It noted that petitioner signed the "Guarantee Clause" of the trust receipt agreements in his personal capacity and even waived the benefit of excussion against Novachem. As such, he is personally and solidarily liable with Novachem.

The Petition

In the instant petition, petitioner contends that the CA erred in declaring him civilly liable under the subject L/Cs which are corporate obligations of Novachem, and that the adjudged amounts were without factual basis because the obligations had already been settled. He also questions the unilaterally-imposed interest rates applied by Chinabank and, accordingly, prays for the application of the stipulated interest rate of 18% per annum (p.a.) on the corporation's obligations. He further assails the authority of Ms. De Mesa to prosecute the case against him sans authority from Chinabank's Board of Directors.

The Court's Ruling

The petition is partly meritorious.

Section 13 of the Trust Receipts Law explicitly provides that if the violation or offense is committed by a corporation, as in this case, the penalty provided for under the law shall be imposed upon the directors, officers, employees or other officials or person responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

---

[12] *Supra* note 2.

In this case, petitioner was acquitted of the charge for violation of the Trust Receipts Law in relation to Article 315 1(b)[13] of the RPC. As such, he is relieved of the corporate criminal liability as well as the corresponding civil liability arising therefrom. However, as correctly found by the RTC and the CA, he may still be held liable for the trust receipts and L/C transactions he had entered into in behalf of Novachem.

Settled is the rule that debts incurred by directors, officers, and employees acting as corporate agents are not their direct liability but of the corporation they represent, except if they contractually agree/stipulate or assume to be personally liable for the corporation's debts,[14] as in this case.

---

[13] Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished x x x:

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[14] *Tupaz IV v. CA*, G.R. No. 145578, November 18, 2005, 475 SCRA 398, 407. See also *Canonigo v. Suico*, G.R. No. 170284, March 16, 2007, citing *MAM Realty Development Corporation v. NLRC*, 244 SCRA 797, 802-803 (1995), where the Court said:

"In *MAM Realty Development Corporation v. NLRC*, the Court stated:

A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The general rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. There are times, however, when solidary liabilities may be incurred but only when exceptional circumstances warrant such as in the following cases:

1. When directors and trustees or, in appropriate cases, the officers of a corporation:
   (a) vote for or assent to patently unlawful acts of the corporation;
   (b) act in bad faith or with gross negligence in directing the corporate affairs;

The RTC and the CA adjudged petitioner personally and solidarily liable with Novachem for the obligations secured by the subject trust receipts based on the finding that he signed the guarantee clauses therein in his personal capacity and even waived the benefit of excussion. However, a review of the records shows that petitioner signed only the guarantee clauses of the Trust Receipt dated May 24, 1989[15] and the corresponding Application and Agreement for Commercial Letter of Credit No. L/C No. 89/0301.[16] With respect to the Trust Receipt[17] dated August 31, 1989 and Irrevocable Letter of Credit[18] No. L/C No. DOM-33041 issued to SMC for the glass containers, the second pages of these documents that would have reflected the guarantee clauses were missing and did not form part of the prosecution's formal offer of evidence. In relation thereto, Chinabank stipulated[19] before the CA that the second page of the August 31, 1989 Trust Receipt attached to the complaint before the court *a quo* would serve as the missing page. A perusal of the said page, however, reveals that the same does not bear the signature of the petitioner in the guarantee clause. Hence, it was error for the CA to hold petitioner likewise liable for the obligation secured by the said trust receipt (L/C No. DOM-33041). Neither was sufficient evidence presented to prove that petitioner

---

(c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;

2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;
3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or
4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.

x x x x x x x x x

[15] RTC records, reverse side of page 268.

[16] *Id.* at reverse side of page 260.

[17] *Id.* at 271.

[18] *Id.* at 261.

[19] CA *rollo*, pp. 129-131.

acted in bad faith or with gross negligence as regards the transaction that would have held him civilly liable for his actions in his capacity as President of Novachem.

On the matter of interest, while petitioner assailed the unilateral imposition of interest at rates above the stipulated 18% p.a., he failed to submit a summary of the pertinent dates when excessive interests were imposed and the purported over-payments that should be refunded. Having failed to prove his affirmative defense, the Court finds no reason to disturb the amount awarded to Chinabank. Settled is the rule that in civil cases, the party who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. Thus, the burden rests on the debtor to prove payment rather than on the creditor to prove non-payment.[20]

Lastly, the Court affirms Ms. De Mesa's capacity to sue on behalf of Chinabank despite the lack of proof of authority to represent the latter. The Court noted that as Staff Assistant of Chinabank, Ms. De Mesa was tasked, among others, to review applications for L/Cs, verify the documents of title and possession of goods covered by L/Cs, as well as pertinent documents under trust receipts (TRs); prepare/send/cause the preparation of statements of accounts reflecting the outstanding balance under the said L/Cs and/or TRs, and accept the corresponding payments; refer unpaid obligations to Chinabank's lawyers and follow-up results thereon. As such, she was in a position to verify the truthfulness and correctness of the allegations in the Complaint-Affidavit. Besides, petitioner voluntarily submitted[21] to the jurisdiction of the court *a quo* and did not question Ms. De Mesa's authority to represent Chinabank in the instant case until an adverse decision was rendered against him.

WHEREFORE, the assailed November 23, 2011 Decision of the Court of Appeals in CA-G.R. CV No. 80350 is **AFFIRMED**

---

[20] *Bank of the Philippine Islands v. Royeca*, G.R. No. 176664, July 21, 2008, 559 SCRA 207, 215-216.

[21] He entered a plea of not guilty on September 25, 1995. RTC records, p. 96.

with the **MODIFICATION** absolving petitioner Ildefonso S. Crisologo from any civil liability to private respondent China Banking Corporation with respect to the Trust Receipt dated August 31, 1989 and L/C No. DOM-33041. The rest of the Decision stands.

SO ORDERED.

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

EN BANC

[A.M. No. 09-5-2-SC. December 4, 2012]

IN THE MATTER OF THE BREWING CONTROVERSIES IN THE ELECTIONS OF THE INTEGRATED BAR OF THE PHILIPPINES.

[A.C. No. 8292. December 4, 2012]

ATTYS. MARCIAL M. MAGSINO, MANUEL M. MARAMBA and NASSER MAROHOMSALIC, *complainants, vs.* **ATTYS. ROGELIO A. VINLUAN, ABELARDO C. ESTRADA, BONIFACIO T. BARANDON, JR., EVERGISTO S. ESCALON and RAYMUND JORGE A. MERCADO,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; INTEGRATED BAR OF THE PHILIPPINES-BOARD OF GOVERNORS (IBP-BOG); ELECTIONS; ROTATION RULE; ROTATION BY PRE-ORDAINED SEQUENCE AND ROTATION BY EXCLUSION;

---

[*] Acting Chief Justice per Special Order No. 1384.

DISTINGUISHED. — The rotation by pre-ordained sequence is effected by the observance of the sequence of the service of the chapters in the first cycle, which is very predictable. The rotation by exclusion is effected by the exclusion of a chapter who had previously served until all chapters have taken their turns to serve. It is not predictable as each chapter will have the chance to vie for the right to serve, but will have no right to a re-election as it is debarred from serving again until the full cycle is completed.

2. ID.; ID.; ID.; ID.; ROTATION BY EXCLUSION RULE, SUSTAINED; RATIONALE. — After an assiduous review of the facts, the issues and the arguments raised by the parties involved, the Court finds wisdom in the position of the IBP-BOG, through retired Justice Santiago M. Kapunan, that at the start of a new rotational cycle "all chapters are deemed qualified to vie of the governorship for the 2011-2013 term without prejudice to the chapters entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each chapter will have its turn in the rotation." Stated differently, the IBP-BOG recommends the adoption of the rotation by exclusion scheme. x x x The Court takes notice of the predictability of the rotation by succession sheme. Through the rotation by exclusion schemes, the elections would be more genuine as the opportunity to serve as Governor at any time is once again open to all chapters, unless, of course, a chapter has already served in the new cycle. While predictability is not altogether avoided, as in the case where only one chapter remains in the cycle, still, as previously noted by the Court "the rotation rule should be applied in harmony with, and not in derogation of, the sovereign will of the electorate as expressed through the ballot. Thus, as applied in the IBP-Western Visayas Region, initially, all the chapters shall have the equal opportunity to vie for the position of Governor for the next cycle except Romblon, so as no chapter shall serve consecutively. Every winner shall then be excluded after its term. Romblon then joins the succeeding elections after the first winner in the cycle.

APPEARANCES OF COUNSEL

Francis L. Rafil for Atty. Nasser A. Marohomsalic.

V. V. Orocio & Associates Law Office for Atty. Erwin M. Fortunato.

Diaz Law Office for IBP Capiz Chapter.

Leandro Angelo Y. Aguirre and Juan Paolo F. Fajardo for Attys. Rogelio A. Vinluan, Abelardo C. Estrada, Bonifacio T. Barandon, Jr., Evergisto S. Escalon and Raymund Jorge A. Mercado.

Joyas Dauz Garcia Mendoza for IBP Southern Luzon Region.

R E S O L U T I O N

MENDOZA, *J.*:

Subjects of this disposition are the: [1] Resolution Urgently Requesting the Supreme Court to Issue Clarification on the Query of Western Visayas IBP Governor Erwin M. Fortunato Involving the Application of the Rotational Rule in the Forthcoming Elections in his Region[1] *(IBP Resolution)*, filed by the IBP Board of Governors *(IBP-BOG)*; and the [2] Urgent Motion for Clarification with Prayer for Leave of Court to Admit Motion and to Intervene and for the Issuance of a Temporary Restraining Order[2] *(Urgent Motion)* filed by Atty. Marven B. Daquilanea *(Atty. Daquilanea)*, immediate past president of the IBP-Iloilo Chapter.

The Court shall likewise act upon the Petition-in-Intervention[3] filed by the IBP-Southern Luzon Region, regarding its qualification to field a candidate for the position of Executive Vice-President for the 2011-2013 term.

Brief Statement of the Antecedents

On December 14, 2010, the Court resolved the various controversies persistently pestering the various IBP chapter elections in a resolution,[4] the dispositive portion of which reads:

---

[1] *Rollo*, pp. 3281-3285.

[2] *Id.* at 3259-3268.

[3] *Id.* at 3454-3460.

[4] *Id.* at 2998-3026.

WHEREFORE, premises considered, the Court resolves that:

1. The elections of Attys. Manuel M. Maramba, Erwin M. Fortunato and Nasser A. Marohomsalic as Governors for the Greater Manila Region, Western Visayas Region and Western Mindanao Region, respectively, for the term 2009-2011 are UPHELD;

2. A special election to elect the IBP Executive Vice President for the 2009-2011 term is hereby ORDERED to be held under the supervision of this Court within seven (7) days from receipt of this Resolution with Attys. Maramba, Fortunato and Marohomsalic being allowed to represent and vote as duly-elected Governors of their respective regions;

3. Attys. Rogelio Vinluan, Abelardo Estrada, Bonifacio Barandon, Jr., Evergisto Escalon, and Raymund Mercado are all found GUILTY of grave professional misconduct arising from their actuations in connection with the controversies in the elections in the IBP last April 25, 2009 and May 9, 2009 and are hereby disqualified to run as national officers of the IBP in any subsequent election. While their elections as Governors for the term 2007-2009 can no longer be annulled as this has already expired, Atty. Vinluan is declared unfit to hold the position of IBP Executive Vice President for the 2007-2009 term and, therefore, barred from succeeding as IBP President for the 2009-2011 term;

4. The proposed amendments to Sections 31, 33, par. (g), 39, 42, and 43, Article VI and Section 47, Article VII of the IBP By-Laws as contained in the Report and Recommendation of the Special Committee dated July 9, 2009 are hereby approved and adopted; and

5. The designation of retired SC Justice Santiago Kapunan as Officer-in-Charge of the IBP shall continue, unless earlier revoked by the Court, but not to extend beyond June 30, 2011.

SO ORDERED.

In the December 14, 2010 Resolution, the Court once again upheld its Resolution in Bar Matter No. 586, dated May 16, 1991, that the "rotation rule" under Sections 37[5]

---

[5] Section 37. Composition of the Board. — The Integrated Bar of the Philippines shall be governed by a Board of Governors consisting of nine (9) Governors from the nine (9) regions as delineated in Section 3 of the Integration Rule, on the representation basis of one (1) Governor for each

and 39[6] of the IBP By-Laws should be strictly implemented, "so that all prior elections for governor in the region shall be reckoned with or considered in determining who should be the governor to be selected from the different chapters to represent the region in the Board of Governors."[7]

A motion for reconsideration was filed but it was denied by the Court in its Resolution, dated February 8, 2011.[8]

On April 15, 2011, Gov. Erwin M. Fortunato *(Gov. Fortunato)* of IBP-Western Visayas Region wrote a letter[9] to the IBP-BOG seeking confirmation/clarification on whether "Capiz is the only Chapter in the IBP-Western Visayas Region eligible and qualified to run for Governor in the forthcoming election for Governor."[10]

As the IBP-BOG was unable to reach a unanimous resolution on the matter, it issued the subject IBP-Resolution, urgently requesting the Court to issue a clarification on the query of IBP-Western Visayas Region Gov. Fortunato involving the application of the rotational rule for the next regional election.

On April 29, 2011, Atty. Daquilanea, the immediate past president of the IBP-Iloilo Chapter, filed the subject Urgent

---

region to be elected by the members of the House of Delegates from that region only. The position of Governor should be rotated among the different Chapters in the region. (As amended pursuant to the Resolution of the Court dated December 14, 2010.)

[6] Sec. 39. Nomination and election of the Governors. — At least one (1) month before the national convention, the delegates from each region shall elect the Governor for their region, who shall be chosen by rotation which is mandatory and shall be strictly implemented among the Chapters in the region. When a Chapter waives its turn in the rotation order, its place shall redound to the next Chapter in the line. Nevertheless, the former may reclaim its right to the Governorship at any time before the rotation is completed; otherwise, it will have to wait for its turn in the next round, in the same place that it had in the round completed.

[7] *Id.* at 3014-3015.

[8] *Id.* at 3240-3242.

[9] *Id.* at 3287-3289.

[10] *Id.* at 3289.

Motion likewise seeking clarification on the application of the rotational rule for the election of Governor for IBP-Western Visayas Region for the 2011-2013 term, specifically, whether the IBP-Capiz Chapter would be the only chapter to be allowed to nominate candidates for said election.

On May 3, 2011, upon filing of the subject Urgent Motion and the IBP-Resolution, then Chief Justice Renato C. Corona issued a Temporary Restraining Order[11] *(TRO)* suspending the election for Governor of the IBP-Western Visayas Region and directing retired Justice Santiago M. Kapunan *(Justice Kapunan)*, Officer-in-Charge of the IBP and Gov. Fortunato of the IBP-Western Visayas Region to file their respective comments thereon.

On May 31, 2011, the TRO was confirmed *nunc pro tunc* by the Court *En Banc*.[12]

On May 17, 2011, the majority of the presidents of the various chapters composing the IBP-Western Visayas Region filed their Respectful Comment-in-Intervention,[13] praying for the lifting of the TRO without prejudice to the resolution on the Urgent Motion.

In its Comment,[14] dated June 2, 2011, the IBP-BOG, through Justice Kapunan, presented the view that with the completion of a rotational cycle with the election of Gov. Fortunato representing Romblon, "all chapters are deemed qualified to vie of the governorship for the 2011-2013 term without prejudice to the chapters entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each chapter will have its turn in the rotation."[15]

Like the IBP, Atty. Daquilanea espoused the view that upon the completion of a rotational cycle, elections should be open to all chapters of the region subject to the exclusionary rule.[16]

---

[11] *Id.* at 3243-3246.

[12] *Id.* at 3315-3317.

[13] *Id.* at 3309-3314.

[14] *Id.* at 3325-3329.

[15] *Id.* at 3328.

[16] *Id.* at 3318-3323.

On June 23, 2011, the IBP-Capiz Chapter filed its Comment-in-Intervention with Motion for Early Resolution,[17] praying for a declaration that it was its turn to serve as Governor for IBP-Western Visayas Region and moving for the early resolution of the controversy.

Issues for the Court's Consideration

A reading of both the IBP-BOG Resolution and the Urgent Motion discloses that the respective movants are praying that the Court determine whether at the start of a new rotational cycle, nominations for Governor of the IBP-Western Visayas Region are: a] once again open to all chapters subject to the rule on "rotation by exclusion"; or b] limited only to the chapter first in the previous rotation cycle, following the previous sequence or "rotation by pre-ordained sequence."

The issue, therefore, in the IBP-Western Visayas Region is whether, after the first cycle, the rotation rule will be the rotation by pre-ordained sequence or rotation by exclusion. The rotation by pre-ordained sequence is effected by the observance of the sequence of the service of the chapters in the first cycle, which is very predictable. The rotation by exclusion is effected by the exclusion of a chapter who had previously served until all chapters have taken their turns to serve. It is not predictable as each chapter will have the chance to vie for the right to serve, but will have no right to a re-election as it is debarred from serving again until the full cycle is completed.

As can be gleaned from the records and all pleadings, there is no dispute that the IBP-Western Visayas already completed a full cycle with the election of Gov. Fortunato of Romblon for the 2009-2011 term. The first governor was Eugene Tan of the IBP Capiz Chapter and, later, all chapters were able to serve as governors.

Thus, under the rotation by pre-ordained sequence, only members of the IBP-Capiz Chapter may vie for Governor of the IBP-Western Visayas Region. Under the rotation by exclusion,

[17] *Id.* at 3339-3348.

every chapter in IBP-Western Visayas Region may compete again.

Resolution of the Court

Re: IBP-Western Visayas Region

After an assiduous review of the facts, the issues and the arguments raised by the parties involved, the Court finds wisdom in the position of the IBP-BOG, through retired Justice Santiago M. Kapunan, that at the start of a new rotational cycle "all chapters are deemed qualified to vie of the governorship for the 2011-2013 term without prejudice to the chapters entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each chapter will have its turn in the rotation." Stated differently, the IBP-BOG recommends the adoption of the rotation by exclusion scheme. The Court quotes with approval the reasons given by the IBP-BOG on this score:

> 6. After due deliberation, the Board of Governors agreed and resolved to recommend adherence to the principle of "rotation by exclusion" based on the following reasons:
>
> a) Election through 'rotation by exclusion' is the more established rule in the IBP. The rule prescribes that once a member of the chapter is elected as Governor, his chapter would be excluded in the next turn until all have taken their turns in the rotation cycle. Once a full rotation cycle ends and a fresh cycle commences, all the chapters in the region are once again entitled to vie but subject again to the rule on rotation by exclusion.
>
> b) Election through a 'rotation by exclusion' allows for a more democratic election process. The rule provides for freedom of choice while upholding the equitable principle of rotation which assures the every member-chapter has its turn in every rotation cycle.
>
> c) On the other hand, rotation by pre-ordained sequence, or election based on the same order as the previous cycle, tends to defeat the purpose of an election. The element of choice — which is crucial to a democratic process — is virtually removed. Only one chapter could vie for election at every turn as the entire sequence, from first

to last, is already predetermined by the order in the previous rotation cycle. This concept of rotation by pre-ordained sequence negates freedom of choice, which is the bedrock of any democratic election process.

d) The pronouncement of the Special Committee, which the Supreme Court may have adopted in AM No. 09-5-2-SC, involving the application of the rotation rule in the previous election for GMR may not be controlling, not being one of the principal issues raised in the GMR elections.

7. Thus, applying the principle of 'rotation by exclusion' in Western Visayas which starts with a new rotation cycle, all chapters (with the exception of Romblon) are deemed qualified to vie for the Governorship for 2011-2013 term without prejudice to the chapters entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each chapter will have its turn in the rotation.[18]

The Court takes notice of the predictability of the rotation by succession scheme. Through the rotation by exclusion scheme, the elections would be more genuine as the opportunity to serve as Governor at any time is once again open to all chapters, unless, of course, a chapter has already served in the new cycle. While predictability is not altogether avoided, as in the case where only one chapter remains in the cycle, still, as previously noted by the Court "the rotation rule should be applied in harmony with, and not in derogation of, the sovereign will of the electorate as expressed through the ballot."[19]

Thus, as applied in the IBP-Western Visayas Region, initially, all the chapters shall have the equal opportunity to vie for the position of Governor for the next cycle except Romblon, so as no chapter shall serve consecutively. Every winner shall then be excluded after its term. Romblon then joins the succeeding elections after the first winner in the cycle.

---

[18] *Id.* at 3327-3328.

[19] Resolution dated December 14, 2010, p. 22.

Re: Query by IBP-Southern Luzon

On July 27, 2012, the IBP-Southern Luzon Region filed its Petition for Intervention,[20] seeking a declaration that it was qualified to nominate a candidate for the position of Executive Vice-President for the 2011-2013 term. It argued that since the Court removed its member, Atty. Rogelio Vinluan, as IBP Executive Vice-President for the 2007-2009 term, it should not now be prejudiced and disallowed to vie for the position of Executive Vice-President of the IBP for the 2011-2013 term. To do so would be a violation of the rotational system and the principle of equal rotation among the different regions to lead the IBP.

On September 21, 2012, Gov. Fortunato filed an *Ex Abundanti Ad Cautelam* Vigorous Opposition/Comment,[21] opposing the position of the IBP-Southern Luzon on the ground that:

1] in its December 14, 2010 Resolution, the Court found that it was only the IBP-Western Visayas chapter and the IBP-Eastern Mindanao chapter that had yet to have their turns as Executive Vice-President. Since IBP-Eastern Mindanao, through now IBP President Roan I. Libarios, was elected as the Executive Vice-President, it is only IBP-Western Visayas which is the only region qualified to file a candidate for the 2011-2013 term;

2] Section 2, Rule 21 of the Rules of Court allows for intervention only before the rendition of judgment; and

3] Atty. Vinluan was actually able to serve his 2007-2009 term as Executive Vice President even if he was later on disqualified by the Court in December 14, 2010 Resolution. To allow IBP-Southern Luzon to vie for the position of Executive Vice President of the IBP for the 2011-2013 term would allow said chapter to serve twice as Executive Vice President since Atty. Raul R. Angangco of IBP Southern Luzon had already served as Executive Vice President for the 1995-1997 term.

---

[20] *Rollo*, pp. 3454-3456.

[21] *Id.* at 3480-3500.

The Court finds merit in the contentions of both parties, and thus believes that the IBP-BOG should be given its say on the matter pursuant to the dictates of due process.

WHEREFORE, the Court hereby holds that in the IBP-Western Visayas Region, the rotation by exclusion shall be adopted such that, initially, all chapters of the region shall have the equal opportunity to vie for the position of Governor for the next cycle except Romblon.

The Temporary Restraining Order dated May 3, 2011 is hereby lifted and the IBP-Western Visayas Region is hereby ordered to proceed with its election of Governor for the 2011-2013 term pursuant to the rotation by exclusion rule.

The IBP Board of Governors is hereby ordered to file its comment on the Petition for Intervention of IBP-Southern Luzon, within ten (10) days from receipt hereof.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, Abad, Villarama, Jr., Perez, Reyes, Perlas-Bernabe,* and *Leonen, JJ.,* concur.

Peralta and *del Castillo, JJ.,* no part due to close relations to a party.

Sereno, C.J., on leave.

---

[*] Acting Chief Justice per Special Order No. 1384 dated December 4, 2012.

EN BANC

[A.M. No. P-08-2418. December 4, 2012]
(Formerly OCA IPI No. 05-2152-P)

FERDINAND S. BASCOS, *complainant, vs.* **RAYMUNDO A. RAMIREZ, Clerk of Court, Regional Trial Court, Ilagan, Isabela,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; MISCONDUCT; ELUCIDATED. — Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior. Qualified by the term "grave" or "gross," it means conduct that is "out of all measure; beyond allowance; flagrant; shameful; such conduct as is not to be excused."

2. ID.; ID.; ID.; CLERKS OF COURT; GRAVE MISCONDUCT COMMITTED FOR DEFYING LAWFUL DIRECTIVES; PROPER PENALTY IS DISMISSAL FROM SERVICE. — In this case, respondent has conveniently ignored the letter-directive of Judge Bigornia x x x [and] continued to defy, not only the orders of Judge Bigornia but also the lawful directive of the Court. x x x [R]espondent, by his failure to comply with the directives of the Court, was remiss in his duty of keeping his own records of applications for foreclosure as well as the minutes of the raffle of notices for publication, and of producing them when required if he had kept such records in his possession. x x x Accordingly, the Court finds respondent guilty of **grave misconduct,** classified as a grave offense under Section 46 (A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service with the corresponding punishment of dismissal from service.

D E C I S I O N

***PER CURIAM*:**

This administrative case is an offshoot of the case previously filed by Ferdinand S. Bascos (complainant) against Atty. Raymundo A. Ramirez (respondent), Clerk of Court and *Ex-Officio* Provincial Sheriff of the Regional Trial Court of Ilagan, Isabela (RTC-Ilagan), for neglect of duty, arrogance, willful and deliberate violation of the Court's circulars relating to Presidential Decree No. 1079[1] (PD 1079), and attempted extortions.

The Facts

In a letter-complaint dated January 31, 2003,[2] complainant informed Executive Judge Juan A. Bigornia, Jr. (Judge Bigornia) of the RTC-Ilagan that respondent failed to abide by the judge's verbal order to designate a day of the week for the raffling of judicial and extrajudicial notices and other court processes requiring publication. He accused respondent of being partial when the latter awarded to Isabela Profile, a regional weekly newspaper, around 13 extra-judicial foreclosures without conducting any court raffle.

On February 3, 2003, Judge Bigornia required respondent to file his comment on the complaint, followed by another letter dated February 27, 2003[3] directing him to submit the following:

1. Copies of the application for Extra-Judicial Foreclosures together with the docket number from December, 2002 to date (February 27, 2003);
2. To whom among the Deputy Sheriffs of this Court were these applications for extra-judicial foreclosure raffled respectively; and

---

[1] Revising and Consolidating All Laws and Decrees Regulating Publication of Judicial Notices, Advertisements for Public Biddings, Notices of Auction Sales and Other Similar Notices.

[2] *Rollo*, p. 5.

[3] *Id.* at 7.

3. The name of the newspaper to whom these notices where sent for publication.[4]

It also contained a directive which reads:

From hereon, application for judicial foreclosure either by Notary Public or by the Sheriff shall be raffled to the different Deputy Sheriffs under my direction. The Deputy Sheriffs of this Court, in turn, shall raffle the notices for publication to the accredited newspaper under my direction.

Any violation of this directive shall be dealt with severely.[5]

Without offering any explanation, respondent never complied with the aforesaid directives.[6]

On March 8, 2005, complainant filed with the Office of the Court Administrator (OCA) a sworn letter-complaint dated November 25, 2004[7] charging respondent of neglect of duty, arrogance, willful and deliberate violation of circulars of the Court in relation to PD 1079, and for attempted extortions.

After due proceedings, the OCA recommended that respondent be fined in the amount of ₱2,000.00 with a warning that similar infractions in the future shall be dealt with more severely.[8]

In the Court's Decision dated January 31, 2008,[9] the Court agreed with the OCA's findings but increased the fine to ₱20,000.00, stressing that "[o]n the more than twenty instances that respondent failed to include in the raffle the notices for publication, respondent displayed on each occasion dereliction and gross neglect of duty."[10] Moreover, having observed that

---

[4] *Id.*

[5] *Id.*

[6] *Id.* at 68.

[7] *Id.* at 1-2.

[8] *Id.* at 71.

[9] *Id.* at 95-105.

[10] *Id.* at 103.

respondent failed to comply with the directives contained in the letter of Judge Bigornia, it ordered the submission of the required documents.

The dispositive portion of the said Decision reads:[11]

"WHEREFORE, the Court finds Clerk of Court and *Ex-Officio* Provincial Sheriff of the Regional Trial Court of Ilagan, Atty. Raymundo A. Ramirez, **GUILTY of dereliction of duty, gross neglect, insubordination and for violating the Code of Professional Responsibility.** He is ordered to pay **a FINE of Twenty Thousand (₱20,000) Pesos, with WARNING that the commission of the same or similar acts in the future shall be dealt with more severely.**

Respondent is further ORDERED to submit with utmost dispatch the records and documents specified in the February 27, 2003 Letter of then Executive Judge Juan A. Bigornia, Jr. This is without prejudice to the possible filing of criminal charges against respondent under Section 6 of P.D. 1079." (Emphasis supplied)

In his attempt to comply with the foregoing directives of the Court, respondent, in his letter dated February 26, 2008,[12] merely submitted a certified true copy of the letter of Judge Bigornia dated February 27, 2003. Thus, the Court, in its Resolution dated April 30, 2008, required respondent to show cause why he should not be disciplinarily dealt with or held in contempt for his failure to pay the imposed fine and submit the required records and documents. [13]

In compliance, respondent paid the ₱20,000.00 fine on July 25, 2008[14] but still failed to submit the required records and documents. He explained[15] that the three deputy sheriffs who were "beneficiaries"[16] of the subject documents died in 2005

---

[11] *Id.* at 104-105.

[12] *Id.* at 106-107.

[13] *Id.* at 108.

[14] Under OR No. 1408301; *id.* at 120.

[15] Compliance/Explanation dated July 23, 2008; *id.* at 110-111.

[16] Addendum to the Compliance/Explanation; *id.* at 121.

and 2006, leaving only one sheriff, Christopher R. Belleza, to assist him in locating the same.[17] Nonetheless, he had requested the warehouseman of the RTC-Ilagan to find the expediente of the extra-judicial foreclosures filed and raffled to the sheriffs during the subject period.[18]

On the basis of the memorandum of the store room-in-Charge of RTC-Ilagan, Aristotle Tumaneng (Mr. Tumaneng), respondent reported[19] that only 56 applications for extra-judicial foreclosure within the subject period were kept in the store room of the court. He also explained that he cannot submit the other questioned applications for foreclosure because of the untimely demise of the concerned sheriffs, and that his job was only to docket the foreclosures, collect the docket fees and sheriff's commission after the auction sale, and forward the applications for extra-judicial foreclosure to the Executive Judge for approval.[20]

On June 1, 2011, the Court referred the matter to the OCA for evaluation, report and recommendation.[21]

The Action and Recommendation of the OCA

On November 15, 2011, the OCA found respondent guilty of grave misconduct for his contumacious conduct of disrespect for the Court's lawful order and directive and recommended his dismissal from service with forfeiture of all retirement benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. [22]

It observed that only 51 applications for extra-judicial foreclosure, not 56 as claimed by respondent, were listed in the memorandum of Mr. Tumaneng. Out of these cases, only 42

---

[17] *Id.* at 111.

[18] *Id.*

[19] *Id.* at 121-122.

[20] *Id.* at 122.

[21] *Id.* at 135.

[22] *Id.* at 136-141.

were filed within the covering period December 2002 to February 27, 2003. It also noted that while the memorandum provided the titles of the cases, dates of their filing and the sheriffs in charge, it failed to indicate the names of the newspaper to which the notices for extra-judicial foreclosure were sent for publication.[23] It likewise did not find sufficient respondent's justifications that his inability to comply was due to the deaths of his co-sheriffs and that his job was only to docket the applications for foreclosure and collect the docket fees and sheriff's commission.[24] In sum, the OCA concluded that respondent defied the lawful orders of the Court despite its warning that the commission of similar acts shall be dealt with more severely.

The Issue

The only issue to be resolved is whether respondent is guilty of grave misconduct warranting his dismissal from service.

The Ruling of the Court

The Court adopts the findings and recommendation of the OCA.

Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior. Qualified by the term "grave" or "gross," it means conduct that is "out of all measure; beyond allowance; flagrant; shameful; such conduct as is not to be excused."[25]

In this case, respondent has conveniently ignored the letter-directive of Judge Bigornia since it was issued in 2003 and such crude insubordination was characterized by the Court as "an obstinate refusal to perform his official duty and to comply

---

[23] *Id.* at 139.

[24] *Id.* at 140.

[25] *Vidallon-Magtolis v. Salud,* A.M. No. CA-05-20-P, September 9, 2005, 469 SCRA 439, 469; *Hallasgo v. COA*, G.R. No. 171340, September 11, 2009, 599 SCRA 514, 529.

with a direct order of a superior."[26] Nonetheless, respondent was given another opportunity to submit the records and documents required of him by Judge Bigornia in the Court's Decision dated January 31, 2008 with a warning that "the commission of the same or similar acts in the future shall be dealt with more severely."[27]

However, respondent continued to defy, not only the orders of Judge Bigornia but also the lawful directive of the Court. Respondent's justification that his co-sheriffs died in 2005 and 2006 does not merit consideration since the directive was issued as early as 2003 long before their deaths. Besides, the order to submit the subject documents was directed to him and not to the other sheriffs.

Neither can the Court accept the reason that "he is not in a position to have the documents be submitted"[28] nor that his *job* "is only to docket the foreclosure as filed x x x and to collect the docket fees and sheriff's commission after the auction sale and forward the same (applications for extra-judicial foreclosure) to the Honorable Executive Judge x x x."[29] As Clerk of Court and *Ex-officio* Provincial Sheriff, respondent is tasked to assist in the raffle of applications for extra-judicial foreclosure;[30] presumed to know that notices of extra-judicial foreclosure shall be raffled to accredited newspapers for publication;[31] and expected to keep a record thereof.[32]

---

[26] *Rollo,* p. 103.

[27] *Id.* at 104.

[28] *Id.* at 124.

[29] *Id.* at 122.

[30] See par. 4 of A.M. No. 99-10-05-0 known as the "Procedure in Extra-judicial Foreclosure of Mortgage," August 7, 2001; Chapter 6, Subsection F, par. 10.3.7 of the 2002 Revised Manual for Clerks of Court.

[31] See Chapter 6, Section F, par. 10.3.6 of the 2002 Revised Manual for Clerks of Court; Sec. 2, PD 1079.

[32] See footnote 22 in the Court Decision, A.M. No. P-08-2418, January 31, 2008, 543 SCRA 238, 247, stating that "Administrative Order No. 6,

In the Decision of the Court, finding respondent guilty of dereliction of duty, gross neglect, insubordination and violation of the Code of Professional Responsibility, it stressed the duties of respondent as a lawyer and employee of the court, thus:

> Respondent, as a lawyer and an employee of the court, ought to know the requirements in and the importance of distributing notices for publication. **And he is expected to keep his own record of the applications for extra-judicial foreclosure and the minutes of the raffle thereof so he can effectively assist the judge in the performance of his functions.** It is incumbent upon him to help the judge devise an efficient recording and filing system in the court so that no disorderliness can affect the flow of cases, particularly foreclosure cases, and their speedy disposition. That all efforts should be addressed towards maintaining public confidence in the courts can never be overemphasized.[33] (Emphasis supplied; citation omitted)

Evidently, respondent, by his failure to comply with the directives of the Court, was remiss in his duty of keeping his own records of applications for foreclosure as well as the minutes of the raffle of notices for publication, and of producing them when required if he had kept such records in his possession. In both situations, respondent's actions constitute grave misconduct.

The Court has consistently held that it is the sacred duty of everyone charged with the dispensation of justice, from the judge to the lowliest clerk, to maintain the courts' good name and standing as true temples of justice.[34] Their conduct at all times

---

dated June 30, 1975 and Circular No. 7 dated September 23, 1974 requiring that raffle proceedings should be stenographically recorded, and the results signed by the Judges **or their representatives and the Clerk of Court** in attendance, and the branch assignment shall be recorded in words and figures on the *rollo*." Moreover, the Clerk of Court has the control and supervision over court personnel like stenographers whose duty is to "transcribe, duly accomplish and sign the minutes of the raffle proceedings" under Chapter 6, Section E, par. 1.13.2 of the 2002 Revised Manual for Clerks of Court.

[33] *Rollo*, p. 102.

[34] *Vilar v. Angeles*, A.M. No. P-06-2276, February 5, 2007, 514 SCRA 147, 157, citing *Basco v. Gregorio*, 315 Phil. 687; 245 SCRA 619 (1995).

must not only be characterized with propriety and decorum, but above all else, must be above suspicion.[35] Thus, there ought to be no compunction to punish anyone who brings or threatens to bring disgrace to the judiciary and to weed them out from the service if necessary.

Recently, in *OCA v. Reyes*,[36] where a clerk of court was dismissed from service for repeatedly failing to heed the Court's order to transmit the records of a criminal case and to file his comment to the complaint against him, the Court ruled that the repeated failure to comply with the Court's directives amounts to grave or gross misconduct. In *Martinez v. Zoleta*,[37] the Court emphasized that a resolution of the Court should not be construed as mere request and should not be complied with partially, inadequately or selectively.

Accordingly, the Court finds respondent guilty of **grave misconduct** for his utter recalcitrance and stubbornness to obey legitimate directives of this Court, which is classified as a grave offense under Section 46(A), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service[38] with the corresponding punishment of dismissal from service.

WHEREFORE, respondent Raymundo A. Ramirez, Clerk of Court and *Ex-Officio* Provincial Sheriff of the Regional Trial Court of Ilagan, Isabela, is hereby **DISMISSED** from service with forfeiture of all retirement benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporations.

Let a copy of this Decision be filed in the personal record of respondent.

---

[35] *Id.*

[36] See A.M. No. P-08-2535, June 23, 2010, 621 SCRA 511.

[37] A.M. No. MTJ-94-904, September 29, 1999, 315 SCRA 438, 449.

[38] Promulgated by the Civil Service Commission through Resolution No. 1101502 dated November 18, 2011.

SO ORDERED.

Carpio, Velasco, Jr.,[*] *Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez,*[*] *Mendoza, Reyes, Perlas-Bernabe,* and *Leonen, JJ.,* concur.

Sereno, C.J., on leave.

EN BANC

[G.R. No. 191890. December 4, 2012]

EVALYN I. FETALINO and AMADO M. CALDERON, *petitioners,* **MANUEL A. BARCELONA, JR.,** *petitioner-intervenor, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; RA 1568; TYPES OF RETIREMENT BENEFITS FOR A COMELEC MEMBER; RE FIVE YEAR LUMP SUM; EVENT THAT MUST TRANSPIRE. — R.A. No. 1568 provides two types of retirement benefits for a Comelec Chairperson or Member: a *gratuity* or five-year lump sum, and an *annuity* or a lifetime monthly pension. x x x To be entitled to the five-year lump sum gratuity under Section 1 of R.A. No. 1568, any of the following events must transpire: (1)**Retirement from the service for having completed the term of office**; (2) Incapacity to discharge the duties of their office; (3) Death while in the service; and (4) Resignation after reaching the age of sixty

---

[*] No part. Justice Presbitero J. Velasco, Jr. and Justice Jose P. Perez signed in the OCA Memorandum dated July 18, 2005, as then Court Administrator and Deputy Court Administrator, respectively. *Rollo,* pp. 68-71.

(60) years but before the expiration of the term of office. In addition, the officer should have rendered not less than twenty years of service in the government at the time of retirement.

2. ID.; ID.; ID.; ID.; ID.; ID.; RETIREMENT FROM SERVICE FOR HAVING COMPLETED THE TERM OF OFFICE; NOT COMPLIED WITH AND SERVICE IN CASE AT BAR AMOUNTS ONLY TO *TENURE IN OFFICE*, NOT TERM OF OFFICE. — The petitioners [here] never completed the full seven-year term of office prescribed by Section 2, Article IX-D of the 1987 Constitution; they served as Comelec Commissioners for barely four months, *i.e.*, from February 16, 1998 to June 30, 1998. x x x [W]e agree with the Solicitor General that the petitioners' service, if any, could only amount to *tenure in office* and not to the *term of office* contemplated by Section 1 of R.A. No. 1568. x x x [T]he Court, in *Topacio Nueno v. Angeles*, provided clear distinctions between these concepts in this wise: **The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office.** The term of office is not affected by the hold-over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent. x x x While we characterized an *ad interim* appointment in *Matibag v. Benipayo* "as a permanent appointment that takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office," we have also positively ruled in that case that "an *ad interim* appointment that has lapsed by inaction of the Commission on Appointments **does not constitute a term of office**." x x x **The period from the time the *ad interim* appointment is made to the time it lapses is neither a fixed term nor an unexpired term.**

3. ID.; ID.; ID.; ID.; ID.; ID.; LIBERAL CONSTRUCTION NOT PROPER AS THE LAW IS CLEAR AND UNAMBIGUOUS AND THERE IS NO COMPELLING REASON TO WARRANT THE SAME. — We emphasize that the primary modality of addressing the present case is to look into the provisions of the retirement law itself. Guided by the rules of statutory construction in this consideration, we find that the language of the retirement law is clear and unequivocal; no

room for construction or interpretation exists, only the application of the letter of the law. The application of the clear letter of the retirement law in this case is supported by jurisprudence.

4. ID.; ID.; ID.; ID.; ID.; ID.; RETIREMENT; DOES NOT SUPPORT THE "TERMINATION OF AN *AD INTERIM* APPOINTMENT". — Section 1 of R.A. No. 1568, by its plain terms, is clear that retirement entails the completion of the term of office. To construe the term "retirement" [therein] to include termination of an *ad interim* appointment is to read into the clear words of the law exemptions that its literal wording does not support; to depart from the meaning expressed by the words of R.A. No. 1568 is to alter the law and to legislate, and not to interpret.

5. ID.; ID.; COMELEC RULES AND PROCEDURE; FINALITY OF DECISIONS OR RESOLUTIONS; DOES NOT COVER RESOLUTION NO. 06-1369 WHICH GRANTED PETITIONERS A FIVE-YEAR LUMP SUM GRATUITY. — Section 13, Rule 18 of the Comelec Rules of Procedure reads: **Finality of Decisions or Resolutions.** — a. In **ordinary actions, special proceedings, provisional remedies and special reliefs** a decision or resolution of the Commission *en banc* shall become final and executory after thirty (30) days from its promulgation. x x x [T]he proceedings that precipitated the issuance of Resolution No. 06-1369 (which initially granted them a five-year lump sum gratuity) do not fall within the coverage of the actions and proceedings under Section 13, Rule 18 of the Comelec Rules of Procedure. Thus, the Comelec did not violate its own rule on finality of judgments.

6. ID.; ID.; COMELEC RESOLUTION NO. 8808; NO DENIAL OF DUE PROCESS AS PETITIONERS WERE HEARD PRIOR ISSUANCE THEREOF. — No denial of due process [when the Comelec issued Resolution No. 8808. x x x [T]he petitioners cannot claim deprivation of due process because they actively participated in the Comelec proceedings that sought for payment of their retirement benefits under R.A. No. 1568. The records clearly show that the issuance of the assailed Comelec resolution was precipitated by the petitioners' application for retirement benefits with the Comelec. Significantly, the petitioners were given ample opportunity to present and explain their respective positions when they

sought a re-computation of the initial pro-rated retirement benefits that were granted to them by the Comelec. Under these facts, no violation of the right to due process of law took place.

7. ID.; ID.; RA 1568; RETIREMENT BENEFITS OF COMELEC MEMBERS; NO VESTED RIGHT THEREIN. — [T]he retirement benefits granted to the petitioners under Section 1 of R.A. No. 1568 are purely gratuitous in nature; thus, they have no vested right over these benefits.

REYES, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; R.A. NO. 1568, AS AMENDED, ON RETIREMENT BENEFITS FOR A COMELEC MEMBER; FIVE-YEAR LUMP SUM, WHEN PROPER. — R.A. No. 1568, as amended, provides for the retirement benefits due to a COMELEC or Chairperson Member. One is the *gratuity* or five-year lump sum and the other is the *annuity* or lifetime monthly pension. The bone of contention in this case pertains solely to the *gratuity* or five-year lump sum. x x x There are only four (4) categories under which a COMELEC Chairperson or Commissioner may avail of the five-year lump sum gratuity, *viz*: (1) Retirement from the service for having completed the term of office; (2) Incapacity to discharge the duties of office; (3) Death while in the service; and (4) Resignation after reaching the age of sixty (60) years but before the expiration of the term of office. In addition, the officer should have rendered not less than twenty years of service in the government at the time of retirement.

2. ID.; ID.; ID.; ID.; RETIREMENT FROM SERVICE; TERMINATION OF PETITIONER'S *AD INTERIM* APPOINTMENTS CONSIDERED AS RETIREMENT FROM SERVICE. — The termination of the petitioners' *ad interim* appointments cannot qualify as either incapacity or resignation. x x x The COMELEC was correct in ruling that the only pertinent provision under which the petitioners' case may fall is retirement from service. Retirement, however, entails compliance with certain age and service requirements specified by law and jurisprudence and takes effect by operation of law.

3. ID.; ID.; ID.; ID.; ID.; ID.; REQUIREMENT AS TO TERM OF OFFICE NOT COMPLIED WITH; MUST BE

LIBERALLY CONSTRUED APPLYING THE CASE OF *ORTIZ VS. COMELEC* TO ACHIEVE HUMANITARIAL PURPOSES OF THE LAW. — Article IX-D, Section 2 of the 1987 Constitution provides for a seven (7) year term, without reappointment, for the COMELEC Chairperson and Commissioners. In this case, petitioners Fetalino and Calderon served as COMELEC Commissioners only from February 16, 1998 to June 30, 1998. Petitioner-intervenor Barcelona, on the other hand, served only from February 12, 2004 to July 10, 2005. Strictly construed, the petitioners, therefore, did not complete the full term of their office. I believe, however, that all is not lost for the petitioners. In *Ortiz v. COMELEC*, the Court affirmed the grant of retirement benefits in favor of then COMELEC Commissioner Mario D. Ortiz (Ortiz) despite the fact that he did not complete the full term of his office. x x x While the circumstances of *Ortiz* are not exactly identical with that of the petitioners', this should not be a bar to the Court's application of the *Ortiz* ruling in this case. It should be noted that at the time of Ortiz's appointment in 1985 and courtesy resignation in 1986, there was no CA to speak of as it was abolished by the 1973 Constitution. Nevertheless, the severance of the petitioners' appointment may be likened to that of Commissioner Ortiz's in that it is not "attributable to any voluntary act" on their part and their positions may be "placed in the same category as that of an official holding a primarily confidential position whose tenure ends upon his superior's loss of confidence in him." Moreover, a liberal construction of R.A. No. 1568, as amended, would achieve the humanitarian purposes of the law so that efficiency, security and well-being of government employees may be enhanced. After all, retirement laws are designed to provide for the retiree's sustenance and, hopefully, even comfort, when he no longer has the capability to earn a livelihood. Thus, the non-renewal of the petitioners' *ad interim* appointments should be tantamount to expiration of their respective terms and in line with the same dictates of justice and equity espoused in *Ortiz*, the petitioners, therefore, are deemed to have completed their terms of office and considered as retired from the service.

4. ID.; ID.; ID.; ID.; PRO-RATED COMPUTATION MUST APPLY AS FULL TERM OF OFFICE NOT COMPLETED IN CASE AT BAR. — The petitioners are not entitled to the full five-year lump sum gratuity provided by R.A. No. 1568,

as amended. Section 1 contains the *proviso*: "he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement." Said condition provides for the manner of computing the retirement benefits due to a COMELEC Chairperson or Commissioner. Consequently, a maximum of five-year lump gratuity is given to a Chairperson or Commissioner who retired and has served for at least five (5) years. If the years of service are less than five (5), then a retiree is entitled to a gratuity for every year of service. The same *proviso* also contemplates the situation when a Chairperson or Commissioner does not complete the full term of the office. This will occur, for example, when a Chairperson or Commissioner takes over in a case of vacancy resulting from certain causes — death, resignation, disability or impeachment — such that the appointee will serve only for the unexpired portion of the term of the predecessor. In such case, the retiree is entitled to gratuity depending on the years of service but not to exceed five (5) years. Given that the petitioners did not serve the full length of their term of office, the computation of their lump sum gratuity should be based on the foregoing *proviso*.

5. ID.; ID.; COMELEC RESOLUTION NO. 8808; NO DENIAL OF DUE PROCESS AS IT WAS ISSUED VIA PURELY ADMINISTRATIVE FUNCTION AND PETITIONERS WERE ABLE TO PARTICIPATE. — In issuing the assailed Resolution No. 8808, the COMELEC was performing a purely administrative function. Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. In *Bautista v. COMELEC*, the Court stated that the term *administrative* connotes, or pertains, to administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things. It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon. In denying the petitioners' application for retirement benefits, the COMELEC was merely applying and implementing the provisions of R.A. No. 1568, as amended, *vis-à-vis* the petitioners' prevailing circumstances. It was not exercising any quasi-judicial or administrative adjudicatory power such

that the due process requirements of notice and hearing must be observed. Records also show that the issuance of the assailed resolution originated from the petitioners' own move to have their retirement benefits paid. Petitioners, in fact, were also able to present their respective positions on the matter when they sought a re-computation of the initial retirement benefits that were granted by the COMELEC on a *pro rata* basis.

6. ID.; ID.; R.A. NO. 1568 ON RETIREMENT BENEFITS OF COMELEC MEMBER; PURELY GRATUITOUS IN NATURE AND NO VESTED RIGHT OVER THE SAME. — It should be stressed that the retirement benefits granted to COMELEC Chairpersons and Commissioners under R.A. No. 1568, as amended, are purely gratuitous in nature. The petitioners cannot claim any vested right over the same as these are not similar to a pension plan where employee contribution or participation is mandatory, thus vesting in the employee a right over said pension. The rule is that where the pension is part of the terms of employment and employee participation is mandatory, employees have contractual or vested rights in the pension.

APPEARANCES OF COUNSEL

Froilan M. Bacungan & Associates for petitioners.
Quasha Ancheta Peña Nolasco for petitioner-intervenor.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

Before us is a Petition for *Certiorari, Mandamus* and Prohibition with Application for Writ of Preliminary Injunction and/or Temporary Restraining Order,[1] seeking to nullify and enjoin the implementation of Commission on Elections (*Comelec*) Resolution No. 8808 issued on March 30, 2010.[2] Republic Act

---

[1] *Rollo,* pp. 3-42.

[2] *Id.* at 46-51.

(*R.A.*) No. 1568, as amended,[3] extends a five-year lump sum gratuity to the chairman or any member of the Comelec upon *retirement*, after completion of the term of office; *incapacity*; *death*; and *resignation* after reaching 60 years of age but before expiration of the term of office. The Comelec *en banc* determined that former Comelec Commissioners Evalyn I. Fetalino[4] and Amado M. Calderon[5] (*petitioners*) — whose *ad interim* appointments were not acted upon by the Commission on Appointments (*CA*) and, who were subsequently, not reappointed — are not entitled to the five-year lump sum gratuity because they did not complete in full the seven-year term of office.

The Antecedent Facts

On February 10, 1998, President Fidel V. Ramos extended an interim appointment to the petitioners as Comelec Commissioners, each for a term of seven (7) years, pursuant to Section 2, Article IX-D of the 1987 Constitution.[6] Eleven days later (or on February 21, 1998), Pres. Ramos renewed the petitioners' *ad interim* appointments for the same position. Congress, however, adjourned in May 1998 before the CA could act on their appointments. The constitutional ban on presidential appointments later took effect and the petitioners were no longer re-appointed as Comelec Commissioners.[7] Thus, the petitioners

---

[3] The term Republic Act No. 1568 without indicating its amended status refers to the Republic Act, as amended, unless otherwise indicated.

[4] *Vice* Remedios A. Salazar-Fernando, now a member of the Court of Appeals.

[5] *Vice* Regalado E. Maambong (deceased), retired member of the Court of Appeals.

[6] The provision states:

> (2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Member for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

[7] *Rollo,* pp. 6-7.

merely served as Comelec Commissioners for more than four months, or from February 16, 1998 to June 30, 1998.[8]

Subsequently, on March 15, 2005, the petitioners applied for their retirement benefits and monthly pension with the Comelec, pursuant to R.A. No. 1568.[9] The Comelec initially approved the petitioners' claims pursuant to its Resolution No. 06-1369[10] dated December 11, 2006 whose dispositive portion reads:

> [T]he Commission RESOLVED, as it hereby RESOLVES, to approve the recommendation of Director Alioden D. Dalaig, Law Department, to grant the request of former Comelec Commissioners Evalyn Fetalino and Amado Calderon for the payment of their retirement benefits, subject to release of funds for the purpose by the Department of Budget and Management.[11]

On February 6, 2007, the Comelec issued Resolution No. 07-0202 granting the petitioners a pro-rated gratuity and pension.[12] Subsequently, on October 5, 2007, the petitioners asked for a re-computation of their retirement pay on the principal ground that R.A. No. 1568,[13] does not cover a pro-rated computation of retirement pay. In response, the Comelec issued a resolution referring the matter to its Finance Services Department for comment and recommendation.[14] On July 14, 2009, the Comelec issued another resolution referring the same matter to its Law Department for study and recommendation.[15]

In the presently assailed Resolution No. 8808[16] dated March 30, 2010, the Comelec, on the basis of the Law Department's

---

[8] *Id.* at 50.

[9] *Id.* at 52-67.

[10] *Id.* at 88-89.

[11] *Id.* at 89.

[12] *Id.* at 90-92.

[13] *Id.* at 93.

[14] *Id.* at 94-97.

[15] *Id.* at 98-99.

[16] *Supra* note 2.

study, completely disapproved the petitioners' claim for a lump sum benefit under R.A. No. 1568. The Comelec reasoned out that:

> Of these four (4) modes by which the Chairman or a Commissioner shall be entitled to lump sum benefit, only the first instance (completion of term) is pertinent to the issue we have formulated above. It is clear that the ***non-confirmation and non-renewal of appointment*** is not a case of resignation or incapacity or death. The question rather is: Can it be considered as retirement from service for having ***completed*** one's term of office?
>
> x x x x x x x x x
>
> The full term of the Chairman and the Commissioners is seven (7) years. When there has been a partial service, what remains is called the "unexpired term." The partial service is usually called tenure. There is no doubt in the distinction between a term and tenure. Tenure is necessarily variable while term is always fixed. When the law, in this case, RA 1568 refers to completion of term of office, it can only mean finishing up to the end of the seven year term. By completion of term, the law could not have meant partial service or a variable tenure that does not reach the end. It could not have meant, the "expiration of term" of the Commissioner whose appointment lapses by reason of non-confirmation of appointment by the Commission on Appointments and non-renewal thereof by the President. It is rightly called expiration of term but note: it is not completion of term. RA 1568 requires 'having completed his term of office' for the Commissioner to be entitled to the benefits.
>
> Therefore, one whose ad interim appointment expires cannot be said to have completed his term of office so as to fall under the provisions of Section 1 of RA 1568 that would entitle him to a lump sum benefit of five (5) years salary.[17] (emphasis, italics and underscores ours)

On this basis, the Comelec ruled on the matter, as follows:

> Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to APPROVE and ADOPT the study of the Law Department on the payment of retirement benefits to members of the Commission.

---

[17] *Id.* at 48-49.

Consequently, the following former Chairman and Commissioners of this Commission whose appointments expired by reason of non-approval by Commission on Appointments and non-renewal by the President **are not entitled to a lump sum benefit under Republic Act 1528** (sic):

Name	Position	Date of Service
1. Alfredo Benipayo, Jr.	Chairman	Feb. 16, 2001 to June 5, 2002
2. Evalyn Fetalino	Commissioner	Feb. 16, 1998 to June 30, 1998
3. Amado Calderon	Commissioner	Feb. 16, 1998 to June 30, 1998
4. Virgilio Garciliano	Commissioner	Feb. 12, 2004 to June 10, 2005
5. Manuel Barcelona, Jr.	Commissioner	Feb. 12, 2004 to June 10, 2005
6. Moslemen Macarambon	Commissioner	Nov[.] 05, 2007 to Oct. 10, 2008
7. Leonardo Leonida	Commissioner	July 03, 2008 to June 26, 2009

This resolution shall also apply to all requests of former COMELEC Chairmen and Commissioners similarly situated. All previous resolutions which are inconsistent herewith are hereby AMENDED or REVOKED accordingly.

Let the Finance Services and Personnel Departments implement this resolution.[18] (emphasis ours)

The Petitions

The petitioners sought the nullification of Comelec Resolution No. 8808 *via* a petition for *certiorari* under Rule 65 of the Rules of Court. Petitioner-intervenor Manuel A. Barcelona, Jr. later joined the petitioners in questioning the assailed resolution. Like the petitioners, Barcelona did not complete the full seven-year term as Comelec Commissioner since he served only from February 12, 2004 to July 10, 2005. The petitioners and Barcelona commonly argue that:

---

[18] *Id.* at 50-51.

(1) the non-renewal of their *ad interim* appointments by the CA until Congress already adjourned qualifies as *retirement* under the law and entitles them to the full five-year lump sum gratuity;

(2) Resolution No. 06-1369 that initially granted the five-year lump sum gratuity is already final and executory and cannot be modified by the Comelec; and

(3) they now have a vested right over the full retirement benefits provided by RA No. 1568 in view of the finality of Resolution No. 06-1369.[19]

In the main, both the petitioners and Barcelona pray for a liberal interpretation of Section 1 of R.A. No. 1568. They submit that the involuntary termination of their *ad interim* appointments as Comelec Commissioners should be deemed by this Court as a retirement from the service. Barcelona, in support of his plea for liberal construction, specifically cites the case of *Ortiz v. COMELEC*.[20] The Court ruled in this cited case that equity and justice demand that the involuntary curtailment of Mario D. Ortiz's term be deemed a completion of his term of office so that he should be considered retired from the service.

In addition, the petitioners also bewail the lack of notice and hearing in the issuance of Comelec Resolution No. 8808. Barcelona also assails the discontinuance of his monthly pension on the basis of the assailed Comelec issuance.[21]

The Case for the Respondents

On July 22, 2010, the Comelec filed its Comment[22] through the Office of the Solicitor General. The Comelec prays for the dismissal of the petition on the grounds outlined below:

First, it submits that the petitioners' reliance on Section 13, Rule 18 of the Comelec Rules of Procedure to show that

---

[19] *Id.* at 12-38.

[20] 245 Phil.780, 788 (1988).

[21] *Rollo*, p. 237.

[22] *Id.* at 107-122.

Resolution No. 06-1369 has attained finality is misplaced as this resolution is not the final decision contemplated by the Rules. It also argues that estoppel does not lie against the Comelec since the erroneous application and enforcement of the law by public officers do not estop the Government from making a subsequent correction of its errors.[23]

Second, the Comelec reiterates that the petitioners are not entitled to the lump sum gratuity, considering that they cannot be considered as officials who retired after completing their term of office. It emphasizes that R.A. No. 1568 refers to the completion of the term of office, not to partial service or to a variable tenure that does not reach its end, as in the case of the petitioners. The Comelec also draws the Court's attention to the case of *Matibag v. Benipayo*[24] where the Court categorically ruled that an *ad interim* appointment that lapsed by inaction of the Commission on Appointments does not constitute a term of office.[25]

Third, it argues that the petitioners do not have any vested right on their retirement benefits considering that the retirements benefits afforded by R.A. No. 1568 are purely gratuitous in nature; they are not similar to pension plans where employee participation is mandatory so that they acquire vested rights in the pension as part of their compensation. Without such vested rights, the Comelec concludes that the petitioners were not deprived of their property without due process of law.[26]

The Court's Ruling

We DISMISS the petition and DENY Barcelona's petition for intervention.

Preliminary Considerations

R.A. No. 1568 provides two types of retirement benefits for a Comelec Chairperson or Member: a *gratuity* or five-year lump

---

[23] *Id.* at 113-116.

[24] 429 Phil. 554 (2002).

[25] *Rollo*, p. 119.

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

sum, and an *annuity* or a lifetime monthly pension.[27] Our review of the petitions, in particular, Barcelona's petition for intervention, indicates that he merely questions the discontinuance of his monthly pension on the basis of Comelec Resolution No. 8808.[28] As the assailed resolution, by its plain terms (cited above), only pertains to the lump sum benefit afforded by R.A. No. 1568, it appears that Barcelona's petition for intervention is misdirected. We note, too, that Barcelona has not substantiated his bare claim that the Comelec discontinued the payment of his monthly pension on the basis of the assailed Resolution.

To put the case in its proper perspective, the task now before us is to determine whether the petitioners are entitled to the full five-year lump sum gratuity provided for by R.A. No. 1568. We conclude under our discussion below that they are not so entitled as they did not comply with the conditions required by law.

The petitioners are not entitled to the lump sum gratuity under Section 1 of R.A. No. 1568, as amended

That the petitioners failed to meet conditions of the applicable retirement law — Section 1 of R.A. No. 1568[29] — is beyond dispute. The law provides:

---

[27] Section 1 of R.A. No. 1568, as amended.

[28] *Supra* note 20.

[29] Originally, Section 1 of R.A. No. 1568 only provided for a five-year lump sum gratuity. It reads:

> Section 1. When the Auditor General, or the Chairman or any Member of the Commission on Elections retires from the service for having completed his term of office or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns upon reaching the age of sixty years, he or his heirs shall be paid in lump sum his salary for five years: *Provided*, That at the time of said retirement, death or resignation, he has rendered not less than twenty years of service in the government.

Subsequently, R.A. No. 1568 was amended by R.A. No. 3473 (entitled "An Act to provide under certain conditions life pension to the Auditor General and the Chairman and members of the Commission on Elections")

Sec. 1. When the Auditor General or the Chairman or any Member of the Commission on Elections retires from the service for having completed his term of office or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns at any time after reaching the age of sixty years but before the expiration of his term of office, he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement, incapacity, death or resignation, as the case may be: Provided, That in case of resignation, he has rendered not less than twenty years of service in the government; And, provided, further, That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation. [italics supplied]

To be entitled to the five-year lump sum gratuity under Section 1 of R.A. No. 1568, any of the following events must transpire:

(1) **Retirement from the service for having completed the term of office**;

(2) Incapacity to discharge the duties of their office;

(3) Death while in the service; and

(4) Resignation after reaching the age of sixty (60) years but before the expiration of the term of office. In addition, the officer should have rendered not less than twenty years of service in the government at the time of retirement.

---

to include a life pension and R.A. No. 3595. These amendments added the following proviso in Section 1 of R.A. No. 1568, as amended:

> And, *provided, further,* That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of the monthly salary he was receiving on the date of retirement, incapacity or resignation.

On June 17, 1967, R.A. No. 4968 (entitled "An Act to Amend Republic Act Numbered Fifteen Hundred Sixty-Eight") abolished R.A. No. 1568, as amended. Finally, on August 4, 1969, R.A. No. 6118 (entitled "An Act to Restore the Pension System for the Auditor General and the Chairman and Members of the Commission on Elections as Provided in Republic Act Numbered One Thousand Five Hundred Sixty-Eight, as amended") re-enacted R.A. No. 1568, as amended, by R.A. No. 3473 and R.A. No. 3595.

Death during the service obviously does not need to be considered in the present case, thus leaving *retirement*, *incapacity* and *resignation* as the event that must transpire in order to be entitled to the lump sum gratuity.

We note that the termination of the petitioners' *ad interim* appointments could hardly be considered as incapacity since it was not the result of any disability that rendered them incapable of performing the duties of a Commissioner. Thus, incapacity is likewise effectively removed from active consideration.

"Resignation is defined as the act of giving up or the act of an officer by which he declines his office and renounces the further right to it. To constitute a complete and operative act of resignation, the officer or employee must show a clear intention to relinquish or surrender his position accompanied by the act of relinquishment."[30] In this sense, resignation likewise does not appear applicable as a ground because the petitioners did not voluntarily relinquish their position as Commissioners; their termination was merely a consequence of the adjournment of Congress without action by the CA on their *ad interim* appointments.

This eliminative process only leaves the question of whether the termination of the petitioners' *ad interim* appointments amounted to retirement from the service after completion of the term of office. We emphasize at this point that the *right to retirement benefits* accrues only when two conditions are met: *first*, when the conditions imposed by the applicable law — in this case, R.A. No. 1568 — are fulfilled; and *second*, when an actual retirement takes place.[31] This Court has repeatedly emphasized that retirement entails compliance with certain age and service requirements specified by law and jurisprudence, and takes effect by operation of law.[32]

---

[30] *Ortiz v. Comelec, supra* note 19 at 787; citations omitted.

[31] See J. Brion's Separate Concurring Opinion in *Herrera v. National Power Corporation*, G.R. No. 166570, December 18, 2009, 608 SCRA 475, 501, citing *DBP v. COA*, 467 Phil. 62 (2004).

[32] *Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946*, A.M. No. 14061-Ret, June 19, 2012.

Section 1 of R.A. No. 1568 allows the grant of retirement benefits to the Chairman or any Member of the Comelec who has retired from the service after having completed his term of office. The petitioners obviously did not retire under R.A. No. 1568, as amended, since they never completed the full seven-year term of office prescribed by Section 2, Article IX-D of the 1987 Constitution; they served as Comelec Commissioners for barely four months, *i.e.*, from February 16, 1998 to June 30, 1998. In the recent case of *Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946*,[33] where the Court did not allow Judge Macarambon to retire under R.A. No. 910 because he did not comply with the age and service requirements of the law, the Court emphasized:

> **Strict compliance with the age and service requirements under the law is the rule and the grant of exception remains to be on a case to case basis.** We have ruled that the Court allows seeming exceptions to these fixed rules for certain judges and justices only and whenever there are ample reasons to grant such exception. (emphasis ours; citations omitted)

More importantly, we agree with the Solicitor General that the petitioners' service, if any, could only amount to *tenure in office* and not to the *term of office* contemplated by Section 1 of R.A. No. 1568. *Tenure* and *term of office* have well-defined meanings in law and jurisprudence. As early as 1946, the Court, in *Topacio Nueno v. Angeles*,[34] provided clear distinctions between these concepts in this wise:

> **The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another**. **The tenure represents the term during which the incumbent actually holds the office**. The term of office is not affected by the hold-over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent. There is no principle, law or doctrine

---

[33] *Ibid.*

[34] 76 Phil. 12, 21-22 (1946).

by which the term of an office may be extended by reason of war. [emphasis ours]

This is the ruling that has been followed since then and is the settled jurisprudence on these concepts.[35]

While we characterized an *ad interim* appointment in *Matibag v. Benipayo*[36] "as a permanent appointment that takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office," we have also positively ruled in that case that "an *ad interim* appointment that has lapsed by inaction of the Commission on Appointments **does not constitute a term of office**."[37] We consequently ruled:

However, an *ad interim* appointment that has lapsed by inaction of the Commission on Appointments does not constitute a term of

---

[35] *Aparri v. CA, et al.* similarly discusses what a "term" connotes, as follows:

> **The word "term" in a legal sense means a fixed and definite period of time which the law describes that an officer may hold an office.** According to Mechem, the term of office is the period during which an office may be held. Upon the expiration of the officer's term, unless he is authorized by law to holdover, his rights, duties and authority as a public officer must *ipso facto* cease. In the law of Public Officers, the most natural and frequent method by which a public officer ceases to be such is by the expiration of the term for which he was elected or appointed. [emphasis ours; italics supplied; citations omitted]

A later case, *Gaminde v. Commission on Audit,* reiterated the well-settled distinction between term and tenure, *viz.*:

> In the law of public officers, there is a settled distinction between "term" and "tenure." "[T]he term of an office must be distinguished from the tenure of the incumbent. **The term means the time during which the officer may claim to hold office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office.** The term of office is not affected by the hold-over. **The tenure may be shorter than the term for reasons within or beyond the power of the incumbent.** [emphases ours]

[36] *Supra* note 23.

[37] *Id.* at 598; emphasis ours.

office. **The period from the time the *ad interim* appointment is made to the time it lapses is neither a fixed term nor an unexpired term.** To hold otherwise would mean that the President by his unilateral action could start and complete the running of a term of office in the COMELEC without the consent of the Commission on Appointments. This interpretation renders inutile the confirming power of the Commission on Appointments.[38] (emphasis ours; italics supplied)

Based on these considerations, we conclude that the petitioners can never be considered to have retired from the service not only because they did not complete the full term, but, more importantly, because they did not serve a "term of office" as required by Section 1 of R.A. No. 1568, as amended.

***Ortiz v. COMELEC* cannot be applied to the present case**

We are not unmindful of the Court's ruling in *Ortiz v. COMELEC*[39] which Barcelona cites as basis for his claim of retirement benefits despite the fact that — like the petitioners — he did not complete the full term of his office.

In that case, the petitioner was appointed as Comelec Commissioner, for a term expiring on May 17, 1992, by then President Ferdinand E. Marcos, and took his oath of office on July 30, 1985. When President Corazon Aquino assumed the Presidency and following the lead of the Justices of the Supreme Court, Ortiz — together with the other Comelec Commissioners — tendered his courtesy resignation on March 5, 1986. On July 21, 1986, President Aquino accepted their resignations effective immediately. Thereafter, Ortiz applied for retirement benefits under R.A. No. 1568, which application the Comelec denied. The Court, however, reversed the Comelec and held that "[t]he curtailment of [Ortiz's] term not being attributable to any voluntary act on the part of the petitioner, equity and justice demand that he should be deemed to have completed his term

---

[38] *Ibid.*

[39] *Supra* note 19.

x x x. [That he] should be placed in the same category as that of an official holding a primarily confidential position whose tenure ends upon his superior's loss of confidence in him." Thus, as "he is deemed to have completed his term of office, [Ortiz] should be considered retired from the service."[40]

A close reading of *Ortiz* reveals that it does not have the same fact situation as the present case and is thus not decisive of the present controversy. We note that the impact of the principle of *stare decisis* that Barcelona cited as basis is limited; **specific judicial decisions are binding only on the parties to the case and on future parties with *similar or identical* factual situations**.[41] Significantly, the factual situation in *Ortiz* is totally different so that its ruling cannot simply be bodily lifted and applied arbitrarily to the present case.

First, in *Ortiz*, Ortiz's appointment was a regular appointment made by then President Marcos, while the petitioners were appointed by President Ramos *ad interim* or during the recess of Congress.

Second, Ortiz's appointment was made under the 1973 Constitution which did not require the concurrence of the CA. Notably, the 1973 Constitution abolished the CA and did not provide for an executive limit on the appointing authority of the President. In the present case, the petitioners' *ad interim* appointment was made under the 1987 Constitution which mandated that an appointment shall be effective only until disapproval by the CA or until the next adjournment of Congress.

Third, in *Ortiz*, the Court addressed the issue of whether a constitutional official, whose "courtesy resignation" had been accepted by the President of the Philippines during the effectivity

---

[40] *Id.* at 788.

[41] See Concurring Opinion of J. Brion in *Philippine Savings Bank, et al. v. Senate Impeachment Court, etc.*, G.R. No. 200238, February 9, 2012 citing Theodore O. Te, *Stare In (Decisis): Reflections on Judicial Flip-flopping in League of Cities v. Comelec and Navarro v. Ermita*, 85 PHIL. L. J. 784, 787 (2011). See also *Negros Navigation Co., Inc. v. CA*, 346 Phil. 551, (1997).

of the Freedom Constitution, may be entitled to retirement benefits under R.A. No. 1568. In the present case, the issue is whether the termination of the petitioners' *ad interim* appointments entitles them to the full five-year lump sum gratuity provided for by R.A. No. 1568.

No occasion for liberal construction since Section 1 of R.A. No. 1568, as amended, is clear and unambiguous

The petitioners' appeal to liberal construction of Section 1 of R.A. No. 1568 is misplaced since the law is clear and unambiguous. We emphasize that the primary modality of addressing the present case is to look into the provisions of the retirement law itself. Guided by the rules of statutory construction in this consideration, we find that the language of the retirement law is clear and unequivocal; no room for construction or interpretation exists, only the application of the letter of the law.

The application of the clear letter of the retirement law in this case is supported by jurisprudence. As early as 1981, in the case of *In Re: Claim of CAR Judge Noel*,[42] the Court strictly adhered to the provisions of R.A. No. 910 and did not allow the judge's claim of monthly pension and annuity under the aforementioned law, considering that his length of government service fell short of the minimum requirements.

Similarly, in *Re: Judge Alex Z. Reyes*,[43] the Court dismissed CTA Judge Reyes' invocation of the doctrine of liberal construction of retirement laws to justify his request that the last step increment of his salary grade be used in the computation of his retirement pay and terminal leave benefits, and held:

> In *Borromeo*, the court had occasion to say: "It is axiomatic that retirement laws are liberally construed and administered in favor of the persons intended to be benefited. All doubts as to the intent of the law should be resolved in favor of the retiree to achieve its humanitarian purposes." **Such interpretation in favor of the retiree**

---

[42] Adm. Matter No. 1155-CAR, 194 Phil. 9 (1981).

[43] Adm. Matter No. 91-6-007-CTA, December 21, 1992, 216 SCRA 720.

is unfortunately not called for nor warranted, where the clear intent of the applicable law and rules are demonstrably against the petitioner's claim. (Paredes *v.* City of Manila, G.R. No. 88879, March 21, 1991). Section 4 is explicit and categorical in its prohibition and[,] unfortunately for Judge Reyes[,] applies squarely to the instant case.[44] (emphasis ours; italics supplied)

Finally, in *Gov't. Service Insurance System v. Civil Service Commission,*[45] the Court was asked to resolve whether government service rendered on a *per diem* basis is creditable for computing the length of service for retirement purposes. In disregarding the petitioners' plea for liberal construction, the Court held:

The law is very clear in its intent to exclude *per diem* in the definition of "compensation." Originally, *per diem* was not among those excluded in the definition of compensation (See Section 1(c) of C.A. No. 186), not until the passage of the amending laws which redefined it to exclude *per diem*.

The law not only defines the word "compensation," but it also distinguishes it from other forms of remunerations. Such distinction is significant not only for purposes of computing the contribution of the employers and employees to the GSIS but also for computing the employees' service record and benefits.

x x x x x x x x x

Private respondents both claim that retirement laws must be liberally interpreted in favor of the retirees. **However, the doctrine of liberal construction cannot be applied in the instant petitions, where the law invoked is clear, unequivocal and leaves no room for interpretation or construction.** Moreover, to accommodate private respondents' plea will contravene the purpose for which the law was enacted, and will defeat the ends which it sought to attain (cf. Re: Judge Alex Z. Reyes, 216 SCRA 720 [1992]).[46] [italics supplied; emphasis ours]

---

[44] *Id.* at 725.

[45] G.R. Nos. 98395 and 102449, October 28, 1994, 237 SCRA 809.

[46] *Id.* at 816- 818.

No compelling reasons exist to warrant the liberal application of Section 1 of R.A. No. 1568, as amended, to the present case

We find no compelling legal or factual reasons for the application of the Court's liberality in the interpretation of retirement laws to the present case. The discretionary power of the Court to exercise the liberal application of retirement laws is not limitless; its exercise of liberality is on a case-to-case basis and only after a consideration of the factual circumstances that justify the grant of an exception. The recent case of *Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946*[47] fully explained how a liberal approach in the application of retirement laws should be construed, *viz*:

> The rule is that retirement laws are construed liberally in favor of the retiring employee. **However, when in the interest of liberal construction the Court allows seeming exceptions to fixed rules for certain retired Judges or Justices, there are ample reasons behind each grant of an exception.** The crediting of accumulated leaves to make up for lack of required age or length of service is not done indiscriminately. It is always on a case to case basis.
>
> In some instances, the lacking element—such as the time to reach an age limit or comply with length of service is *de minimis*. It could be that the amount of accumulated leave credits is tremendous in comparison to the lacking period of time.
>
> More important, **there must be present an essential factor** before an application under the *Plana* or *Britanico* rulings may be granted. The Court allows a making up or compensating for lack of required age or service only if satisfied that the career of the retiree was marked by competence, integrity, and dedication to the public service; it was only a bowing to policy considerations and an acceptance of the realities of political will which brought him or her to premature retirement. (emphases and italics ours; citation omitted)

---

[47] *Supra* note 32 citing *Re: Gregorio G. Pineda*, A.M. No. 6789, July 13, 1990, 187 SCRA 469, 475.

In the present case, as previously mentioned, *Ortiz* cannot be used as authority to justify a liberal application of Section 1 of R.A. No. 1568, as amended not only because it is not on all fours with the present case; more importantly, the Court in *Ortiz* had ample reasons, based on the unique factual circumstances of the case, to grant an exception to the service requirements of the law. In *Ortiz*, the Court took note of the involuntariness of Ortiz's "courtesy resignation," as well as the peculiar circumstances obtaining at that time President Aquino issued Proclamation No. 1 calling for the courtesy resignation of all appointive officials, *viz*:

> From the foregoing it is evident that petitioner's "resignation" lacks the element of clear intention to surrender his position. We cannot presume such intention from his statement in his letter of March 5, 1986 that he was placing his position at the disposal of the President. He did not categorically state therein that he was unconditionally giving up his position. It should be remembered that said letter was actually a response to Proclamation No. 1 which President Aquino issued on February 25, 1986 when she called on all appointive public officials to tender their "courtesy resignation" as a "first step to restore confidence in public administration."[48]

In stark contrast, no such peculiar circumstances obtain in the present case.

Finally, in the absence of any basis for liberal interpretation, the Court would be engaged in **judicial legislation** if we grant the petitioners' plea. We cannot overemphasize that the policy of liberal construction cannot and should not be to the point of engaging in judicial legislation — an act that the Constitution absolutely forbids this Court to do. In the oft-cited case of *Tanada v. Yulo*,[49] Justice George A. Malcolm cautioned against judicial legislation and warned against liberal construction being used as a license to legislate and not to simply interpret,[50] thus:

---

[48] *Ortiz v. COMELEC, Supra* note 19 at 787-788.

[49] 61 Phil. 515 (1935).

[50] See Theodore O. Te, *Stare In (Decisis): Reflections on Judicial Flip-flopping in League of Cities v. Comelec and Navarro v. Ermita*, 85 PHIL. L. J. 784, 787 (2011).

Counsel in effect urges us to adopt a liberal construction of the statute. That in this instance, as in the past, we aim to do. But counsel in his memorandum concedes "that the language of the proviso in question is somewhat defective and does not clearly convey the legislative intent", and at the hearing in response to questions was finally forced to admit that what the Government desired was for the court to insert words and phrases in the law in order to supply an intention for the legislature. That we cannot do. By liberal construction of statutes, courts from the language used, the subject matter, and the purposes of those framing them are able to find out their true meaning. There is a sharp distinction, however, between construction of this nature and the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced. The former is liberal construction and is a legitimate exercise of judicial power. The latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government, the executive, the legislative, and the judicial.[51]

In the present case, Section 1 of R.A. No. 1568, by its plain terms, is clear that retirement entails the completion of the term of office. To construe the term "retirement" in Section 1 of R.A. No. 1568 to include termination of an *ad interim* appointment is to read into the clear words of the law exemptions that its literal wording does not support; to depart from the meaning expressed by the words of R.A. No. 1568 is to alter the law and to legislate, and not to interpret. We would thereby violate the time-honored rule on the constitutional separation of powers. The words of Justice E. Finley Johnson in the early case of *Nicolas v. Alberto*[52] still ring true today, *viz.*:

The courts have no legislative powers. In the interpretation and construction of statutes their sole function is to determine, and, within the constitutional limits of the legislative power, to give effect to the intention of the legislature. The courts cannot read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself. To depart from the meaning expressed by the words of a statute, is to alter the statute,

---

[51] *Tanada v. Yulo, supra* note 50, at 519.

[52] See Dissenting Opinion in *Nicolas v. Alberto*, 51 Phil. 370, 382 (1928).

to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the legislature, and it is the province of the courts to construe, not to make the laws.

To reiterate, in light of the express and clear terms of the law, the basic rule of statutory construction should therefore apply: "legislative intent is to be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction."[53]

The Comelec did not violate the rule on finality of judgments

Petitioners argue that Resolution No. 06-1369, which initially granted them a five-year lump sum gratuity, attained finality thirty (30) days after its promulgation, pursuant to Section 13, Rule 18 of the Comelec Rules of Procedure, and, thus, can no longer be modified by the Comelec.

We cannot agree with this position. Section 13, Rule 18 of the Comelec Rules of Procedure reads:

Sec. 13. Finality of Decisions or Resolutions. —

a. In **ordinary actions, special proceedings, provisional remedies and special reliefs** a decision or resolution of the Commission *en banc* shall become final and executory after thirty (30) days from its promulgation.

A simple reading of this provision shows that it only applies to ordinary actions, special proceedings, provisional remedies and special reliefs. Under Section 5, Rule 1 of the Comelec Rules of Procedures, **ordinary actions** refer to election protests, *quo warranto*, and appeals from decisions of courts in election protest cases; **special proceedings** refer to annulment of permanent list of voters, registration of political parties and accreditation of citizens' arms of the Commission; **provisional**

---

[53] See Concurring Opinion of J. Brion in *Philippine Savings Bank, et al. v. Senate Impeachment Court, etc.*, G.R. No. 200238, February 9, 2012, citing *Veroy v. Layague, et al*., G.R. No. 95630, June 18, 1992 and *Provincial Board of Cebu v. Presiding Judge of Cebu, CFI, Br. IV*, G.R. No. L-34695, March 7, 1989, 171 SCRA 1.

remedies refer to injunction and/or restraining order; and **special reliefs** refer to *certiorari*, prohibition, *mandamus* and contempt. Thus, it is clear that the proceedings that precipitated the issuance of Resolution No. 06-1369 do not fall within the coverage of the actions and proceedings under Section 13, Rule 18 of the Comelec Rules of Procedure. Thus, the Comelec did not violate its own rule on finality of judgments.

No denial of due process

We also find no merit in the petitioners' contention that they were denied due process of law when the Comelec issued Resolution No. 8808 without affording them the benefit of a notice and hearing. We have held in the past that "[t]he essence of due process is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. [Thus, a] formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are given fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is absolute lack of notice and hearing."[54] In *Bautista v. Commission on Elections*,[55] we emphasized:

> In *Zaldivar vs. Sandiganbayan* (166 SCRA 316 [1988]), we held that the right to be heard does not only refer to the right to present verbal arguments in court. A party may also be heard through his pleadings. Where opportunity to be heard is accorded either through oral arguments or pleadings, there is no denial of procedural due process. As reiterated in *National Semiconductor (HK) Distribution, Ltd. vs. NLRC* (G.R. No. 123520, June 26, 1998), the essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side. Hence, in *Navarro III vs. Damaso* (246 SCRA 260 [1995]), we held that a formal or trial-type hearing is not at all times and not in all instances essential.[56] (italics supplied)

---

[54] *Bautista v. COMELEC,* 460 Phil. 459, 478 (2003).

[55] 359 Phil. 1 (1998).

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

Thus, "[a] party cannot successfully invoke deprivation of due process if he was accorded the opportunity of a hearing, through either oral arguments or pleadings. There is no denial of due process when a party is given an opportunity through his pleadings."[57] In the present case, the petitioners cannot claim deprivation of due process because they actively participated in the Comelec proceedings that sought for payment of their retirement benefits under R.A. No. 1568. The records clearly show that the issuance of the assailed Comelec resolution was precipitated by the petitioners' application for retirement benefits with the Comelec. Significantly, the petitioners were given ample opportunity to present and explain their respective positions when they sought a re-computation of the initial pro-rated retirement benefits that were granted to them by the Comelec. Under these facts, no violation of the right to due process of law took place.

No vested rights over retirement benefits

As a last point, we agree with the Solicitor General that the retirement benefits granted to the petitioners under Section 1 of R.A. No. 1568 are purely gratuitous in nature; thus, they have no vested right over these benefits.[58] Retirement benefits as provided under R.A. No. 1568 must be distinguished from a pension which is a form of deferred compensation for services performed; in a pension, employee participation is mandatory, thus, employees acquire contractual or vested rights over the pension as part of their compensation.[59] In the absence of any vested right to the R.A. No. 1568 retirement benefits, the petitioners' due process argument must perforce fail.

WHEREFORE, premises considered, we hereby **DISMISS** the petition for *certiorari* filed by petitioners Evalyn I. Fetalino

---

[57] *Alauya, Jr. v. Commission on Elections*, 443 Phil. 893, 902 (2003); citations omitted.

[58] *Parreño v. Commission on Audit*, G.R. No. 162224, June 7, 2007, 523 SCRA 390, 400.

[59] *Ibid.*

and Amado M. Calderon for lack of merit. We likewise **DENY** Manuel A. Barcelona, Jr.'s petition for intervention for lack of merit. No costs.

SO ORDERED.

Carpio,[*] *Acting C.J., Leonardo-de Castro, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Perlas-Bernabe,* and *Leonen, JJ.,* concur.

Bersamin, J., joined the dissent of *J.* Reyes.

Reyes, J., with his dissenting position.

Velasco, Jr., J., no part due to relationship to party.

Sereno, C.J., on leave.

DISSENTING OPINION

REYES, *J.*:

At issue in this case is whether the petitioners are entitled to the full five-year lump sum gratuity provided by Republic Act (R.A.) No. l568, as amended,[1] entitled "An Act to Provide Life Pension to the Auditor General and the Chairman or any Member of the Commission on Elections."[2]

In deference to the majority, it is my opinion that the petitioners are entitled to a pro-rated computation of the gratuity for reasons hereinafter discussed.

R.A. No. 1568, as amended, provides for the retirement benefits due to a COMELEC or Chairperson Member. One is the *gratuity*

---

[*] In lieu of Chief Justice Maria Lourdes P. A. Sereno per Special Order No. 1384 dated December 4, 2012.

[1] R.A. No. 1568 was amended by R.A. Nos. 3473 and 3595.

[2] Approved on June 16, 1956 and re-enacted by R.A. No. 6118, entitled "An Act to Restore the Pension System for the Auditor General and the Chairman and Members of the Commission on Elections, as provided in Republic Act Numbered One Thousand Five Hundred Sixty-Eight, as amended."

or five-year lump sum and the other is the *annuity* or lifetime monthly pension. The bone of contention in this case pertains solely to the *gratuity* or five-year lump sum.

Originally, Section 1 of R.A. No. 1568 provides:

> Sec. 1. When the Auditor General, or the Chairman or any Member of the Commission on Elections retires from the service for having completed his term of office or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns upon reaching the age of sixty years, he or his heirs shall be paid in lump sum his salary for five years: Provided, That at the time of said retirement, death or resignation, he has rendered not less than twenty years of service in the government.

R.A. No. 1568 was subsequently amended by R.A. Nos. 3473[3] and 3595,[4] until R.A. No. 4968,[5] which declared inoperative or abolished R.A. No. 1568, as amended. R.A. No. 1568, as amended by R.A. Nos. 3473 and 3595 was finally resurrected by R.A. No. 6118[6] by re-enacting it.

Thus, as it now stands, Section 1 provides:

> Sec. 1. When the Auditor General or the Chairman or any Member of the Commission on Elections **retires from the service for having**

---

[3] Approved on June 16, 1962. The title of the law was amended to read as "(A)n Act to provide under certain conditions life pension to the Auditor General and the Chairman and members of the Commission on Elections," while the proviso "(A)nd, provided, further, That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of the monthly salary he was receiving on the date of retirement, incapacity or resignation," was added to Section 1.

[4] Approved on June 22, 1963, entitled "An Act to Amend Republic Act Numbered Fifteen Hundred Sixty-Eight."

[5] Approved on June 17, 1967, entitled, "An Act Amending further Commonwealth Act Numbered One Hundred Eighty-Six, as amended."

[6] Section 1 thereof states: "Republic Act Numbered One thousand five hundred sixty-eight, as amended by Republic Act Numbered Three thousand four hundred seventy-three and Republic Act Numbered Three thousand five hundred ninety-five providing for the pension system for the Auditor General and the Chairman and Members of the Commission on Elections, is hereby re-enacted."

completed his term or office or by reason of his **incapacity to discharge the duties of his office,** or **dies while in the service**, or **resigns at any time after reaching the age of sixty years but before the expiration of this term of office, he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement, incapacity, death or resignation**, as the case may be: Provided, That in case of resignation, he has rendered not less than twenty years of service in the government; And, provided, further, That he shall receive an annuity payable monthly during the residue of his natural life equivalent to the amount of monthly salary he was receiving on the date of retirement, incapacity or resignation. (Emphasis and underscoring ours)

There are only four (4) categories under which a COMELEC Chairperson or Commissioner may avail of the five-year lump sum gratuity, *viz*:

(1) Retirement from the service for having completed the term of office;
(2) Incapacity to discharge the duties of office;
(3) Death while in the service; and
(4) Resignation after reaching the age of sixty (60) years but before the expiration of the term of office. In addition, the officer should have rendered not less than twenty years of service in the government at the time of retirement.

The termination of the petitioners' *ad interim* appointments cannot qualify as either incapacity or resignation.

Incapacity in this case means the inability of a public officer to perform the functions and duties concomitant to the office due to impairment. The termination of the petitioners' *ad interim* appointment was obviously not a result of any disability such that the petitioners cannot perform the duties of a Commissioner. The limitation on their capacity to perform the duties of their office was due to the simple reason that they have no office or responsibility to speak of since their *ad interim* appointments were not acted upon by the CA and were bypassed with the adjournment of Congress.

Neither can the termination of their *ad interim* appointments be deemed as resignation. Resignation is defined as the act of giving up or the act of an officer by which he declines his office and renounces the further right to use it. To constitute a complete and operative act of resignation, the officer or employee must show a clear intention to relinquish or surrender his position accompanied by the act of relinquishment.[7] In this case, there was no intentional relinquishment by the petitioners' of their posts as the termination was a result of the adjournment of Congress without the CA acting on their appointments.

The COMELEC was correct in ruling that the only pertinent provision under which the petitioners' case may fall is retirement from service.[8] Retirement, however, entails compliance with certain age and service requirements specified by law and jurisprudence and takes effect by operation of law.[9]

R.A. No. 1568, as amended, is clear. Section 1 thereof states that "[W]hen x x x any Member of the Commission on Elections **retires from the service for having completed his term of office** x x x he or his heirs shall be paid in lump sum his salary for five years x x x." It is obvious from the plain language of the provision that retirement under said category presupposes completion of the term of office.

Term means the time during which the officer may claim to hold office as a matter of right, and fixes the interval after which the several incumbents shall succeed one another.[10] Particularly, *term of office* has been defined as the period when an elected officer or appointee is entitled to perform the functions of the office and enjoy its privileges and emoluments.[11]

---

[7] *Ortiz v. COMELEC*, 245 Phil. 780, 787 (1988).

[8] *Rollo*, p. 48.

[9] *Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946*, A.M. No. 14061-Ret, June 19, 2012.

[10] *Gaminde v. Commission on Audit*, 401 Phil. 77, 88 (2000).

[11] *Casibang v. Judge Aquino*, 181 Phil. 181, 190 (1979).

Article IX-D, Section 2 of the 1987 Constitution provides for a seven (7) year term, without reappointment, for the COMELEC Chairperson and Commissioners. In this case, petitioners Fetalino and Calderon served as COMELEC Commissioners only from February 16, 1998 to June 30, 1998. Petitioner-intervenor Barcelona, on the other hand, served only from February 12, 2004 to July 10, 2005. Strictly construed, the petitioners, therefore, did not complete the full term of their office.

I believe, however, that all is not lost for the petitioners. In *Ortiz v. COMELEC*,[12] the Court affirmed the grant of retirement benefits in favor of then COMELEC Commissioner Mario D. Ortiz (Ortiz) despite the fact that he did not complete the full term of his office. Ortiz was initially appointed as COMELEC Commissioner by then President Ferdinand E. Marcos and took his oath of office on July 30, 1985. Immediately after the assumption of President Corazon C. Aquino (Pres. Aquino), Ortiz, together with other COMELEC Commissioners, tendered their courtesy resignations on March 5, 1986, which were accepted by Pres. Aquino. Subsequently, Ortiz filed his application for retirement benefits, which was denied by the COMELEC. Taking into consideration principles of equity and justice, the Court reversed the COMELEC's denial of Ortiz's application and directed the appropriate government agency to facilitate the processing and payment of his retirement benefits. The Court stated:

> The curtailment of his term not being attributable to any voluntary act on the part of the petitioner, **equity and justice demand that he should be deemed to have completed his term albeit much ahead of the date stated in his appointment paper. Petitioner's case should be placed in the same category as that of an official holding a primarily confidential position whose tenure ends upon his superior's loss of confidence in him. His cessation from the service entails no removal but an expiration of his term**.
>
> **As he is deemed to have completed his term of office, petitioner should be considered retired from the service**. x x x.[13] (Citation omitted and emphasis ours)

[12] *Supra* note 7.

[13] *Id.* at 788-789.

While the circumstances of *Ortiz* are not exactly identical with that of the petitioners', this should not be a bar to the Court's application of the *Ortiz* ruling in this case. It should be noted that at the time of Ortiz's appointment in 1985 and courtesy resignation in 1986, there was no CA to speak of as it was abolished by the 1973 Constitution.[14] Nevertheless, the severance of the petitioners' appointment may be likened to that of Commissioner Ortiz's in that it is not "attributable to any voluntary act" on their part and their positions may be "placed in the same category as that of an official holding a primarily confidential position whose tenure ends upon his superior's loss of confidence in him."[15]

Moreover, a liberal construction of R.A. No. 1568, as amended, would achieve the humanitarian purposes of the law so that efficiency, security and well-being of government employees may be enhanced. After all, retirement laws are designed to provide for the retiree's sustenance and, hopefully, even comfort, when he no longer has the capability to earn a livelihood.[16] Thus, the non-renewal of the petitioners' *ad interim* appointments should be tantamount to expiration of their respective terms and in line with the same dictates of justice and equity espoused in *Ortiz*, the petitioners, therefore, are deemed to have completed their terms of office and considered as retired from the service.

Parenthetically, to a public servant, pension is not a gratuity but rather a form of deferred compensation for services performed and his right thereto commences to vest upon his entry into the retirement system and becomes an enforceable obligation in court upon fulfillment of all conditions under which it is to be paid. Similarly, retirement benefits receivable by public employees are valuable parts of the consideration for entrance into and continuation in public employment. They serve a public purpose and a primary objective in establishing them is to induce able persons to enter and remain in public

---

[14] http://comappt.gov.ph/index.php?id1=2&id2=1&id3=0, viewed on October 25, 2012.

[15] *Supra* note 7.

[16] *Government Service Insurance System v. De Leon*, G.R. No. 186560, November 17, 2010, 635 SCRA 321, 330.

employment, and to render faithful and efficient service while so employed.[17]

The petitioners, however, are not entitled to the full five-year lump sum gratuity provided by R.A. No. 1568, as amended. Section 1 contains the *proviso*: "he or his heirs shall be paid in lump sum his salary for one year, not exceeding five years, for every year of service based upon the last annual salary that he was receiving at the time of retirement." Said condition provides for the manner of computing the retirement benefits due to a COMELEC Chairperson or Commissioner. Consequently, a maximum of five-year lump gratuity is given to a Chairperson or Commissioner who retired and has served for at least five (5) years. If the years of service are less than five (5), then a retiree is entitled to a gratuity for every year of service. The same *proviso* also contemplates the situation when a Chairperson or Commissioner does not complete the full term of the office. This will occur, for example, when a Chairperson or Commissioner takes over in a case of vacancy resulting from certain causes — death, resignation, disability or impeachment — such that the appointee will serve only for the unexpired portion of the term of the predecessor.[18] In such case, the retiree is entitled to gratuity depending on the years of service but not to exceed five (5) years. Given that the petitioners did not serve the full length of their term of office, the computation of their lump sum gratuity should be based on the foregoing *proviso*.

Moreover, I do not agree with the petitioners that they were deprived of due process when the COMELEC issued the assailed resolution without affording them the right to be notified of its issuance and be heard on the matter. Neither did they acquire a vested right over their retirement benefits.

In issuing the assailed Resolution No. 8808, the COMELEC was performing a purely administrative function. Administrative

---

[17] *Supra* note 7.

[18] See *Funa v. The Chairman, Commission on Audit, Reynaldo A. Villar*, G.R. No. 192791, April 24, 2012.

power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs.[19] In *Bautista v. COMELEC*,[20] the Court stated that the term *administrative* connotes, or pertains, to administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things.[21] It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon.[22] In denying the petitioners' application for retirement benefits, the COMELEC was merely applying and implementing the provisions of R.A. No. 1568, as amended, *vis-à-vis* the petitioners' prevailing circumstances. It was not exercising any quasi-judicial or administrative adjudicatory power such that the due process requirements of notice and hearing must be observed.[23]

Records also show that the issuance of the assailed resolution originated from the petitioners' own move to have their retirement benefits paid.[24] Petitioners, in fact, were also able to present their respective positions on the matter when they sought a re-computation of the initial retirement benefits that were granted by the COMELEC on a *pro rata* basis.[25]

It should be stressed that the retirement benefits granted to COMELEC Chairpersons and Commissioners under R.A. No. 1568, as amended, are purely gratuitous in nature. The petitioners cannot claim any vested right over the same as these are not similar to a pension plan where employee contribution or participation is mandatory, thus vesting in the employee a right

---

[19] *Cipriano v. Commission on Elections*, 479 Phil. 677, 690 (2004).

[20] 460 Phil. 459 (2003).

[21] *Id.* at 475-476, citing the concurring opinion of Justice Antonio in *University of Nueva Caceres v. Hon. Martinez*, 155 Phil. 126, 132-133 (1974).

[22] *Id.*

[23] *Namil v. COMELEC*, 460 Phil. 751, 759 (2003).

[24] *Rollo*, pp. 52-67.

[25] *Id.* at 93.

over said pension. The rule is that where the pension is part of the terms of employment and employee participation is mandatory, employees have contractual or vested rights in the pension.[26]

WHEREFORE, I vote that the petition filed by Evelyn I. Fetalino and Amado M. Calderon should be **GRANTED** while the petition filed by Manuel A. Barcelona should be **DENIED** inasmuch as he admitted that he already received his *pro-rated* gratuity.[27]

EN BANC

[G.R. No. 195640. December 4, 2012]

SUGAR REGULATORY ADMINISTRATION, represented by its Administrator, *petitioner, vs.* **ENCARNACION B. TORMON, EDGARDO B. ALISAJE, LOURDES M. DOBLE, TERESITA Q. LIM, EDMUNDO R. JORNADAL, JIMMY C. VILLANUEVA, DEANNA M. JANCE, HENRY G. DOBLE, REYNALDO D. LUZANA, MEDELYN P. TOQUILLO, SEVERINO A. ORLIDO, RHODERICK V. ALIPOON, JONATHAN CORDERO, DANILO B. BISCOCHO, BELLO C. LUCASAN, LUBERT V. TIVE, and the COMMISSION ON AUDIT,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; ON PAYMENT; PARTY ALLEGING REFUND AS PAYMENT

---

[26] *GSIS, Cebu City Branch v. Montesclaros*, 478 Phil. 573, 584 (2004); see also *Parreño v. Commission on Audit*, G.R. No. 162224, June 7, 2007, 523 SCRA 390, 400.

[27] *Rollo*, p. 236; Petition-In-Intervention, p. 5.

HAS TO PROVE THE SAME; CASE AT BAR. — Petitioner withheld 25% of private respondents' incentive and terminal leave benefits because of their failure to present evidence of refund of the amounts of retirement and incentive benefits earlier received from PHILSUGIN/SQA. On the other hand, private respondents claim that they had already refunded these benefits through salary deduction, therefore, they are entitled to the payment of the amounts withheld by petitioner. The burden of proof is on private respondents to prove such refund. One who pleads payment has the burden of proving it.

2. **ID.; ID.; ID.; ID.; ID.; AFFIDAVITS OF OFFICIALS WHO WERE IN THE BEST POSITIONS TO ATTEST THE FACT OF REFUND IN CASE AT BAR, APPRECIATED. —** In order to prove their allegations of refund, private respondents submitted the affidavits of Messrs. Cordova and Meneses, Jr. x x x Messrs. Cordova, being petitioner's head of the Personnel Department, and Meneses, Jr., as petitioner's Chief of Budget Division, and later Manager of the Administrative and Finance Department, were in the best positions to attest to the fact of private respondents' refund through salary deductions of the amounts of retirement and incentive benefits previously received, especially since these officials were in those departments since PHILSUCOM took over in 1977 and later with petitioner until their retirement in 2003. There was nothing on record to show that Messrs. Cordova and Meneses, Jr. were actuated with any ill motive in the execution of their affidavits attesting to the fact of refund. The general rule is that administrative agencies are not bound by the technical rules of evidence. It can accept documents which cannot be admitted in a judicial proceeding where the Rules of Court are strictly observed. It can choose to give weight or disregard such evidence, depending on its trustworthiness.

3. **ID.; ID.; ID.; ID.; ID.; AS EVIDENCE OF REFUND WAS MADE, BURDEN OF PROOF IS SHIFTED TO THE PARTY ALLEGING NON-REFUND. —** Considering that private respondents had introduced evidence that they had refunded their retirement and incentive benefits through salary deduction, the burden of going forward with the evidence — as distinct from the general burden of proof — shifts to the petitioner, who is then under a duty of producing some evidence to show non-payment.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION; WHEN PRESENT. — There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.

APPEARANCES OF COUNSEL

Ignacio S. Santillan and *Albert B. Arles* for petitioner.
Benjamin S. Candari, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, is Decision No. 2010-146[1] dated December 30, 2010 of the Commission on Audit (COA).

The antecedent facts are as follows:

Private respondents, namely: Encarnacion B. Tormon, Edgardo B. Alisaje, Lourdes M. Doble, Teresita Q. Lim, Edmundo R. Jornadal, Jimmy C. Villanueva, Deanna M. Jance, Henry G. Doble, Reynaldo D. Luzana, Medelyn P. Toquillo, Severino A. Orlido, Rhoderick V. Alipoon, Jonathan Cordero, Danilo B. Biscocho, Bello C. Lucasan, Lubert V. Tive, were former employees of Philippine Sugar Institute (PHILSUGIN) and the Sugar Quota Administration (SQA). On February 2, 1974, Presidential Decree (P.D.) No. 388 was issued creating the Philippine Sugar Commission (PHILSUCOM). Under the said decree, PHILSUGIN and SQA shall be abolished upon the organization of PHILSUCOM and all the former's assets, liabilities and records shall be transferred to the latter and the personnel of the abolished agencies who may not be retained shall be entitled to retirement/gratuity and incentive benefits.

[1] *Rollo,* pp. 34-49.

In September 1977, PHILSUGIN and SQA were abolished and private respondents were separated from the service; thus, they were paid their retirement/gratuity and incentive benefits. In the same year, private respondents were reinstated by PHILSUCOM subject to the condition that the former would refund in full the retirement/gratuity and incentive benefits they received from PHILSUGIN or SQA. PHILSUCOM Consultant, Eduardo F. Gamboa, wrote:

> We have received orders from the Main Office to require you to refund in full the unexpired portion of the money value of the retirement or lay-off gratuity you received as called for in Office Memorandum No. 4, series of 1977, dated December 5, 1977, in view of your reinstatement in the service.
>
> x x x x x x x x x
>
> In connection herewith, you are therefore directed to make the necessary refund of the above-mentioned amount to our Local Accounting Department and to inform the Personnel Department, when refund is made. Failure on your part to make the necessary refund will constrain us to recommend corrective measures.[2]

On May 28, 1986, Executive Order (E.O.) No. 18, series of 1986 was issued wherein the Sugar Regulatory Administration (petitioner SRA) replaced PHILSUCOM. PHILSUCOM's assets and records were all transferred to petitioner SRA which also retained some of the former's personnel which included the private respondents.

On July 29, 2004, E.O. No. 339 was issued, otherwise known as *Mandating the Rationalization of the Operations and Organization of the SRA*, for the purpose of strengthening its vital services and refocusing its resources to priority programs and activities, and reducing its personnel with the payment of retirement gratuity and incentives for those who opted to retire from the service. Among those separated from the service were private respondents. Under the SRA Rationalization Program, petitioner computed its employees' incentives and terminal leave

---

[2] *Id.* at 59.

benefits based on their creditable years of service contained in their respective service records on file with petitioner and validated by the Government Service and Insurance System (GSIS). The computation was then submitted to the Department of Budget and Management (DBM) for approval and request of funds. The DBM approved the same and released the disbursement vouchers for processing of the incentive benefits.

However, in the course of the implementation of its rationalization plan, petitioner found out that there was no showing that private respondents had refunded their gratuity benefits received from PHILSUGIN or SQA. Hence, petitioner considered private respondents' length of service as having been interrupted which commenced only at the time they were re-employed by PHILSUCOM in 1977. Petitioner then recomputed private respondents' retirement and incentive benefits and paid only the 75% equivalent of the originally computed benefits and withheld the remaining 25% in view of the latter's inability to prove the refund.

Private respondents requested petitioner to compute their incentive benefits based on their length of service to include their years of service with PHILSUGIN or SQA taking into consideration their refund of gratuity benefits to PHILSUCOM at the time of their re-employment in 1977. On January 4, 2007, then petitioner's Administrator, James C. Ledesma, issued a memorandum[3] declaring the services of its employees affected by the Rationalization Program, which included private respondents, terminated effective on January 15, 2007. Under Board Resolution No. 2007-055[4] dated June 14, 2007, petitioner denied private respondents' requests for the latter's failure to submit proofs of refund of gratuity received from PHILSUGIN or SQA.

On September 6, 2007, private respondents wrote a letter[5] addressed to then Commission on Audit (COA) Chairman,

---

[3] *Id.* at 116.

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

[5] *Id.* at 121-127.

Guillermo N. Caragues, asking the COA to order petitioner to pay the balance representing the 25% of their retirement and incentive benefits withheld by petitioner. They claimed that they had already refunded the full amount of the incentive benefits through salary deductions and since petitioner could no longer find the PHILSUCOM payrolls reflecting those deductions, private respondents submitted the affidavits of Messrs. Hilario T. Cordova[6] and Nicolas L. Meneses Jr.,[7] petitioner's Chief, Administrative Division, and Manager, Administrative and Finance Department, respectively, both executed in March 2007, attesting to the fact of refund.

Petitioner filed its Answer[8] thereto contending among others that since private respondents alleged payment, they were duty-bound to present evidence substantiating the said refund; that no records of payments existed to clearly establish their claim, thus, their resort to secondary evidence which were the sworn affidavits of petitioner's former officials were insufficient to prove the fact of the alleged payment.

On October 14, 2009, the COA rendered Decision No. 2009 -100,[9] with the following dispositive portion, to wit:

> WHEREFORE, foregoing premises considered, this Commission rules that the affidavits presented by claimants are insufficient proofs that they have refunded to PHILSUCOM the gratuity/incentive benefits they received from PHILSUGIN/SQA.
>
> Evidence other than the affidavits must be presented to substantially prove their claims. Also, all the benefits, gratuity, incentive and retirement they received upon their separation from PHILSUGIN or SQA must be accounted for and refunded to SRA before the requested incentive benefit is computed based on their length of government service reckoned from the time they were employed with PHILSUGIN or SQA.[10]

[6] *Id.* at 128.

[7] *Id.* at 129.

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

[9] *Id.* at 50-54.

[10] *Id.* at 53.

In so ruling, the COA found that since private respondents alleged payment, they had the burden of proving the same by clear and positive evidence; that the affidavits of Messrs. Cordova and Meneses, Jr. stating that private respondents had refunded to PHILSUCOM the benefits they received from PHILSUGIN/SQA were not the best evidence of such refunds; that an affidavit was made without notice to the adverse party or opportunity to cross examine; and that the contents of these affidavits were too general and did not state private respondents' respective final payments.

Private respondents filed their motion for reconsideration which was opposed by petitioner.

On December 30, 2010, the COA rendered Decision No. 2010-146 granting private respondents' motion for reconsideration, the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby GRANTED. Accordingly, COA Decision No. 2009-100 is hereby REVERSED and [SET] ASIDE. The SRA is directed to release to movants the amount representing the 25% balance of their incentive and terminal leave benefits.[11]

In its decision, the COA observed that private respondents had filed a separate but related complaint with the Civil Service Commission (CSC). It found that while their complaint with the CSC was denominated as illegal termination/backwages and entitlements, the main thrust of their complaint was to compel the payment of the 25% balance of their total incentives and terminal leave benefits withheld by petitioner, which was the same demand made in their letter to Chairman Carague whose decision is the subject of the motion for reconsideration, thus, forum shopping existed. The COA also noted that in their Supplement to Motion for Reconsideration/Manifestation filed on November 24, 2009, private respondents mentioned the ruling of the CSC[12] in their favor and they now disputed the COA's

---

[11] *Id.* at 48.

[12] In Resolution No. 08-1945 dated October 12, 2008, the CSC ruled, among others, the private respondents' entitlement to the 25% of their incentives

jurisdiction to rule on their demand contending that it is the CSC which has jurisdiction over cases involving government reorganization; and that the CSC had issued a Resolution granting private respondents' motion for execution of the CSC resolution. Notwithstanding, however, the COA found that it did not lose jurisdiction over the present case and went on to decide the claim on the merits and disregarded the CSC Resolution.

The COA ruled that the affidavits submitted were not secondary evidence within the context of Section 5, Rule 130 of the Rules of Court, hence, admissible in evidence, since technical rules of procedure and evidence are not strictly applied in administrative proceedings. The COA found in the records certain significant circumstances which, when taken together with the affidavits, established that indeed private respondents had refunded the incentives in question. Since private respondents had discharged their burden of proof, it was incumbent on petitioner to discharge the burden of evidence that respondents had not paid the said incentives; that it was the PHILSUCOM, then petitioner, being the successor of PHILSUGIN and SQA, that had been tasked with the official custody of all the records and books of their predecessors, as mandated under Section 10 of Presidential Decree No. 388; that if petitioner's Accounting Division cannot issue a certification because it has no records, it is never an excuse to shift the burden to the employees.

Petitioner is now before us raising the following issues, to wit:

1. Whether or not respondent Commission erred and gravely abused its discretion when it gave credence to the affidavits of Mr. Hilario T. Cordova, then Chief, Administrative Division, SRA, and Mr. Nicolas L. Meneses, Jr., then Manager, Administrative and Finance Department plainly alleging that the gratuity/incentives have been refunded by the private respondents.

2. Whether or not public respondent Commission on Audit erred and gravely abused its discretion in making assumptions or suppositions out of certain circumstances which were not even alleged

---

and terminal benefits and payment of their back salaries. Petitioner filed a petition with the Court of Appeals, which is still pending resolution.

by private respondents and in arriving at a conclusion out of the same in favor of private respondents.

3. Whether or not public respondent Commission on Audit erred and gravely abused its discretion in finding substantial evidence that private respondents refunded the gratuity incentives in question.[13]

The issue for resolution is whether the COA committed grave abuse of discretion amounting to lack of jurisdiction in directing petitioner to pay the 25% balance of private respondents' incentive and terminal leave benefits withheld from the submitted computation of petitioner and duly funded by the DBM.

We find no merit in the petition.

Petitioner withheld 25% of private respondents' incentive and terminal leave benefits because of their failure to present evidence of refund of the amounts of retirement and incentive benefits earlier received from PHILSUGIN/SQA. On the other hand, private respondents claim that they had already refunded these benefits through salary deduction, therefore, they are entitled to the payment of the amounts withheld by petitioner. The burden of proof is on private respondents to prove such refund. One who pleads payment has the burden of proving it.[14] Even where the creditor alleges non-payment, the general rule is that the *onus* rests on the debtor to prove payment, rather than on the creditor to prove non-payment.[15] The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.[16]

Well settled also is the rule that a receipt of payment is the best evidence of the fact of payment.[17] In *Monfort v.*

---

[13] *Rollo*, pp. 20-21.

[14] *Citibank, N.A. (Formerly First National City Bank) v. Sabeniano*, G.R. No. 156132, October 16, 2006, 504 SCRA 378, 418.

[15] *Coronel v. Capati*, G.R. No. 157836, May 26, 2005, 459 SCRA 205, 213; 498 Phil. 248, 255 (2005).

[16] *Id.*; *Citibank, N.A. v. Sabeniano, supra.*

[17] *Cham v. Paita-Moya*, A.C. No. 7494, June 27, 2008, 556 SCRA 1, 8, citing *Philippine National Bank v. Court of Appeals*, 326 Phil. 326, 335-336

Aguinaldo,[18] the receipts of payment, although not exclusive, were deemed to be the best evidence. Private respondents, however, could not present any receipt since they alleged that their payments were made through salary deductions and the payrolls which supposedly contained such deductions were in petitioner's possession which had not been produced. In order to prove their allegations of refund, private respondents submitted the affidavits of Messrs. Cordova and Meneses, Jr., which we successively quote in part, to wit:

Mr. Cordova states:

That I was the Administrative Officer II of the defunct Philippine Sugar Institute when it was abolished in 1977; that I hold the same position when the Philippine Sugar Commission took over the functions of PHILSUGIN from that year up to 1986;

That I continued to be the head of Personnel Division when Sugar Regulatory Administration replaced PHILSUCOM in 1986 and retired as Division Chief II of the Administrative Division on July 31, 2003;

That during my incumbency in said positions, I have personal knowledge of the paymen/refund of ex-PHILSUGIN employees separated from service but reinstated in PHILSUCOM by way of salary deduction through payroll;

That Ms. Encarnacion Tormon, *et al.*, upon return to service with PHILSUCOM, refunded the amount of the gratuities they received from PHILSUGIN in the months following/succeeding upon their appointment as reinstated employees of PHILSUCOM;

That their status as reinstated employees are officially marked in their individual service records duly authenticated by myself as Chief of Personnel Division and validated by the Government Service Insurance System as proven by GSIS computation of their creditable years.[19]

(1996), cited in *Towne and City Dev't. Corp. v. Court of Appeals*, G.R. No. 135043, July 14, 2004, 434 SCRA 356, 361-363.

[18] 91 Phil. 913 (1952).

[19] *Rollo,* p. 128.

On the other hand, Mr. Meneses Jr., states:

> That I was the Chief Internal Auditor of the defunct Philippine Sugar Institute when it was abolished in 1977; that I hold a key position in the Budget and Accounting Division when the Philippine Sugar Commission took over the functions of PHILSUGIN from that year up to 1986;
>
> That I later became Division Chief I of [the] Budget Division in the Sugar Regulatory Administration in 1988 and retired as Manager of the Administrative and Finance Department on July 31, 2003;
>
> That during my incumbency in said positions, I have personal knowledge of the payment/refund of ex-PHILSUGIN employees separated from service and reinstated in PHILSUCOM;
>
> That Ms. Encarnacion Tormon, *et al.*, upon return to service with PHILSUCOM, refunded the amount of the gratuities they received from PHILSUGIN;
>
> That their status as reinstated employees are officially marked in their individual service records duly authenticated by the Chief of Personnel Division and validated by GSIS.[20]

Messrs. Cordova, being petitioner's head of the Personnel Department, and Meneses, Jr., as petitioner's Chief of Budget Division, and later Manager of the Administrative and Finance Department, were in the best positions to attest to the fact of private respondents' refund through salary deductions of the amounts of retirement and incentive benefits previously received, especially since these officials were in those departments since PHILSUCOM took over in 1977 and later with petitioner until their retirement in 2003. There was nothing on record to show that Messrs. Cordova and Meneses, Jr. were actuated with any ill motive in the execution of their affidavits attesting to the fact of refund.

The general rule is that administrative agencies are not bound by the technical rules of evidence. It can accept documents which cannot be admitted in a judicial proceeding where the Rules of Court are strictly observed. It can choose to give weight or

---

[20] *Id.* at 129.

disregard such evidence, depending on its trustworthiness.[21] Here, we find no grave abuse of discretion committed by the COA when it admitted the affidavits of Messrs. Cordova and Meneses, Jr. and gave weight to them in the light of the other circumstances established by the records which will be shown later in the decision.

Petitioner claims that the affiants attested on a matter which happened 30 years ago; thus, how could they recall that each of the 16 employees had actually refunded the gratuity/incentives way back in 1977; that each of the private respondents held different positions with salaries different from each other and the dates when they respectively re-assumed service in the government differed from each other; that it may not even be entirely correct that all 16 respondents refunded the gratuity incentives in question by salary deduction.

We are not persuaded.

Significantly, Messrs. Cordova and Meneses, Jr. were petitioner's former officials who held key positions in the two divisions, namely, Personnel and Accounting Divisions, where private respondents were directed by then petitioner's Consultant Gamboa to make the necessary refunds for their retirement and incentive pay. Thus, if no refunds were made, these officials could have reported the same to Gamboa, who would have taken corrective measures as he threatened to do so if private respondents failed to make the necessary refunds. Notably, there is no showing that corrective measures had been taken. Moreover, as we said, while the COA admitted the affidavits, it did not rely solely on those affidavits to conclude that refunds were already made by private respondents. The matter of refund was proven by several circumstances which the COA found extant in the records of the case. We find apropos to quote the COA findings in this wise:

First, movants were reemployed by PHILSUCOM with the condition that they must return the benefits they had already received. In his

---

[21] See *Commission of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301, 327; 494 Phil. 306, 332-333 (2005).

16 March 1978 letter, Mr. Eduardo F. Gamboa, directed Ms. Tormon to refund the amount and to inform the Personnel Department when the refund was made. He warned Ms. Tormon to make the refund or they will be constrained to recommend corrective measures. The fact was that claimants were reinstated. That management did not take any corrective measures to compel the refund — except perhaps, the enforced salary deduction which claimants said was the mode of refund undertaken — is a point in favor of claimants. It would be unbelievable that in all these years, from 1977 to 2007, the SRA management, indubitably having the higher authority, just slept on its right to enforce the refund and did nothing about it. The natural and expected action that SRA ought to have taken was to enforce the refund through salary deduction, not through voluntary direct payment since the latter option does not carry with it the mandatory character of an automatic salary deduction.

Second, a certain Mr. Henry Doble, one of the movants, was promoted from Emergency Employee, a temporary status, to senior machine cutting operator with permanent status. If Mr. Doble had not refunded his gratuity, it was more reasonable to suppose that SRA would not have promoted him.

Third, COA Directors Rosemarie L. Lerio and Divina M. Alagon, CGS and SRA ATL[22] Antonio M. Malit, to whom the case was coursed through for comments, did not mention, even in passing, of any audit finding in the Annual Audit Reports (AARS) regarding the unrefunded incentives received by claimants The silence of the AARs for 30 years would only lend credence that theses refunds were made.

Fourth, under the SRA Rationalization program, the affected employees' incentive and terminal leave benefits were computed based on their creditable years of services as contained in their respective service records with the agency as validated by the GSIS. Accordingly, SRA computed movants' incentive and terminal leave benefits as of December 31, 2006 which was approved by the Department of Budget and Management (DBM) Secretary Rolando Andaya. This only showed that even the SRA was convinced that movants had no more financial accountability with the SRA at the time.

Fifth, then SRA Administrator James C. Ledesma informed movants that not one of the records of the payments they claimed

[22] Audit Team Leader.

was available at the office; thus, the SRA could not be definite as to the actual payments made by them and the equivalent periods corresponding thereto, Also, Ms. Amelita A. Papasin, Accountant IV, Accounting Unit, SRA, Bacolod, stated that they could not find any record showing payments made as claimed by Ms. Tormon, *et al.*, to refund the severance gratuities paid to them during their termination on September 30, 1977. Indeed, the SRA could not comply with the request of Mr. Antonio M. Malit, Audit Team leader (ATL), SRA, to produce copies of payroll or index of payments, or any accounting records covering the 32-year period which would have shown whether movants paid or did not pay the required refund. These payrolls and other records would have conclusively established the fact of payment or non-payment, But then all the SRA could say was there is no record of such payment. Absence of record is different from saying there was no payment.[23]

Factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[24]

Petitioner's claim that the COA made its own assumptions which were not even based on the allegations made by private respondents in any of their pleadings is devoid of merit. In their Reply to petitioner's Supplemental Comment/Opposition to private respondents' motion for reconsideration, private respondents had alleged some of these above-mentioned circumstances to support their claim that refunds had already been made. We also find that the records of the case support the above-quoted circumstances enumerated by the COA.

Considering that private respondents had introduced evidence that they had refunded their retirement and incentive benefits through salary deduction, the burden of going forward with the evidence — as distinct from the general burden of proof —

---

[23] *Rollo*, pp. 44-46.

[24] *Lumayna v. Commission on Audit*, G.R. No. 185001, September 25, 2009, 601 SCRA 163, 176-177.

shifts to the petitioner, who is then under a duty of producing some evidence to show non-payment.[25] However, the payroll to establish whether or not deductions had been made from the salary of private respondents were in petitioner's custody, but petitioner failed to present the same due to the considerable lapse of time.

All told, we find no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COA in rendering its assailed decision. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism,[26] which is wanting in this case.

WHEREFORE, the petition is **DISMISSED.** Decision No. 2010-146 dated December 30, 2010 of the Commission on Audit is hereby **AFFIRMED.**

SO ORDERED.

Carpio,[*] *Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe,* and *Leonen, JJ.,* concur.

Sereno, C.J., on leave.

---

[25] See *G & M (Phils.), Inc. v. Cruz*, G.R. No. 140495, April 15, 2005, 456 SCRA 215, 222; 496 Phil. 119, 126 (2005).

[26] *Veloso v. Commission on Audit,* G.R. No. 193677, September 6, 2011, 656 SCRA 767, 777.

[*] Acting Chief Justice per Special Order No. 1384 dated December 4, 2012.

SECOND DIVISION

[A.M. No. MTJ-10-1772. December 5, 2012]

DR. JANOS B. VIZCAYNO, *complainant, vs.* **JUDGE JASPER JESSE G. DACANAY, in his official capacity as the Presiding Judge of the Municipal Circuit Trial Court of Liloan-Compostela, Cebu,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; DUTY TO AVOID IMPROPRIETY AND APPEARANCE OF IMPROPRIETY IN ALL THEIR ACTIVITIES; VIOLATED WHEN JUDGE MADE OCULAR INSPECTION OF PROPERTY SUBJECT OF A CASE IN HIS SALA, WITHOUT PROPER NOTICE TO NOR PRESENCE OF THE PARTIES. — Judge Dacanay went to Catarman, Liloan Cebu to personally see Lot 1529-P, subject of the forcible entry and damages in Civil Case No. 650-R pending in his court; [He] inspected the property in the presence of the plaintiffs and in the absence of Dr. Vizcayno and his counsels. x x x There was failure to inform all parties about the ocular inspection. x x x We have previously ruled that an ocular inspection without notice to nor presence of the parties is highly improper. Good and noble intentions notwithstanding, Judge Dacanay's actuations gave an appearance of impropriety. His behavior diminished public confidence in the integrity and impartiality of the judiciary.

2. ID.; ID.; ID.; ID.; ID.; PENALTY; FINE INCREASED IN CASE AT BAR CONSIDERING UNPAID FINE IN PREVIOUS ADMINISTRATIVE CASE. — Judge Dacanay's ocular inspection without notice to the parties constitutes conduct prejudicial to the best interest of the service, in violation of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary. [I]n view of the still unpaid fine of ₱11,000 in the 10 September 2003 case of *Cabahug v. Dacanay,* for which Judge Dacanay was found guilty of undue delay in resolving a motion, it would seem that Judge Dacanay has a cavalier attitude in the performance of his judicial duties. For this reason, we increase the fine to ₱30,000.

D E C I S I O N

CARPIO,* ***Acting C.J.*:**

Dr. Janos B. Vizcayno (Dr. Vizcayno) filed the present administrative complaint against Judge Jasper Jesse G. Dacanay (Judge Dacanay), Presiding Judge of the 7th Municipal Circuit Trial Court (MCTC), Liloan-Compostela, Cebu for Gross Ignorance of the Law, Abuse of Authority, Manifest Partiality and Delay relative to Civil Case No. 650-R entitled "*Deodito R. Pulido, et al. v. Janos B. Vizcayno*." The Office of the Court Administrator (OCA) recommended that Judge Dacanay be found guilty of committing conduct prejudicial to the best interest of the service and be imposed a fine of 25,000 with a stern warning that a repetition of the same offense shall be dealt with more severely. The OCA also recommended payment by Judge Dacanay of the fine of ₱11,000 imposed on him in *Cabahug v. Dacanay*, A.M. No. MTJ-03-1480, dated 10 September 2003, within 15 days from notice.

The Facts

The memorandum from the OCA narrated the facts as follows:

In a **VERIFIED ADMINISTRATIVE COMPLAINT** dated September 25, 2009 (with enclosures), Dr. Janos B. Vizcayno (complainant) charges Judge Jasper Jesse G. Dacanay (respondent judge) of the Municipal Circuit Trial Court (MCTC), Liloan-Compostela, Cebu, with Gross Ignorance of the Law, Abuse of Authority, Manifest Partiality and Delay.

Complainant is the defendant in a civil complaint for forcible entry and damages, docketed as Civil Case No. 650-R entitled, "*Deodito R. Pulido, et al. v. Janos B. Vizcayno*," filed before the MCTC, Liloan-Compostela, Cebu. On March 31, 2009, respondent judge (together with the plaintiff who allegedly fraternized with and entertained him), without notice to complainant, conducted an *ex-parte* ocular inspection on the property subject of the civil action. Complainant only learned of the ocular inspection through neighbors Norma Tan, Herminia Domain, and Fernan Baguio. Feeling aggrieved,

* Per Special Order No. 1384 dated 4 December 2012.

complainant filed a motion for inhibition of respondent judge to hear the civil action. The motion was set for hearing on April 24, 2009. However, respondent judge opted to proceed with the hearing of the case on May 29, 2009. In a heated argument, complainant and his counsel moved that the motion for inhibition be first resolved, but respondent judge ignored the same.

Complainant argues that respondent judge committed a gross violation of the due process clause protected under the Constitution when the latter conducted an *ex-parte* ocular inspection without notice to him. Also, respondent judge failed to live up to that norm of conduct that "judges should not only be impartial but should also appear impartial," when he conducted the ocular inspection together with the plaintiffs. Such act, complainant claims, is highly improper and grossly inappropriate, and is a violation of Canon 2 of the New Code of Judicial Conduct for the Philippine Judiciary (New Code of Judicial Conduct) which provides that "a judge should avoid impropriety and the appearance of impropriety in all activities."

In his **COMMENT** dated November 24, 2009 (with enclosures), respondent judge, among others, explains that he went to the subject property with his utility personnel only to conduct his own personal investigation on the case to determine whether the disputed construction therein really exists, and to help him in suggesting to the parties to settle the case amicably. At the time of his personal inspection of the property, no one from either the plaintiffs or the defendant ever entertained him. What he did was to make a mere assessment of the property for his personal satisfaction, in all good faith and without fraud, dishonesty, or malicious intent.

Respondent judge further stresses that it is still premature for complainant and his counsel to conclude that he is biased against them, as the case is still then in the preliminary stage wherein there is still a possibility of amicable settlement. Likewise, respondent judge maintains that complainant and his counsel should have waited for the finality of the denial of the motion for his inhibition. Citing the case of *Roxas v. Eugenio, Jr.*, respondent judge argues that an administrative complaint against a judge cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by an erroneous order or judgment, as administrative remedies are neither alternative nor cumulative to judicial review where such review is available to aggrieved parties and the same has not been resolved with finality.

Respondent judge asserts that he cannot be accused of gross ignorance of the law, abuse of authority, manifest partiality, and delay, as he made the inspection in good faith and with noble intentions. Citing *Lumbos v. Baliguat*, he argues that to constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence, but it must be moved by bad faith, fraud, dishonesty or corruption. He likewise denies incurring delay, averring that the records of the case easily reveal that it was complainant and his counsel who, for several instances, failed to appear during the scheduled hearings of the case.

Respondent judge intimates that it was Atty. Gabriel Cañete (complainant's counsel) who actually filed the instant administrative complaint against him. He states that complainant's counsel got embarrassed before his client when, during the May 29, 2009 hearing, Atty. Carlos Allan Cardenas (opposing counsel for plaintiff) argued that the motion for inhibition was a mere scrap of paper for his failure to state thereat his Mandatory Continuing Legal Education (MCLE) number and the date of issue of the requisite certificate of compliance with respect thereto. Chagrined with what happened, complainant's counsel threatened respondent judge that he was going to file several charges against him.

Respondent judge states that the instant administrative case stemmed from two (2) events when he went to the area where the subject property is situated to without notifying the parties while the case is pending before his sala, and when he allegedly ignored the motion to inhibit himself from handling the case filed by the complainant, the defendant in Civil Case No. 650-R.

When complainant's counsel filed the Motion for Inhibition, he did not indicate his MCLE compliance. Thus, respondent judge did not inhibit from handling the case. Under Bar Matter No. 1922 (2009), the failure of a practicing lawyer to disclose the number and date of issue of his MCLE Certificate of Compliance or Certificate of Exemption in his pleadings in court "*would cause the dismissal of the case and the expunction of the pleadings from the records.*" Complainant's counsel might have felt that he was being forced out from the case, which might have made him angry. Nonetheless, respondent judge eventually inhibited from handling the case on March 10, 2010. From the time the civil case was filed in 2008 up

to the time when he (respondent judge) inhibited himself on March 10, 2010, complainant cannot categorically say that he was placed at a disadvantage because no ruling was issued by the respondent judge.[1] (Emphasis in the original)

Dr. Vizcayno, through counsels, filed a Verified Reply[2] dated 14 December 2009. Dr. Vizcayno noted that Judge Dacanay's Comment lacked verification as well as Mandatory Continuing Legal Education (MCLE) Compliance Number and asked for the expunction of the Comment from the case records. Dr. Vizcayno further stated that Judge Dacanay had shown undue preference to the opposing party, even making an off-the-record comment during the hearing: "*Dako man kayo na imong yuta, doctor! Kaning mga reklamante ba, pobre ni sila!"* ("Your lot is very big, doctor! These complainants, they are poor!")[3]

The OCA's Ruling

On 10 March 2010, the OCA, under Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jesus Edwin A. Villasor, issued its Evaluation and Recommendation on the present complaint.

The OCA held that Dr. Vizcayno and Judge Dacanay should be given the opportunity to adduce and establish their respective evidence on Judge Dacanay's alleged impropriety and denial of due process.

The OCA's recommendation reads as follows:

RECOMMENDATION: Respectfully submitted, for the consideration of the Honorable Court, is our recommendation that the instant administrative complaint against Judge **Jasper Jesse G. Dacanay** of the Municipal Circuit Trial Court, Liloan-Compostela, Cebu, be **REDOCKETED** as a regular administrative case; and the same be **REFERRED** to the Executive Judge of the Regional Trial Court, Mandaue City, for **investigation, report and**

---

[1] *Rollo*, pp. 293-295.

[2] *Id.* at 122-130.

[3] *Id.* at 164.

recommendation within sixty (60) days from receipt of the records.[4] (Emphasis in the original)

This Court, in a Resolution[5] dated 17 November 2010, re-docketed administrative complaint OCA-IPI No. 09-2203-MTJ as regular administrative matter A.M. No. MTJ-10-1772 and referred the matter to the Executive Judge of the Regional Trial Court of Mandaue City for investigation, report, and recommendation.

Executive Judge Marilyn Lagura-Yap (Judge Lagura-Yap), in her Partial Report[6] dated 5 July 2011, indicated that the investigation is already completed and ready for her resolution, findings, and recommendation. She asked for another 60 days to submit her complete report. In her Final Report[7] dated 22 September 2011, Judge Lagura-Yap stated that Judge Dacanay failed to show that his act of inspecting the property subject of Civil Case No. 650-R was proper. Although there was insufficient evidence to conclude that Judge Dacanay acted with bad faith, fraud, dishonesty, or corruption, there is still no doubt that the inspection of the property was done in the absence of Dr. Vizcayno and his counsels. Hence, Judge Dacanay's lack of prudence merited liability for conduct prejudicial to the best interest of the service and not for gross ignorance of the law. Moreover, Judge Lagura-Yap found that Judge Dacanay did not incur delay in the resolution of the Motion for Inhibition dated 13 April 2009 because the motion did not comply with the requirements of Bar Matter No. 1922.[8] Judge Dacanay's Order dated 30

---

[4] *Id.* at 165.

[5] *Id.* at 169.

[6] *Id.* at 196.

[7] *Id.* at 204-214.

[8] Bar Matter No. 1922 required "practicing members of the bar to indicate in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, as may be applicable, for the immediately preceding compliance period. Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records."

September 2009 was issued within the required 90-day period for resolution because the 13 April 2009 Motion for Inhibition was submitted for resolution only on 19 August 2009. Judge Dacanay inhibited from Civil Case No. 650-R on 10 March 2010.

Judge Lagura-Yap's recommendation reads as follows:

> WHEREFORE, the undersigned Executive Judge respectfully submits the following recommendations to the Honorable Supreme Court, for consideration, to wit:
>
> a. To find the respondent judge, Judge Jasper Jesse G. Dacanay, liable for Conduct Prejudicial to the Best Interest of the Service; and
>
> b. To reprimand the respondent judge, Judge Japer [sic] Jesse G. Dacanay, with a warning that a repetition of the same or similar act in the future shall be dealt with severely.[9]

In its Memorandum[10] dated 27 February 2012, the OCA found no reason to deviate from the findings of Judge Lagura-Yap but revised her recommendation as to the penalty.

The OCA's recommendation reads as follows:

> **PREMISES CONSIDERED,** for conducting an ocular inspection without informing the parties, we find respondent, Judge Jasper Jesse Dacanay, **guilty of conduct prejudicial to the best interest of the service** in violation of Sec. 1, Canon 4 of The New Code of Judicial Conduct, which is considered a serious charge.
>
> x x x x x x x x x
>
> Considering that respondent judge has been previously imposed a fine of eleven thousand pesos (₱11,000) in A.M. No. MTJ-03-1480 dated September 10, 2003 which has not been paid yet, we respectfully recommend that Judge Jasper Jesse G. Dacanay be:
>
> 1. found **GUILTY** of committing conduct prejudicial to the best interest of the service in violation of Canon 4 of The New Code of Judicial Conduct for the Philippine Judiciary, and meted or imposed

---

[9] *Rollo*, p. 214.

[10] *Id.* at 293-300.

a **FINE** of twenty-five thousand pesos (₱25,000.00) to be paid together with the **FINE** of eleven thousand pesos (₱11,000.00) imposed in A.M. No. MTJ-03-1480, dated September 10, 2003, within fifteen (15) days from notice; and

2. **STERNLY WARNED** that a repetition of the same or similar offense shall be dealt with more severely.[11] (Emphasis in the original)

The Issues

The issues which we consider for our resolution are: (1) whether Judge Dacanay should be held administratively liable for conduct prejudicial to the best interest of the service for conducting an ocular inspection without informing the parties, and (2) whether Judge Dacanay should be held administratively liable for the delay in the resolution of the Motion for Inhibition.

The Court's Ruling

We affirm the recommendation of the OCA.

Conduct prejudicial to the best interest of the service

Section 1, Canon 4 of the New Code of Judicial Conduct[12] states that "[j]udges shall avoid impropriety and the appearance of impropriety in all of their activities."

From the OCA's recommendation, we glean the following pertinent facts: (1) On 31 March 2009, Judge Dacanay went to Catarman, Liloan, Cebu to personally see Lot 1529-P, subject of the forcible entry and damages in Civil Case No. 650-R pending in his court; and (2) Judge Dacanay inspected the property in the presence of the plaintiffs and in the absence of Dr. Vizcayno and his counsels.

Judge Dacanay's actuations, although not necessarily attended with bad faith, fraud, dishonesty or corruption, were precipitate

---

[11] *Id.* at 299-300.

[12] The New Code of Judicial Conduct for the Philippine Judiciary took effect on 1 June 2004, following its publication not later than 15 May 2004 in two newspapers of large circulation in the Philippines.

and imprudent. The pre-trial stage has not begun. There was failure to inform all parties about the ocular inspection. Judge Dacanay issued an Order dated 31 March 2009, the same day as the ocular inspection, resetting the preliminary conference on 29 May 2009, yet the order did not contain any notice to the parties of Judge Dacanay's ocular inspection.

We have previously ruled that an ocular inspection without notice to nor presence of the parties is highly improper.[13] Good and noble intentions notwithstanding, Judge Dacanay's actuations gave an appearance of impropriety. His behavior diminished public confidence in the integrity and impartiality of the judiciary. We have repeatedly stressed that all those involved in the dispensation of justice, from the presiding judge to the lowliest clerk, must always be beyond reproach. Their conduct must, at all times, be circumscribed with the heavy burden of responsibility free from any suspicion that may taint the judiciary. As the administration of justice is a sacred task, this Court condemns and cannot countenance any act on the part of court personnel that would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.[14]

Judges should be extra prudent in associating with litigants and counsel appearing before them to avoid even a mere perception of possible bias or partiality. Judges need not live in seclusion, nor avoid all social interrelations. When time and work commitments permit, judges may continue to relate to members of the bar in worthwhile endeavors in such fields of interest as are in keeping with the noble objectives of the legal profession.

However, in pending or prospective litigations before them, judges should be scrupulously careful to avoid anything that may tend to awaken the suspicion that their personal, social or sundry relations could influence their objectivity. Not only must judges possess proficiency in law, they must also act and behave in such manner

---

[13] *Adan v. Judge Abucejo-Luzano*, 391 Phil. 853 (2000). See Justice Claudio Teehankee's Separate Opinion in *In re: Rafael C. Climaco*, 154 Phil. 105, 124 (1974).

[14] *Chua v. Sorio*, A.M. No. P-07-2409, 7 April 2010, 617 SCRA 474.

that would assure litigants and their counsel of the judges' competence, integrity and independence.[15]

Gross misconduct consisting of violations of the Code of Judicial Conduct is a serious charge. Section 11(A) of Rule 140, as amended,[16] provides:

SEC. 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;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Delay in the resolution of the motion for inhibition

We see no reason to deviate from the OCA's findings, which stated thus:

x x x [R]espondent judge in his Order dated September 30, 2009, expunged from the records the said motion because the counsel of complainant failed to indicate the date of issue and number of his MCLE Compliance as required by Bar Matter No. 1922. Said Order may therefore be considered as a denial of the Motion for Inhibition, which was issued within the 90-day period to resolve a motion.

The failure of respondent judge to resolve the Motion for Reconsideration of the Order dated September 30, 2009, which was filed on October 21, 2009, could not be attributable to him because

---

[15] *Atty. Molina v. Judge Paz*, 462 Phil. 620, 630 (2003) citing *Sibayan-Joaquin v. Judge Javellana*, 420 Phil. 584 (2001).

[16] The amendments to Rule 140, found in A.M. No. 01-8-10, took effect on 1 October 2001 following their publication in two newspapers of general circulation on or before 15 September 2001.

on November 9, 2009, he received a directive from the Office of the Court Administrator to comment on the instant complaint. Since an order was issued on September 30, 2009 to expunge the Motion for Inhibition from the record of the case, and that on March 30, 2010, he eventually inhibited from the case, there was no unreasonable delay on the part of the respondent judge.[17]

Judge Dacanay issued his Orders well within the three-month period imposed by Section 15, Article VIII of the Constitution.[18]

Judge Dacanay's ocular inspection without notice to the parties constitutes conduct prejudicial to the best interest of the service, in violation of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary. However, in view of the still unpaid fine of ₱11,000 in the 10 September 2003 case of *Cabahug v. Dacanay*, A.M. No. MTJ-03-1480, for which Judge Dacanay was found guilty of undue delay in resolving a motion, it would seem that Judge Dacanay has a cavalier attitude in the performance of his judicial duties. For this reason, we increase the fine recommended by the OCA in the present case from ₱25,000 to ₱30,000. Judge Dacanay would well be reminded to behave at all times in a way that will promote public confidence in the integrity and impartiality of the judiciary.

WHEREFORE, respondent Judge Jasper Jesse G. Dacanay is found guilty of committing conduct prejudicial to the best interest of the service in violation of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary and is imposed a fine of ₱30,000. Judge Dacanay is directed to pay, within 15 days from notice of this Decision, this fine together with the fine imposed in A.M. No. MTJ-03-1480. Judge Dacanay is sternly warned that a repetition of the same or similar offense shall be dealt with more severely.

---

[17] *Rollo*, pp. 298-299.

[18] Sec. 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within x x x three months [from date of submission] for all other lower courts.

(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum required by the Rules of Court or by the court itself.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 162930. December 5, 2012]

LAGRIMAS DE JESUS ZAMORA, *petitioner, vs.* **SPOUSES BEATRIZ ZAMORA HIDALGO MIRANDA and ARTURO MIRANDA, ROSE MARIE MIRANDA GUANIO, MARY JULIE CRISTINA S. ANG, JESSIE JAY S. ANG, JASPER JOHN S. ANG and the REGISTER OF DEEDS for Davao City,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; FORM OF CONTRACTS; PUBLIC DOCUMENTS; FOR CONTRACTS WHICH HAVE FOR THEIR OBJECT THE TRANSMISSION OF REAL RIGHTS OVER IMMOVABLE PROPERTY OR THE SALE OF REAL PROPERTY; DISCUSSED. — Article 1358 of the Civil Code provides that acts and contracts which have for their object the transmission of real rights over immovable property or the sale of real property must appear in a public document. If the law requires a document or other special form, the contracting parties may compel each other to observe that form, once the contract has been perfected. In *Fule v. Court of Appeals,* the Court held that Article 1358 of the Civil Code, which requires the embodiment of certain contracts in a public instrument, is only for convenience, and registration of the instrument only adversely affects third parties. Formal requirements are,

---

[**] Designated additional member per Raffle dated 3 December 2012.

therefore, for the benefit of third parties. Non-compliance therewith does not adversely affect the validity of the contract nor the contractual rights and obligations of the parties thereunder.

2. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, NOT PROPER FOR APPEAL; EXCEPTIONS. — It is a settled rule that the factual findings of the Court of Appeals affirming those of the trial court are final and conclusive and may not be reviewed on appeal, except under any of the following circumstances: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

APPEARANCES OF COUNSEL

Victorio S. Advincula for petitioner.
Quasha Ancheta Peña & Nolasco for Sps. Miranda, *et al.*
Cesar S. Europa for respondents Ang.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Court of Appeals' Decision dated September 17, 2003 in CA-G.R. CV No. 74156, and its Resolution dated February 9, 2004, denying petitioner's motion for reconsideration.

[1] Under Rule 45 of the Rules of Court.

The Court of Appeals affirmed the decision of the Regional Trial Court (RTC) of Davao City, Branch 12, which dismissed petitioner's complaint for specific performance, annulment of sale and certificate of title and damages.

The facts, as stated by the Court of Appeals and the trial court, are as follows:

Petitioner is the widow of the late Fernando Zamora, the son of Alberto Zamora. Respondent Beatriz Miranda is the cousin of Alberto Zamora, while respondent Rose Marie Miranda-Guanio is the daughter of respondent Beatriz Miranda.

Respondent Beatriz Miranda was the registered owner of the property in question, which is a parcel of land, with an area of more or less 5,090 square meters, covered by Transfer Certificate of Title (TCT) No. 1594 of the Register of Deeds for the City of Davao. The said parcel of land is located at Carmelite, Bajada, Davao City.

According to petitioner, her father-in-law, Alberto Zamora, through an *encargado*, Eduardo Cecilio, was in possession of the property in question. In 1952, she (petitioner) was designated by Alberto Zamora as his assistant on land matters. The property in question was turned over to her and she was introduced to Eduardo Cecilio. After the year 1952, Alberto Zamora told her that the property in question was owned by respondent Beatriz Miranda whose family was permanently residing in Manila.

Petitioner allegedly contacted respondent Beatriz Miranda, and petitioner was given a calling card and was told to see her (Beatriz). In October 1972, petitioner claimed that she went to the residence of respondent Beatriz Miranda in Quezon City. While there, they talked about the property in question and respondent Beatriz Miranda drew a sketch depicting the location of the property.[2] Thereafter, petitioner alleged that respondent Beatriz Miranda sold to her the said property for the sum of ₱50,000.00. An acknowledgment[3] of the receipt of the amount

---

[2] Exhibits "B", to "B-1", records, Vol. I, p. 266.

[3] Exhibit "B-2", *id.*

of ₱50,000.00 was prepared, and respondent Beatriz Miranda allegedly signed[4] the same. The receipt was dated October 23, 1972.[5] In the sketch, and acknowledgment of the receipt of ₱50,000.00, marked as Exhibit "B",[6] there is a notation "Documents for Agdao Property follows." This notation referred to the property in Agdao, which was the subject of negotiation. Petitioner prepared the document relative to the Agdao property.[7]

Petitioner further claimed that after 1972, she rented out portions of the property in question. Eduardo Cecilio allegedly continued to be her *encargado* as there were squatters on the property. In January 1996, the tenants reported to her that there were two men who went to the property in question. On the first week of February 1996, she (petitioner) met Atty. Cabebe and Mr. Joe Ang. She informed them that she was the owner of the property in question as she bought it in 1972. After sometime, she (petitioner) learned that the occupants of the property in question were being harassed and were told to vacate. She (petitioner) went to Manila and confronted respondent Beatriz Miranda, and told her that she would file a case in court.

On June 14, 1996, petitioner filed with the RTC of Davao City, Branch 12 (*trial court*) an action for specific performance, annulment of sale and certificate of title, damages, with preliminary injunction and temporary restraining order.[8]

Petitioner prayed that the Court render judgment nullifying the deed of sale between respondents Beatriz Miranda and Ang involving the property covered by TCT No. T-1594; declaring petitioner to be the owner of the parcel of land covered by TCT No. T-1594 and ordering respondent Beatriz Miranda to execute the corresponding deed of sale in her favor; and ordering

---

[4] Exhibit "B-3", *id.*

[5] Exhibit "B-4", *id.*

[6] *Id.*

[7] Exhibit "C", *id.* at 17.

[8] Docketed as Civil Case No. 24,442-96.

respondents, except the Registrar of Deeds, to pay her (petitioner) damages, including litigation expenses and attorney's fees.

On June 17, 1996, a Temporary Restraining Order was issued. The said Temporary Restraining Order was extended for 15 days pursuant to the Order dated June 24, 1996. On July 1, 1996, a *Status Quo* Order was issued. Petitioner claimed that respondents did not respect the court orders as they caused the demolition of the structures on the property in question. The property was levelled and, thereafter, improvements were introduced thereon by respondents.

Respondent Rose Marie Miranda-Guanio declared that before the year 1941, her mother, respondent Beatriz Miranda, was a resident of Davao City. Her mother left Davao City in 1942 and resided in Manila, and she went to Davao City for vacation only. Her mother owned the property in question. When her mother (Beatriz) left Davao City, she did not appoint anyone to administer or take care of her property. She (Rose Marie) disputed the claim of petitioner that the latter visited her mother in 1972. She alleged that on June 26, 1972, she gave birth to her first child and that she and her mother, Beatriz, took care of her child. She declared that the signature on the receipt dated October 23, 1972[9] was not the signature of her mother, Beatriz Miranda. She identified the genuine signatures of her mother (Beatriz) which were reflected on the Voter's Affidavit (Exhibits "1" - "24"); the 1973 Residence Certificate (Exhibits "3" - "20"); the 1980 Residence Certificate (Exhibits "4"-"21"); the 1981 Residence Certificate (Exhibits "5"-"22"); the 1974 expired passport (Exhibits "6"-"17").[10] She also alleged that because of this case she suffered damages and incurred expenses of litigation.

Mr. Arcadio Ramos, Chief Document Examiner and Chief, Questioned Documents Division of the National Bureau of Investigation (NBI), Manila, was presented to determine whether

---

[9] Exhibit "B", records, Vol. I, p. 266.

[10] *Id.* at 347-351; 354-372.

or not the signature of respondent Beatriz Miranda appearing on the receipt dated October 23, 1972 was her genuine signature per the Order dated November 17, 1997.

After samples of the genuine signatures of respondent Beatriz Miranda (Exhibits "1" to "7" and "12" to "28") and the original copy of the receipt dated October 23, 1972 were submitted to Mr. Ramos, he prepared two reports with the following findings and conclusions:

FINDINGS:

Scientific comparative examination of the specimens submitted under the stereoscopic microscope, with the aid of hand lens and photographic enlargements (comparison chart), reveal significant differences in handwriting characteristics existing between the questioned and the sample signatures "Beatriz H. Miranda" to wit:

- manner of execution of strokes;
- structural pattern of letters; and
- other identifying minute details.

The questioned and the sample signatures "Beatriz H. Miranda" were NOT WRITTEN by one and the same person.[11]

Atty. George Cabebe testified for respondents Mary Julie Cristina Ang, Jessie Jay Ang and Jasper John Ang. He declared that as the lawyer of Mr. Jose Ang, the father of respondents Ang, his advice was sought regarding the purchase of the property in question, which was registered in the name of respondent Beatriz Miranda. He asked for the copy of the title (TCT No. T-1594) in the name of Beatriz Miranda, and verified from the Register of Deeds whether or not there was an encumbrance. When he found no encumbrance annotated on the title, he inspected the property in question and found thereon several squatters, who agreed to vacate the premises provided they were given financial assistance. With these findings, he recommended to respondents Ang to proceed in purchasing the property of Beatriz Miranda. Thus, respondents Ang purchased the property in

---

[11] Exhibits "8-A" to "8-B"; "9-A" to "9-B", records, Vol. II, pp. 366-369.

question, and they were issued TCT No. T-258316.[12] The squatters/occupants of the property in question, including Eduardo Cecilio, the alleged *encargado* of petitioner, were given financial assistance[13] and they vacated the property in question.

As agreed upon by the parties during the pre-trial conference, the issues that had to be resolved were as follows: (1) whether or not the Deed of Sale executed by defendant (respondent) Beatriz Miranda in favor of defendants (respondents) Ang on February 26, 1996 was valid; (2) whether or not the plaintiff (petitioner) can recover the claims in the complaint; (3) whether or not defendants (respondents) can recover the claims in their counterclaims; and (4) whether or not defendants (respondents) Ang can recover the claims in the cross-claim.

On February 4, 2002, the trial court rendered a Decision,[14] the dispositive portion of which reads:

> IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered dismissing the complaint.
>
> All claims of the contending parties are disallowed.
>
> Costs against the plaintiff.[15]

The trial court dismissed petitioner's complaint on the ground that the receipt dated October 23, 1972 which was the basis of petitioner's claim of ownership over the subject property, was a worthless piece of paper, because it was established by Mr. Arcadio Ramos, an NBI handwriting expert, that the signature appearing on the receipt was not the signature of respondent Beatriz Miranda, as vendor of the property, and the testimony of Mr. Ramos was not controverted.

The trial court observed that petitioner was an astute businesswoman knowledgeable in transactions involving real

---

[12] Exhibits "2" and "2-A", *id.* at 484.

[13] Exhibits "3" to "45", *id.* at 486-611.

[14] CA *rollo*, p. 52.

[15] *Id.* at 60.

estate. She would not have been designated by her father-in-law as his assistant on land matters if she did not know anything about transactions involving real estate. Thus, if the property in question was really sold to petitioner by respondent Beatriz Miranda in 1972, she should have taken the appropriate action to perfect her title over the said property. She should have asked for the delivery of the owner's duplicate copy of the title. The fact that the owner's duplicate copy of the title remained in the possession of Beatriz Miranda until she sold the property in question to respondents Ang only showed that the property was not sold to petitioner. It also appeared that for more than 20 years, petitioner did nothing to perfect her title to the property allegedly sold to her.

The trial court found that the Deed of Sale[16] dated February 26, 1996, executed by respondent Rose Marie Miranda-Guanio, as attorney-in-fact of Beatriz Miranda, in favor of respondents Ang, involving the property in question, was valid. All the requisites of a valid sale were present when the deed was executed. The sale was registered in the Register of Deeds and a new transfer certificate of title[17] was issued in the name of respondents Ang. The trial court declared that the certificate of title in the names of respondents Ang was a conclusive evidence of ownership.

Petitioner appealed the trial court's decision to the Court of Appeals.

Petitioner alleged that the trial court erred in finding that the receipt evidencing the sale of the subject property was a worthless piece of paper which could not be made the basis of her claim of ownership over the land in question; and that the trial court erred in dismissing the case.

On September 17, 2003, the Court of Appeals rendered a decision, the dispositive portion of which reads:

---

[16] Exhibit "G", records, Vol. I, p. 25.

[17] Exhibit "2", records, Vol. II, p. 484.

IN VIEW OF THE FOREGOING, the appealed decision is AFFIRMED *in toto*. Costs against appellant.[18]

The Court of Appeals stated that as the receipt presented by petitioner was a private document, it could not be made the basis of her claim of ownership over the property in question. More so, when the NBI handwriting expert, Mr. Arcadio Ramos, found the signature of respondent Beatriz Miranda on the receipt to be forged, as he concluded that the questioned and the sample signatures presented were not written by one and the same person.

Moreover, the Court of Appeals stated that even on the implausible assumption that respondent Beatriz Miranda's signature on the disputed document was not forged, and was therefore valid, such fact cannot be successfully invoked to invalidate the title subsequently issued to respondents Ang. At the time respondents purchased the land in question from attorney-in-fact Rose Marie Miranda-Guanio on February 26, 1996, TCT No. T-1594 was in the name of respondent Beatriz Miranda. The Court of Appeals stated that settled is the rule that where the certificate of title is in the name of the vendor when the land is sold, the vendee for value has a right to rely on what appears on the certificate of title. Thus, when innocent third persons, such as respondents Ang, relying on the correctness of the certificate thus issued, acquire rights over the property, the courts cannot disregard such rights.[19]

Petitioner filed this petition raising these issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT RULED THAT THE RECEIPT DATED OCTOBER 23, 1972, EVIDENCING THE SALE OF THE LAND BY RESPONDENT BEATRIZ ZAMORA HIDALGO

---

[18] *Rollo*, p. 49. (Emphasis in the original)

[19] Citing *Director of Lands v. Abache*, 73 Phil. 606 (1941-1942).

MIRANDA TO PETITIONER LAGRIMAS DE JESUS ZAMORA, BEING A PRIVATE DOCUMENT IS NOT VALID AND BINDING AND CANNOT BE MADE A BASIS OF SAID PETITIONER'S CLAIM OVER THE PROPERTY IN QUESTION.

II

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT FOUND THAT THE SIGNATURE OF RESPONDENT BEATRIZ ZAMORA HIDALGO MIRANDA ON THE RECEIPT OR NOTE EVIDENCING THE SALE OF THE LAND BY SAID RESPONDENT TO THE PETITIONER LAGRIMAS DE JESUS ZAMORA IS FORGED, CONSIDERING THE ABSENCE OF EVIDENCE TO SUPPORT SUCH FINDING AND, CONSIDERING FURTHER THAT UNDER THE RULES SHE IS DEEMED TO HAVE ADMITTED THE GENUINENESS AND DUE EXECUTION OF SAID RECEIPT OR NOTE FOR HER FAILURE TO SPECIFICALLY DENY THEM UNDER OATH IN HER ANSWER.

III

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT FOUND THAT RESPONDENTS "ANGS" ARE PURCHASERS IN GOOD FAITH AND FOR VALUE OF THE LAND IN DISPUTE EVEN IF THEY HAD ACTUAL KNOWLEDGE OF THE PREVIOUS SALE OF THE LAND BY RESPONDENT BEATRIZ HIDALGO MIRANDA TO THE PETITIONER LAGRIMAS DE JESUS ZAMORA WHO WAS IN POSSESSION THEREOF, TOGETHER WITH HER *ENCARGADO* AND TENANTS.

IV

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF JURISDICTION WHEN IT FOUND PETITIONER LAGRIMAS DE JESUS ZAMORA GUILTY OF LACHES, INSTEAD OF FINDING THAT SINCE THE ACTION OF SAID PETITIONER, WHO WAS IN POSSESSION OF THE LAND, IS ACTUALLY ONE FOR QUIETING OF TITLE OF REAL PROPERTY, AND RESPONDENT BEATRIZ ZAMORA HIDALGO MIRANDA, RECOGNIZING THE EXISTENCE OF THE RIGHT OF SAID

PETITIONER TO THE EXECUTION OF THE DEED OF SALE, HAD FROM TIME TO TIME PROMISED TO EXECUTE THE DEED OF SALE, THE ACTION OF SAID PETITIONER DID NOT PRESCRIBE NOR [WAS IT] BARRED BY LACHES.

V

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DISMISSING THE CASE INSTEAD OF (1) ANNULLING THE SALE BETWEEN RESPONDENT BEATRIZ ZAMORA HIDALGO MIRANDA AND THE RESPONDENTS "ANGS"; (2) DECLARING THE PETITIONER LAGRIMAS DE JESUS ZAMORA TO BE THE OWNER OF THE PROPERTY IN DISPUTE; (3) DIRECTING THE RESPONDENT BEATRIZ ZAMORA HIDALGO MIRANDA TO EXECUTE THE DEED OF SALE IN A PUBLIC INSTRUMENT IN FAVOR OF SAID PETITIONER TO ENABLE THE LATTER TO REGISTER THE SALE; AND (4) ORDERING ALL THE RESPONDENTS, EXCEPT THE REGISTER OF DEEDS, TO PAY DAMAGES AND ATTORNEY'S FEES IN SUCH SUMS AS THE HONORABLE COURT MAY FIX.[20]

The Court notes that the issues raised by petitioner alleged grave abuse of discretion by the Court of Appeals, which is proper in a petition for *certiorari* under Rule 65 of the Rules of Court, but not in the present petition for review on *certiorari* under Rule 45 of the Rules of Court.

The main issue in this case is whether or not the Court of Appeals erred in affirming the decision of the trial court, dismissing the complaint for specific performance, annulment of sale and certificate of title and damages.

As stated by the trial court, petitioner principally prays that she be declared the owner of the subject property; that respondent Beatriz Miranda be ordered to execute a deed of sale in her (petitioner's) favor; and that the sale of the subject property in favor of respondents Ang be nullified.

---

[20] Memorandum of Petitioner, *rollo*, pp. 157-158.

The sole evidence relied upon by petitioner to prove her claim of ownership over the subject property is the receipt dated October 23, 1972[21] which states:

> Rec'd the amount of fifty thousand (₱50,000) pesos from Lagrimas Zamora as payment for the property at Carmelite, Bajada, Davao City.
>
> Documents for Agdao property follows.
>
> (signed)
> Beatriz H. Miranda

Can the receipt dated October 23, 1972 evidencing sale of real property, being a private document, be a basis of petitioner's claim over the subject property?

Article 1358[22] of the Civil Code provides that acts and contracts which have for their object the transmission of real rights over immovable property or the sale of real property must appear in a public document. If the law requires a document or other special form, the contracting parties may compel each other to observe that form, once the contract has been perfected.[23]

---

[21] Records, Vol. I, p. 16.

[22] Art. 1358. The following must appear in a public document:

(1) **Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property**; sales of real property or of an interest therein a governed by Articles 1403, No. 2, and 1405;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;

(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by Articles, 1403, No. 2 and 1405. (Emphasis supplied.)

[23] Civil Code, Art. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the

In *Fule v. Court of Appeals*,[24] the Court held that Article 1358 of the Civil Code, which requires the embodiment of certain contracts in a public instrument, is only for convenience, and registration of the instrument only adversely affects third parties. Formal requirements are, therefore, for the benefit of third parties.[25] Non-compliance therewith does not adversely affect the validity of the contract nor the contractual rights and obligations of the parties thereunder.[26]

However, in this case, the trial court dismissed petitioner's complaint on the ground that the receipt dated October 23, 1972 (Exhibit "B") is a worthless piece of paper, which cannot be made the basis of petitioner's claim of ownership over the property as Mr. Arcadio Ramos, an NBI handwriting expert, established that the signature appearing on the said receipt is not the signature of respondent Beatriz Miranda.

The Court of Appeals affirmed the trial court's dismissal of the complaint.

The Court sustains the decision of the Court of Appeals.

The receipt dated October 23, 1972 cannot prove ownership over the subject property as respondent Beatriz Miranda's signature on the receipt, as vendor, has been found to be forged by the NBI handwriting expert, the trial court and the Court of Appeals. It is a settled rule that the factual findings of the Court of Appeals affirming those of the trial court are final and conclusive and may not be reviewed on appeal, except under any of the following circumstances: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse

---

contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

[24] G.R. No. 112212, March 2, 1998, 286 SCRA 698.

[25] *Fule v. Court of Appeals, supra,* at 713; 364.

[26] *Id.*

of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[27]

Considering that the aforementioned exceptions are not present in this case, the factual finding of the Court of Appeals that the signature of respondent Beatriz Miranda on the receipt dated October 23, 1972 is forged is final and conclusive upon this Court. Consequently, the complaint of petitioner has no leg to stand on and was properly dismissed by the trial court.

As the receipt dated October 23, 1972 has no evidentiary value to prove petitioner's claim of ownership over the property in question, there is no need to discuss the other issues raised by petitioner based on the *assumption* that she has a valid claim over the subject property.

In fine, the Court of Appeals did not err in affirming the decision of the trial court dismissing the complaint.

WHEREFORE, the petition is **DENIED.** The Court of Appeals' Decision dated September 17, 2003 in CA-G.R. CV No. 74156, and its Resolution dated February 9, 2004, are hereby **AFFIRMED.**

Costs against petitioner.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

---

[27] *Larena v. Mapili,* G.R. No. 146341, August 7, 2003, 408 SCRA 484, 488-489.

FIRST DIVISION

[G.R. No. 174300. December 5, 2012]

MINDANAO TERMINAL AND BROKERAGE SERVICE, INC. and/or FORTUNATO V. DE CASTRO, *petitioners, vs.* **NAGKAHIUSANG MAMUMUO SA MINTERBRO-SOUTHERN PHILIPPINES FEDERATION OF LABOR and/or MANUEL ABELLANA, GILBERT ABELLO, SIXTO ABELLO, JR., IRENEO ABONITA, ALIEZER ADALIM, CONSTANCIO ALBISO, NELSON ANCAJAS, ROGELIO ANOUEVO, REYNALDO ANTOQUE, DEORIDO ARIOLA, BERNARDINO AROJADO, JAIME ATILANO, ALBERTO BAHALA, RODRISITO BAHALA, JR., JOVITO BASTASA, TEODORO BASTASA, PACIANO BATICAN, BENJAMIN BAYNOSA, APOLINARIO BERNALDEZ, GODOFREDO BIOCO, ERLINDO BRIGOLI, TEODRICO CABATO, ANARITO CABUDLAN, DARIO CALIBJO, ERDIE CALIBJO, JAIME CAMINERO, BENNY CASI, EDWIN CORTEZ, ARTURO CRISMAS, ALEJANDRO DIO, CATALINO DIONGZON, JR., MANUEL DORADO, ZACARIAS DUMAYAC, ORLANDO EBERO, LEONARDO ENRIQUEZ, GABRIEL ESPERA, ROBERTO ESTRERA, JOEL FERNANDEZ, EDGARDO FLORES, RUSTICO GALAN, ELIEZER GELECANA, PRIMO GELECANA, DANIEL GIDUCOS, FELIPE GUANZON, GORDONIO HURANO, FLORENTINO IBAÑEZ, ALFRED IBORI, NICANOR INTO, ROBERT JAMILA, JESUS JANDAYAN, EWAN JUGAN, DIEGO JULATON, JOVENCIO JULATON, ANGELITO JULIANE, WILFREDO LACNO, LAGRAMA DOMINGO, CERILO MAGDASAL, FERNANDO MANGARON, JOSEPH MANGARON, EDGARDO MANGILAYA, EDGARDO MANSARON, VIRGILIO MATALANG, JEREMIAS MOLATO, CARLOS MONARES, RAMON NECESARIO, DANILO OTADAY, ROGELIO PAL, EBELIO PALMA, GAVINO PAMAN, JR., DANILO**

PANDAPATAN, NOLI PATRICIO, MODESTO PIOQUINIO, NEMENSIO PLASABAS, JULIUS QUIBOY, RUEL QUINILATAN, SANTOS RASONABE, ROBERTO REBUCAS, ALEJANDRO REDOBLADO, SR., DARIO REYES, RODOLFO ROCA, ROGER MAGAN, NECITO ROSOS, PANTALEON SAGAYNO, VENANCIO SAGAYNO, VICENTE SALARDE, REYNALDO SALCEDO, JOSE SALINAS, DANIEL SAPIO, ROMY SEGOVIA, JENELITO SIOCON, RENATO SODE, EDUARDO SOLIZA, PABLITO TAC-AN, PEPITO TAGALAWAN, ARIEL TIBUS, ARTURO TOLIBAS, ROMEO TUBOG, ALFREDO VIDAD and ARNOLD TIBUS, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT, NOT PROPER. — There is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts. There is a question of fact if the issue invites a review of the evidence presented. In this case, this Court is effectively being called upon to determine who among the parties is asserting the truth regarding the date the union members were laid-off. Such venture requires the evaluation of the respective pieces of evidence presented by the parties as well as the consideration of "the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation." However, the nature of petitioners' action, a petition for review under Rule 45 of the Rules of Court, renders that very action inappropriate for this Court to take. Only questions of law should be raised in a petition for review under Rule 45. While there are recognized exceptions to that rule, this case is not among them.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; TEMPORARY LAYOFF BECAME CONSTRUCTIVE DISMISSAL WHEN NO WORK MADE AVAILABLE FOR A PERIOD OF MORE THAN SIX (6) MONTHS. — [P]etitioners' inaction on what they allege to be the unexplained abandonment by Del Monte of its obligations

under the Contract for the Use of Pier coupled with petitioners' belated action on the damaged condition of the pier caused the absence of available work for the union members. As petitioners were responsible for the lack of work at the pier and, consequently, the layoff of the union members, they are liable for the separation from employment of the union members on a ground similar to retrenchment. When a lay-off is temporary, the employment status of the employee is not deemed terminated, but merely suspended. Article 286 of the Labor Code provides, in part, that the *bona fide* suspension of the operation of the business or undertaking for a period not exceeding six months does not terminate employment. x x x When petitioners failed to make work available to the union members for a period of more than six months starting April 14, 1997 by failing to call the attention of Del Monte on the latter's obligations under the Contract of Use of Pier and to undertake a timely rehabilitation of the pier, they are deemed to have constructively dismissed the union members.

3. ID.; ID.; ID.; PROPER SEPARATION PAY IS THAT EQUIVALENT TO ONE (1) MONTH SALARY OR ONE-HALF (½) MONTH SALARY PER YEAR OF SERVICE, WHICHEVER IS HIGHER. — In Sebuguero (*v.* NLRC), the Court ruled on a case regarding layoff or temporary retrenchment, which subsequently resulted to the separation from employment of the concerned employee as it lasted for more than six months. x x x *Sebuguero* applies to this case, the consequences arrived at in *Sebuguero* also apply. Lay-off is essentially retrenchment and under Article 283 of the Labor Code a retrenched employee is entitled to separation pay equivalent to one (1) month salary or one-half (½) month salary per year of service, whichever is higher.

APPEARANCES OF COUNSEL

Froilan M. Bacungan & Associates for petitioners.
Cagatin Cagatin and Aban Law Firm for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari*[1] of the Decision[2] and Resolution[3] dated April 21, 2006 and August 7, 2006, respectively, of the Court of Appeals in CA-G.R. SP No. 51656, which dismissed the petition for *certiorari* of petitioners Mindanao Terminal and Brokerage Service, Inc. (Minterbro) and Fortunato V. De Castro.

Minterbro is a domestic corporation managed by De Castro and engaged in the business of providing arrastre and stevedoring services to its clientele at Port Area, Sasa, Davao City.[4] It has a Contract for Use of Pier[5] with Del Monte Philippines, Inc. (Del Monte), which provides for the exclusive use by Del Monte of the Minterbro pier.[6] Thus, at the time relevant to this controversy, Del Monte was Minterbro's only client.

The docking of vessels at the piers in Davao City, including that of Minterbro, is being carried out by the Davao Pilots' Association, Inc. (DPAI).[7] In a letter[8] dated January 6, 1996, DPAI requested Minterbro to waive any claim of liability against it for any damage to the pier or vessel. DPAI alleged that Minterbro's pier vibrates everytime a ship docks due to weak posts at the underwater portion.

---

[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 23-38; penned by Associate Justice Romulo V. Borja with Associate Justices Myrna Dimaranan Vidal and Ramon R. Garcia, concurring.

[3] *Id.* at 40-41.

[4] *Id.* at 25.

[5] CA *rollo*, pp. 29-31.

[6] *Rollo*, p. 26.

[7] *Id.*

[8] *Id.* at 42.

In a letter[9] dated January 15, 1997, Minterbro denied the request explaining that DPAI's observation had no basis as any damage to the pier was actually caused by a vessel under the control of DPAI which bumped the pier on December 28, 1996. DPAI replied in a letter[10] dated January 23, 1997 informing Minterbro of its intention to refrain from docking vessels at Minterbro's pier for security and safety reasons, until such time as Minterbro shall have caused the restoration of the original independent fenders of the said pier.

This prompted Minterbro to bring up the matter to the Philippine Ports Authority (PPA). The PPA promptly dispatched a team to conduct ocular inspection on Minterbro's pier.[11] In a communication[12] dated February 3, 1997, on the basis of its ocular inspection, the PPA advised Minterbro "to conduct a thorough investigation of the underdeck and underwater structures of the pier and initiate corrective measures if necessary." Thereafter, Minterbro, DPAI, and the PPA had a meeting and agreed that Minterbro would seek the assistance of experts for an ocular inspection and survey of the pier. Minterbro engaged the Davao Engineering Works and Marine Services (Davao Engineering) to carry out the work.[13]

In its Survey Report No. 390/97[14] dated May 6, 1997, Davao Engineering stated:

OBSERVATIONS:

The Pier facilities of Minterbro at Ilang, Davao City can still be used for loading and unloading of cargoes provided, however, that docking procedures were properly carried out.

The cracks and spalled concrete on the joints of the RC Piles and Pile caps [do] not affect the strength and capabilities of the Pier.

[9] *Id.* at 44-45.

[10] *Id.* at 46-47.

[11] *Id.* at 27.

[12] *Id.* at 48.

[13] *Id.* at 27.

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

However, immediate attention should be given to the Pier damages in order to prevent further deterioration of its structural members which will lead to a costly [repair] later on.[15]

Meanwhile, from January 1 until April 13, 1997, a total of sixteen (16) vessels were serviced at the Minterbro pier:

January 1997	–	7 vessels
February 1997	–	3 vessels
March 1997	–	4 vessels
April 1997	–	2 vessels[16]

Subsequently, Minterbro decided to rehabilitate the pier on August 1, 1997 and, on the same day, sent a letter to the Department of Labor and Employment (DOLE) to inform DOLE of Minterbro's intention to temporarily suspend arrastre and stevedoring operations. Minterbro alleged that, despite the condition of the pier, it was able to service 16 vessels from January 1997 to April 13, 1997 and it was ready and awaiting vessels to dock at the pier from April 14, 1997 to July 31, 1997 during which Minterbro's office, motor pool, and field personnel continued operations.[17]

On November 4, 1997, respondent Nagkahiusang Mamumuo sa Minterbro-Southern Philippines Federation of Labor composed of respondents Manuel Abellana, *et al.*, employees of Minterbro working on a rotation basis and employed for arrastre and stevedoring work depending on the actual requirements of the vessels serviced by Minterbro, filed a complaint for payment of separation pay against Minterbro and De Castro in the Regional Arbitration Branch No. XI at Davao City of the National Labor Relations Commission (NLRC).[18]

---

[15] *Id.* at 53.

[16] *Id.* at 83; Decision dated September 30, 1998 in NLRC CA No. M-004178-98 in Case No. RAB-11-11-01057-97 of the Labor Arbiter.

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

[18] *Id.* at 28.

Meanwhile, on December 8, 1997, Minterbro sent a letter[19] to the PPA the pertinent portion of which reads:

> This is to advise you that we have completed the repair of our pier which we did inspite of the earlier certification issued by the Davao Engineering Works & Services, that after the latter carried out the underwater/above water ocular inspection and survey of the pier facilities, said pier can still be used for loading and unloading of cargoes provided that the docking procedures should be properly carried out.
>
> In view of the foregoing, may we request your office to render your own ocular inspection and survey for the issuance of the corresponding certification on its readiness to accept vessels for loading and unloading operations.

At the initial hearing before the Labor Arbiter on December 10, 1997, Minterbro and De Castro informed the union and its members that the rehabilitation of the pier had been completed and that they were just awaiting clearance to operate from the PPA. In a manifestation dated December 12, 1997, the union and its members stated, among others, that "they x x x are not anymore amenable to going back to work with [the] company, for the reason that the latter has not been operating for more than six (6) months, even if it resumes operation at a later date and would just demand that they be given Retirement or Separation Pay, as the case may be."[20]

On December 17, 1997, the PPA issued the following Certification[21] declaring Minterbro's pier as safe and ready for operation:

> C E R T I F I C A T I O N
>
> This is to certify that the repair and rehabilitation of Minterbro Wharf owned by Mindanao Terminal & Brokerage Services, Inc. located at Tibungco, Ilang, Davao City was inspected by our

---

[19] *Id.* at 67.

[20] *Id.* at 28-29.

[21] *Id.* at 69.

Engineering Services Division office on Dec. 10, 1997 and was found to be totally completed. The structural design and the supervision of work was undertaken by Bow C. Moreno, Civil Structural Design Engineering Office of San Andres St., Manila.

Further, as certified by the Structural Consultants of the Contractor, copy attached, the Port [M]anagement Office of Davao, Philippine Ports Authority has now declared Minterbro Wharf as safe and ready for operationalization.

This certification is issued for whatever purpose the Mindanao Terminal & Brokerage Services, Inc. will deem necessary.

Done in the City of Davao, Philippines, this 17th day of December 1997.

(Sgd.)
MANUEL C. ALBARRACIN
Port Manager

Thereafter, MV Uranus was serviced at the Minterbro pier on December 22 to 28, 1997.[22]

On June 15, 1998, the Labor Arbiter rendered a Decision[23] with the following decretal portion:

WHEREFORE, judgment is hereby rendered dismissing the complaint for separation pay for lack of merit and declaring the ninety-five (95) complainants named in the final list filed on February 3, 1998 to have lost their employment status for abandonment of work; and

Declaring complainants Roberto D. Estrera, Sr., Gorgonio Huraño, Jeremias Molato and Constancio Albiso, who have formally withdrawn their complaint, not to have lost their employment status and ordering respondents to accept them back to their former positions without loss of seniority rights and other privileges.[24]

---

[22] *Id.* at 79; Decision dated June 15, 1998 in Case No. RAB-11-11-01057-97 of the Labor Arbiter.

[23] *Id.* at 73-80.

[24] *Id.* at 79-80.

Aggrieved, the union members appealed the Labor Arbiter's Decision to the NLRC. In a Decision[25] dated September 30, 1998, the NLRC modified the Decision of the Labor Arbiter in this wise:

In denying complainants their separation benefits, the Executive Labor Arbiter considered the period embraced within August 1, 1997, when respondent formally informed [the] DOLE of the temporary cessation of operation up to December 16, 1997, when respondent was issued a certificate declaring the wharf safe and ready for operations and December 22-28, 1997, when the respondent company serviced a vessel MV Uranus which obviously did not exceed six (6) months, thus denying complainants their monetary benefits. Incidentally, the period reckoned is incorrect.

It is admitted by respondent that the last vessel that was serviced was on April 11-13, 1997 (MV Bosco Polar), and after the rehabilitation of the wharf, on December 22-28, 1997 (MV Uranus) was served, thereby covering a period of more or less eight months.

Respondent cannot conceal or make the August 1, 1997 formal notice to DOLE or the alleged continued operations of its office personnel until July 31, 1997, an excuse to evade the mandated six (6) months period (Article 286 of the Labor Code, as amended), since the issue at bar concerns the complainants who became jobless and penniless because of the December 28, 1996 accident.

With the unrefuted peculiar circumstances, complainants are therefore entitled to their claims for separation benefits.

Moreover, complainants cannot be considered to have abandoned their jobs for the reason that it took respondent a long period [of] time to rehabilitate the wharf causing uncertainties in their minds which culminated in the filing of the case.

WHEREFORE, the assailed Decision is Modified. Respondents are ordered to pay complainants their separation benefits to be assessed and computed during the post arbitral stage of the proceedings below upon finality of the herein Decision.[26]

---

[25] *Id.* at 81-85.

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

In a Resolution[27] dated January 25, 1999, the NLRC maintained its Decision and denied the motion for reconsideration of Minterbro and De Castro.

Thereafter, Minterbro and De Castro took the NLRC and the members of the union to task by filing a Petition for *Certiorari*[28] in the Court of Appeals asserting that the NLRC acted with grave abuse of discretion in ordering Minterbro and De Castro to pay the union members separation pay under Article 286 of the Labor Code. This was docketed as CA-G.R. SP No. 51656.

In a Decision dated April 21, 2006, the Court of Appeals dismissed the petition. It ruled that the seasonal nature of the services rendered by the members of the union did not negate their status as regular employees and that the temporary suspension of Minterbro's operations should be reckoned from April 14, 1997, the day no more vessel was serviced at Minterbro's pier after MV Bosco Polar was serviced at the said pier on April 11 to 13, 1997. Thus, pursuant to Article 286 of the Labor Code and its application in *Sebuguero v. National Labor Relations Commission*,[29] the NLRC correctly ordered Minterbro and De Castro to pay the union members their separation benefits as their temporary lay-off exceeded six months.

In a Resolution dated August 7, 2006, reconsideration was denied as the Court of Appeals found no reason to reverse its decision. Hence, this petition.

Petitioners Minterbro and De Castro insist that the Court of Appeals erred when it ruled that the union members are entitled to separation pay under Article 286 of the Labor Code. Petitioners concede that, as enunciated in *Sebuguero*, where a temporary lay-off lasts longer than six months, the employees should either be recalled to work or permanently retrenched following the

---

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

[28] CA *rollo*, pp. 2-20.

[29] G.R. No. 115394, September 27, 1995, 248 SCRA 532.

requirements of the law.[30] However, according to petitioners, the lack of arrastre and stevedoring services in the pier after the servicing of MV Bosco Polar on April 11 to 13, 1997 was a result of Del Monte's decision, for reasons unknown to Minterbro, to suddenly stop docking its vessels at Minterbro's pier. And while there were no arrastre and stevedoring services for lack of any vessel to service, Minterbro's office, motorpool and field personnel continued their work until July 31, 1997, or a day before Minterbro filed the required notices with the DOLE on August 1, 1997. The decision to rehabilitate the pier is a business decision and had nothing to do with the unfounded complaint of DPAI in January 1997 about the condition of the pier.[31]

For their part, the union members contend that the petition is flawed as it presents a question of fact, not of law. In particular, the determination of the correct reckoning date of the temporary suspension of Minterbro's business, whether April 14, 1997 or August 1, 1997, involves a review of facts and the respective evidence of the parties, which is prohibited under the Rules of Court. Moreover, the NLRC and the Court of Appeals have already fully discussed the matter and both came to the same conclusion, that Minterbro and De Castro are liable to the union members for separation pay. The factual findings of the NLRC and the Court of Appeals should therefore be accorded respect and conclusiveness.[32]

The issue thus presented in this petition is whether the union members/employees were deprived of gainful employment on April 14, 1997 after the last vessel was serviced prior to the repair of the pier or on August 1, 1997 when repair works on the pier were commenced. Resolution of this issue will determine whether petitioners are liable for separation pay for effectively dismissing the union members through their prolonged lay-off of more than six months.

---

[30] *Rollo*, p. 13.

[31] *Id.* at 12-16.

[32] *Id.* at 104-106.

Petitioners insist on August 1, 1997 as the reckoning date and rely on Article 286 of the Labor Code. On the other hand, the union members assert that the reckoning date is April 14, 1997 and invoke *Sebuguero*.

At the outset, the Court notes that the petition is fatally defective. The issue it presents is factual, not legal.

There is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts. There is a question of fact if the issue invites a review of the evidence presented.[33]

In this case, this Court is effectively being called upon to determine who among the parties is asserting the truth regarding the date the union members were laid-off. Such venture requires the evaluation of the respective pieces of evidence presented by the parties as well as the consideration of "the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation."[34] However, the nature of petitioners' action, a petition for review under Rule 45 of the Rules of Court, renders that very action inappropriate for this Court to take. Only questions of law should be raised in a petition for review under Rule 45.[35] While there are recognized exceptions to that rule, this case is not among them.

Moreover, this Court finds neither compelling reason nor substantial argument that will warrant the reversal of the NLRC Decision which has been affirmed by the Court of Appeals.

The NLRC and the Court of Appeals found that the union members/employees were not given work starting April 14, 1997 and that more than six months have elapsed after the union

---

[33] *Republic v. Malabanan*, G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345.

[34] *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 582-583, citing *Republic v. Sandiganbayan*, 426 Phil. 104, 110 (2002).

[35] *See* Section 1, Rule 45.

members were laid off when the next vessel was serviced at the Minterbro pier on December 22 to 28, 1997.

Minterbro claims that it had no hand whatsoever in the lack of work for the union members at the pier from April 14, 1997. It stated that it did not even have any idea as to why Del Monte suddenly stopped docking its vessels at Minterbro's pier. Nonetheless, as between petitioners and the union members, it is petitioners who had the right to demand from Del Monte to perform its obligations under the Contract for Use of Pier. Petitioners' right to compel Del Monte to comply with its contractual obligations becomes stronger in view of the following undertaking of Del Monte:

October 7, 1988

Atty. Eliodoro C. Cruz
Vice-President
Mindanao Terminal and Brokerage Service, Inc.
Davao City

Dear Atty. Cruz:

With reference to our "Contract for Use of Pier", dated 3 October, 1988, (Doc. No. 348, No. 71, Book XXVI of Notary Public D. A. Soriano of Makati, Metro Manila), **we confirm our commitment to maximize the use of the [Minterbro] Pier at Ilang, Davao City and not to dock any of the vessels of our principal elsewhere** for as long as they can be accommodated therein as per your commitment in the contract and in the customary and usual manner and for the purpose which they are intended to serve.

If this reflects our understanding, please sign below and return to us our copy of this letter. This will serve as our supplemental agreement on the matter.

Very truly yours,

(Sgd.)
JUAN F. SIERRA
President

CONFORME:
Mindanao Terminal and
Brokerage Service, Inc.

By:

(Sgd.)
ELIODORO C. CRUZ
Vice-President[36] (Emphasis supplied.)

Unfortunately, petitioners failed to show any effort on their part to hold Del Monte to its end of the bargain even though the union members were being forced to be laid off. Effectively, when petitioners allowed Del Monte to abandon its agreement with Minterbro for eight months covering the middle of April 1997 until the latter part of December 1997 without holding Del Monte accountable for such breach, petitioners consented to Del Monte's unexplained action and the prejudice it caused to the union members.

Moreover, the communications between Minterbro and the PPA during the relevant period are telling. Among these is a letter dated February 3, 1997 from the PPA:

03 February 1997

MR. FORTUNATO V. DE CASTRO, SR.
General Manager
Mindanao Terminal & Brokerage Services, Inc.
Port Area, Sasa, Davao City

Dear Mr. de Castro,

We had been furnished copy of the communications of the Davao Pilot's, Association dated January 6 and 23, 1997 with the same subject on weakened pier structure of your port facility.

On 22 January 1997, a PMO team was dispatched to conduct an ocular inspection. The related report is herewith furnished for your perusal.

Any report or observation of this nature from port users is considered critical and this should be investigated and verified for the safety of all parties concerned. We therefore advise your company to conduct a thorough investigation of the underdeck and

---

[36] CA *rollo*, p. 28.

underwater structures of the pier and initiate corrective measures if necessary.

Please advise this end of your action/s undertaken.

Very truly yours,

(Sgd.)
MANUEL C. ALBARRACIN[37] (Emphasis supplied.)

Another material document is the letter dated December 8, 1997 from Minterbro to the PPA wherein petitioners requested the PPA to confirm the repair and rehabilitation of the Minterbro pier and issue a certification on the pier's "readiness to accept vessels for loading and unloading operations." [38]

Petitioners exert much effort to dissociate themselves from Del Monte's act of stopping its vessels from docking at Minterbro's pier beginning April 14, 1997. They also went to great lengths not only to refute the complaint of DPAI that Minterbro's pier is damaged and defective but also to establish that such allegedly baseless claims have no connection with the decision of the vessels not to dock at the Minterbro pier. The above communications, however, negate petitioners' contention. As early as February 1997, the PPA had already advised petitioners that the observation of DPAI that the pier had abnormal vibrations "is considered critical."[39] And in the Petition for *Certiorari*[40] and Memorandum[41] which they filed in the Court of Appeals, petitioners alleged as follows:

12. MINTERBRO sent copies of the Survey Report No. 390/97 to the PPA, the [Davao Pilots] Association and Del Monte Philippines, Inc. to inform them that the observation/complaint of the [Davao Pilots] Association was clearly unfounded and without any factual

---

[37] *Rollo*, p. 48.

[38] *Id.* at 67.

[39] *Id.* at 48.

[40] CA *rollo*, pp. 2-20.

[41] *Id.* at 178-198.

basis. **Despite receipt of the Survey Report, Del Monte did not dock any of its vessels at MINTERBRO's pier**.[42] (Emphasis supplied.)

The above statement shows that petitioners were fully aware that Del Monte's decision to stop docking any of its vessels at the Minterbro pier was basically related to the issue of the condition of the pier. Moreover, petitioners may not rightfully shift the blame to Del Monte in view of the following provision of their Contract for Use of Pier:

3. **MINTERBRO shall maintain the pier in good condition** suitable for the loading and unloading of [Del Monte] or [Del Monte]-related cargoes[.][43] (Emphasis supplied.)

If petitioners really believed their claim that the pier's condition was still suitable for normal operations even without having undertaken the repairs which it took starting August 1997, petitioners could have simply submitted Survey Report No. 390/97 to the PPA and requested for a certification similar to the PPA certification dated December 17, 1997. Yet, they did not. They had to rehabilitate the pier first before they requested for the certification. Furthermore, the very Survey Report No. 390/97 that petitioners use to support their claim that the claim of DPAI as to the condition of the pier is totally baseless is not completely true. As quoted by petitioners, the Survey Report states that the Minterbro pier "can still be used for loading and unloading of cargoes provided, however, that docking procedures were properly carried out."[44] This can be reasonably taken to mean as saying that the operations at the pier should now be carried out in a mistake free manner because one wrong move may prove to be disastrous. That means that every time arrastre and stevedoring services are conducted at the pier, a sword would be hanging over the heads of those working at the pier. Moreover, the said Survey Report expressly directs that "**immediate**

[42] *Id.* at 181.

[43] *Id.* at 30.

[44] *Rollo*, p. 53.

attention should be given to the Pier damages in order to prevent further deterioration of its structural members."[45] This directive contradicts petitioners' stance that the Minterbro pier was in good condition even prior to its repair and rehabilitation in August 1997. Thus, the Court of Appeals did not err when it made the following observations:

> In view of the inspections and surveys conducted on the pier, it could not have failed to dawn upon petitioners that no vessel would take the risk of docking in their pier because of its damaged condition.[46]
>
> To Our mind, both petitioners and the Labor Arbiter failed to realize that what had been indisputably established thereby was that petitioners' pier was in critical condition[,] *i.e.*, no longer viable for docking as early as May 1996 in spite of which petitioners decided to make the necessary repairs only in August [1996] or four months thereafter.
>
> x x x Petitioners had already been amply notified of the unstable condition of their pier which required prompt corrective action for the safety of both the facilities and the lives of the laborers therein, so that petitioners should not have insisted that their pier was still in good shape. x x x.[47]

In sum, petitioners' inaction on what they allege to be the unexplained abandonment by Del Monte of its obligations under the Contract for the Use of Pier coupled with petitioners' belated action on the damaged condition of the pier caused the absence of available work for the union members. As petitioners were responsible for the lack of work at the pier and, consequently, the layoff of the union members, they are liable for the separation from employment of the union members on a ground similar to retrenchment. In this connection, this Court has ruled:

> A lay-off, used interchangeably with "retrenchment," is a recognized prerogative of management. It is the termination of

---

[45] *Id.*

[46] *Id.* at 34.

[47] *Id.* at 41.

employment resorted to by the employer, through no fault of nor with prejudice to the employees, during periods of business recession, industrial depression, seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or the introduction of new methods or more efficient machinery, or of automation. Simply put, it is an act of the employer of dismissing employees because of losses in operation of a business, lack of work, and considerable reduction on the volume of his business, a right consistently recognized and affirmed by this Court. The requisites of a valid retrenchment are covered by Article 283 of the Labor Code.

When a lay-off is temporary, the employment status of the employee is not deemed terminated, but merely suspended. Article 286 of the Labor Code provides, in part, that the *bona fide* suspension of the operation of the business or undertaking for a period not exceeding six months does not terminate employment.[48] (Citation omitted.)

When petitioners failed to make work available to the union members for a period of more than six months starting April 14, 1997 by failing to call the attention of Del Monte on the latter's obligations under the Contract of Use of Pier and to undertake a timely rehabilitation of the pier, they are deemed to have constructively dismissed the union members. As this Court held in *Valdez v. National Labor Relations Commission*[49]:

Under Article 286 of the Labor Code, the *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six months shall not terminate employment. Consequently, when the *bona fide* suspension of the operation of a business or undertaking exceeds six months, then the employment of the employee shall be deemed terminated. By the same token and applying said rule by analogy, **if the employee was forced to remain without work or assignment for a period exceeding six months, then he is in effect constructively dismissed**. (Citation omitted.)

---

[48] *De la Cruz v. National Labor Relations Commission*, 335 Phil. 932, 939-940 (1997).

[49] 349 Phil. 760, 765-766 (1998); *De Guzman v. National Labor Relations Commission,* G.R. No. 167701, December 12, 2007, 540 SCRA 21, 32.

In *Sebuguero*,[50] the Court ruled on a case regarding layoff or temporary retrenchment, which subsequently resulted to the separation from employment of the concerned employee as it lasted for more than six months, as follows:

Article 283 of the Labor Code which covers retrenchment, reads as follows:

> Art. 283. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by servicing a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

This provision, however, speaks of a permanent retrenchment as opposed to a temporary lay-off as is the case here. There is no specific provision of law which treats of a temporary retrenchment or lay-off and provides for the requisites in effecting it or a period or duration therefor. These employees cannot forever be temporarily laid-off. To remedy this situation or fill the hiatus, Article 286 may be applied but only by analogy to set a specific period that employees may remain temporarily laid-off or in floating status.[13] Six months is the period set by law that the operation of a business or undertaking may be suspended thereby suspending the employment of the employees concerned. The temporary lay-off wherein the employees

---

[50] *Sebuguero v. National Labor Relations Commission, supra* note 29.

likewise cease to work should also not last longer than six months. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law, and that failing to comply with this would be tantamount to dismissing the employees and the employer would thus be liable for such dismissal.[51] (Citation omitted.)

As the Court of Appeals did not err in ruling that *Sebuguero* applies to this case, the consequences arrived at in *Sebuguero* also apply. Lay-off is essentially retrenchment and under Article 283 of the Labor Code a retrenched employee is entitled to separation pay equivalent to one (1) month salary or one-half (½) month salary per year of service, whichever is higher.

WHEREFORE, the petition is hereby **DENIED.** The Executive Labor Arbiter of the Regional Arbitration Branch No. XI at Davao City of the National Labor Relations Commission is **DIRECTED** to ensure the prompt implementation of this Decision.

SO ORDERED.

Bersamin, Villarama, Jr., Perez,[*] and *Reyes, JJ.,* concur.

---

[51] *Id.* at 542-544.

[*] Per Special Order No. 1385 dated December 4, 2012.

FIRST DIVISION

[G.R. Nos. 174457-59. December 5, 2012]

EXPRESS INVESTMENTS III PRIVATE LTD. and EXPORT DEVELOPMENT CANADA, *petitioners, vs.* **BAYAN TELECOMMUNICATIONS, INC., THE BANK OF NEW YORK (AS TRUSTEE FOR THE HOLDERS OF THE US$200,000,000 13.5% SENIOR NOTES OF BAYAN TELECOMMUNICATIONS, INC.) and ATTY. REMIGIO A. NOVAL (AS THE COURT-APPOINTED REHABILITATION RECEIVER OF BAYANTEL),** *respondents.*

[G.R. Nos. 175418-20. December 5, 2012]

IN THE MATTER OF: THE CORPORATE REHABILITATION OF BAYAN TELECOMMUNICATIONS, INC. PURSUANT TO THE INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION (A.M. NO. 00-8-10-SC)

THE BANK OF NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE US$200,000,000 13.5% SENIOR NOTES OF BAYAN TELECOMMUNICATIONS, INC. DUE 2006 ACTING ON THE INSTRUCTIONS OF THE INFORMAL STEERING COMMITTEE: AVENUE ASIA INVESTMENTS, L.P., AVENUE ASIA INTERNATIONAL, LTD., AVENUE ASIA SPECIAL SITUATIONS FUND II, L.P. AND AVENUE ASIA CAPITAL PARTNERS, L.P., *petitioners, vs.* **BAYAN TELECOMMUNICATIONS, INC.,** *respondent.* **IN THE MATTER OF: THE CORPORATE REHABILITATION OF BAYAN TELECOMMUNICATIONS, INC. PURSUANT TO THE INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION (A.M. NO. 00-8-10-SC)**

AVENUE ASIA INVESTMENTS, L.P., AVENUE ASIA INTERNATIONAL, LTD., AVENUE ASIA SPECIAL

SITUATIONS FUND II, L.P., AVENUE ASIA CAPITAL PARTNERS, L.P. AND AVENUE ASIA SPECIAL SITUATIONS FUND III, L.P., *petitioners, vs.* **BAYAN TELECOMMUNICATIONS, INC.,** *respondent.*

[G.R. No. 177270. December 5, 2012]

THE BANK OF NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE US$200,000,000 13.5% SENIOR NOTES OF BAYAN TELECOMMUNICATIONS, INC., *petitioner, vs.* **BAYAN TELECOMMUNICATIONS, INC.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; CORPORATE REHABILITATION; AN ATTEMPT TO CONSERVE AND ADMINISTER THE ASSETS OF AN INSOLVENT CORPORATION IN THE HOPE OF ITS EVENTUAL RETURN FROM FINANCIAL STRESS TO SOLVENCY. — Rehabilitation is an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity. The purpose of rehabilitation proceedings is precisely to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. Rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated.

2. ID.; ID.; ID.; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; CREDITORS, SECURED OR UNSECURED, TREATED *PARI PASSU* UNTIL REHABILITATION PROCEEDINGS IS TERMINATED. — In this case, in an Order dated April 19,

2004, the Rehabilitation Court held that "[t]he creditors of Bayantel, whether secured or unsecured, should be treated equally and on the same footing or *pari passu* until the rehabilitation proceedings is terminated in accordance with the Interim Rules [of Procedure on Corporate Rehabilitation]. x x x In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*. x x x We ruled that whenever a distressed corporation asks the SEC for rehabilitation and suspension of payments, preferred creditors may no longer assert preference but shall stand on equal footing with other creditors. x x x In 1999, the Court qualified this ruling by stating that preferred creditors of distressed corporations shall stand on equal footing with all other creditors only after a rehabilitation receiver or management committee has been appointed. More importantly, the Court laid the guidelines for the treatment of claims against corporations undergoing rehabilitation. x x x Basically, once a management committee or rehabilitation receiver has been appointed in accordance with PD 902-A, no action for claims may be initiated against a distressed corporation and those already pending in court shall be suspended in whatever stage they may be. Notwithstanding, secured creditors shall continue to have preferred status but the enforcement thereof is likewise held in abeyance. However, if the court later determines that the rehabilitation of the distressed corporation is no longer feasible and its assets are liquidated, secured claims shall enjoy priority in payment. We perceive no good reason to depart from established jurisprudence. While Section 24(d), Rule 4 of the Interim Rules states that contracts and other arrangements between the debtor and its creditors shall be interpreted as continuing to apply, this holds true only to the extent that they do not conflict with the provisions of the plan.

3. ID.; ID.; ID.; ID.; ID.; THE PHRASE "GIVING DUE REGARD TO THE INTERESTS OF SECURED CREDITORS"; ELUCIDATED. — During rehabilitation, the only payments sanctioned by the Interim Rules are those made to creditors in accordance with the provisions of the plan. Pertinent to this is Section 5 (b), Rule 4 of the Interim Rules which states that the terms and conditions of the rehabilitation plan shall include the manner of its implementation, *giving due regard to the interests of secured* creditors. x x x In the context of [Section 12, Rule 4 of the Interim Rule], "giving due regard to the interests of secured creditors" primarily entails ensuring that

the property comprising the collateral is insured, maintained or replacement security is provided such that the obligation is fully secured. The reason for this rule is simple, in the event that the court terminates the proceedings for reasons other than the successful implementation of the plan, the secured creditors may foreclose the securities and the proceeds thereof applied to the satisfaction of their preferred claims. When the Rules of Procedure on Corporate Rehabilitation took effect on January 16, 2009, the "due regard" provision was amended to read: x x x giving due regard to the interests of secured creditors such as, **but not limited, to the non-impairment of their security liens or interests**; x x x Despite the additional phrase, however, it is our view that the amendment simply amplifies the meaning of the "due regard provision" in the Interim Rules.

4. ID.; ID.; ID.; ID.; REMEDY OF SECURED CREDITOR IN CASE OF DEVALUATION OF SECURITIES OVER TIME THAT THE PROCEEDS OF THE CORPORATION'S COLLATERAL WOULD BE INSUFFICIENT TO COVER THE CLAIMS IN THE EVENT OF LIQUIDATION. — [P]etitioners are concerned x x x with the devaluation of the securities over time. Petitioners fear that the proceeds of respondent's collateral would be insufficient to cover their claims in the event of liquidation. On this point, suffice it to state that petitioners are not without any remedy to address a deficiency in securities, if and when it comes about. Under Section 12, Rule 4 of the Interim Rules, a secured creditor may file a motion with the Rehabilitation Court for the modification or termination of the stay order. If petitioners can show that arrangements to insure or maintain the property or to make payment or provide additional security therefor is not feasible, the court shall modify the stay order to allow petitioners to enforce their claim — that is, to foreclose the mortgage and apply the proceeds thereof to their claims. Be that as it may, the court may deny the creditor this remedy if allowing so would prevent the continuation of the debtor as a going concern or otherwise prevent the approval and implementation of a rehabilitation plan.

5. ID.; ID.; ID.; REHABILITATION PLAN; OPPOSITION OF CREDITORS; FACTORS TO CONSIDER. — Indeed, neither the "due regard provision" nor contractual arrangements can shackle the Rehabilitation Court in determining the best means

of rehabilitating a distressed corporation. Truth be told, the Rehabilitation Court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following: (a) That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three-month period; (b) That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and (c) The Rehabilitation Receiver has recommended approval of the plan.

6. ID.; ID.; ID.; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; ALL CREDITORS TREATED *PARI PASSU;* NOT A VIOLATION AGAINST CONSTITUTIONAL PROHIBITION ON CONTRACT'S NON-IMPAIRMENT CLAUSE. — [P]etitioners submit that the *pari passu* treatment of claims offends the Contract Clause under the 1987 Constitution. Article III, Section 10 of the Constitution mandates that no law impairing the obligation of contracts shall be passed. x x x [I]t bears stressing that the non-impairment clause is a limitation on the exercise of legislative power and not of judicial or quasi-judicial power.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW, AS DISTINGUISHED TO QUESTIONS OF FACT, MAY BE RAISED. — [I]n a petition for review on *certiorari*, the scope of the Supreme Court's judicial review is limited to reviewing only errors of law, not of fact. x x x A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

8. COMMERCIAL LAW; CORPORATION LAW; CORPORATE REHABILITATION; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; CREDITOR-INITIATED PETITION FOR REHABILITATION; DEBTOR MAY SUBMIT ITS OWN REHABILITATION PLAN. — Rule 4 of the Interim Rules treats of rehabilitation in general, without distinction as to who between the debtor and the creditor initiated the petition. Nowhere in said Rule is there any provision that prohibits the debtor in a creditor-initiated petition to file its own rehabilitation plan for consideration by the court. Quite the reverse, one of the functions and powers of the rehabilitation receiver under Section 14(m) of said Rule is to study the rehabilitation plan *proposed by the debtor* or any rehabilitation plan submitted during the proceedings, together with any comments made thereon. This provision makes particular reference to a debtor-initiated proceeding in which the debtor principally files a rehabilitation plan. In such case, the receiver is tasked, among other things, to study the rehabilitation plan presented by the debtor along with any rehabilitation plan submitted during the proceedings. This implies that the creditors of the distressed corporation, and even the receiver, may file their respective rehabilitation plans. We perceive no good reason why the same option should not be available, by analogy, to a debtor in creditor-initiated proceedings, which is also found in Rule 4 of the Interim Rules.

9. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; CONTROL OVER PUBLIC UTILITIES RESERVED TO FILIPINO CITIZENS; ON THE PROVISION THAT AS TO CORPORATIONS, AT LEAST SIXTY *PER CENTUM* OF ITS CAPITAL IS OWNED BY FILIPINO CITIZENS; ELUCIDATED. — [P]etitioners fault the Court of Appeals for ruling that the debt-to-equity conversion rate of 77.7%, as proposed by The Bank of New York, violates the Filipinization provision of the Constitution. x x x The provision adverted to is Article XII, Section II of the 1987 Constitution which states: 'SEC. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens. x x x In the recent case of *Gamboa v. Teves,* the Court settled

once and for all the meaning of "capital" in the above-quoted Constitutional provision limiting foreign ownership in public utilities. In said case, we held that considering that common shares have voting rights which translate to control as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors. Applying this, two steps must be followed in order to determine whether the conversion of debt to equity in excess of 40% of the outstanding capital stock violates the constitutional limit on foreign ownership of a public utility: *First*, identify into which class of shares the debt shall be converted, whether common shares, preferred shares that have the right to vote in the election of directors or non-voting preferred shares; *Second*, determine the number of shares with voting right held by foreign entities prior to conversion. If upon conversion, the total number of shares held by foreign entities exceeds 40% of the capital stock with voting rights, the constitutional limit on foreign ownership is violated. Otherwise, the conversion shall be respected.

10. COMMERCIAL LAW; CORPORATION LAW; CORPORATE REHABILITATION; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; REHABILITATION PLAN; DEBT RESTRUCTURING; DID NOT VIOLATE *PARI PASSU* TREATMENT OF CREDITORS IN CASE AT BAR. — Section 5(d), Rule 4 of the Interim Rules provides that the rehabilitation plan shall include the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest. x x x In this case, the approved Rehabilitation Plan provided for a longer period of payment, the conversion of debt to 40% equity in respondent company, modification of interest rates on the restructured debt and accrued interest and a write-off or relief from penalties and default interest. These recommendations by the Receiver are perfectly

within the powers of the Rehabilitation Court to adopt and approve, as it did adopt and approve. x x x As applied to this case, the *pari passu* treatment of claims during rehabilitation entitles all creditors, whether secured or unsecured, to receive payment out of Bayantel's cash flow. Despite their preferred position, therefore, the secured creditors shall not be paid ahead of the unsecured creditors but shall receive payment only in the proportion owing to them. In any event, the debt restructuring schemes complained of shall be implemented among all creditors regardless of class. Both secured and unsecured creditors shall suffer a write-off of penalties and default interest and the escalating interest rates shall be equally imposed on them. We repeat, the commitment embodied in the *pari passu* principle only goes so far as to ensure that the assets of the distressed corporation are held in trust for the equal benefit of all creditors. It does not espouse absolute equality in all aspects of debt restructuring.

11. ID.; ID.; ID.; ID.; COSTS IN REHABILITATION PROCEEDINGS, DISCUSSED. — As regards petitioners' claims for costs, x x x there is no prevailing party in rehabilitation proceedings which is non-adversarial in nature. Unlike in adversarial proceedings, the court in rehabilitation proceedings appoints a receiver to study the best means to revive the debtor and to ensure that the value of the debtor's property is reasonably maintained pending the determination of whether or not the debtor should be rehabilitated, as well as implement the rehabilitation plan after its approval. The main thrust of rehabilitation is not to adjudicate opposing claims but to restore the debtor to a position of successful operation and solvency. Under the Interim Rules, reasonable fees and expenses are allowed the Receiver and the persons hired by him, for those expenses incurred in the ordinary course of business of the debtor after the issuance of the stay order but excluding interest to creditors. Moreover, while it is true that the Indenture between petitioners and respondent corporation authorizes the Trustee to file proofs of claim for the payment of reasonable expenses and disbursements of the Trustee, its agents and counsel, accountants and experts, such remedy is available only in cases where the Trustee files a collection suit against respondent company. Indubitably, the rehabilitation proceedings in the case at bar is not a collection suit, which is adversarial in nature.

12. ID.; ID.; ID.; ON THE CREATION OF MONITORING COMMITTEE. — [T]he Rehabilitation Court's decision to form a monitoring committee was borne out of creditors' concerns over the possession of vast powers by the Receiver. x x x From all indications, however, the tenor of the Rehabilitation Court's Decision does not contemplate the creation of a Monitoring Committee with broader powers than the Receiver. As the name of the Monitoring Committee itself suggests, its job is "to watch, observe or check especially for a special purpose." In the context of the Decision, the fundamental task of the Monitoring Committee herein is to oversee the implementation of the rehabilitation plan as approved by the court. This should not be confused with the functions of the Receiver under the Interim Rules or a management committee under PD 902-A.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for Express Investments III Private Ltd. & Export Dev't. Canada.

Belo Gozon Elma Parel Asuncion & Lucila for Bank of New York and Avenue Asia Capital Group.

Sumalpong & Associates for BDO.

Quiason Makalintal Barot Torres Ibarra & Sison for Bayan Telecommunications, Inc.

Wilfredo M. Trinidad for receiver Noval.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us are seven consolidated petitions for review on *certiorari* filed in connection with the corporate rehabilitation of Bayan Telecommunications, Inc. (Bayantel).

The Petition for Partial Review on *Certiorari*[1] in G.R. Nos. 174457-59 was filed by Express Investments III Private Ltd.

[1] *Rollo* (G.R. Nos. 174457-59), Vol. I, pp. 16-141.

and Export Development Canada to assail the August 18, 2006 Decision[2] of the Court of Appeals in CA-G.R. SP No. 87203.

On the other hand, the Petition for Review on *Certiorari*[3] in G.R. Nos. 175418-20 was filed by The Bank of New York; Avenue Asia Investments, L.P.; Avenue Asia International, Ltd.; Avenue Asia Special Situations Fund II, L.P.; Avenue Asia Capital Partners, L.P. and Avenue Asia Special Situations Fund III, L.P. Said petition questions as well the said August 18, 2006 Court of Appeals Decision, and also the November 8, 2006 Resolution[4] of the Court of Appeals in CA-G.R. SP Nos. 87100 and 87111 affirming the June 28, 2004 Decision[5] of the Regional Trial Court (RTC) of Pasig City, Branch 158, in SEC Case No. 03-25.

Meanwhile, the Petition for Review on *Certiorari*[6] in G.R. No. 177270 was filed by The Bank of New York, in its capacity as trustee for the holders of the US$200 million 13.5% Senior Notes of Bayantel and upon the instructions of the Informal Steering Committee, to contest the Decision[7] and Resolution[8] of the Court of Appeals in CA-G.R. SP No. 89894 which nullified the November 9, 2004 and March 15, 2005 Orders of the Pasig RTC, Branch 158, in SEC Case No. 03-25 insofar as it defined the powers and functions of the Monitoring Committee.

The facts, as culled from the records of these cases, follow:

Respondent Bayantel is a duly organized domestic corporation engaged in the business of providing telecommunication services.

---

[2] *Id.* at 188-219. Penned by Associate Justice Vicente Q. Roxas with Presiding Justice Ruben T. Reyes (now a retired member of this Court) and Associate Justice Rebecca De Guia-Salvador concurring.

[3] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 49-123.

[4] *Id.* at 45-46.

[5] *Id.* at 1014-1029. Penned by Judge Rodolfo R. Bonifacio.

[6] *Rollo* (G.R. No. 177270), Vol. I, pp. 47-140.

[7] *Id.* at 12-37. The decision is dated October 27, 2006. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Magdangal M. de Leon and Ramon R. Garcia concurring.

[8] *Id.* at 39-42. The resolution is dated March 23, 2007.

It is 98.6% owned by Bayan Telecommunications Holdings Corporation (BTHC), which in turn is 85.4% owned by the Lopez Group of Companies and Benpres Holdings Corporation.

On various dates between the years 1995 and 2001, Bayantel entered into several credit agreements with Express Investments III Private Ltd. and Export Development Canada (petitioners in G.R. Nos. 174457-59), Asian Finance and Investment Corporation, Bayerische Landesbank (Singapore Branch) and Clearwater Capital Partners Singapore Pte Ltd., as agent for Credit Industriel et Commercial (Singapore), Deutsche Bank AG, Equitable PCI Bank, JP Morgan Chase Bank, Metropolitan Bank and Trust Co., P.T. Bank Negara Indonesia (Persero), TBK, Hong Kong Branch, Rizal Commercial Banking Corporation and Standard Chartered Bank. To secure said loans, Bayantel executed an Omnibus Agreement dated September 19, 1995 and an EVTELCO Mortgage Trust Indenture[9] dated December 12, 1997.[10]

Pursuant to the Omnibus Agreement, Bayantel executed an Assignment Agreement in favor of the lenders under the Omnibus Agreement (hereinafter, Omnibus Creditors, Bank Creditors, or secured creditors). In the Assignment Agreement, Bayantel bound itself to assign, convey and transfer to the Collateral Agent, the following properties as collateral security for the prompt and complete payment of its obligations to the Omnibus Creditors:

(i) all monies payable to Bayantel under the Project Documents (as the term is defined by the Omnibus Agreement);

(ii) all Project Documents and all Contract Rights arising thereunder;

(iii) all receivables;

(iv) all general intangibles;

---

[9] A written agreement under which bonds and debentures are issued, setting forth maturity date, interest rate, and other terms. *BLACK'S LAW DICTIONARY* 693 (5th ed., 1979).

[10] CA *rollo*, Vol. II, pp. 38-39.

(v) each of the Accounts (as the term is defined by the Omnibus Agreement);

(vi) all amounts maintained in the Accounts and all monies, securities and instruments deposited or required to be deposited in the Accounts;

(vii) all other chattel paper and documents;

(viii) all other property, assets and revenues of Bayantel, whether tangible or intangible; and

(ix) all proceeds and products of any and all of the foregoing.[11]

In July 1999, Bayantel issued US$200 million worth of 13.5% Senior Notes pursuant to an Indenture[12] dated July 22, 1999 that it entered into with The Bank of New York (petitioner in G.R. Nos. 175418-20) as trustee for the holders of said notes. Pursuant to the said Indenture, the notes are due in 2006 and Bayantel shall pay interest on them semi-annually. Bayantel managed to make two interest payments, on January 15, 2000 and July 15, 2000, before it defaulted on its obligation.

Foreseeing the impossibility of further meeting its obligations, Bayantel sent, in October 2001, a proposal for the restructuring of its debts to the Bank Creditors and the Holders of Notes. To facilitate the negotiations between Bayantel and its creditors, an Informal Steering Committee was formed composed of Avenue Asia Investments, L.P., Avenue Asia International, Ltd., Avenue Asia Special Situations Fund II, L.P., Avenue Asia Capital Partners, L.P. (petitioners in G.R. Nos. 175418-20) and Van Eck Global Opportunity Masterfund, Ltd. The members of the Informal Steering Committee are the assignees of the unsecured credits extended to Bayantel by J.P. Morgan Europe, Ltd., Bayerische Landesbank Singapore Branch and Deutsche Bank AG, London in the total principal amount of US$13,637,485.20. They are holders, as well, of the Notes issued by Bayantel pursuant to the Indenture dated July 22, 1999.

---

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

[12] *Rollo* (G.R. Nos. 174457-59), Vol. I, pp. 402-570.

In its initial proposal called the "First Term Sheet," Bayantel suggested a 25% write-off of the principal owing to the Holders of Notes. The Informal Steering Committee rejected the idea, but accepted Bayantel's proposal to pay the restructured debt, *pari passu*,[13] out of its cash flow. This *pari passu* or equal treatment of debts, however, was opposed by the Bank Creditors who invoked their security interest under the Assignment Agreement.

Bayantel continued to pay reduced interest on its debt to the Bank Creditors but stopped paying the Holders of Notes starting July 17, 2000. By May 31, 2003, Bayantel's total indebtedness had reached US$674 million or ₱35.928 billion in unpaid principal and interest, based on the prevailing conversion rate of US$1 = ₱53.282. Out of its total liabilities, Bayantel allegedly owes 43.2% or US$291 million (₱15.539 billion) to the Holders of the Notes.

On July 25, 2003, The Bank of New York, as trustee for the Holders of the Notes, wrote Bayantel an Acceleration Letter declaring immediately due and payable the principal, premium interest, and other monetary obligations on all outstanding Notes. Then, on July 30, 2003, The Bank of New York filed a petition[14] for the corporate rehabilitation of Bayantel upon the instructions of the Informal Steering Committee.

On August 8, 2003, the Pasig RTC, Branch 158, issued a Stay Order[15] which directed, among others, the suspension of all claims against Bayantel and required the latter's creditors and other interested parties to file a comment or opposition to the petition. The court appointed Dr. Conchita L. Manabat to act as rehabilitation receiver but the latter declined.[16] In her

---

[13] By an equal progress; equably, ratably; without preference. Used especially of creditors who, in marshalling assets, are entitled to receive out of the same fund without any precedence over each other. *BLACK'S LAW DICTIONARY* 1004 (5th ed., 1979).

[14] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 203-218.

[15] *Id.* at 246-249.

[16] CA *rollo*, Vol. II, pp. 302-303.

stead, the court appointed Atty. Remigio A. Noval (Atty. Noval) who took his oath and posted a bond on September 26, 2003.[17]

On November 28, 2003, the Rehabilitation Court gave due course to the petition and directed the Rehabilitation Receiver to submit his recommendations to the court within 120 days from the initial hearing.[18] After several extensions, Atty. Noval filed on March 22, 2004 a Compliance and Submission of the Report as Compelling Evidence that Bayantel may be Successfully Rehabilitated.[19]

In his report, Atty. Noval classified Bayantel's debts into three: (1) those owed to secured Bank Creditors pursuant to the Omnibus Agreements (Omnibus Creditors) in the total amount of US$334 million or ₱17.781 billion; (2) those owed to Holders of the Senior Notes and Bank Creditors combined (Chattel Creditors), comprising US$625 million, of which US$473 million (₱25.214 billion) is principal and US$152 million (₱8.106 billion) is accrued unpaid interest; and (3) those that Bayantel owed to persons other than Financial Creditors/unsecured creditors in the amount of US$49 million or ₱2.608 billion.

According to The Bank of New York, out of the US$674 million that respondent owes its creditors under groups 2 and 3 above, the amount outstanding under the Senior Notes represent 43.2% of its liabilities as of May 31, 2003. Subsequently, negotiations for the restructuring of Bayantel's debt reached an impasse when the Informal Steering Committee insisted on a *pari passu* treatment of the claims of both secured and unsecured creditors.

Meanwhile, on January 20, 2004, Bayantel filed a "Motion to Include Radio Communications Philippines, Inc. [RCPI] and Naga Telephone Company [Nagatel] as Debtor-Corporations for Rehabilitation x x x."[20]

---

[17] *Id.* at 313, 316.

[18] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 307-318.

[19] *Rollo* (G.R. No. 177270), Vol. I, pp. 245-250.

[20] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 319-330.

The Rehabilitation Court denied said motion in an Order[21] dated April 19, 2004. The *fallo* of said order reads:

WHEREFORE, the Court resolves the pending incidents as follows:

1. The Urgent Motion to Resolve of petitioner is hereby granted. The creditors of Bayantel, whether secured or unsecured, should be treated equally and on the same footing or *pari passu* until the rehabilitation proceedings is terminated in accordance with the Interim Rules;

2. The Motion of Bayantel to Include RCPI and Nagatel in the present rehabilitation proceedings as debtor-corporations is denied;

3. The Motion of Bayantel to Exempt from the Stay Order the payment of the compensation package of its former employees per Annex "A" attached to said motion is granted, subject to the verification and confirmation of the items therein by the Rehabilitation Receiver;

4. The Motion of Petitioner to Strike Out the proposed rehabilitation plan of Bayantel is denied.

SO ORDERED.[22]

On June 28, 2004, the Pasig RTC, Branch 158, acting as a Rehabilitation Court, approved the Report and Recommendations[23] attached by the Receiver to his "Submission with Prayer for Further Guidance from the Honorable Court,"[24] subject to the following clarifications and/or amendments:

1. The ruling on the *pari passu* treatment of all creditors whose claims are subject to restructuring shall be maintained and shall extend to all payment terms and treatment of past due interest.

2. Due regard shall be given to the rights of the secured creditors and no changes in the security positions of the creditors shall be granted as a result of the rehabilitation plan as amended and approved herein.

---

[21] *Id.* at 650-654.

[22] *Id.* at 653-654.

[23] *Id.* at 670-843.

[24] *Id.* at 655-669.

3. The level of sustainable debt of the rehabilitation plan, as amended, shall be reduced to the amount of [US]$325,000,000 for a period of 19 years.

4. Unsustainable debt shall be converted into an appropriate instrument that shall not be a financial burden for Bayantel.

5. All provisions relating to equity in the rehabilitation plan, as approved and amended, must strictly conform to the requirements of the Constitution limiting foreign ownership to 40%.

6. A Monitoring Committee shall be formed composed of representatives from all classes of the restructured debt. The Rehabilitation Receiver's role shall be limited to the powers of monitoring and oversight as provided in the Interim Rules.

All powers provided for in the Report and Recommendations, which exceed the monitoring and oversight functions mandated by the Interim Rules shall be amended accordingly.

SO ORDERED.[25]

Dissatisfied, The Bank of New York filed a Notice of Appeal[26] on August 6, 2004. So did Avenue Asia Investments, L.P., Avenue Asia International, Ltd., Avenue Asia Special Situations Fund II, L.P., Avenue Asia Capital Partners, L.P., and Avenue Asia Special Situations Fund III, L.P. which filed a Joint Record on Appeal[27] on August 9, 2004.

On September 28, 2004, Bayantel submitted an Implementing Term Sheet to the Rehabilitation Court and the Receiver. Claiming that said Term Sheet was inadequate to protect the interest of the creditors, The Bank of New York (petitioner in G.R. No. 177270) filed a Manifestation[28] dated October 15, 2004 praying for the constitution of a Monitoring Committee and the creation of a convertible debt instrument to cover the unsustainable portion of the restructured debt.

---

[25] *Id.* at 1028-1029.

[26] CA *rollo*, Vol. I, pp. 30-35.

[27] *Id.* at 37-56.

[28] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 1067-1092.

On November 9, 2004, the Rehabilitation Court issued an Order[29] directing the creation of a Monitoring Committee to be composed of one member each from the group of Omnibus Creditors and unsecured creditors, and a third member to be chosen by the unanimous vote of the first two members. In the same Order, the court defined the scope of the Monitoring Committee's authority, as follows:

> x x x The Monitoring Committee shall participate with the Receiver in monitoring and overseeing the actions of the Board of Directors of Bayantel and may, by majority vote, adopt, modify, revise or substitute, any of the following items:
>
> (1) any proposed Annual OPEX Budgets;
>
> (2) any proposed Annual CAPEX Budgets;
>
> (3) any proposed Reschedule;
>
> (4) any proposed actions by the Receiver on a payment default;
>
> (5) terms of Management Incentivisation Scheme and Management Targets;
>
> (6) the EBITDA/Revenue ratios set by the Bayantel Board of Directors; and
>
> (7) any other proposed actions by the Bayantel Board of Directors including, without limitation, issuance of new shares, sale of core and non-core assets, change of business, *etc*. that will materially affect the terms and conditions of the rehabilitation plan and its implementation.
>
> In case of disagreement between the Monitoring Committee and the Board of Directors of Bayantel on any of the foregoing matters, the same shall be submitted to the Court for resolution.[30]

On November 16, 2004, The Bank of New York filed a Petition for Review[31] before the Court of Appeals. The petition was

---

[29] *Rollo* (G.R. No. 177270), Vol. I, pp. 509-511.

[30] *Id.* at 510.

[31] CA *rollo*, Vol. I, pp. 78-161. The petition was filed under Rule 43 of the 1997 Rules of Civil Procedure, as amended.

docketed as CA-G.R. SP No. 87100 in the Fifteenth Division of the Court of Appeals. On even date, Avenue Asia Investments, L.P., Avenue Asia International, Ltd., Avenue Asia Special Situations Fund II, L.P., Avenue Asia Capital Partners, L.P., and Avenue Asia Special Situations Fund III, L.P (Avenue Asia Capital Group) filed a similar petition[32] which was docketed as CA-G.R. SP No. 87111 in the Second Division of the Court of Appeals. Both petitions contest the Rehabilitation Court's June 28, 2004 Decision for, among others, fixing the level of Bayantel's sustainable debt at US$325 million to be paid in 19 years.

Thereafter, on November 30, 2004, petitioners Express Investments III Private Ltd. and Export Development Canada along with Bayerische Landesbank (Singapore Branch), Credit Industriel et Commercial, Deutsche Bank AG, P.T. Bank Negara Indonesia (Persero), TBK, Hong Kong Branch and Rizal Commercial Banking Corporation filed a Petition for Review[33] which was docketed as CA-G.R. No. 87203 in the Tenth Division of the Court of Appeals. The secured creditors likewise assailed the Rehabilitation Court's June 28, 2004 Decision insofar as it ordered the *pari passu* treatment of all claims against Bayantel. Said petitioners invoke a lien over the cash flow and receivables of Bayantel by virtue of the Assignment Agreement.

On December 23, 2004, Bayantel filed an Omnibus Motion[34] for the consolidation of CA-G.R. SP Nos. 87111 and CA-G.R. SP No. 87203 with CA-G.R. SP No. 87100, the lowest-numbered case.

In a Resolution dated January 20, 2005, the Court of Appeals, Fifteenth Division, ordered the consolidation of CA-G.R. SP No. 87203 with CA-G.R. SP No. 87100. This was accepted by the Court of Appeals, Seventh Division, in a Resolution[35] dated March 29, 2005. Then, in the Resolution[36] dated June

---

[32] *Id.* at 219-302.

[33] *Rollo* (G.R. Nos. 174457-59), Vol. I, pp. 1470-1535.

[34] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 1099-1109.

[35] *Id.* at 1115-1119.

[36] *Id.* at 1111-1112.

10, 2005, the Court of Appeals, First Division, ordered the consolidation of CA-G.R. SP No. 87111 with 87100 and the transmittal of the records of the three cases to the Seventh Division.

Meanwhile, on January 10, 2005, Atty. Noval submitted to the Rehabilitation Court an Implementing Term Sheet[37] to serve as a guide for Bayantel's Rehabilitation. The same was approved in an Order[38] dated March 15, 2005. In the same Order, the Rehabilitation Court appointed Avenue Asia Investments L.P. and Export Development Canada to represent the unsecured and secured creditors, respectively, in the Monitoring Committee.

On May 26, 2005, Bayantel filed a petition for *certiorari* and prohibition[39] docketed as CA-G.R. SP No. 89894 in the Court of Appeals. Said petition assailed the Rehabilitation Court's Orders dated November 9, 2004 and March 15, 2005, for purportedly conferring upon the Monitoring Committee, powers of management and control over its operations.

The Court of Appeals Decision in CA-G.R. Nos. 87100, 87111 and 87203

In the assailed August 18, 2006 Decision, the Court of Appeals dismissed the petitions in CA-G.R. SP Nos. 87100, 87111 and 87203 for lack of merit. The appellate court upheld the Rehabilitation Court's determination of Bayantel's sustainable debt at US$325 million payable in 19 years. It rejected the Receiver's proposal to set the sustainable debt at US$370 million payable in 15 years, and the proposal of the Avenue Asia Capital Group to set it at US$471 million payable in 12 years.

The Court of Appeals agreed with the Rehabilitation Court that it is reasonable to adopt a level of sustainable debt that approximates respondent Bayantel's proposal because the latter is in the best position to determine the level of sustainable debt

---

[37] *Rollo* (G.R. No. 177270), Vol. I, pp. 729-803.

[38] *Id.* at 609-614.

[39] *Id.* at 619-664.

that it can manage. It found Bayantel's proposal more credible considering that it was prepared using "updated financial information with realistic cash flow figures."[40] The appellate court noted that Bayantel's proposal was drafted without regard for its status as a "niche player" in the telecommunications market and after factoring the cost of reorganization. In contrast, it expressed concern that the proposals submitted by Avenue Asia Capital Group and the Receiver might eventually leave Bayantel with an unworkable financial debt-to-revenue ratio.

The Court of Appeals also confirmed the Rehabilitation Court's authority to approve, reject, substitute, or even change the rehabilitation plans submitted by the Receiver and the parties. It upheld the trial court in adopting the Receiver's recommendation to limit the equity conversion of Bayantel's unsustainable debt to 40% of its paid-up capital. This percentage, the appellate court explains, is consistent with the constitutional limitation on the allowable foreign equity in Filipino corporations. It also maintained the write-off of penalties and default interest and recomputation of Bayantel's past due interest, as a valid exercise of discretion by the Rehabilitation Court under the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules). The appellate court negated any violation of the *pari passu* principle with the use of these measures since they shall apply to all classes of creditors.

As to the claim of the secured creditors in CA-G.R. SP No. 87203, the Court of Appeals ruled that while rehabilitation is ongoing, the sole control over the security on the receivables and cash flow of Bayantel is vested in the Rehabilitation Court. To allow otherwise would not only violate the Stay Order but interfere as well with the duty of the Receiver to "take possession, control and custody of the debtor's assets."[41] Ultimately, the Court of Appeals ruled that preference in payment cannot be accorded the secured creditors since preference applies only in liquidation proceedings.

---

[40] *Rollo* (G.R. Nos. 175418-20), Vol. I, p. 29.

[41] *Id.* at 38.

Discontented, The Bank of New York and the Avenue Asia Capital Group (petitioners in CA-G.R. SP Nos. 87100 and 87111) filed a Motion for Partial Reconsideration.[42] Said motion was, however, denied in the Resolution dated November 8, 2006.

In the meantime, Express Investments III Private Ltd. and Export Development Canada had filed before this Court a Petition for Partial Review on *Certiorari* of the Court of Appeals Decision docketed as G.R. Nos. 174457-59. According to petitioners, the other secured creditors who were also petitioners in CA-G.R. SP No. 87203 had not remained in contact with them and had not authorized them to file further petitions on their behalf.

On December 28, 2006, The Bank of New York and the Avenue Asia Capital Group also filed their own Petition for Review on *Certiorari* which was docketed as G.R. Nos. 175418-20.

The Court of Appeals Decision in CA-G.R. SP No. 89894

In CA-G.R. SP No. 89894, the Court of Appeals rendered the assailed Decision dated October 27, 2006 declaring null and void the November 9, 2004 and March 15, 2005 Orders of the Rehabilitation Court insofar as they defined the powers and functions of the Monitoring Committee.

The appellate court found grave abuse of discretion on the part of the Rehabilitation Court for conferring upon the Monitoring Committee the power to modify, reverse or overrule the proposals of Bayantel's Board of Directors relative to operations. It stressed that the Committee's functions are confined to monitoring and overseeing the operations of Bayantel to ensure its compliance with the terms and conditions of the Rehabilitation Plan. To conform therewith, the appellate court restated the Committee's powers as follows:

> The Monitoring Committee shall participate with the Receiver in monitoring and overseeing the operations of Bayantel to ensure compliance by Bayantel with the terms and conditions of the Rehabilitation Plan. In the event Bayantel fails to meet any of the

---

[42] CA *rollo*, Vol. I, pp. 877-911.

milestones under the Rehabilitation Plan or fails to comply with any material provision thereunder, the Monitoring Committee may, by majority vote, **recommend** modifications, revisions and substitutions of the following items:

x x x x x x x x x[43]

(Emphasis supplied)

The Court of Appeals likewise approved of the Implementing Term Sheet, clarifying that the same is not intended to address every contingency that may arise in the implementation of the Plan. It assured that any doubt in the interpretation of the Term Sheet shall be resolved by the Rehabilitation Court.

Lastly, the appellate court affirmed the creation of a convertible debt instrument to cover the unsustainable portion of respondent's debt. It perceives such instrument as a tool to generate surplus cash to satisfy Bayantel's debt under Tranche B. As well, it serves as a buy-back scheme for the assignment and transfer of credits by the Financial Creditors in a manner that will not unduly burden Bayantel.

Issues

On October 19, 2006, Express Investments III Private Ltd. and Export Development Canada[44] filed a Petition for Partial Review on *Certiorari* which was docketed as G.R. Nos. 174457-59. Said petition, which seeks the reversal of the August 18, 2006 Decision of the Court of Appeals insofar as it dismissed the petition of the secured creditors in CA-G.R. SP No. 87203, essentially proffers the following issues for resolution: (1) whether the claims of secured and unsecured creditors should be treated *pari passu* during rehabilitation; (2) whether the *pari passu* treatment of creditors during rehabilitation impairs the Assignment

---

[43] *Rollo* (G.R. No. 177270), Vol. I, pp. 28-29.

[44] Apparently, the other secured creditors who were also petitioners in CA-G.R. SP No. 87203 had not remained in contact with the *Ad Hoc* Committee of the secured creditors and did not furnish it with the requisite secretary's certificate authorizing the filing of a petition on their behalf. [*Rollo* (G.R. Nos. 174457-59), Vol. I, p. 16.]

Agreement between respondent and petitioners; (3) whether an impairment in the security position of petitioners can be justified as a valid exercise of police power.

On the other hand, The Bank of New York and the Avenue Asia Capital Group filed a Petition for Review on *Certiorari* docketed as G.R. Nos. 175418-20, to question the appellate court's August 18, 2006 Decision as well as its November 8, 2006 Resolution in CA-G.R. SP Nos. 87100 and 87111. This second consolidated petition raises the following issues: (1) whether the Court of Appeals erred in setting Bayantel's sustainable debt at US$325 million, payable in 19 years; (2) whether a debtor may submit a rehabilitation plan in a creditor-initiated rehabilitation; (3) whether the conversion of debt to equity in excess of 40% of the outstanding capital stock in favor of petitioners violates the constitutional limit on foreign ownership of a public utility; (4) whether the write-off of respondent's penalties and default interest and recomputation of its past due interest violate the *pari passu* principle; and (5) whether petitioners are entitled to costs.

On February 22, 2007, respondent Bayantel moved for the consolidation of G.R. Nos. 174457-59 with G.R. Nos. 175418-20. In a Resolution[45] dated April 23, 2007, we directed the Division Clerk of Court to study the feasibility of consolidating said cases. In a Memorandum Report[46] dated May 17, 2007, the First Division Clerk of Court recommended the consolidation of G.R. Nos. 174457-59 with G.R. Nos. 175418-20.

On May 21, 2007, The Bank of New York, as trustee for the Holders of the Senior Notes, filed a Petition for Review on *Certiorari*, docketed as G.R. No. 177270, to assail the October 27, 2006 Decision and March 23, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 89894. Amplified, the petition presents the lone issue of whether the Monitoring Committee in this case may exercise control over Bayantel's operations.

---

[45] *Rollo* (G.R. Nos. 175418-20), Vol. I, p. 1669.

[46] *Id.* at 1670-1673.

In a Resolution[47] dated June 6, 2007, we directed the Division Clerk of Court to study the feasibility of consolidating G.R. No. 177270 with G.R. Nos. 174457-59 and G.R. Nos. 175418-20. To avoid conflicting decisions on related cases, the Assistant Clerk of Court recommended the consolidation of the three cases. By Resolution[48] dated July 11, 2007, the Court ordered the consolidation of G.R. No. 177270 with G.R. Nos. 174457-59 and G.R. Nos. 175418-20.

The Parties' Arguments

In G.R. Nos. 174457-59

The petitioners/secured creditors argue primarily that the *pari passu* treatment of creditors during rehabilitation has no basis in law. According to petitioners, all that Presidential Decree No. 902-A[49] (PD 902-A) provides is the suspension of all claims against the debtor corporation during rehabilitation so that the Receiver can exercise his powers free from judicial or extrajudicial interference. If the equity policy is to be considered at all, they believe that the equity policy should be construed to accord creditors with similar rights or uniform treatment. In line with this, petitioners assert priority under the Assignment Agreement to receive from Bayantel's surplus cash flow and to be paid in full, ahead of all other creditors.

The petitioners/secured creditors contend that the *pari passu* treatment of claims impairs the Omnibus Agreement and the Assignment Agreement. Such impairment, they posit, cannot be justified as a proper exercise of police power for three reasons: *first*, there is no law which authorizes the equal treatment of claims; *second*, there is no enabling law; and *third*, it is not reasonably necessary for the success of the rehabilitation.

---

[47] *Rollo* (G.R. No. 177270), Vol. I, p. 1085.

[48] *Id.* at 1089-1090.

[49] REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING THE SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT.

Petitioners point out that the Interim Rules mandates instead that the rehabilitation plan shall give due regard to the interest of the secured creditors. For petitioners, the preservation of Bayantel's chattels alone is inadequate to meet said requirement since the value thereof depreciates over time. They go on to invoke international practices on bankruptcy and rehabilitation which purportedly recognize the distinction between the rights of secured and unsecured creditors. Petitioners warn of dire consequences to the international credit standing of the Philippines, the financial market, and the influx of foreign investments if the *pari passu* principle would be upheld. Finally, petitioners maintain that a "Trigger Event"[50] had occurred which rendered respondent's obligations due and demandable. Thus, despite their failure to notify respondent of the alleged Events of Default, petitioners believe that they can rightfully proceed against the securities.

For its part, respondent Bayantel reasons that enforcing preference in payment at this stage of the rehabilitation would only disrupt the progress it has made so far. It assures petitioners that their security rights are adequately protected in case the collateral assets are disposed. Respondent adds that no single payment scheme is applicable in all rehabilitation proceedings and the peculiar circumstances of its case warrant the *pari passu* treatment of its creditors.

---

[50] Part M of the Omnibus Agreement states that a "Trigger Event" shall mean 75% of the outstanding principal amount constituting Secured Obligations shall have been declared to be, or shall automatically have become, due and payable (and shall not have been rescinded) by reason of one or more Events of Default, as evidenced by the notices provided to the Collateral Agent by the Credit Agents pursuant to Section 4(a) of the [Inter-creditor] Agreement, *except* that the foregoing percentage shall be 66 2/3% in the event that (i) one or more Events of Default arise by reason of the non-payment when due of any scheduled payment of principal or interest by the Company under any Credit Agreement, and (ii) such an Event of Default or Events of Default give rise to one or more Events of Default under a cross-acceleration provision in any other Financing Document (including Section 9.01(b) of each Existing Credit Agreement). (Underscoring and italics in the original) [*Rollo* (G.R. Nos. 174457-59), Vol. I, p. 130.]

In G.R. Nos. 175418-20

Mainly, petitioners Bank of New York and Avenue Asia Capital Group impute error on the Court of Appeals for affirming the Rehabilitation Court's decision which adopted the sustainable debt level Bayantel proposed. The court *a quo* fixed respondent's sustainable debt at US$325 million payable within 19 years against the Receiver's proposal of US$370 million payable in 15 years. Petitioners dispute Bayantel's financial projections as unreliable and contrived, designed to bear out a reduced level of sustainable debt and justify a substantial write-off of its debts. In order to arrive at a reasonable level of sustainable debt, they believe that the prospective cash flow of Bayantel must be reckoned against industry standards. Petitioners point out that the Interim Rules only allows the debtor, in a creditor-initiated petition for corporate rehabilitation, to file a comment or opposition but not to submit its own rehabilitation plan. They warn that if the fulfillment of the obligation would be made to depend on the sole will of Bayantel, the entire obligation would be void.

Petitioners fault the trial court for basing the sustainable debt on the state of the telecommunications industry in the country rather than consulting the financial projections and business models submitted by petitioners and the Receiver. They stress that the state of the telecommunications industry is not among those which the court may take judicial notice of by discretion.

Petitioners maintain that converting the unsustainable debt to 77.7% equity in Bayantel will not violate the nationality requirement of the 1987 Constitution. They aver that the debts to domestic bank creditors[51] account is US$473 million or 70.18% of Bayantel's total liabilities. Considering the substantial write-off of penalties and default interest in the amount of

[51] Bank of the Philippine Islands, Banco de Oro Universal Bank, China Bank Corporation, Development Bank of the Philippines, Equitable Philippine Commercial International Bank, Land Bank of the Philippines, Metrobank, PCCI, Philippine Commercial International Bank, Rizal Commercial Banking Corporation, United Coconut Planter's Bank and Union Bank. [*Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 102-103.]

US$34,044,553.00 and past due interest of US$25,243,381.07, petitioners believe that it is only fair to accord the Financial Creditors greater equity in Bayantel to compensate for said losses.

Moreover, it is the petitioners' view that the write-off contravenes the *pari passu* principle because they would suffer greater losses than the Omnibus Creditors. According to petitioners, approximately 82% of the penalties and interests shall be borne by the unsecured creditors and the Holders of Notes. In the same vein, petitioners protest the recomputation of past due interest in accordance with the rate proposed by the Receiver. They claim that recomputation would result in the condonation of 89% of the accrued interest owing them. The Receiver's report shows that as of the filing of the present petition, the total accrued interest amounts to US$106,054,197.66, of which, US$91,100,000 are due the Holders of Notes.

Finally, petitioners reiterate their claim for costs. In its Order dated March 15, 2005, the Rehabilitation Court awarded costs of suit to petitioner Bank of New York. In particular, it granted the latter's prayer for the payment of filing fees, costs of publication and professional fees. Even then, petitioner bank claims that a huge amount of its expenses for the professional fees of counsels and advisers remain unpaid. More importantly, it asserts precedence in payment over the preferred creditors. In the alternative, the Bank of New York prays that the costs of suit be incorporated in the award to the nonfinancial or trade creditors. Similarly, the Avenue Asia Capital Group seeks reimbursement for the docket fees, publication expenses and the professional fees it has paid its counsels and financial adviser. It invokes Article 2208 of the Civil Code and the provisions of the Indenture as legal bases therefor.

Meanwhile, the secured creditors in G.R. Nos. 174457-59 filed a Memorandum[52] dated April 30, 2009 with a prayer for the dismissal of the bondholders' petition in G.R. Nos. 175418-20. For the secured creditors, the sustainable debt set by the Courts of Appeals is a more manageable and realistic undertaking

[52] *Rollo* (G.R. Nos. 175418-20), Vol. III, pp. 2720-2771.

compared to herein petitioners' proposal. They add that the fact that Bayantel's actual revenues are lower than its cash flow projections belies any scheme to avoid paying its debts in full. The secured creditors agree with the appellate court in limiting the conversion of the unsustainable debt to a maximum of 40% shares in Bayantel as more in keeping with the Constitution.

Further, the secured creditors point out that there is nothing in the Interim Rules which prohibits a debtor company from submitting an alternative rehabilitation plan in creditor-initiated proceedings. In support of this, they cite Section 22,[53] Rule 4 of said rules which permits the debtor to modify its proposed plan or submit a revised or substitute plan. According to them, Bayantel's suggestion as to the terms of payment does not constitute a potestative condition that would render the obligation void.

The secured creditors, however, join petitioners in protesting the condonation of penalties and default interest. Rather than observing absolute equality, they insist that the *pari passu* principle should be applied such that creditors within the same class are treated alike.

In response, respondent Bayantel submitted on May 21, 2009, a Consolidated Memorandum[54] in G.R. Nos. 175418-20 and G.R. No. 177270. It practically echoed the *ratio decidendi* of the Court of Appeals in dismissing both petitions.

In G.R. Nos. 175418-20, Bayantel defends the Rehabilitation Court for adopting the sustainable debt level it proposed. Such approval by the court alone, Bayantel reasons, did not make the payment of its debt a condition whose fulfillment rests on its sole will, as to render the obligation void under Article

---

[53] SEC. 22. ***Modification of the Proposed Rehabilitation Plan.*** — The debtor may modify its rehabilitation plan in the light of the comments of the Rehabilitation Receiver and creditors or any interested party and submit a revised or substitute rehabilitation plan for the final approval of the court. Such rehabilitation plan must be submitted to the court not later than one (1) year from the date of the initial hearing.

[54] *Rollo* (G.R. Nos. 175418-20), Vol. III, pp. 2994-3153.

1182[55] of the Civil Code. Respondent maintains that among the stakeholders, it is in the best position to determine the level of debt that it can pay. Moreover, it believes that a majority of the secured creditors are comfortable with the approved sustainable debt since only two of them appealed. Respondent insists that altering the sustainable debt at this point would be counterproductive.

Respondent equally opposes the Bondholders' proposal to reduce the company's capital expenditures to between 9% and 11% to make more funds available for debt servicing. This approach, according to Bayantel, ignores its need to make significant investments in new infrastructure in order to cope with competitors. Respondent disputes the value of petitioners' projections which were derived by benchmarking Bayantel's income, as a company under rehabilitation, against those of the major players, PLDT and Digitel.

Furthermore, respondent maintains that its rehabilitation plan was based on accurate financial data and operation reports. It insists that the Interim Rules allows a debtor, in creditor-initiated rehabilitation proceedings, to submit an alternative plan. It agrees with the Rehabilitation Court's decision to restrict conversion of the unsustainable debt to 40% of fully paid-up capital in Bayantel. Respondent believes that the waiver of penalties and default interest and the recomputation of past due interest will not violate the *pari passu* principle because said measures shall apply equally to all creditors. Lastly, respondent admits limited liability for costs pursuant to the Assignment Agreement but not for those incurred by petitioners under "non-consensual scenarios."

In G.R. No. 177270

In this petition for review, the Bank of New York, as trustee for the holders of the 13.5% Senior Notes of respondent Bayantel,

---

[55] Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.

challenges the Court of Appeals decision nullifying the Monitoring Committee's power to modify, reverse or overrule the decision of Bayantel's Board of Directors on certain matters. It invokes Section 23,[56] Rule 4 of the Interim Rules as legal basis to justify the Rehabilitation Court's grant of extensive powers to the Monitoring Committee. The pertinent portion of said Rule states:

> In approving the rehabilitation plan, the court shall issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the plan fail.

Petitioner contends that the magnitude and complexity of respondent's business necessitate close monitoring of its operations to ensure successful rehabilitation. Specifically, the Bank of New York expresses concern over Bayantel's taciturn disposition as regards its budget and expansion costs. Petitioner believes that such lack of transparency can be addressed by empowering the Monitoring Committee to approve measures that will ultimately affect respondent's ability to settle its debts.

---

[56] SEC. 23. ***Approval of the Rehabilitation Plan***. — The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.

In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following:

a. That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three-month period;

b. That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and

c. The Rehabilitation Receiver has recommended approval of the plan.

In approving the rehabilitation plan, the court shall issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the plan fail.

Moreover, petitioner assures that the Implementing Term Sheet provides safeguards against the improvident disapproval by the Monitoring Committee of proposed measures. Petitioner is of the view that the functions of the Monitoring Committee would be rendered illusory if all disagreements on key areas would have to be heard by the Rehabilitation Court. Petitioner explains that the Monitoring Committee's powers do not in any way supplant those of the Board of Directors. The Bank of New York claims that it is customary to allow creditors to monitor and supervise the debtor's operations as demonstrated by the restructuring experiences of certain Asian countries.

Petitioner submits that the Rehabilitation Court did not intend to give the Monitoring Committee powers that are concurrent with those of the Receiver on account of the differing interests that they represent in rehabilitation. It argues that if at all, the court *a quo* committed a mere error of judgment not correctible by *certiorari*. Petitioner adds that even if a petition for *certiorari* was proper, the 60-day reglementary period provided by the Rules of Court had already lapsed when Bayantel filed its petition on May 27, 2005. It contends that Bayantel's Manifestation and Motion for Clarification dated December 15, 2004 was in truth a motion for reconsideration which is a prohibited pleading under Section 1,[57] Rule 3 of the Interim Rules. Petitioner concludes

---

[57] Section 1. ***Nature of Proceedings***. — Any proceeding initiated under these Rules shall be considered *in rem*. Jurisdiction over all those affected by the proceedings shall be considered as acquired upon publication of the notice of the commencement of the proceedings in any newspaper of general circulation in the Philippines in the manner prescribed by these Rules.

The proceedings shall also be summary and non-adversarial in nature. The following pleadings are prohibited:

a. Motion to dismiss;
b. Motion for a bill of particulars;
c. Motion for new trial or for reconsideration;
d. Petition for relief;
e. Motion for extension;
f. Memorandum;
g. Motion for postponement;
h. Reply or Rejoinder;

that such pleadings did not toll the period for filing a petition and, therefore, the Rehabilitation Court's decision had become final.

In its Consolidated Memorandum dated May 21, 2009, Bayantel counters that Section 23, Rule 4 of the Interim Rules should be understood as delineating the purpose of the court's orders and processes to mere implementation and monitoring of the plan. Respondent opposes any interpretation of said provision which authorizes the Committee to substitute its judgment for those of the Board or vest it with powers greater than those of the Receiver. It argues that vesting the Committee with veto power over certain decisions of the Board would effectively give it control and management over Bayantel's operations. The necessary effect, according to Bayantel, is that every disagreement between the Committee and the Board would have to be settled in court. Respondent points out that petitioner failed to cite proof of its claim that it is customary among Asian countries to allow the Monitoring Committee active participation during rehabilitation.

Bayantel perceive the instant petition as an underhanded attempt by petitioner to create a Management Committee without satisfying the requisites therefor. It reiterates that the functions of the Monitoring Committee are confined to ensuring that Bayantel meets the debt reduction milestones under the plan. Respondent avers that even without a Monitoring Committee, it is obliged under the Plan to comply with certain information covenants and reportorial requirements. It adds that the Plan

---

i. Third party complaint; and

j. Intervention.

Any pleading, motion, opposition, defense, or claim filed by any interested party shall be supported by verified statements that the affiant has read the same and that the factual allegations therein are true and correct of his personal knowledge or based on authentic records and shall contain as annexes such documents as may be deemed by the party submitting the same as supportive of the allegations in the affidavits. The court may decide matters on the basis of affidavits and other documentary evidence. Where necessary, the court shall conduct clarificatory hearings before resolving any matter submitted to it for resolution.

provides a mechanism for dispute resolution through which creditors can enforce compliance.

Penultimately, respondent assails the validity of the Order dated November 9, 2004 for lack of notice. Allegedly, Bayantel learned of said Order only after petitioner furnished it a copy of its Compliance to which the same was made an attachment. Thus, respondent insists that the reglementary period to file an appeal or a petition for *certiorari* did not run against it.

The Court's Ruling

In G.R. Nos. 174457-59

Rehabilitation is an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency.[58] It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity. The purpose of rehabilitation proceedings is precisely to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings.[59] Rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated.[60]

The law governing rehabilitation and suspension of actions for claims against corporations is PD 902-A, as amended. On December 15, 2000, the Court promulgated A.M. No. 00-8-10-SC or the Interim Rules of Procedure on Corporate Rehabilitation, which applies to petitions for rehabilitation filed

---

[58] *BLACK'S LAW DICTIONARY* 1157 (5th ed., 1979).

[59] *Negros Navigation Co., Inc. v. Court of Appeals, Special Twelfth Division*, G.R. Nos. 163156 & 166845, December 10, 2008, 573 SCRA 434, 450.

[60] See *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*, G.R. Nos. 178768 & 180893, November 25, 2009, 605 SCRA 503, 515.

by corporations, partnerships and associations pursuant to PD 902-A.

In January 2004, Republic Act No. 8799 (RA 8799), otherwise known as the Securities Regulation Code, amended Section 5 of PD 902-A, and transferred to the Regional Trial Courts the jurisdiction of the Securities and Exchange Commission (SEC) over petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a rehabilitation receiver or a management committee.

In order to effectively exercise such jurisdiction, Section 6(c), PD 902-A empowers the Regional Trial Court to appoint one or more receivers of the property, real and personal, which is the subject of the pending action before the Commission whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors.

Under Section 6, Rule 4 of the Interim Rules, if the court finds the petition to be sufficient in form and substance, it shall issue, not later than five (5) days from the filing of the petition, an Order with the following pertinent effects:

(a) appointing a Rehabilitation Receiver and fixing his bond;

(b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor;

(c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business;

(d) prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition; x x x (Emphasis supplied)

The stay order shall be effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings.[61] Under the Interim Rules, the petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of 180 days from the date of the initial hearing. The court may grant an extension beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed 18 months from the date of filing of the petition.[62]

On the other hand, Section 27, Rule 4 of the Interim Rules provides when the rehabilitation proceedings is deemed terminated:

> SEC. 27. ***Termination of Proceedings.*** — In case of the failure of the debtor to submit the rehabilitation plan, or the disapproval thereof by the court, or the failure of the rehabilitation of the debtor because of failure to achieve the desired targets or goals as set forth therein, or the failure of the said debtor to perform its obligations under the said plan, or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions, the court shall upon motion, *motu proprio*, or upon the recommendation of the Rehabilitation Receiver, terminate the proceedings. **The proceedings shall also terminate upon the successful implementation of the rehabilitation plan**. (Emphasis supplied)

Hence, unless the petition is dismissed for any reason, the stay order shall be effective until the rehabilitation plan has been successfully implemented. In the meantime, the debtor is prohibited from paying any of its outstanding liabilities as of the date of the filing of the petition except those authorized in the plan under Section 24(c), Rule 4 of the Interim Rules.

In this case, in an Order dated April 19, 2004, the Rehabilitation Court held that "[t]he creditors of Bayantel, whether secured

---

[61] INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION, Rule 4, Section 11.

[62] *Id.*

or unsecured, should be treated equally and on the same footing or *pari passu* until the rehabilitation proceedings is terminated in accordance with the Interim Rules."[63] The court reiterated this pronouncement in its Decision dated June 28, 2004.

Before us, petitioners contend that such *pari passu* treatment of claims violates not only the "due regard" provision in the Interim Rules but also the Contract Clause in the 1987 Constitution. Petitioners assert precedence in the payment of claims during rehabilitation by virtue of the Assignment Agreement dated September 19, 1995. Under said Agreement, Bayantel assigned, charged, conveyed and transferred to a Collateral Agent, the following properties as collateral for the prompt and complete payment of its obligations to secured creditors:

(i) All land, buildings, machinery and equipment currently owned, and to be acquired in the future by Bayantel;

(ii) All monies payable to Bayantel under the Project Documents (as the term is defined by the Omnibus Agreement);

(iii) All Project Documents and all Contract Rights arising thereunder;

(iv) All receivables;

(v) Each of the Accounts (as the term is defined by the Omnibus Agreement);

(vi) All amounts maintained in the Accounts and all monies, securities and instruments deposited or required to be deposited in the Accounts;

(vii) All other Chattel Paper and Documents;

(viii) All other property, assets and revenues of Bayantel, whether tangible or intangible;

(ix) All General Intangibles; and

(x) All proceeds and products of any and all of the foregoing.[64]

---

[63] *Rollo* (G.R. Nos. 174457-59), Vol. I, p. 1240.

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

In particular, petitioners refer to Section 4.02 of the Assignment Agreement as basis for demanding full payment, ahead of other creditors, out of respondent's revenue from operations during rehabilitation. The relevant provision reads:

> Section 4.02. Payments Under Contracts and Receivables.
>
> If during the continuance of a Trigger Event the Company shall receive directly from any party to any Assigned Agreement or from any account debtor or other obligor under any Receivable, any payments under such agreements or the Receivables, **the Company shall receive such payments in a constructive trust for the benefit of the Secured Parties**, shall segregate such payments from its other funds, and shall forthwith transmit and deliver such payments to the Collateral Agent in the same form as so received (with any necessary endorsement) along with a description of the sources of such payments. All amounts received by the Collateral Agent pursuant to this Section 4.02 shall be applied as set forth in Part L and in the [Inter-creditor] Agreement.[65] (Underscoring in the original; emphasis supplied)

The resolution of the issue at hand rests on a determination of whether secured creditors may enforce preference in payment during rehabilitation by virtue of a contractual agreement.

Section 6(c), PD 902-A provides that upon the appointment of a management committee, rehabilitation receiver, board or body, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.[66] The suspension of action for claims against the corporation under a rehabilitation receiver or management committee embraces all phases of the suit, be it before the trial court or any tribunal or before this Court.[67]

The justification for suspension of actions for claims is to enable the management committee or rehabilitation receiver to

---

[65] *Id.* at 133.

[66] *Philippine Airlines, Inc. v. Zamora*, G.R. No. 166996, February 6, 2007, 514 SCRA 584, 601.

[67] *Id.* at 605.

effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company.[68] It is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again without having to divert attention and resources to litigation in various fora.[69]

In the 1990 case of *Alemar's Sibal & Sons, Inc. v. Judge Elbinias*,[70] the Court first enunciated the prevailing principle which governs the relationship among creditors during rehabilitation. In said case, G.A. Yupangco sought the issuance of a writ of execution to implement a final and executory default judgment in its favor and after Alemar's Sibal & Sons, Inc. was placed under rehabilitation. In ordering the stay of execution, the Court held:

During rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of an attachment, execution or otherwise. For what would prevent an alert creditor, upon learning of the receivership, from rushing posthaste to the courts to secure judgments for the satisfaction of its claims to the prejudice of the less alert creditors.

As between the creditors, the key phrase is "equality is equity." When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is a duly appointed officer of the SEC.[71] (Emphasis supplied)

---

[68] *Rubberworld (Phils.), Inc. v. NLRC*, 365 Phil. 273, 280-281 (1999).

[69] *Id.* at 276-277.

[70] 264 Phil. 456 (1990).

[71] *Id.* at 462.

Since then, the principle of equality in equity has been cited as the basis for placing secured and unsecured creditors in equal footing or in *pari passu* with each other during rehabilitation. In legal parlance, *pari passu* is used especially of creditors who, in marshaling assets, are entitled to receive out of the same fund without any precedence over each other.[72]

In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*,[73] the Court disallowed the foreclosure of the debtor company's property after the latter had filed a Petition for Rehabilitation and Declaration of Suspension of Payments with the SEC. We ruled that whenever a distressed corporation asks the SEC for rehabilitation and suspension of payments, preferred creditors may no longer assert preference but shall stand on equal footing with other creditors. Foreclosure shall be disallowed so as not to prejudice other creditors, or cause discrimination among them. In 1999, the Court qualified this ruling by stating that preferred creditors of distressed corporations shall stand on equal footing with all other creditors only after a rehabilitation receiver or management committee has been appointed.[74] More importantly, the Court laid the guidelines for the treatment of claims against corporations undergoing rehabilitation:

> 1. All claims against corporations, partnerships, or associations that are pending before any court, tribunal, or board, without distinction as to whether or not a creditor is secured or unsecured, shall be suspended effective upon the appointment of a management committee, rehabilitation receiver, board, or body in accordance with the provisions of Presidential Decree No. 902-A.
>
> 2. **Secured creditors retain their preference over unsecured creditors, but enforcement of such preference is equally suspended upon the appointment of a management committee, rehabilitation receiver, board, or body**. In the event that the assets of the

---

[72] *BLACK'S LAW DICTIONARY* 1004 (5th ed., 1979).

[73] G.R. No. 74851, September 14, 1992, 213 SCRA 830, 838.

[74] *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, 378 Phil. 10, 27 (1999).

corporation, partnership, or association are finally liquidated, however, secured and preferred credits under the applicable provisions of the Civil Code will definitely have preference over unsecured ones.[75] (Emphasis supplied)

Basically, once a management committee or rehabilitation receiver has been appointed in accordance with PD 902-A, no action for claims may be initiated against a distressed corporation and those already pending in court shall be suspended in whatever stage they may be. Notwithstanding, secured creditors shall continue to have preferred status but the enforcement thereof is likewise held in abeyance. However, if the court later determines that the rehabilitation of the distressed corporation is no longer feasible and its assets are liquidated, secured claims shall enjoy priority in payment.

We perceive no good reason to depart from established jurisprudence. While Section 24(d), Rule 4 of the Interim Rules states that contracts and other arrangements between the debtor and its creditors shall be interpreted as continuing to apply, this holds true only to the extent that they do not conflict with the provisions of the plan.

Here, the stipulation in the Assignment Agreement to the effect that respondent Bayantel shall pay petitioners in full and ahead of other creditors out of its cash flow during rehabilitation directly impinges on the provision of the approved Rehabilitation Plan that "[t]he creditors of Bayantel, whether secured or unsecured, should be treated equally and on the same footing or *pari passu* until the rehabilitation proceedings is terminated in accordance with the Interim Rules."

During rehabilitation, the only payments sanctioned by the Interim Rules are those made to creditors in accordance with the provisions of the plan. Pertinent to this is Section 5(b), Rule 4 of the Interim Rules which states that the terms and conditions of the rehabilitation plan shall include the manner of its implementation, *giving due regard to the interests of*

---

[75] *Id.* at 26-27.

secured creditors. This very phrase is what petitioners invoke as basis for demanding priority in payment out of respondent's cash flow.

But petitioners' reliance thereon is misplaced.

By definition, due regard means consideration in a degree appropriate to the demands of a particular case.[76] On the other hand, security interest is a form of interest in property which provides that the property may be sold on default in order to satisfy the obligation for which the security interest is given. Often, the term "lien" is used as a synonym, although lien most commonly refers only to interests providing security that are created by operation of law, not through agreement of the debtor and creditor. In contrast, the term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability.[77]

Under the Interim Rules, the only pertinent reference to creditor security is found in Section 12, Rule 4 on relief from, modification or termination of stay order. Said provision states that the creditor is regarded as lacking adequate protection if it can be shown that: (a) the debtor fails or refuses to honor a pre-existing agreement with the creditor to keep the property insured; (b) the debtor fails or refuses to take commercially reasonable steps to maintain the property; or (c) the property has depreciated to an extent that the creditor is undersecured.

Upon a showing that the creditor is lacking in protection, the court shall order the rehabilitation receiver to take steps to ensure that the property is insured or maintained or to make payment or provide replacement security such that the obligation is fully secured. If such arrangements are not feasible, the court may allow the secured creditor to enforce its claim against the debtor. Nonetheless, the court may deny the creditor the foregoing remedies if allowing so would prevent the continuation of the

---

[76] *BLACK'S LAW DICTIONARY* 450 (5th ed., 1979).

[77] *Id.* at 1217.

debtor as a going concern or otherwise prevent the approval and implementation of a rehabilitation plan.[78]

In the context of the foregoing provisions, "giving due regard to the interests of secured creditors" primarily entails ensuring that the property comprising the collateral is insured, maintained or replacement security is provided such that the obligation is fully secured. The reason for this rule is simple, in the event that the court terminates the proceedings for reasons other than the successful implementation of the plan, the secured creditors may foreclose the securities and the proceeds thereof applied to the satisfaction of their preferred claims.

When the Rules of Procedure on Corporate Rehabilitation took effect on January 16, 2009, the "due regard" provision was amended to read:

> SEC. 18. *Rehabilitation Plan.* — The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors such as, **but not limited, to the non-impairment of their security liens or interests**; x x x. (Emphasis supplied)

Despite the additional phrase, however, it is our view that the amendment simply amplifies the meaning of the "due regard provision" in the Interim Rules. First, the amendment exemplifies what giving "due regard to the interests of secured creditors" contemplates, mainly, the non-impairment of securities. At the same time, the specific reference to "security liens" and "interests," separated by the disjunctive "or," describes what "the interests of secured creditors" consist of. Again, lien pertains only to interests providing security that are created by operation of law while security interests include those acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. Lastly, the

---

[78] INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION, Rule 4, Section 12.

addition of the phrase "but not limited" in the amendment shuns a rigid application of the provision by recognizing that "giving due regard to the interest of secured creditors" may be rendered in other ways than taking care that the security liens and interests of secured creditors are adequately protected.

In this case, petitioners Express Investments III Private Ltd. and Export Development Canada are concerned, not so much with the adequacy of the securities offered by respondent, but with the devaluation of such securities over time. Petitioners fear that the proceeds of respondent's collateral would be insufficient to cover their claims in the event of liquidation.

On this point, suffice it to state that petitioners are not without any remedy to address a deficiency in securities, if and when it comes about. Under Section 12, Rule 4 of the Interim Rules, a secured creditor may file a motion with the Rehabilitation Court for the modification or termination of the stay order. If petitioners can show that arrangements to insure or maintain the property or to make payment or provide additional security therefor is not feasible, the court shall modify the stay order to allow petitioners to enforce their claim "that is, to foreclose the mortgage and apply the proceeds thereof to their claims. Be that as it may, the court may deny the creditor this remedy if allowing so would prevent the continuation of the debtor as a going concern or otherwise prevent the approval and implementation of a rehabilitation plan.

Indeed, neither the "due regard provision" nor contractual arrangements can shackle the Rehabilitation Court in determining the best means of rehabilitating a distressed corporation. Truth be told, the Rehabilitation Court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following: (a) That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets

of the debtor were sold by a liquidator within a three-month period; (b) That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and (c) The Rehabilitation Receiver has recommended approval of the plan.[79]

According to the Liquidation Analysis[80] prepared by KPMG at the request of the Receiver, the Fair Market Value of respondent's fixed assets is ₱18.7 billion while its Forced Liquidation Value is ₱9.3 billion. Together with cash and receivables in the amount of ₱911 million, respondent's total liquidation assets are valued at ₱10.2 billion. From this amount, the estimated liquidation return to the Omnibus Creditors is ₱6,102,150,000 or approximately 52.9% of their claims in the amount of ₱11,539,776,000. Meanwhile, Chattel Creditors can recoup 61% of its claims. As regards the Unsecured Creditors, they will share in the pool of assets that respondents have acquired since 1998, which were not specifically registered under the Omnibus Agreement Mortgage Supplements. Said assets are estimated to have a value of ₱3.5 Billion. This accounts for 10.7% of the Unsecured Creditors' claims.

Reckoned from these figures, the Receiver concluded that the shareholders shall receive nothing on respondent's liquidation while the latter's creditors can expect significantly less than full repayment. Moreover, regardless of whether the shareholders will lose at least their controlling interest as a result of the plan, petitioners, in their Memorandum dated April 30, 2009, have signified their conformity with the Court of Appeals decision to limit the conversion of the unsustainable debt to a maximum of 40% of the fully-paid up capital of respondent corporation. Lastly, the Receiver not only recommended the approval of the Plan by the Rehabilitation Court, he, himself, prepared it. The concurrence of these conditions renders the opposition of petitioners manifestly unreasonable.

---

[79] *Id.*, Rule 4, Section 23.

[80] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 760-779.

As regards the second issue, petitioners submit that the *pari passu* treatment of claims offends the Contract Clause under the 1987 Constitution. Article III, Section 10 of the Constitution mandates that no law impairing the obligation of contracts shall be passed. Any law which enlarges, abridges, or in any manner changes the intention of the parties, necessarily impairs the contract itself. And even when the change in the contract is done by indirection, there is impairment nonetheless.[81]

At this point, it bears stressing that the non-impairment clause is a limitation on the exercise of legislative power and not of judicial or quasi-judicial power. In *Lim, Sr. v. Secretary of Agriculture & Natural Resources, et al.*,[82] we held:

> x x x. For it is well-settled that a law within the meaning of this constitutional provision has reference primarily to statutes and ordinances of municipal corporations. Executive orders issued by the President whether derived from his constitutional powers or valid statutes may likewise be considered as such. It does not cover, therefore, the exercise of the quasi-judicial power of a department head even if affirmed by the President. The administrative process in such a case partakes more of an adjudicatory character. It is bereft of any legislative significance. It falls outside the scope of the non-impairment clause. x x x.[83]

The prohibition embraces enactments of a governmental law-making body pertaining to its legislative functions. Strictly speaking, it does not cover the exercise by such law-making body of quasi-judicial power.

Verily, the Decision dated June 28, 2004 of the Rehabilitation Court is not a proper subject of the Non-impairment Clause.

In view of the foregoing, we find no need to discuss the third issue posed in this petition.

---

[81] J.G. Bernas, *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY*, 2003 ed., p. 431.

[82] 145 Phil. 561 (1970).

[83] *Id.* at 577.

In G.R. Nos. 175418-20

Prefatorily, we restate the time honored principle that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. Thus, in a petition for review on *certiorari,* the scope of the Supreme Court's judicial review is limited to reviewing only errors of law, not of fact.[84] It is not our function to weigh all over again evidence already considered in the proceedings below, our jurisdiction is limited to reviewing only errors of law that may have been committed by the lower court.[85]

Before us, petitioners Bank of New York and Avenue Asia Capital Group raise a question of fact which is not proper in a petition for review on *certiorari.* A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[86]

Whether the Court of Appeals erred in affirming the sustainable debt fixed by the Rehabilitation Court is a question of fact that calls for a recalibration of the evidence presented by the parties before the trial court. In order to resolve said issue, petitioners would have this Court reassess the state of respondent Bayantel's finances at the onset of rehabilitation and gauge the practical value of the plans submitted by the parties *vis-à-vis* the financial

---

[84] *Dela Rosa v. Michaelmar Philippines, Inc.*, G.R. No. 182262, April 13, 2011, 648 SCRA 721, 729.

[85] *Vallacar Transit, Inc. v. Catubig,* G.R. No. 175512, May 30, 2011, 649 SCRA 281, 293-294.

[86] *Tirazona v. Court of Appeals,* G.R. No. 169712, March 14, 2008, 548 SCRA 560, 581.

models prepared by the experts engaged by them. These tasks are certainly not for this Court to accomplish. The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect.[87] This is especially true in rehabilitation proceedings where certain courts are designated to hear the case on account of their expertise and specialized knowledge on the subject matter. Though this doctrine admits of several exceptions,[88] none is applicable in the case at bar.

Notably, the Interim Rules is silent on the manner by which the sustainable debt of the debtor shall be determined. Yet, Section 2 of the Interim Rules prescribe that the Rules shall be liberally construed to carry out the objectives of Sections 5(d),[89] 6(c)[90] and 6(d)[91] of PD 902-A.

---

[87] *Vallacar Transit, Inc. v. Catubig, supra* note 85 at 294.

[88] *Id.* The findings of fact of the Court of Appeals are generally conclusive but may be reviewed when: (1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.

[89] SEC. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x x x x x x;

d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership

or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.

[90] SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

x x x x x x x x x;

c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: *Provided, however*, That the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof: *Provided, further*, That the Commission may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: *Provided, finally*, That upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.

[91] SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

x x x x x x x x x;

d) To create and appoint a management committee, board, or body upon petition or *motu proprio* to undertake the management of corporations, partnerships or other associations not supervised or regulated by other government agencies in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paral[y]zation of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public: *Provided, further*, That the Commission may create or appoint a management committee, board or body to undertake the management of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned.

The management committee or rehabilitation receiver, board or body shall have the power to take custody of, and control over, all the existing

Section 5(d), PD 902-A vested jurisdiction upon the SEC over petitions for rehabilitation. Later, RA 8799 or the Securities Regulation Code, amended Section 5(d) of PD 902-A by transferring SEC's jurisdiction over said petitions to the RTC. Meanwhile, Section 6(c) of PD 902-A provides for the appointment of a receiver of the subject property whenever necessary in order to preserve the rights of the parties and to protect the interest of the investing public and the creditors. Upon the appointment of such receiver, all actions for claims against the corporation pending before any court, tribunal, board or body shall be suspended accordingly. On the other hand, Section 5(d), PD 902-A expands the power of the Commission to allow the creation and appointment of a management committee to undertake the management of the corporation when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of the business of the corporation which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.

---

assets and property of such entities under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission. It shall report and be responsible to the Commission until dissolved by order of the Commission: *Provided, however*, That the Commission may, on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, board or body, or on its own findings, determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation entity and its remaining assets liquidated accordingly. The management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

The management committee, or rehabilitation receiver, board or body shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done by it in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred.

The underlying objective behind these provisions is to foster the rehabilitation of the debtor by insulating it against claims, preserving its assets and taking steps to ensure that the rights of all parties concerned are adequately protected.

This Court is convinced that the Court of Appeals ruled in accord with this policy when it upheld the Rehabilitation Court's determination of respondent's sustainable debt. We find the sustainable debt of US$325 million, spread over 19 years, to be a more realistically achievable amount considering respondent's modest revenue projections. Bayantel projected a constant rise in its revenues at the range of 1.16%-4.91% with periodic reverses every two years.[92] On the other hand, petitioner's proposal of a sustainable debt of US$471 million to be paid in 12 years and the Receiver's proposal of US$370 million to be paid in 15 years betray an over optimism that could leave Bayantel with nothing to spend for its operations.

Next, petitioners contest the admission of respondent's rehabilitation plan for being filed in violation of the Interim Rules. It is petitioner's view that in a creditor-initiated petition for rehabilitation, the debtor may only submit either a comment or opposition but not its own rehabilitation plan.

We cannot agree.

Rule 4 of the Interim Rules treats of rehabilitation in general, without distinction as to who between the debtor and the creditor initiated the petition. Nowhere in said Rule is there any provision that prohibits the debtor in a creditor-initiated petition to file its own rehabilitation plan for consideration by the court. Quite the reverse, one of the functions and powers of the rehabilitation receiver under Section 14(m) of said Rule is to study the rehabilitation plan *proposed by the debtor* or any rehabilitation plan submitted during the proceedings, together with any comments made thereon. This provision makes particular reference to a debtor-initiated proceeding in which the debtor principally files a rehabilitation plan. In such case, the receiver

---

[92] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 408-409.

is tasked, among other things, to study the rehabilitation plan presented by the debtor along with any rehabilitation plan submitted during the proceedings. This implies that the creditors of the distressed corporation, and even the receiver, may file their respective rehabilitation plans. We perceive no good reason why the same option should not be available, by analogy, to a debtor in creditor-initiated proceedings, which is also found in Rule 4 of the Interim Rules.

Third, petitioners fault the Court of Appeals for ruling that the debt-to-equity conversion rate of 77.7%, as proposed by The Bank of New York, violates the Filipinization provision of the Constitution. Petitioners explain that the acquisition of shares by foreign Omnibus and Financial Creditors shall be done, both directly and indirectly in order to meet the control test principle under RA 7042[93] or the Foreign Investments Act of 1991. Under the proposed structure, said creditors shall own 40% of the outstanding capital stock of the telecommunications company on a direct basis, while the remaining 40% of shares shall be registered to a holding company that shall retain, on a direct basis, the other 60% equity reserved for Filipino citizens.

Moreover, petitioners maintain that it is only fair to impose upon the Omnibus and Financial Creditors a bigger equity conversion in Bayantel considering that petitioners will bear the bulk of the accrued interests and penalties to be written off. Initially, the Rehabilitation Court approved the Receiver's recommendation to write-off interests and penalties in the amount of US$34,044,553.00. The Rehabilitation Court likewise ordered a re-computation of past due interest in accordance with the rate proposed by the Receiver. Following this, petitioners estimate the total unpaid accrued interest of Bayantel as of July 30, 2003 to be at US$140,098,750.66 while the Rehabilitation Court arrived at the total amount of past due interest and penalties of US$114,855,369.59 upon recomputation. This makes for a difference of US$25,243,381.07 which, petitioners claim,

[93] AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES.

represents an additional write-off to be borne by them for a total write-off of US$59,287,934.07.

The provision adverted to is Article XII, Section 11 of the 1987 Constitution which states:

> SEC. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

This provision explicitly reserves to Filipino citizens control over public utilities, pursuant to an overriding economic goal of the 1987 Constitution: to "conserve and develop our patrimony" and ensure "a self-reliant and independent national economy ***effectively controlled*** by Filipinos."[94]

In the recent case of *Gamboa v. Teves*,[95] the Court settled once and for all the meaning of "capital" in the above-quoted Constitutional provision limiting foreign ownership in public utilities. In said case, we held that considering that common shares have voting rights which translate to control as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the

---

[94] *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 716. Emphasis and italics in the original.

[95] *Id.* at 726.

term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.

Applying this, two steps must be followed in order to determine whether the conversion of debt to equity in excess of 40% of the outstanding capital stock violates the constitutional limit on foreign ownership of a public utility: *First*, identify into which class of shares the debt shall be converted, whether common shares, preferred shares that have the right to vote in the election of directors or non-voting preferred shares; *Second*, determine the number of shares with voting right held by foreign entities prior to conversion. If upon conversion, the total number of shares held by foreign entities exceeds 40% of the capital stock with voting rights, the constitutional limit on foreign ownership is violated. Otherwise, the conversion shall be respected.

In its Rehabilitation Plan,[96] among the material financial commitments made by respondent Bayantel is that its shareholders shall "relinquish the agreed-upon amount of common stock[s] as payment to Unsecured Creditors as per the Term Sheet."[97] Evidently, the parties intend to convert the unsustainable portion of respondent's debt into common stocks, which have voting rights. If we indulge petitioners on their proposal, the Omnibus Creditors which are foreign corporations, shall have control over 77.7% of Bayantel, a public utility company. This is precisely the scenario proscribed by the Filipinization provision of the Constitution. Therefore, the Court of Appeals acted correctly in sustaining the 40% debt-to-equity ceiling on conversion.

As to the fourth issue, petitioners insist that the write-off of the default interest and penalties along with the re-computation of past due interest violate the *pari passu* treatment of creditors.

---

[96] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 373-431.

[97] *Id.* at 429.

Petitioner's argument lacks merit.

Section 5(d), Rule 4 of the Interim Rules provides that the rehabilitation plan shall include the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest.

Debt restructuring may involve conversion of the debt or any portion thereof to equity, sale of the assets of the distressed company and application of the proceeds to the obligation, *dacion en pago*, debt relief or reduction, modification of the terms of the loan or a combination of these schemes.

In this case, the approved Rehabilitation Plan provided for a longer period of payment, the conversion of debt to 40% equity in respondent company, modification of interest rates on the restructured debt and accrued interest and a write-off or relief from penalties and default interest. These recommendations by the Receiver are perfectly within the powers of the Rehabilitation Court to adopt and approve, as it did adopt and approve. In so doing, no reversible error can be attributed to the Rehabilitation Court.

The pertinent portion of the *fallo* of said court's Decision dated June 28, 2004 states:

> 1. The ruling on **the *pari passu* treatment of all creditors** whose claims are subject to restructuring shall be maintained and **shall extend to all payment terms and treatment of past due interest.**[98] (Emphasis supplied)

Thus, the court *a quo* provided for a uniform application of the *pari passu* principle among creditor claims and the terms by which they shall be paid, including past due interest. This is consistent with the interpretation accorded by jurisprudence to the *pari passu* principle that during rehabilitation, the assets of the distressed corporation are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or

---

[98] *Id.* at 1028.

preference over another. All creditors should stand on equal footing. Not any one of them should be given preference by paying one or some of them ahead of the others.[99]

As applied to this case, the *pari passu* treatment of claims during rehabilitation entitles all creditors, whether secured or unsecured, to receive payment out of Bayantel's cash flow. Despite their preferred position, therefore, the secured creditors shall not be paid ahead of the unsecured creditors but shall receive payment only in the proportion owing to them.

In any event, the debt restructuring schemes complained of shall be implemented among all creditors regardless of class. Both secured and unsecured creditors shall suffer a write-off of penalties and default interest and the escalating interest rates shall be equally imposed on them. We repeat, the commitment embodied in the *pari passu* principle only goes so far as to ensure that the assets of the distressed corporation are held in trust for the equal benefit of all creditors. It does not espouse absolute equality in all aspects of debt restructuring.

As regards petitioners' claims for costs, petitioner Bank of New York filed before the Rehabilitation Court a Notice of Claim[100] dated February 19, 2004 for the payment of US$1,255,851.30, representing filing fee, deposit for expenses and the professional fees of its counsels and financial advisers. Earlier, said bank had filed a claim for the payment of US$863,829.98 for professional fees of its counsels and professional advisers and ₱2,850,305.00 for docket fees and publication expenses. On its end, the Avenue Asia Capital Group claims a total of US$535,075.64 to defray the professional fees of its financial adviser, Price Waterhouse & Cooper and the Bondholder Communications Group.

In an Order[101] dated March 15, 2005, the Rehabilitation Court approved the claims for costs of petitioner Bank of New York as follows:

---

[99] *Alemar's Sibal & Sons, Inc. v. Judge Elbinias, supra* note 71.

[100] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 542-548.

[101] *Id.* at 1624-1629.

i. filing fees of ₱2,701,750.00 as evidenced by O.R. Nos. 18463998, 18466286 and 0480246 all dated August 13, 2003 of the Regional Trial Court (of Pasig City);

ii. costs of publication of the Stay Order in the amount of ₱47,550.00 as evidenced by O.R. No. 86384 dated August 13, 2003 of the Peoples Independent Media, Inc.,

the same being judicial costs authorized under Sec. 1, Rule 142 of the Rules of Court;

iii. payments of professional fees to its Philippine Counsel, Belo Gozon Elma Parel Asuncion & Lucila, in the total amount of US$152,784.32 as evidenced by the Affidavit of Atty. Roberto Rafael V. Lucila and the Statements of Account attached thereto;

which the Court considers to be reasonable and finds authorized under Secs. 6.11 and 6.12 of the Indenture attached as Annex "E" to the Petition;

The Receiver is hereby directed to cause the settlement of payment of the accounts within a period of sixteen (16) months from receipt of this Order.[102]

The trial court made no pronouncement on the claims for cost of petitioner Avenue Asia Capital Group, either in the same Order or in a subsequent order.

Before us, petitioners reiterate their claims for costs based on Sections 6.11[103] and 6.12[104] of the Indenture[105] dated July 22, 1999, which was executed by respondent in their favor.

---

[102] *Id.* at 1626.

[103] SECTION 6.11. Collection Suit by Trustee. If an Event of Default in payment of principal, premium, if any, interest, Additional Amounts, if any, or Liquidated Damages, if any, specified in Section 6.1(a) or (b) occurs and is continuing, **the Trustee may recover judgment in its own name and as trustee** of an express trust against the Company or any other obligor on the Notes **for the whole amount of principal and accrued interest remaining unpaid, together with interest on overdue principal and, to the extent that payment of such interest is lawful, interest on overdue installments of interest,** in each case at the rate per annum borne by the Notes and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel, and any

It bears stressing at this point that the subject of petitioners' appeal before the Court of Appeals was the Rehabilitation Court's Decision dated June 28, 2004. Said Decision, however, bore no discussion on either petitioners' claim for costs from which they may appeal. Notably, the assailed Order of the Rehabilitation Court was promulgated on March 15, 2005 or four (4) months after petitioners had appealed the Decision dated June 28, 2004 to the Court of Appeals on November 16, 2004. Evidently, the appellate court could not have acquired jurisdiction to review said Order.

Nonetheless, we doubt the propriety of the Rehabilitation Court's award for costs. A perusal of the Order dated March 15, 2005 reveals that the award to petitioner Bank of New York

---

other amounts due the Trustee under Section 7.7. (Emphasis supplied) [*Rollo* (G.R. Nos. 174457-59), Vol. I, p. 472.]

[104] SECTION 6.12. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee **(including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, accountants and experts)** and the Holders allowed in any judicial proceedings relating to the Company, its creditors or its property or other obligor on the Notes, its creditors and its property and shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and any Custodian in any such judicial proceedings is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel, and any other amounts due the Trustee under Section 7.7. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties which the Holders of the Notes may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. (Emphasis supplied) (*Id.* at 73.)

[105] *Rollo* (G.R. Nos. 174457-59), Vol. I, pp. 402-570.

was made pursuant to Section 1, Rule 142 of the Rules of Court, which states:

SECTION 1. *Costs ordinarily follow results of suit*. — Unless otherwise provided in these Rules, **costs shall be allowed to the prevailing party** as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law. (Emphasis supplied)

However, there is no prevailing party in rehabilitation proceedings which is non-adversarial in nature.[106] Unlike in adversarial proceedings, the court in rehabilitation proceedings appoints a receiver to study the best means to revive the debtor and to ensure that the value of the debtor's property is reasonably maintained pending the determination of whether or not the debtor should be rehabilitated, as well as implement the rehabilitation plan after its approval.[107] The main thrust of rehabilitation is not to adjudicate opposing claims but to restore the debtor to a position of successful operation and solvency. Under the Interim Rules, reasonable fees and expenses are allowed the Receiver and the persons hired by him,[108] for those expenses incurred in the ordinary course of business of the debtor after the issuance of the stay order but excluding interest to creditors.[109]

Moreover, while it is true that the Indenture between petitioners and respondent corporation authorizes the Trustee to file proofs of claim for the payment of reasonable expenses and disbursements of the Trustee, its agents and counsel, accountants and experts, such remedy is available only in cases where the Trustee files a collection suit against respondent company. Indubitably, the rehabilitation proceedings in the case at bar is not a collection suit, which is adversarial in nature.

---

[106] INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION, Rule 3, Section 1.

[107] *Id.*, Rule 4, Section 14.

[108] *Id.*, Rule 4, Section 16.

[109] *Id.*, Rule 2, Section 1.

In G.R. No. 177270

At issue in this petition for review on *certiorari* is the extent of power that the Monitoring Committee can exercise.

The pertinent portion of the *fallo* of the Decision dated June 28, 2004 provides:

> 6. A Monitoring Committee shall be formed composed of representatives from all classes of the restructured debt. The Rehabilitation Receiver's role shall be limited to the powers of monitoring and oversight as provided in the Interim Rules. All powers provided for in the Report and Recommendations, which exceed the monitoring and oversight functions mandated by the Interim Rules shall be amended accordingly.[110]

On October 15, 2004, petitioner Bank of New York filed a Manifestation with the Rehabilitation Court for the creation of a monitoring committee in accordance with the aforequoted pronouncement. Petitioner espouses the view that it is essential to "provide for a strong and effective Monitoring Committee x x x which gives the Financial Creditors meaningful and substantial participation in Bayantel."[111] It went on to propose the powers that the Monitoring Committee should possess, specifically:

> The role of the Monitoring Committee shall be to work with the Receiver (on precise terms to be agreed as discussed below) to Oversee the actions of the BTI New Board of Directors, making key Decisions and **approving**, amongst other things,
>
> (i) Any proposed Events of Rescheduling;
>
> (ii) Any other proposed actions by the receiver on a payment default;
>
> (iii) Operating Expenses Budgets;
>
> (iv) Capital Expenditure Budgets;
>
> (v) Asset Sales Programs; and

---

[110] *Rollo* (G.R. No. 177270), Vol. I, pp. 507-508.

[111] *Rollo* (G.R. Nos. 175418-20), Vol. I, p. 1075.

(vi) Terms of Incentive Scheme for New Management and Management Targets.[112]

Subsequently, in an Order[113] dated November 9, 2004, the Rehabilitation Court adopted petitioner's proposal by constituting a Monitoring Committee that

> shall participate with the Receiver in monitoring and overseeing the actions of the Board of Directors of Bayantel and may, by majority vote, **adopt, modify, revise or substitute** any of the following items:
>
> (1) any proposed Annual OPEX Budgets;
>
> (2) any proposed Annual CAPEX Budgets;
>
> (3) any proposed Reschedule;
>
> (4) any proposed actions by the Receiver on a payment default;
>
> (5) terms of Management Incentivisation Scheme and Management Targets;
>
> **(6) the EBITDA/Revenue ratios set by the Bayantel Board of Directors; and,**
>
> **(7) any other proposed actions by the Bayantel Board of Directors including, without limitation, issuance of new shares, sale of core and non-core assets, change of business, etc. that will materially affect the terms and conditions of the rehabilitation plan and its implementation**.[114] (Emphasis supplied)

From said Order, respondent Bayantel filed a Manifestation and Motion for Clarification while the secured creditors moved for an increase in the membership of the monitoring committee from three to five members. For his part, the Receiver submitted a Compliance and Manifestation dated January 10, 2005.

In an Order[115] dated March 15, 2005, the Rehabilitation Court affirmed the creation of a monitoring committee but denied the

---

[112] *Id.* at 1071.

[113] *Id.* at 1096-1098.

[114] *Id.* at 1097.

[115] *Rollo* (G.R. No. 177270), Vol. I, pp. 609-614.

motion for the appointment of additional members therein. It also made the following dispositions relative to the functions of the Monitoring Committee:

> (d) to approve the Implementing Term Sheet submitted by the Receiver subject to the following conditions:
>
> x x x x x x x x x
>
> ii. **the Receiver shall design and formulate with the participation of the Monitoring Committee and Bayantel the convertible debt instrument**, as directed of him in the earlier Order of November 9, 2004, for the unsustainable portion of the restructured debt of Bayantel and submit the same to the Court within thirty (30) days from receipt of this Order. Costs, expenses and taxes that may be due on the execution of the convertible debt instrument shall be charged to Bayantel as costs of the rehabilitation proceedings;
>
> x x x x x x x x x
>
> iv. the Receiver shall devise a mode or procedure whereby **the Monitoring Committee can have immediate and direct access to any information** that the Receiver has obtained or received from Bayantel or the Monitoring Accountant **in regard to the management and business operations of Bayantel**;
>
> v. the trading of debt mentioned in the Implementing Term Sheet shall be governed by the pre-petition documents which do not conflict with the Decision of this Court and provided that no transfer shall be made to the Bayantel Group Companies, or any controlling shareholders thereof including Bayan Telecommunications Holdings Corporation ("BTHC"); however, any "buy back" scheme **as may be approved by the Monitoring Committee** and Bayantel shall be open to all creditors whether secured or unsecured;[116] (Emphasis supplied)

On appeal, the Court of Appeals nullified the Orders dated November 9, 2004 and March 15, 2005 insofar as they defined the powers and functions of the Monitoring Committee. The appellate court ruled that the Rehabilitation Court committed grave abuse of discretion in vesting the Monitoring Committee

---

[116] *Id.* at 611-613.

with powers beyond monitoring and overseeing Bayantel's operations.

Before us, petitioner contends that the Rehabilitation Court intended for the Monitoring Committee to exercise powers greater than those of the Receiver.

We find no merit in petitioner's argument.

In the Decision dated June 28, 2004, the Rehabilitation Court discussed the circumstances surrounding the creation of the monitoring committee, thus:

> Both Bayantel and the Opposing Creditors contend that the Rehabilitation Receiver, under his Report and Recommendations, appear to be vested with too much discretion in the implementation of his proposed rehabilitation plan. Bayantel and the Opposing Creditors for one, argue against the power of the Rehabilitation Receiver to be able to further restructure Restructured Debt as well as the Rehabilitation Receiver's power relating to matters of Bayantel's budget.
>
> The [c]ourt wishes to stress that the Interim Rules prohibit the Rehabilitation Receiver from taking over the management and control of the company under rehabilitation, and limit his role to merely overseeing and monitoring the operations of the company (Section 14, Rule 4, Interim Rules). However, the [c]ourt also appreciates that the Rehabilitation Receiver must oversee the implementation of the rehabilitation plan as approved by the [c]ourt. In line with petitioner's proposal, **the creation of a Monitoring Committee composed of representatives from all classes of the restructured debt addresses the concerns raised by the creditors**.[117] (Emphasis supplied)

It can be gleaned from the foregoing that the Rehabilitation Court's decision to form a monitoring committee was borne out of creditors' concerns over the possession of vast powers by the Receiver. While the Rehabilitation Court was quick to delineate the Receiver's authority, it nevertheless, underscored the value of his role in overseeing the implementation of the

---

[117] *Id.* at 505-506.

Plan. It was on this premise that the Rehabilitation Court appointed the Monitoring Committee - to "[address] the concerns raised by the creditors." Yet, in its Orders dated November 9, 2004 and March 15, 2005, the Rehabilitation Court equipped the Monitoring Committee with powers well beyond those of the Receiver's. Apart from control over respondent's budget, the Monitoring Committee may also adopt, modify, revise or even substitute any other proposed actions by respondent's Board of Directors, including, without limitation issuance of new shares, sale of core and non-core assets, change of business and others that will materially affect the terms and conditions of the rehabilitation plan and its implementation. Ironically, the court *a quo* diluted the seeming concentration of power in the hands of the Receiver but appointed a Committee possessed of even wider discretion over respondent's operations.

From all indications, however, the tenor of the Rehabilitation Court's Decision dated June 28, 2004 does not contemplate the creation of a Monitoring Committee with broader powers than the Receiver. As the name of the Monitoring Committee itself suggests, its job is "to watch, observe or check especially for a special purpose."[118] In the context of the Decision dated June 28, 2004, the fundamental task of the Monitoring Committee herein is to oversee the implementation of the rehabilitation plan as approved by the court. This should not be confused with the functions of the Receiver under the Interim Rules or a management committee under PD 902-A.

Under Section 14, Rule 4 of the Interim Rules, the Receiver shall not take over the management and control of the debtor but shall closely oversee and monitor its operations during the pendency of the rehabilitation proceeding. The Rehabilitation Receiver shall be considered an officer of the court and his core duty is to assess how best to rehabilitate the debtor and to preserve its assets pending the determination of whether or not it should be rehabilitated and to implement the approved plan.

---

[118] *WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY* 1460 (Unabridged ed.).

It is a basic precept in Corporation Law that the corporate powers of all corporations formed under *Batas Pambansa Blg.* 68 or the Corporation Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees. Nonetheless, PD 902-A presents an exception to this rule.

Section 6(d)[119] of PD 902-A empowers the Rehabilitation Court to create and appoint a management committee to undertake the management of corporations when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of business operations of such corporations which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public. In the case of corporations supervised or regulated by government agencies, such as banks and insurance companies, the appointment shall be made upon the request of the government agency concerned. Otherwise, the Rehabilitation Court may, upon petition or *motu proprio,* appoint such management committee.

The management committee or rehabilitation receiver, board or body shall have the following powers: (1) to take custody of, and control over, all the existing assets and property of the distressed corporation; (2) to evaluate the existing assets and liabilities, earnings and operations of the corporation; (3) to determine the best way to salvage and protect the interest of the investors and creditors; (4) to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Rehabilitation Court; and (5) it may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

In this case, petitioner neither filed a petition for the appointment of a management committee nor presented evidence to show that there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of

[119] *Supra* note 91.

business operations of respondent corporation which may be prejudicial to the interest of the minority stockholders, the creditors or the public. Unless petitioner satisfies these requisites, we cannot sanction the exercise by the Monitoring Committee of powers that will amount to management of respondent's operations.

WHEREFORE, the Court hereby **RESOLVES** to dispose of these consolidated petitions, as follows:

(1) The petition for review on *certiorari* in G.R. Nos. 174457-59 is **DENIED**. The Decision dated August 18, 2006 of the Court of Appeals in CA-G.R. SP No. 87203 is **AFFIRMED**;

(2) The petition for review on *certiorari* in G.R. Nos. 175418-20 is **DENIED**. The Decision dated August 18, 2006 and Resolution dated November 8, 2006 of the Court of Appeals in CA-G.R. SP Nos. 87100 and 87111 are **AFFIRMED**; and

(3) The petition for review on *certiorari* in G.R. No. 177270 is **DENIED**. The Decision dated October 27, 2006 and Resolution dated March 23, 2007 of the Court of Appeals in CA-G.R. SP No. 89894 are **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), Bersamin, Perez,[*] and *Reyes, JJ.*, concur.

---

[*] Designated additional member per Special Order No. 1385 dated December 4, 2012.

THIRD DIVISION

[G.R. No. 174647. December 5, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES ROSA and PEDRO COSTO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); PROCEDURE FOR DETERMINATION OF JUST COMPENSATION. — The procedure for the determination of just compensation cases under R.A. No. 6657, as summarized in *Land Bank of the Philippines v. Banal*, is that initially, the Land Bank is charged with the responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking under the voluntary offer to sell or compulsory acquisition arrangement. The DAR, relying on the Land Bank's determination of the land valuation and compensation, then makes an offer through a notice sent to the landowner. If the landowner accepts the offer, the Land Bank shall pay him the purchase price of the land after he executes and delivers a deed of transfer and surrenders the certificate of title in favor of the government. In case the landowner rejects the offer or fails to reply thereto, the DAR Adjudicator conducts summary administrative proceedings to determine the compensation for the land by requiring the landowner, the Land Bank and other interested parties to submit evidence as to the just compensation for the land. A party who disagrees with the Decision of the DAR Adjudicator may bring the matter to the RTC designated as a Special Agrarian Court (SAC) for the determination of just compensation. In determining just compensation, the RTC is required to consider several factors enumerated in Section 17 of R.A. No. 6657.

2. ID.; ID.; DETERMINATION OF JUST COMPENSATION; FACTORS TO CONSIDER; BASIC FORMULA THEREOF. — Section 17 of R.A. No. 6657 has defined the parameters for the determination of the just compensation. x x x Thus, in determining just compensation, the RTC is required to consider the following factors: (1) the acquisition cost of the land;

(2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any. In *Land Bank of the Philippines v. Celada*, the Court ruled that the factors enumerated under Section 17 of R.A. No. 6657 had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. Thus, the Court held that the formula outlined in DAR AO No. 5, series of 1998, should be applied in computing just compensation. x x x The Court has consistently ruled that the ascertainment of just compensation by the RTC as SAC on the basis of the landholding's nature, location, market value, assessor's value, and the volume and value of the produce is valid and accords with Section 17 of R.A. No. 6657. The Court has likewise ruled that in appraising just compensation the courts must consider, in addition, all the facts regarding the condition of the landholding and its surroundings, as well as the improvements and the capabilities of the landholding.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE OFFICIALS AND AGENCIES, RESPECTED. — [F]actual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Jesus F. Fumera for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated July 14, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 91469, and the Resolution[2] dated September 15, 2006 denying petitioner's motion for reconsideration.

The procedural and factual antecedents are as follows:

Respondents spouses Rosa and Pedro Costo are the registered owners of a parcel of land located at Catamlangan, Pilar, Sorsogon with an area of 9.1936 hectares covered by Original Certificate of Title (OCT) No. P-6487. After the passage of Republic Act (R.A.) No. 6657,[3] respondents voluntarily offered the said property to the Department of Agrarian Reform (DAR) under the Comprehensive Agrarian Reform Program (CARP) and its implementing Rules. Out of the total area, 7.3471 hectares was deemed qualified for acquisition under the program by the DAR. Petitioner Land Bank of the Philippines (Land Bank) then computed and valued the 7.3471 hectares in the amount of ₱104,077.01.

However, respondents rejected the valuation. This impelled petitioner to deposit the offer in the form of cash and bonds in favor of respondents as provisional compensation for the acquired property. Thereafter, respondents sought the determination of just compensation with the Provincial Adjudication Board of the DAR.

On July 30, 2002, the Provincial Agrarian Reform Adjudicator (PARAD) rendered a Decision[4] in favor of respondents. The

---

[1] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Celia C. Librea-Leagogo, concurring; *rollo*, pp. 57-66.

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

[3] The Comprehensive Agrarian Reform Law (CARL) of 1988.

[4] *Rollo,* pp. 144-146.

PARAD recomputed the land valuation and fixed the value of the property at ₱468,575.92. Petitioner filed a Motion for Reconsideration, but was denied.[5] Aggrieved, pursuant to Section 57[6] of R.A. No. 6657, petitioner filed a petition for determination of just compensation with the Regional Trial Court (RTC), sitting as a Special Agrarian Court (SAC).

On June 28, 2005, the SAC rendered a Decision[7] finding the valuation made by the PARAD as the more realistic appraisal of the subject property, of which, the decretal portion reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1) Fixing the amount of FOUR HUNDRED SIXTY-EIGHT THOUSAND FIVE HUNDRED SEVENTY-FIVE 92/100 (₱468,575.92) Pesos, Philippine currency for the acquired area of 7.3471 hectares, situated at Catamlangan, Pilar, Sorsogon in the name of Rosa P. Costo married to Pedro Costo, covered by OCT No. P-6487, which property was taken by the government pursuant to the Agrarian Reform Program of the government as provided by R.A. 6657.
>
> 2) Ordering the Petitioner Land Bank of the Philippines to pay the Private Respondents the amount of Four Hundred Sixty-Eight Thousand Five Hundred Seventy-Five and 92/100 (₱468,575.92) Pesos, Philippine currency, in the manner provided by R.A. 6657 by way of full payment of the said just compensation after deducting whatever amount previously received by the Private Respondents from the Petitioner Land Bank of the Philippines as part of the just compensation.
>
> 3) Without pronouncement as to costs.
>
> SO ORDERED.[8]

---

[5] Order dated September 12, 2002, *id.* at 150.

[6] Section 57. *Special Jurisdiction.* — The Special Agrarian Court shall have original and exclusive jurisdiction over all petitions for the determination of just compensation and the prosecution of all criminal offenses under this Act.

[7] *Rollo,* pp. 125-129.

[8] *Id.* at 128-129.

Undeterred, petitioner sought recourse before the CA, which case was docketed as CA-G.R. SP No. 91469, raising the sole error that:

THE COURT *A QUO* GRAVELY ERRED IN FIXING THE AMOUNT OF ₱468,575.92 AS THE JUST COMPENSATION FOR THE ACQUIRED PROPERTY OF THE RESPONDENTS, THE SAME BEING IN CLEAR VIOLATION OF THE FACTORS UNDER SECTION 17 OF R.A. 6657 AS TRANSLATED INTO A BASIC FORMULA IN DAR ADMINISTRATIVE ORDER NO. 5, SERIES OF 1998.[9]

On July 14, 2006, the CA rendered a Decision[10] affirming the decision of the SAC in favor of the respondents, to wit:

WHEREFORE, the decision dated June 28, 2005 is **AFFIRMED**.

SO ORDERED.[11]

In ruling for the respondents, the CA opined that the determination of just compensation is the exclusive domain of the courts and that the executive and legislative acts of fixing just compensation are not conclusive or binding upon the court, but should only be regarded as an initial valuation. Moreover, the SAC upheld the determination of the PARAD only after considering the relevant evidence of the parties. Thus, the CA was satisfied that the SAC decided the issue of just compensation based on factual grounds.

Hence, the petition assigning the lone error:

I

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN **AFFIRMING** THE DECISION DATED JUNE 28, 2005 OF THE SPECIAL AGRARIAN COURT (SAC), THE COMPENSATION FIXED BY THE SAC BEING NOT IN ACCORDANCE WITH THE VALUATION FACTORS MANDATED

---

[9] *Id.* at 106.

[10] *Id.* at 57-66.

[11] *Id.* at 66. (Emphasis in the original)

UNDER SECTION 17 OF R.A. 6657 AS TRANSLATED INTO A BASIC FORMULA IN DAR ADMINISTRATIVE ORDER, AND UPHELD BY THE SUPREME COURT IN THE CASE OF *SPS. BANAL*, G.R. NO. 143276 (JULY 20, 2004.)[12]

Petitioner argues that contrary to the ruling in *Land Bank of the Philippines v. Banal*,[13] the PARAD, the SAC, and the CA disregarded and did not follow the valuation factors under Section 17 of R.A. No. 6657 as translated into a basic formula in DAR Administrative Order (AO) No. 5, Series of 1998 in fixing the just compensation of the subject property. In fine, petitioner insists that the PARAD, the SAC, and the CA, should have relied on the ruling in *Land Bank of the Philippines v. Banal* in resolving the issue of just compensation.

On their part, respondents maintain that the PARAD, the SAC, and the CA did not err when they fixed the value of the subject property at ₱468,575.92.

The petition is bereft of merit.

The procedure for the determination of just compensation cases under R.A. No. 6657, as summarized in *Land Bank of the Philippines v. Banal*, is that initially, the Land Bank is charged with the responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking under the voluntary offer to sell or compulsory acquisition arrangement. The DAR, relying on the Land Bank's determination of the land valuation and compensation, then makes an offer through a notice sent to the landowner. If the landowner accepts the offer, the Land Bank shall pay him the purchase price of the land after he executes and delivers a deed of transfer and surrenders the certificate of title in favor of the government. In case the landowner rejects the offer or fails to reply thereto, the DAR Adjudicator conducts summary administrative proceedings to determine the compensation for the land by

---

[12] *Id.* at 35. (Emphasis in the original)

[13] G.R. No. 143276, July 20, 2004, 434 SCRA 543, 554; 478 Phil. 701, 714 (2004).

requiring the landowner, the Land Bank and other interested parties to submit evidence as to the just compensation for the land. A party who disagrees with the Decision of the DAR Adjudicator may bring the matter to the RTC designated as a Special Agrarian Court for the determination of just compensation. In determining just compensation, the RTC is required to consider several factors enumerated in Section 17 of R.A. No. 6657.[14]

Section 17 of R.A. No. 6657 has defined the parameters for the determination of the just compensation, to wit:

> Section 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Thus, in determining just compensation, the RTC is required to consider the following factors: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.[15]

In *Land Bank of the Philippines v. Celada*,[16] the Court ruled that the factors enumerated under Section 17 of R.A. No. 6657

---

[14] *Land Bank of the Philippines v. Federico Suntay*, G.R. No. 188376, December 14, 2011.

[15] *Land Bank of the Philippines v. Heirs of Salvador Encinas and Jacoba Delgado*, G.R. No. 167735, April 18, 2012.

[16] *Land Bank of the Philippines v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495; 515 Phil. 467 (2006).

had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. Thus, the Court held that the formula outlined in DAR AO No. 5, series of 1998, should be applied in computing just compensation.[17] DAR AO No. 5, series of 1998, provides:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)
Where: LV = Land Value
CNI=CapitalizedNet Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all three factors are present, relevant and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder.[18]

Applying the above formula, the PARAD, as concurred into by the SAC and the CA, fixed the value of the property at ₱468,575.92. However, petitioner insists that the PARAD violated

---

[17] *Id.* at 507; *id.* at 478-479.

[18] *Id.* at 508; *id.* at 480.

the provisions of AO No. 5, series of 1998 when he pegged the selling price of copra at ₱16.00/kg., as against the ₱5.82/kg. set by petitioner based on the available 12-month average selling price of copra. Contrary to petitioner's contention, it should be noted that the nature, actual use, and income of the property subject of computation of just compensation is only one of the eight factors to be considered in determining the just compensation of a property earmarked for the purposes of the agrarian reform program of the Government. In addition, the reasons for setting aside the determination of just compensation in the case of *Banal* did not obtain here. In *Banal*, the RTC as SAC did not conduct a hearing to determine the landowner's compensation with notice to and upon participation of all the parties, but merely took judicial notice of the average production figures adduced in another pending land case and used the figures without the consent of the parties.[19]

As aptly found by the SAC, all the factors in arriving at the proper valuation of the subject property were considered in the case at bar, *viz*:

> The Court after careful examination of the evidence presented by the Petitioner LBP as well as the Private Respondents particularly the decision of the Provincial Adjudicator of Sorsogon, the location of the property, the current value of like properties, the improvements, its actual use, the social and economic benefits that the landholding can give to the community, it is the considered Opinion of the Court that the Provincial Adjudicator of Sorsogon did not abuse his discretion in making the valuation assailed by Petitioner Land Bank.
>
> After due scrutiny of the findings of the Provincial Adjudicator of Sorsogon, the Court adopts *in toto* the findings of facts of said Provincial Adjudicator as said Provincial Adjudicator followed the guidelines enunciated under Administrative Order No. 5, Series of 1998 governing the valuation of CARP covered land and in addition considers said valuation as the fair and just compensation of like properties. x x x
>
> x x x x x x x x x

[19] *Land Bank of the Philippines v. Banal, supra* note 12, at 550-551; *id.* at 711.

Considering all these factors, the valuation made by the Provincial Adjudicator and the potentials of the property, the Court considers the findings of the Provincial Adjudicator as the more realistic appraisal which could be the basis for the full and fair equivalent of the property taken from the owner while the Court finds that the valuation of the Petitioner Land Bank i[n] this particular agricultural land subject for acquisition is unrealistically low.[20]

Verily, factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence.[21] The Courts generally accord great respect, if not finality, to factual findings of administrative agencies, because of their special knowledge and expertise over matters falling under their jurisdiction.[22]

Moreover, the same conclusion was also arrived at by the CA, when it found that:

We reject LBP's argument that its valuation of just compensation should be preferred. Any valuation of LBP in accordance with any formula should only be regarded as an initial valuation, never conclusive nor controlling. In *Sigre v. Court of Appeals*, the Supreme Court has held that the determination of just compensation under P.D. 27 and Sec. 16 (d) of R.A. 6657, is not final and conclusive. If that was not the rule, LBP or another agency like DAR might impermissibly usurp the essentially judicial function of determination of just compensation. We stress that, indeed, as stated in *Republic v. Court of Appeals*, the determination of just compensation is the exclusive domain of the courts and that executive and legislative acts fixing just compensation are by no means conclusive or binding upon the court, but rather, at the very least, merely guiding principles.

It is significant that the RTC upheld the determination of PARAD only after considering the relevant evidence of the parties. Thereby,

---

[20] *Rollo*, pp. 127-128.

[21] *Republic v. Saldavor N. Lopez Agri-Business Corp.*, G.R. No. 178895, January 10, 2011, 639 SCRA 49, 60.

[22] *A. Z. Arnaiz Realty, Inc. v. Office of the President*, G.R. No. 170623, July 7, 2010, 624 SCRA 494, 507-508.

it did not act arbitrarily. We accord the highest credence to its evaluation, therefore, considering that LBP failed to convince us that the RTC abused its discretion or ruled on the matter without evidence. We are satisfied that the RTC decided the issue of just compensation on factual grounds. We note that it relied also on the factors enumerated in Sec. 17, R.A. 6657, x x x:[23]

The Court has consistently ruled that the ascertainment of just compensation by the RTC as SAC on the basis of the landholding's nature, location, market value, assessor's value, and the volume and value of the produce is valid and accords with Section 17 of R.A. No. 6657. The Court has likewise ruled that in appraising just compensation the courts must consider, in addition, all the facts regarding the condition of the landholding and its surroundings, as well as the improvements and the capabilities of the landholding.[24] Thus, the computation should be sustained.

One final note, the matters raised by petitioner mainly involves factual controversies, which are clearly beyond the ambit of this Court. To be sure, the review of factual matters is not the province of this Court. The Supreme Court is not a trier of facts, and is not the proper forum for the ventilation and substantiation of factual issues.[25]

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated July 14, 2006 and the Resolution dated September 15, 2006 of the Court of Appeals in CA-G.R. SP No. 91469 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

---

[23] CA Decision dated July 14, 2006, *rollo,* p. 65.

[24] *Land Bank of the Philippines v. Veronica Atega Nable,* G.R. No. 176692, June 27, 2012.

[25] *Titan Construction Corporation v. David, Sr.*, G.R. No. 169548, March 15, 2010, 615 SCRA 362, 363.

SECOND DIVISION

[G.R. No. 177086. December 5, 2012]

ALBERT M. CHING and ROMEO J. BAUTISTA, *petitioners, vs.* **FELIX M. BANTOLO, ANTONIO O. ADRIANO and EULOGIO STA. CRUZ, JR., substituted by his children, represented by RAUL STA. CRUZ, JR.,** *respondents.*

SYLLABUS

CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARDED ONLY IF THE GUILTY PARTY ACTED IN A WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE OR MALEVOLENT MANNER. — Article 2229 of the Civil Code provides that exemplary damages may be imposed "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." They are, however, not recoverable as a matter of right. They are awarded only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. In this case, we agree with the CA that although the revocation was done in bad faith, respondents did not act in a wanton, fraudulent, reckless, oppressive or malevolent manner. They revoked the SPA because they were not satisfied with the amount of the loan approved. Thus, petitioners are not entitled to exemplary damages.

APPEARANCES OF COUNSEL

Regino Palma Ragas and Associates for petitioners.
Victoria G. Noel for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"It is essential that for damages to be awarded, a claimant must satisfactorily prove during the trial that they have a factual

basis, and that the defendant's acts have a causal connection to them."[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the Decision[3] dated July 31, 2006 and the Resolution[4] dated March 12, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 79886.

Factual Antecedents

Respondents Felix M. Bantolo (Bantolo), Antonio O. Adriano and Eulogio Sta. Cruz,[5] Jr. are owners of several parcels of land situated in Tagaytay City, to wit:

Registered owner:

Felix M. Bantolo	-	Original Certificates of Title (OCT) Nos. 787, 788, 789 & 799
Antonio O. Adriano	-	OCT Nos. 793, 805, 806 & 807
Eulogio Sta. Cruz, Jr.	-	OCT Nos. 790, 791, 800 & 801.[6]

On April 3, 2000, respondents executed in favor of petitioners Albert Ching (Ching) and Romeo J. Bautista a Special Power of Attorney (SPA)[7] authorizing petitioners to obtain a loan using respondents' properties as collateral. Pertinent portions of the SPA are reproduced below:

---

[1] *Coastal Pacific Trading, Inc. v. Southern Rolling Mills, Co., Inc.*, 529 Phil. 10, 40 (2006), citing *Air France v. Court of Appeals*, 253 Phil. 395, 402 (1989).

[2] *Rollo*, pp. 25-87 with Annexes "A" to "F" inclusive.

[3] *Id.* at 48-58; penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices Fernanda Lampas Peralta and Myra Dimaranan Vidal.

[4] *Id.* at 60; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Noel G. Tijam and Myra Dimaranan-Vidal.

[5] As per the Court's Resolution dated November 10, 2008, respondent Eulogio Sta. Cruz, Jr. was substituted by his heirs (*Id.* at unnumbered page).

[6] *Id.* at 48-49.

[7] Records, pp. 7-8.

1. To borrow money and apply for and secure a loan on their account with any bank or financial institution in such sum or sums which the herein Attorney-in-fact shall [deem] fit and advisable and the maximum extent of which shall be the loanable value of our real properties based on the attached appraisal report of Asian Appraisal Co., Inc. dated March 24, 1995 on the "Fair Market Value Appraisal" of said realties and/or parcels of land registered in our names respectively in the Registry of Deeds of Tagaytay City and located thereat, to wit:

		Registrant
1.	OCT NO. OP-790	Eulogio Sta. Cruz, Jr.
2.	OCT NO. OP-791	-do-
3.	OCT NO. OP-800	-do-
4.	OCT NO. OP-801	-do-
5.	OCT NO. OP-793	Antonio O. Adriano
6.	OCT NO. OP-805	-do-
7.	OCT NO. OP-806	-do-
8.	OCT NO. OP-807	-do-
9.	OCT NO. OP-787	Felix M. Bantolo
10.	OCT NO. OP-788	-do-
11.	OCT NO. OP-789	-do-
12.	OCT NO. OP-799	-do-

the photocopies of which certificates of title are hereto attached and made integral parts hereof, and we hereby authorize and/or vest authority unto the herein attorney-in-fact to deed, convey, and transfer by way of first mortgage all our rights of ownership and interest over the said parcels as technically described in and covered by the aforementioned original certificates of title in favor of any bank or financial institution of their choice, judgment and discretion subject to the usual conditions or such other terms which may be imposed by said bank or financial institutions, in order to secure and ensure the repayment of any loan indebtedness or obligation which our herein attorneys-in-fact may obtain by virtue of this power and authority with the further authority to receive the proceeds of such loan whether in cash, check or other bills of exchange with the corresponding obligation on the part of the attorney-in-fact to account for or render an accounting of the loan proceeds to us or in our favor;

2. To sign, execute, and deliver any deed or deeds of real estate mortgage over the aforestated parcels of land and the certificates of

title covering the same in favor of the lending bank or financial institution or to secure any surety agreement, bond or undertaking with any Surety Company who may issue a surety or performance bond to ensure the repayment of any loan taken or obtained by our herein Attorneys-in-fact pursuant to the herein special power of attorney;

3. To do and perform any or all acts which may be necessary to carry out and/or implement the foregoing powers and authority vested by us unto aforenamed attorney-in-fact.

4. GIVING and GRANTING, as well as ratifying and confirming all acts and things which our said Attorney-in-fact will do and perform or has done and performed in or about the premises which acts and things done or performed or still to be done or performed are, for all legal intents and purpose are our own as if we ourselves were personally present.[8]

Without notice to petitioners, respondents executed a Revocation of Power of Attorney[9] effective at the end of business hours of July 17, 2000.[10]

On July 18, 2000, the Philippine Veterans Bank (PVB) approved the loan application of petitioner Ching in the amount of ₱25 million for a term of five years subject to certain conditions, to wit:

1) Third party mortgages acceptable. Within one (1) year, however, all mortgaged properties should be in the name of American Boulevard or Albert Ching;

2) Submission of new tax declarations free from claimants;

3) Submission of certification/clearance from DENR that said properties are not subject to forest reserve;

4) To require right of way of at least 6 meters wide which can be used as an actual access road.[11]

---

[8] *Id.*

[9] *Id.* at 28.

[10] *Rollo*, p. 49

[11] *Id.*

On July 31, 2000, petitioner Ching thru a letter[12] informed respondents of the approval of the loan.[13]

Sometime in the first week of August 2000, petitioners learned about the revocation of the SPA.[14] Consequently, petitioners sent a letter[15] to respondents demanding that the latter comply with the agreement by annulling the revocation of the SPA.[16]

On September 8, 2000, petitioners filed before the Regional Trial Court (RTC) of Quezon City a Complaint[17] for Annulment of Revocation of SPA, Enforcement of SPA and/or interest in the properties covered by said SPA and Damages against respondents. Petitioners later amended[18] the Complaint, docketed as Q00-41851, to include an alternative prayer to have them declared as the owners of one-half of the properties covered by the SPA.[19]

Petitioners alleged that the SPA is irrevocable because it is a contract of agency coupled with interest.[20] According to them, they agreed to defray the costs or expenses involved in processing the loan because respondents promised that they would have an equal share in the proceeds of the loan or the subject properties.[21]

In their Answer,[22] respondents contended that petitioners have no cause of action.[23] Respondents alleged that they executed

---

[12] Records, p. 328.

[13] *Rollo*, p. 50.

[14] Records, p. 18.

[15] *Id.* at 324.

[16] *Rollo*, p. 50.

[17] Records, pp. 1-6.

[18] *Id.* at 16-21.

[19] *Id.* at 19.

[20] *Id.* at 17.

[21] *Id.*

[22] *Id.* at 44-50.

[23] *Id.* at 45.

the SPA in favor of petitioners because of their assurance that they would be able to get a loan in the amount of ₱50 million and that ₱30 million would be given to respondents within a month's time.[24] When the one-month period expired, respondents complained to petitioner Ching and asked him to advance the amount of ₱500,000.00.[25] Petitioner Ching acceded to their request on the condition that they hand over to him the original titles for safekeeping.[26] Respondents, in turn, asked petitioner Ching to give them ₱1 million in exchange for the titles.[27] Petitioner Ching agreed and so they gave him the titles.[28] However, he never gave them the money.[29] They asked him to return the titles, but he refused.[30] Later, they were informed that the loan was approved in the amount of ₱25 million and that their share would be ₱6 million.[31] Since it was not the amount agreed upon, respondents revoked the SPA and demanded the return of the titles.[32]

Ruling of the Regional Trial Court

On December 18, 2002, the RTC rendered a Decision[33] in favor of petitioners. It upheld the validity of the SPA and declared its revocation illegal and unjust.[34] But although the SPA was declared valid, the RTC held that it could no longer be enforced because the circumstances present at the time of its execution

---

[24] *Id.* at 46.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.* at 47.

[31] *Id.*

[32] *Id.*

[33] *Rollo*, pp. 68-87; penned by Judge Normandie B. Pizarro.

[34] *Id.* at 79.

have changed.[35] For this reason, the RTC found respondents liable for all the damages caused by the illegal revocation.[36] The RTC also declared petitioners owners of one-half of the subject properties.[37] As to the deficiency in the payment of the docket fees, if any, the RTC ruled that it would be considered a lien on the judgment.[38] Thus:

> **WHEREFORE**, premises considered, judgment is hereby rendered declaring the [petitioners] to be the owners of 50% or one-half, pro-indiviso, of all the parcels of lands covered by OCT Nos. OP-787, OP-788, OP-789, OP-799, OP-793, OP-805, OP-806, OP-807, OP-790, OP-791, OP-800 and OP-801.
>
> Furthermore, [respondents] are ordered to pay [petitioners] jointly and solidarily the following sums, to wit:
>
> 1. As actual damages:
>
> a. The amount covered by the receipts which the [petitioners] used in procuring the loan after the SPA was executed amounting to ₱949,960.40; and
>
> b. The amount of ₱500,000.00 as actual damages for the amount paid out to the [respondents] in exchange for the original certificates of title;
>
> 2. As moral damages, the amount of Php500,000.00 in favor [of] Albert M. Ching;
>
> 3. As exemplary damages, the amount of Php100,000.00; and
>
> 4. As attorney's fees, the amount of Php100,000.00.
>
> No costs.
>
> SO ORDERED.[39]

Aggrieved, respondents elevated the case to the CA.

---

[35] *Id.* at 82.

[36] *Id.* at 79.

[37] *Id.* at 82.

[38] *Id.* at 86.

[39] *Id.* at 86-87. Emphasis in the original.

Pending appeal, a Motion for Intervention with attached Petition-in-Intervention[40] was filed by First Aikka Development, Inc. and Sadamu Watanabe. They alleged that respondents individually executed Deeds of Irrevocable SPAs authorizing Tagaytay and Taal Management Corporation (TTMC), represented by its Japanese President Wataru Minagawa, to sell, lease, mortgage, or administer the subject properties;[41] and that by virtue of the said SPAs, they entered into a Memorandum of Agreement and a Supplement to Memorandum of Agreement with respondents and TTMC, whereby respondents agreed to sell the subject property to them.[42] Thus, they prayed that the Decision of the RTC be vacated and set aside, and that judgment be rendered in their favor.[43]

Ruling of the Court of Appeals

On June 15, 2004, the CA issued a Resolution[44] denying the Motion for Intervention for being filed out of time.

On July 31, 2006, the CA modified the Decision of the RTC. The CA ruled that petitioners are not entitled to one-half of the subject properties because it is contrary to human experience for a person to give one-half of his property to someone he barely knows.[45] The CA likewise ruled that petitioners are not entitled to reimbursement because they failed to show that the receipts presented in evidence were incurred in relation to the loan application.[46] As to the award of exemplary damages, the CA deleted the same because respondents did not act in a wanton,

---

[40] CA *rollo,* 10-35.

[41] *Id.* at 19-20.

[42] *Id.* at 22-24.

[43] *Id.* at 30-31.

[44] *Id.* at 184-185; penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Rodrigo V. Cosico and Santiago Javier Ranada.

[45] *Rollo,* p. 54.

[46] *Id.* at 54-55.

fraudulent, reckless, oppressive or malevolent manner.[47] The decretal portion of the CA Decision reads:

> WHEREFORE, premises considered, the assailed decision is hereby **MODIFIED** as follows:
>
> 1. The Revocation of the Power of Attorney executed by the [respondents] is hereby declared null and void. The Special Power of Attorney dated April 3, 2000 is considered valid and subsisting;
>
> 2. The amount of ₱500,000.00 paid by the [petitioner] Ching to the [respondents] should be deducted from the amount to be loaned;
>
> 3. The expenses incurred and to be incurred in the processing of the loan application must be borne by the [petitioners] alone;
>
> 4. The [petitioners] are not entitled to the one-half of all the parcerls (sic) of land covered by OCT Nos. OP-787, OP-788, OP-789, OP-799, OP-793, OP-805, OP-806, OP-807, OP-790, OP-791, OP-800 and OP-801; and
>
> 5. The award of moral damages in the amount of ₱500,000.00 and attorney's fees in the amount of ₱100,000.00 are in order. The award of exemplary damages is deleted.
>
> SO ORDERED.[48]

Petitioners moved for reconsideration but the CA denied the same in a Resolution[49] dated March 12, 2007.

Issues

Hence, this petition raising the following issues:

A.

WHETHER X X X THE [CA] ERRED IN RULING THAT PETITIONERS' RECOVERY OF THE ACTUAL DAMAGES IN THE AMOUNT OF PHP500,000.00 BE MADE CONTINGENT UPON THE OBTENTION OF A LOAN THROUGH THE SUBJECT SPECIAL POWER OF ATTORNEY, WHICH THE RESPONDENTS,

---

[47] *Id.* at 56.

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

[49] *Id.* at 60.

IN THE FIRST PLACE, REFUSED TO HONOR AND REVOKED IN BAD FAITH AND ILLEGALLY.

B.

WHETHER X X X THE [CA] ERRED IN RULING THAT THE PETITIONERS ARE NOT ENTITLED TO ONE-HALF OF THE RESPONDENTS' PROPERTIES DESPITE THE FINDING OF THE [RTC] THAT THE CONSIDERATION THEREFOR WAS THAT THE PETITIONERS SHALL PAY FOR THE LOAN TO BE OBTAINED UTILIZING THE RESPONDENTS' PROPERTIES AND THE FINDING OF THE [RTC] THAT PETITIONER CHING, TO HIS GRAVE PREJUDICE, FAILED TO UTILIZE THE PROCEEDS OF THE LOAN FOR THE LATTER'S BUSINESS PLAN AS WELL AS TO RECOVER HIS SHARE IN THE EXPENSES, WHICH PETITIONER CHING ADVANCED IN PROCURING THE LOAN.

C.

WHETHER X X X THE [CA] ERRED IN RULING THAT THE EXPENSES INCURRED AND TO BE INCURRED BY THE PETITIONERS IN APPLYING FOR A LOAN THROUGH THE SPA SHOULD BE BORNE BY THE PETITIONER[S] DESPITE THE EXISTENCE OF AN AGREEMENT TO THE CONTRARY BETWEEN THE PETITIONERS AND RESPONDENTS, THE EXISTENCE OF WHICH AGREEMENT WAS DULY FOUND BY THE [RTC].

D.

WHETHER X X X THE [CA] ERRED IN RULING THAT RESPONDENTS ARE NOT LIABLE TO PAY EXEMPLARY DAMAGES FOR REVOKING THE SPA IN BAD FAITH ON THE RATIOCINATION THAT THE RESPONDENTS DID NOT ACT IN A WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE OR MALEVOLENT MANNER BECAUSE THE RESPONDENTS WERE PURPORTEDLY UNSATISFIED WITH THE AMOUNT OF THE LOAN APPROVED.[50]

Petitioners' Arguments

Petitioners, in essence, seek the reinstatement of the Decision of the RTC.[51] They contend that the CA's directive that the

[50] *Id.* at 134-135.

[51] *Id.* at 144.

actual damages in the amount of ₱500,000.00 be deducted from the amount to be loaned, is a conditional judgment, and thus, null and void.[52] In addition, they claim that they are entitled to one-half of the subject properties,[53] and to reimbursement of all expenses incurred in procuring the loan.[54] Finally, they impute error on the part of the CA in deleting the award for exemplary damages, contending that the revocation was done by respondents in a malevolent and oppressive manner.[55]

Respondents' Arguments

Respondents, on the other hand, argue that the judgment was not conditional because the CA categorically declared respondents liable to return the amount of ₱500,000.00 to petitioner Ching.[56] They insist that they never agreed to give petitioners one-half of their respective properties.[57] Neither did they agree to reimburse petitioner Ching all the expenses incurred in obtaining the loan.[58] Petitioner Ching, in fact, admitted in court that he agreed to shoulder all the expenses.[59] Also, petitioners are not entitled to exemplary damages because when respondents revoked the SPA, they did not act in a wanton, fraudulent, reckless, oppressive or malevolent manner.[60]

Our Ruling

The petition is partly meritorious.

There is no question that the SPA executed by respondents in favor of petitioners is a contract of agency coupled with

---

[52] *Id.* at 136-138.

[53] *Id.* at 138- 141.

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

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

[56] *Id.* at 159-162.

[57] *Id.* at 162-166.

[58] *Id.* at 166-172.

[59] *Id.* at 166-168.

[60] *Id.* at 172-177.

interest.[61] This is because their bilateral contract depends upon the agency.[62] Hence, it "cannot be revoked at the sole will of the principal."[63]

The only issue therefore is the extent of the liability of respondents and the damages to be awarded to petitioners.

Petitioner Ching is entitled to actual damages in the amount of ₱500,000.00 without any condition.

In exchange for his possession of the titles, petitioner Ching advanced the amount of ₱500,000.00 to respondents. Considering that the loan application with PVB did not push through, respondents are liable to return the said amount to petitioner Ching.

In ordering the award of ₱500,000.00, the CA decreed:

> 2. The amount of ₱500,000.00 paid by the [petitioner] Ching to the [respondents] should be deducted from the amount to be loaned;[64]

Obviously, the language employed by the CA made the judgment conditional. The return of the amount of ₱500,000.00 should not depend on the happening of a future event.[65] Whether or not a loan is obtained by petitioners, respondents are liable to pay the amount of ₱500,000.00 as actual damages. Thus, the dispositive portion of the CA Decision should be modified by ordering respondents to pay actual damages in the amount of ₱500,000.00, without any condition.

Petitioners are not entitled to one-half of the subject properties.

---

[61] *Id.* at 53-54.

[62] *Republic of the Philippines v. Judge Evangelista*, 504 Phil. 115, 121 (2005).

[63] *Id.*

[64] *Rollo*, p. 57.

[65] *Pascua v. Heirs of Segundo Simeon*, 244 Phil. 1, 6 (1988).

As to petitioners' claim to one-half of the subject properties, we agree with the CA that:

> x x x it is far from human experience that a person will give half of his property to another person whom he barely knows. It is clear from the records of the case that the [respondents] do not know [petitioner] Ching. It was [petitioner] Bautista who introduced him to [respondent] Bantolo. The [respondents] agreed to give an SPA to Ching, because they were informed that the latter could help them secure a loan with their pieces of property as collateral. No one in his right mind would definitely agree to give half of his property to another. It is certain that they agreed that they would share in the proceeds of the loan but not in the property. **Hence, [petitioners] are not entitled to one-half of the property.**[66] (Emphasis supplied)

In fact, other than petitioner Ching's self-serving testimony,[67] no evidence was presented to show that respondents agreed to give one-half of the properties to petitioners.

Petitioners are not entitled to reimbursement of all the expenses incurred in obtaining a loan.

Petitioner Ching testified in court that he agreed to shoulder all the expenses, to wit:

> Atty. Figueroa:
>
> Mr. Witness, during your testimony in the last hearing, you said that [respondent] Bantolo approached you and proposed a business transaction with you, basically using a property, parcels of land, as collateral for a bank loan, which you are supposed to take care of. Now, you also testified in the last hearing that you will personally take care of the [loan application], and in fact, this loan application was approved by Philippine Veterans Bank. Now, by way of recapitulation, Mr. Witness, can you please tell us who will shoulder the expenses that will be incurred in the processing of this loan application?

---

[66] *Rollo,* p. 54.

[67] TSN, June 20, 2001, Direct Examination of petitioner Ching, pp. 5-6.

A - I will shoulder everything.

Q - But you have an agreement with [respondent] Bantolo, and pursuant to this agreement, Mr. Witness, once the application for loan was approved, what will happen?

A - According to him, we will share 50-50 [in] the amount that we will pay and I have the option to choose between the money, if the same is small [or] to take the 50% of the property.

Q - That sharing agreement, Mr. Witness, is premised on the condition that the loan application will be approved. What happens, now, Mr. witness, if the loan is not approved by the bank[?] What happens specifically to the expenses that you have incurred in the processing of the loan application[?]

Atty. Noel:
Objection, your Honor. That question was already asked. In fact, the witness started on a general term, without any condition, that he will shoulder all the expenses. He did not qualify whether the loan will be approved or not. It has been answered already.

Court:
We are at the stage of direct examination. In the interest of truth, you answer.

A - I asked them about that but they told me that they don't have money to pay me, **so I shouldered all the expenses. I took the risk of shouldering all the expenses.**

Atty. Figueroa:
You said you took the risk. Will you be more specific what do you mean by this risk that you took, as far as the expenses are concerned?

A - What I mean, sir, is that **I will not be able to recover all my expenses if the loan is not granted by the Philippine Veterans Bank.**[68] (Emphasis supplied)

For this reason, we find that petitioners are not entitled to the reimbursement of the expenses they have incurred in applying for the loan.

---

[68] *Id.* at 5-7.

Besides, petitioners failed to show that the receipts submitted as evidence were incurred in relation to the loan application.[69] As aptly pointed out by the CA, majority of the receipts were incurred abroad and in connection with petitioner Ching's business dealings.[70]

Petitioners are not entitled to exemplary damages.

Neither are petitioners entitled to exemplary damages.

Article 2229[71] of the Civil Code provides that exemplary damages may be imposed "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." They are, however, not recoverable as a matter of right.[72] They are awarded only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[73]

In this case, we agree with the CA that although the revocation was done in bad faith, respondents did not act in a wanton, fraudulent, reckless, oppressive or malevolent manner. They revoked the SPA because they were not satisfied with the amount of the loan approved. Thus, petitioners are not entitled to exemplary damages.

WHEREFORE, the petition is hereby partially **GRANTED**. The assailed Decision dated July 31, 2006 and the Resolution

---

[69] *Rollo*, p. 55.

[70] *Id.*

[71] Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[72] CIVIL CODE, Art. 2233 provides:

> Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.

[73] CIVIL CODE, Art. 2232 provides:

> In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

dated March 12, 2007 of the Court of Appeals in CA-G.R. CV No. 79886 are hereby **AFFIRMED** with **MODIFICATION** that respondents are ordered to pay petitioner Ching actual damages in the amount of ₱500,000.00.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178607. December 5, 2012]

DANTE LA. JIMENEZ, in his capacity as President and representative of UNLAD SHIPPING & MANAGEMENT CORPORATION, *petitioner, vs.* **HON. EDWIN SORONGON (in his capacity as Presiding Judge of Branch 214 of the Regional Trial Court of Mandaluyong City), SOCRATES ANTZOULATOS, CARMEN ALAMIL, MARCELI GAZA and MARKOS AVGOUSTIS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; REAL PARTY IN INTEREST; THE SUIT IS DISMISSIBLE IF THE PLAINTIFF OR THE DEFENDANT IS NOT A REAL PARTY IN INTEREST. — It is well-settled that "every action must be prosecuted or defended in the name of the real party in interest[,]" "who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit." Interest means material interest or an interest in issue to be affected by the

[*] Per Special Order No. 1384 dated December 4, 2012.

decree or judgment of the case, as distinguished from mere interest in the question involved. By real interest is meant a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest. When the plaintiff or the defendant is not a real party in interest, the suit is dismissible.

2. POLITICAL LAW; ADMINISTRATIVE LAW; 1987 ADMINISTRATIVE CODE; OFFICE OF THE SOLICITOR GENERAL; SHALL BE THE APPELLATE COUNSEL OF THE PEOPLE IN APPEALS OF CRIMINAL CASES BEFORE THE COURT OF APPEALS AND THE SUPREME COURT. — Procedural law basically mandates that "[a]ll criminal actions commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor." In appeals of criminal cases before the CA and before this Court, the OSG is the appellate counsel of the People, pursuant to Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code. x x x The People is the real party in interest in a criminal case and only the OSG can represent the People in criminal proceedings pending in the CA or in this Court. This ruling has been repeatedly stressed in several cases and continues to be the controlling doctrine. While there may be rare occasions when the offended party may be allowed to pursue the criminal action on his own behalf (as when there is a denial of due process), this exceptional circumstance does not apply in the present case. In this case, the petitioner has no legal personality to assail the dismissal of the criminal case since the main issue raised by the petitioner involved the criminal aspect of the case, *i.e.*, the existence of probable cause. The petitioner did not appeal to protect his alleged pecuniary interest as an offended party of the crime, but to cause the reinstatement of the criminal action against the respondents. This involves the right to prosecute which pertains exclusively to the People, as represented by the OSG.

3. REMEDIAL LAW; ACTIONS; JURISDICTION; FILING PLEADINGS SEEKING AFFIRMATIVE RELIEF CONSTITUTES VOLUNTARY APPEARANCE AND THE CONSEQUENT JURISDICTION OF ONE'S PERSON BY THE COURT. — As a rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. Filing pleadings seeking affirmative relief constitutes

voluntary appearance, and the consequent jurisdiction of one's person to the jurisdiction of the court. Thus, by filing several motions before the RTC seeking the dismissal of the criminal case, respondent Alamil voluntarily submitted to the jurisdiction of the RTC. Custody of the law is not required for the adjudication of reliefs other than an application for bail.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretana for petitioner.
Angel R. Purisima III for Antzoulatos & Gaza.
Oben Ventura & Associates for C. Alamil.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by Dante La. Jimenez (*petitioner*) to challenge the twin resolutions of the Court of Appeals (*CA*) dated November 23, 2006[2] and June 28, 2007[3] in CA-G.R. SP No. 96584, which dismissed the petitioner's petition for *certiorari* and denied his motion for reconsideration, respectively.

The Factual Antecedents

The petitioner is the president of Unlad Shipping & Management Corporation, a local manning agency, while Socrates Antzoulatos, Carmen Alamil, Marceli Gaza, and Markos Avgoustis (*respondents*) are some of the listed incorporators of Tsakos Maritime Services, Inc. (*TMSI*), another local manning agency.

---

[1] Under Rule 45 of the 1997 Rules of Civil Procedure; *rollo*, pp. 10-43.

[2] Penned by Associate Justice Elvi John S. Asuncion, and concurred in by Associate Justices Jose Catral Mendoza (now a member of this Court) and Celia C. Librea-Leagogo; *id.* at 48-50.

[3] Penned by Associate Justice Jose Catral Mendoza, and concurred in by Associate Justices Celia C. Librea-Leagogo and Mariflor Punzalan-Castillo; *id.* at 52.

On August 19, 2003, the petitioner filed a complaint-affidavit[4] with the Office of the City Prosecutor of Mandaluyong City against the respondents for syndicated and large scale illegal recruitment.[5] The petitioner alleged that the respondents falsely represented their stockholdings in TMSI's articles of incorporation[6] to secure a license to operate as a recruitment agency from the Philippine Overseas Employment Agency (*POEA*).

On October 9, 2003, respondents Antzoulatos and Gaza filed their joint counter-affidavit denying the complaint-affidavit's allegations.[7] Respondents Avgoustis and Alamil did not submit any counter-affidavit.

In a May 4, 2004 resolution,[8] the 3rd Assistant City Prosecutor recommended the filing of an information for syndicated and large scale illegal recruitment against the respondents. The City Prosecutor approved his recommendation and filed the corresponding criminal information with the Regional Trial Court (*RTC*) of Mandaluyong City (docketed as Criminal Case No. MC04-8514 and raffled to Branch 212) presided by Judge Rizalina T. Capco-Umali.

Subsequently, in a December 14, 2004 resolution, the City Prosecutor reconsidered the May 4, 2004 resolution and filed a motion with the RTC to withdraw the information.[9] The petitioner and respondents Antzoulatos and Gaza filed their opposition[10] and comment to the opposition, respectively.

---

[4] *Id.* at 76-82.

[5] Under Section 6(c), in relation to Section 7, of Republic Act No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995), effective July 15, 1995.

[6] *Rollo*, pp. 57-63.

[7] *Id.* at 83-92.

[8] *Id.* at 104-108.

[9] *Id.* at 109-110.

[10] *Id.* at 111-116.

In an August 1, 2005 resolution,[11] the RTC denied the motion to withdraw information as it found the existence of probable cause to hold the respondents for trial.[12] Thus, the RTC ordered the issuance of warrants of arrest against the respondents.

On August 26, 2005, respondents Antzoulatos and Gaza filed an omnibus motion for reconsideration and for deferred enforcement of the warrants of arrest.[13] In a September 2, 2005 order,[14] the RTC denied the omnibus motion, reiterating that the trial court is the sole judge on whether a criminal case should be dismissed or not.

On September 26, 2005, respondent Alamil filed a motion for judicial determination of probable cause with a request to defer enforcement of the warrants of arrest.[15]

On September 29, 2005, the petitioner filed his opposition with motion to expunge, contending that respondent Alamil, being a fugitive from justice, had no standing to seek any relief and that the RTC, in the August 1, 2005 resolution, already found probable cause to hold the respondents for trial.[16]

In a September 30, 2005 order,[17] the RTC denied respondent Alamil's motion for being moot and academic; it ruled that it had already found probable cause against the respondents in the August 1, 2005 resolution, which it affirmed in the September 2, 2005 order.

On October 10, 2005, respondent Alamil moved for reconsideration and for the inhibition of Judge Capco-Umali, for being biased or partial.[18] On October 25, 2005, the petitioner

---

[11] *Id.* at 118-119.

[12] *Id.*

[13] *Id.* at 120-124.

[14] *Id.* at 125-129.

[15] *Id.* at 130-142.

[16] *Id.* at 143-148.

[17] *Id.* at 150-151.

[18] *Id.* at 152-171.

filed an opposition with a motion to expunge, reiterating that respondent Alamil had no standing to seek relief from the RTC.[19]

In a January 4, 2006 order,[20] Judge Capco-Umali voluntarily inhibited herself from the case and did not resolve respondent Alamil's motion for reconsideration and the petitioner's motion to expunge. The case was later re-raffled to Branch 214, presided by Judge Edwin D. Sorongon.

The RTC Rulings

In its March 8, 2006 order,[21] the RTC granted respondent Alamil's motion for reconsideration. It treated respondent Alamil's motion for judicial determination as a motion to dismiss for lack of probable cause. It found: (1) no evidence on record to indicate that the respondents gave any false information to secure a license to operate as a recruitment agency from the POEA; and (2) that respondent Alamil voluntarily submitted to the RTC's jurisdiction through the filing of pleadings seeking affirmative relief. Thus, the RTC dismissed the case, and set aside the earlier issued warrants of arrest.

On April 3, 2006, the petitioner moved for reconsideration, stressing the existence of probable cause to prosecute the respondents and that respondent Alamil had no standing to seek any relief from the RTC.[22]

On April 26, 2006, respondent Alamil moved to expunge the motion for being a prohibited pleading since the motion did not have the public prosecutor's conformity.[23]

In its May 10, 2006 order,[24] the RTC denied the petitioner's motion for reconsideration, finding that the petitioner merely

---

[19] *Id.* at 172-187.

[20] *Id.* at 189-191.

[21] *Id.* at 192-196.

[22] *Id.* at 197-207.

[23] *Id.* at 209-212.

[24] *Id.* at 218.

reiterated arguments in issues that had been finally decided. The RTC ordered the motion expunged from the records since the motion did not have the public prosecutor's conformity.

On May 19, 2006, the petitioner filed a notice of appeal.[25]

On May 30, 2006, respondent Alamil moved to expunge the petitioner's notice of appeal since the public prosecutor did not authorize the appeal and the petitioner had no civil interest in the case.[26]

On June 27, 2006, the petitioner filed his comment to the motion to expunge, claiming that, as the offended party, he has the right to appeal the RTC order dismissing the case; the respondents' fraudulent acts in forming TMSI greatly prejudiced him.[27]

In its August 7, 2006 joint order,[28] the RTC denied the petitioner's notice of appeal since the petitioner filed it without the conformity of the Solicitor General, who is mandated to represent the People of the Philippines in criminal actions appealed to the CA. Thus, the RTC ordered the notice of appeal expunged from the records.

On October 18, 2006, the petitioner elevated his case to the CA via a Rule 65 petition for *certiorari* assailing the RTC's March 8, 2006, May 10, 2006, and August 7, 2006 orders.

The CA Ruling

In its November 23, 2006 resolution,[29] the CA dismissed outright the petitioner's Rule 65 petition for lack of legal personality to file the petition on behalf of the People of the Philippines. It noted that only the Office of the Solicitor General

---

[25] *Id.* at 219-220.

[26] *Id.* at 221-224.

[27] *Id.* at 225-229.

[28] *Id.* at 240-241.

[29] *Supra* note 2.

(OSG) has the legal personality to represent the People, under Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code. It also held that the petitioner was not the real party in interest to institute the case, him not being a victim of the crime charged to the respondents, but a mere competitor in their recruitment business. The CA denied[30] the motion for reconsideration[31] that followed.

The Petition

The petitioner argues that he has a legal standing to assail the dismissal of the criminal case since he is the private complainant and a real party in interest who had been directly damaged and prejudiced by the respondents' illegal acts; respondent Alamil has no legal standing to seek any relief from the RTC since she is a fugitive from justice.

The Case for the Respondents

The respondents[32] submit that the petitioner lacks a legal standing to assail the dismissal of the criminal case since the power to prosecute lies solely with the State, acting through a public prosecutor; the petitioner acted independently and without the authority of a public prosecutor in the prosecution and appeal of the case.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in dismissing outright the petitioner's Rule 65 petition for *certiorari* for lack of legal personality to file the petition on behalf of the People of the Philippines.

Our Ruling

The petition lacks merit.

---

[30] *Supra* note 3.

[31] *Rollo,* pp. 242-247.

[32] Per the October 12, 2009 Resolution, the Court dispensed with respondent Avgoustis' comment to the petition since, as per the petitioner's report, he could not be located; *id.* at 322-323.

The petitioner has no legal personality to assail the dismissal of the criminal case

It is well-settled that "every action must be prosecuted or defended in the name of the real party in interest[,]" "who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit."[33] Interest means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere interest in the question involved.[34] By real interest is meant a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest.[35] When the plaintiff or the defendant is not a real party in interest, the suit is dismissible.[36]

Procedural law basically mandates that "[a]ll criminal actions commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor."[37] In appeals of criminal cases before the CA and before this Court, the OSG is the appellate counsel of the People, pursuant to Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code. This section explicitly provides:

SEC. 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation,

---

[33] 1997 RULES OF CIVIL PROCEDURE, Rule 3, Section 2.

[34] *Theodore and Nancy Ang, represented by Eldrige Marvin B. Aceron v. Spouses Alan and Em Ang*, G.R. No. 186993, August 22, 2012; and *Goco v. Court of Appeals*, G.R. No. 157449, April 6, 2010, 617 SCRA 397, 405.

[35] *United Church of Christ in the Philippines, Inc. v. Bradford United Church of Christ, Inc., et al.*, G.R. No. 171905, June 20, 2012; and *Jelbert B. Galicto v. H.E. President Benigno Simeon C. Aquino III, etc., et al.*, G.R. No. 193978, February 28, 2012.

[36] *United Church of Christ in the Philippines, Inc. v. Bradford United Church of Christ, Inc., et al., supra;* and *Shipside Inc. v. Court of Appeals*, 404 Phil. 981, 1000 (2001).

[37] REVISED RULES OF CRIMINAL PROCEDURE, Rule 110, Section 5.

proceeding, investigation or matter requiring the services of lawyers. . . . It shall have the following specific powers and functions:

(1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court and Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (emphasis added)

The People is the real party in interest in a criminal case and only the OSG can represent the People in criminal proceedings pending in the CA or in this Court. This ruling has been repeatedly stressed in several cases[38]and continues to be the controlling doctrine.

While there may be rare occasions when the offended party may be allowed to pursue the criminal action on his own behalf[39] (as when there is a denial of due process), this exceptional circumstance does not apply in the present case.

In this case, the petitioner has no legal personality to assail the dismissal of the criminal case since the main issue raised by the petitioner involved the criminal aspect of the case, *i.e.*, the existence of probable cause. The petitioner did not appeal to protect his alleged pecuniary interest as an offended party of the crime, but to cause the reinstatement of the criminal action against the respondents. This involves the right to prosecute which pertains exclusively to the People, as represented by the OSG.[40]

---

[38] *Bureau of Customs v. Sherman,* G.R. No. 190487, April 13, 2011, 648 SCRA 809; *Ong v. Genio,* G.R. No. 182336, December 23, 2009, 609 SCRA 188; *People of the Philippines v. Arturo F. Duca,* G.R. No. 171175, October 30, 2009*; Heirs of Federico C. Delgado v. Gonzalez,* G.R. No. 184337, August 7, 2009, 595 SCRA 501; *Cariño v. De Castro,* G.R. No. 176084, April 30, 2008, 553 SCRA 688; *Mobilia Products, Inc. v. Umezawa,* 493 Phil. 85 (2005); *Narciso v. Sta. Romana-Cruz,* 385 Phil. 208 (2000); *Perez v. Hagonoy Rural Bank, Inc.*, 384 Phil. 322 (2000); *Labaro v. Hon. Panay,* 360 Phil. 102 (1998); *People v. Judge Santiago,* 255 Phil. 851 (1989); and *City Fiscal of Tacloban v. Judge Espina,* 248 Phil. 843 (1988).

[39] *Merciales v. Court of Appeals,* 429 Phil. 70 (2002).

[40] See Minute Resolution, *Carina L. Dacer, Sabina Dacer-Reyes, et al. v. Panfilo M. Lacson,* G.R. No. 196209, June 8, 2011.

Respondent Alamil voluntarily submitted to the RTC's jurisdiction

Contrary to the petitioner's submission, the RTC acquired jurisdiction over the person of respondent Alamil.

As a rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. Filing pleadings seeking affirmative relief constitutes voluntary appearance, and the consequent jurisdiction of one's person to the jurisdiction of the court.[41]

Thus, by filing several motions before the RTC seeking the dismissal of the criminal case, respondent Alamil voluntarily submitted to the jurisdiction of the RTC. Custody of the law is not required for the adjudication of reliefs other than an application for bail.[42]

WHEREFORE, we hereby **DENY** the appeal. The twin resolutions of the Court of Appeals dated November 23, 2006 and June 28, 2007 in CA-G.R. SP No. 96584 are **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

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

---

[41] *Miranda v. Tuliao*, G.R. No. 158763, March 31, 2006, 486 SCRA 377, 388, 390; and *Sapugay v. Court of Appeals*, G.R. No. 86792, March 21, 1990, 183 SCRA 464, 471.

[42] *Alawiya v. Datumanong*, G.R. No. 164170, April 16, 2009, 585 SCRA 267, 280; and *Miranda v. Tuliao*, *supra* at 391.

[*] Designated as Acting Chief Justice in lieu of Chief Justice Maria Lourdes P. A. Sereno per Special Order No. 1384 dated December 4, 2012.

SECOND DIVISION

[G.R. No. 180440. December 5, 2012]

DR. GENEVIEVE L. HUANG, *petitioner, vs.* **PHILIPPINE HOTELIERS, INC., DUSIT THANI PUBLIC CO., LTD. and FIRST LEPANTO TAISHO INSURANCE CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED TO REVIEW OF ERRORS OF LAW; EXCEPTIONS. — Primarily, only errors of law and not of facts are reviewable by this Court in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. This Court is not a trier of facts and it is beyond its function to re-examine and weigh anew the respective evidence of the parties. Besides, this Court adheres to the long standing doctrine that the factual findings of the trial court, especially when affirmed by the Court of Appeals, are conclusive on the parties and this Court. Nonetheless, this Court has, at times, allowed exceptions thereto, to wit: "(a) When the findings are grounded entirely on speculation, surmises, or conjectures; (b) When the inference made is manifestly mistaken, absurd, or impossible; (c) When there is grave abuse of discretion; (d) When the judgment is based on a misapprehension of facts; (e) When the findings of facts are conflicting; (f) When in making its findings the [Court of Appeals] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (g) When the [Court of Appeals'] findings are contrary to those by the trial court; (h) When the findings are conclusions without citation of specific evidence on which they are based; (i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (k) When the [Court of Appeals] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion."

2. ID.; ID.; ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT WILL NOT BE REVIEWED BY THE SUPREME COURT SIMPLY BECAUSE THE JUDGE WHO HEARD AND TRIED THE CASE WAS NOT THE SAME JUDGE WHO PENNED THE DECISION. — [T]his Court will not review the factual findings of the trial court simply because the judge who heard and tried the case was not the same judge who penned the decision. This fact alone does not diminish the veracity and correctness of the factual findings of the trial court. Indeed, "the efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is showing of grave abuse of discretion in the factual findings reached by him." In this case, there was none.

3. ID.; EVIDENCE; PRESUMPTIONS; THE TRIAL COURT'S DECISION IS RENDERED BY THE JUDGE IN THE REGULAR PERFORMANCE OF HIS OFFICIAL DUTIES. — It bears stressing that in this jurisdiction there is a disputable presumption that the trial court's decision is rendered by the judge in the regular performance of his official duties. While the said presumption is only disputable, it is satisfactory unless contradicted or overcame by other evidence. Encompassed in this presumption of regularity is the presumption that the trial court judge, in resolving the case and drafting the decision, reviewed, evaluated, and weighed all the evidence on record. That the said trial court judge is not the same judge who heard the case and received the evidence is of little consequence when the records and transcripts of stenographic notes (TSNs) are complete and available for consideration by the former, just like in the present case. Irrefragably, by reason alone that the judge who penned the trial court's decision was not the same judge who heard the case and received the evidence therein would not render the findings in the said decision erroneous and unreliable. While the conduct and demeanor of witnesses may sway a trial court judge in deciding a case, it is not, and should not be, his only consideration. Even more vital for the trial court judge's decision are the contents and substance of the witnesses' testimonies, as borne out by the TSNs, as well as the object and documentary evidence submitted and made part of the records of the case.

4. ID.; CIVIL PROCEDURE; APPEALS; MATTERS NOT SUBMITTED BEFORE THE TRIAL COURT CANNOT BE CONSIDERED FOR THE FIRST TIME ON APPEAL. — Well-settled is the rule that a party is not allowed to change the theory of the case or the cause of action on appeal. **Matters, theories or arguments not submitted before the trial court cannot be considered for the first time on appeal or *certiorari*.** When a party adopts a certain theory in the court below, he will not be permitted to change his theory on appeal for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process. Hence, a party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; *QUASI-DELICT*; DISTINGUISHED FROM BREACH OF CONTRACT. — In *quasi-delict*, negligence is direct, substantive and independent, while in breach of contract, negligence is merely incidental to the performance of the contractual obligation; there is a pre-existing contract or obligation. In *quasi-delict*, the defense of "good father of a family" is a complete and proper defense insofar as parents, guardians and employers are concerned, while in breach of contract, such is not a complete and proper defense in the selection and supervision of employees. **In *quasi-delict*, there is no presumption of negligence** and it is incumbent upon the injured party to prove the negligence of the defendant, otherwise, the former's complaint will be dismissed, **while in breach of contract, negligence is presumed so long as it can be proved that there was breach of the contract** and the burden is on the defendant to prove that there was no negligence in the carrying out of the terms of the contract; the rule of *respondeat superior* is followed.

6. ID.; ID.; ID.; ID.; REQUISITES. — As petitioner's cause of action is based on *quasi-delict*, it is incumbent upon her to prove the presence of the following requisites before respondents PHI and DTPCI can be held liable, to wit: (a) damages suffered by the plaintiff; (b) **fault or negligence of the defendant, or some other person for whose acts he must respond**; and

(c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff. **Further, since petitioner's case is for *quasi-delict,* the negligence or fault should be clearly established as it is the basis of her action.** The burden of proof is upon petitioner. Section 1, Rule 131 of the Rules of Court provides that "burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." It is then up for the plaintiff to establish his cause of action or the defendant to establish his defense**. Therefore, if the plaintiff alleged in his complaint that he was damaged because of the negligent acts of the defendant, he has the burden of proving such negligence**. It is even presumed that a person takes ordinary care of his concerns. The quantum of proof required is preponderance of evidence.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE TRIAL COURT'S FACTUAL FINDINGS, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE CONCLUSIVE AND BINDING UPON THE SUPREME COURT. — [T]he following were clearly established, to wit: (1) petitioner stayed in the hotel's swimming pool facility beyond its closing hours; (2) she lifted the folding wooden counter top that eventually hit her head; and (3) respondents PHI and DTPCI extended medical assistance to her. As such, no negligence can be attributed either to respondents PHI and DTPCI or to their staff and/or management. Since the question of negligence is one of fact, this Court is bound by the said factual findings made by the lower courts. It has been repeatedly held that the trial court's factual findings, when affirmed by the Court of Appeals, are conclusive and binding upon this Court, if they are not tainted with arbitrariness or oversight of some fact or circumstance of significance and influence. Petitioner has not presented sufficient ground to warrant a deviation from this rule.

8. CIVIL LAW; TORTS AND DAMAGES; DOCTRINE OF *RES IPSA LOQUITUR*; WHEN APPLICABLE. — *Res ipsa loquitur* is a Latin phrase which literally means "the thing or the transaction speaks for itself." It relates to the fact of an injury that sets out an inference to the cause thereof or establishes the plaintiff's *prima facie* case. The doctrine rests on inference

and not on presumption. The facts of the occurrence warrant the supposition of negligence and they furnish circumstantial evidence of negligence when direct evidence is lacking. Simply stated, this doctrine finds no application if there is direct proof of absence or presence of negligence. **If there is sufficient proof showing the conditions and circumstances under which the injury occurred, then the creative reason for the said doctrine disappears**. Further, the doctrine of *res ipsa loquitur* applies where, (1) the accident was of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.

9. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; HEARSAY EVIDENCE; HAS NO PROBATIVE VALUE WHETHER OBJECTED TO OR NOT. — A witness can testify only with regard to facts of which they have personal knowledge. Testimonial or documentary evidence is hearsay if it is based, not on the personal knowledge of the witness, but on the knowledge of some other person not on the witness stand. Consequently, hearsay evidence — whether objected to or not — has no probative value.

10. ID.; ID.; AN UNVERIFIED AND UNIDENTIFIED PRIVATE DOCUMENT CANNOT BE ACCORDED PROBATIVE VALUE; CASE AT BAR. — The x x x medical reports/evaluations/certifications of different doctors in favor of petitioner cannot be given probative value and their contents cannot be deemed to constitute proof of the facts stated therein. It must be stressed that a document or writing which is admitted not as independent evidence but merely as part of the testimony of a witness does not constitute proof of the facts related therein. In the same vein, the medical certificate which was identified and interpreted in court by another doctor was not accorded probative value because the doctor who prepared it was not presented for its identification. Similarly, in this case, since the doctors who examined petitioner were not presented to testify on their findings, the medical certificates issued on

their behalf and identified by another doctor cannot be admitted as evidence. Since a medical certificate involves an opinion of one who must first be established as an expert witness, it cannot be given weight or credit unless the doctor who issued it is presented in court to show his qualifications. Thus, an unverified and unidentified private document cannot be accorded probative value. It is precluded because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Its executor or author should be presented as a witness to provide the other party to the litigation the opportunity to question its contents. Being mere hearsay evidence, failure to present the author of the letter renders its contents suspect and of no probative value.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for petitioner.

Angara Abello Concepcion Regala & Cruz for Phil. Hoteliers, Inc. & Dusit Thani Public Co., Ltd.

Petronilo A. Dela Cruz for First Lepanto-Taisho Insurance Corp.

D E C I S I O N

PEREZ, *J.*:

For this Court's resolution is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] of the Court of Appeals in CA-G.R. CV No. 87065 dated 9 August 2007, affirming the Decision[2] of Branch 56 of the Regional Trial Court (RTC) of Makati City in Civil Case No. 96-1367 dated 21 February 2006, dismissing for lack of merit herein petitioner Dr. Genevieve L. Huang's Complaint

---

[1] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal, concurring. *Rollo*, pp. 200-215.

[2] Penned by Pairing Judge Reinato G. Quilala. *Id.* at 76-109.

for Damages. Assailed as well is the Court of Appeals' Resolution[3] dated 5 November 2007 denying for lack of merit petitioner's Motion for Reconsideration.

This case stemmed from a Complaint for Damages filed on 28 August 1996 by petitioner Dr. Genevieve L. Huang[4] against herein respondents Philippine Hoteliers, Inc. (PHI)[5] and Dusit Thani Public Co., Ltd. (DTPCI),[6] as owners of Dusit Thani Hotel Manila (Dusit Hotel);[7] and co-respondent First Lepanto Taisho Insurance Corporation (First Lepanto),[8] as insurer of the aforesaid hotel. The said Complaint was premised on the alleged negligence of respondents PHI and DTPCI's staff, in the untimely putting off all the lights within the hotel's swimming pool area, as well as the locking of the main entrance door of the area, prompting petitioner to grope for a way out. While doing so, a folding wooden counter top fell on her head causing her serious brain injury. The negligence was allegedly compounded by respondents PHI and DTPCI's failure to render prompt and adequate medical assistance.

Petitioner's version of the antecedents of this case is as follows:

On 11 June 1995, Delia Goldberg (Delia), a registered guest of Dusit Hotel, invited her friend, petitioner Dr. Genevieve L. Huang, for a swim at the hotel's swimming pool facility. They started bathing at around 5:00 p.m. At around 7:00 p.m., the hotel's swimming pool attendant informed them that the swimming

---

[3] *Id.* at 296-297.

[4] A dermatologist by profession at the time the incident inside the swimming pool area of Dusit Thani Hotel, Manila happened where she allegedly sustained head injury (Testimony of Dr. Genevieve L. Huang. TSN, 27 November 1998, p. 4).

[5] A corporation duly organized and existing under the laws of the Philippines.

[6] A corporation duly organized and existing under the laws of Thailand.

[7] Formerly known as "Hotel Nikko Manila Garden" and then "Dusit Hotel Nikko."

[8] A corporation duly organized and existing under the laws of the Philippines. Formerly known as "Metro Taisho Insurance Corporation."

pool area was about to be closed. The two subsequently proceeded to the shower room adjacent to the swimming pool to take a shower and dress up. However, when they came out of the bathroom, the entire swimming pool area was already pitch black and there was no longer any person around but the two of them. They carefully walked towards the main door leading to the hotel but, to their surprise, the door was locked.[9]

Petitioner and Delia waited for 10 more minutes near the door hoping someone would come to their rescue but they waited in vain. Delia became anxious about their situation so petitioner began to walk around to look for a house phone. Delia followed petitioner. After some time, petitioner saw a phone behind the lifeguard's counter. While slowly walking towards the phone, a hard and heavy object, which later turned out to be the folding wooden counter top, fell on petitioner's head that knocked her down almost unconscious.[10]

Delia immediately got hold of the house phone and notified the hotel telephone operator of the incident. Not long after, the hotel staff arrived at the main entrance door of the swimming pool area but it took them at least 20 to 30 minutes to get inside. When the door was finally opened, three hotel chambermaids assisted petitioner by placing an ice pack and applying some ointment on her head. After petitioner had slightly recovered, she requested to be assisted to the hotel's coffee shop to have some rest. Petitioner demanded the services of the hotel physician.[11]

Dr. Violeta Dalumpines (Dr. Dalumpines) arrived. She approached petitioner and introduced herself as the hotel physician. However, instead of immediately providing the needed medical assistance, Dr. Dalumpines presented a "Waiver" and

---

[9] Testimony of Dr. Genevieve L. Huang. TSN, 27 November 1998, pp. 24-28; CA Decision dated 9 August 2007, *rollo*, p. 201.

[10] *Id.* at 29-34; *Id.* at 202; Complaint dated 8 August 1996, *rollo*, p. 769.

[11] *Id.* at 36-42; Testimony of Dr. Genevieve L. Huang. TSN, 10 April 2000, pp. 5-6; CA Decision dated 9 August 2007, *rollo*, p. 202; Complaint dated 8 August 1996, *rollo*, pp. 769-770.

demanded that it be signed by petitioner, otherwise, the hotel management will not render her any assistance. Petitioner refused to do so.[12]

After eating her dinner and having rested for a while, petitioner left the hotel's coffee shop and went home. Thereupon, petitioner started to feel extraordinary dizziness accompanied by an uncomfortable feeling in her stomach, which lasted until the following day. Petitioner was constrained to stay at home, thus, missing all her important appointments with her patients. She also began experiencing "on" and "off" severe headaches that caused her three (3) sleepless nights.[13]

Petitioner, thus, decided to consult a certain Dr. Perry Noble (Dr. Noble), a neurologist from Makati Medical Center, who required her to have an X-ray and a Magnetic Resonance Imaging (MRI) tests.[14] The MRI Report[15] dated 23 August 1995 revealed the following findings:

CONSULTATION REPORT:

> MRI examination of the brain shows scattered areas of intraparenchymal contusions and involving mainly the left middle and posterior temporal and slightly the right anterior temporal lobe.
> Other small areas of contusions with suggestive pertechiae are seen in the left fronto-parietal, left parieto-occipital and with deep frontal periventricular subcortical and cortical regions. There is no mass effect nor signs of localized hemorrhagic extravasation.
> The ventricles are not enlarged, quite symmetrical without shifts or deformities; the peripheral sulci are within normal limits.

---

[12] *Id.* at 42-45; *Id.* at 8-9; *Id.* at 202-203; *Id.* at 770.

[13] *Id.* at 47; Testimony of Dr. Genevieve L. Huang. TSN, 8 September 1999, pp. 45-51; CA Decision dated 9 August 2007, *rollo*, p. 203; Complaint dated 8 August 1996, *rollo*, p. 771.

[14] Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, pp. 5-6.

[15] Records, Volume I, p. 345.

The C-P angles, petromastoids, sella, extrasellar and retro orbital areas appear normal.
The brainstem is unremarkable.

IMPRESSION: Scattered small intraparenchymal contusions mainly involving the left middle-posterior temporal lobe and also right medial anterior temporal, both deep frontal subcortical, left parieto-occipital subcortical and cortical regions.
Ischemic etiology not ruled out.
No localized intra - or extracerebral hemorrhage.[16]

Petitioner claimed that the aforesaid MRI result clearly showed that her head was bruised. Based also on the same MRI result, Dr. Noble told her that she has a very serious brain injury. In view thereof, Dr. Noble prescribed the necessary medicine for her condition.[17]

Petitioner likewise consulted a certain Dr. Ofelia Adapon, also a neurologist from Makati Medical Center, who required her to undergo an Electroencephalogram examination (EEG) to measure the electrostatic in her brain.[18] Based on its result,[19] Dr. Ofelia Adapon informed her that she has a serious condition — a permanent one. Dr. Ofelia Adapon similarly prescribed medicines for her brain injury.[20]

---

[16] *Id.*

[17] Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, pp. 6-9.

[18] *Id.* at 8-13.

[19] TECHNICAL SUMMARY OF EEG TRACING

Background activity is fairly well organized at 6-8 Hz. Medium to high voltage sharp activities are seen bilaterally bisynchronously. No focal slowing is seen.

EEG INTERPRETATION:

ABNORMAL EEG COMPATIBLE WITH A SEIZURE DISORDER (EEG Report dated 5 September 1995. Records, Volume I, p. 346).

[20] Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, pp. 9-13.

Petitioner's condition did not get better. Hence, sometime in September 1995, she consulted another neuro-surgeon by the name of Dr. Renato Sibayan (Dr. Sibayan), who required her to have an X-ray test.[21] According to petitioner, Dr. Sibayan's finding was the same as those of the previous doctors that she had consulted — she has a serious brain injury.[22]

By reason of the unfortunate 11 June 1995 incident inside the hotel's swimming pool area, petitioner also started to feel losing her memory, which greatly affected and disrupted the practice of her chosen profession.[23] Thus, on 25 October 1995, petitioner, through counsel, sent a demand letter[24] to respondents PHI and DTPCI seeking payment of an amount not less than ₱100,000,000.00 representing loss of earnings on her remaining life span. But, petitioner's demand was unheeded.

In November 1995, petitioner went to the United States of America (USA) for further medical treatment. She consulted a certain Dr. Gerald Steinberg and a certain Dr. Joel Dokson[25] from Mount Sinai Hospital who both found that she has "post traumatic-post concussion/contusion cephalgias-vascular and neuralgia."[26] She was then prescribed to take some medications

---

[21] CERVICAL VERTEBRAE

The visualized vertebrae appear intact. There is straightening of the cervical curvature most likely due to muscular spasm. Alignment and intervertebral disc spaces are well maintained. The neural foramenae are well formed.

IMPRESSION

Straightened cervical curvature most likely due to muscular spasm otherwise normal cervical vertebrae (Diagnostic X-Ray Report dated 14 September 1995. Records, p. 347).

[22] Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, p. 16.

[23] Complaint. *Rollo*, p. 771.

[24] Records, Volume I, pp. 16-18.

[25] Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, pp. 24-28.

[26] Document dated 11 December 1995 under the letterhead of Dr. Gerald Steinberg and Dr. Joel Dokson. Records, Volume I, p. 350.

for severe pain and to undergo physical therapy. Her condition did not improve so she returned to the Philippines.[27]

Petitioner, once again, consulted Dr. Sibayan, who simply told her to just relax and to continue taking her medicines. Petitioner also consulted other neurologists, who all advised her to just continue her medications and to undergo physical therapy for her neck pain.[28]

Sometime in 1996, petitioner consulted as well a certain Dr. Victor Lopez (Dr. Lopez), an ophthalmologist from the Makati Medical Center, because of her poor vision, which she has experienced for several months.[29] Petitioner's Eye Report dated 5 March 1996[30] issued by Dr. Lopez stated: "IMPRESSION: Posterior vitreous detachment, right eye of floaters." Dr. Lopez told petitioner that her detached eye is permanent and very serious. Dr. Lopez then prescribed an eye drop to petitioner.[31]

For petitioner's frustration to dissipate and to regain her former strength and physical well-being, she consulted another neurosurgeon from Makati Medical Center by the name of Dr. Leopoldo P. Pardo, Jr. (Dr. Pardo, Jr.).[32] She disclosed to Dr. Pardo, Jr. that at the age of 18 she suffered a stroke due to mitral valve disease and that she was given treatments, which also resulted in *thrombocytopenia*. In Dr. Pardo, Jr.'s medical evaluation of petitioner dated 15 May 1996,[33] he made the following diagnosis and opinion:

---

[27] Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, pp. 31-32.

[28] *Id.* at 32-36.

[29] *Id.* at 47-50.

[30] Records, Volume I, p. 500.

[31] Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, p. 56.

[32] *Id.* at 57-60.

[33] *Rollo*, pp. 1232-1234.

DIAGNOSIS AND OPINION:

This patient sustained a severe head injury in (sic) [11 June 1995] and as a result of which she developed the following injuries:

1. Cerebral Concussion and Contusion
2. Post-traumatic Epilepsy
3. Post-concussional Syndrome
4. Minimal Brain Dysfunction
5. Cervical Sprain, chronic recurrent

It is my opinion that the symptoms she complained of in the foregoing history are all related to and a result of the injury sustained on [11 June 1995].

It is further my opinion that the above diagnosis and complaints do materially affect her duties and functions as a practi[c]ing physician and dermatologist, and that she will require treatment for an undetermined period of time.

The percentage of disability is not calculated at this time and will require further evaluation and observation.[34]

Dr. Pardo, Jr. then advised petitioner to continue her medications.[35]

Petitioner likewise consulted a certain Dr. Tenchavez[36] for her follow-up EEG.[37] He similarly prescribed medicine for

---

[34] *Id.* at 1234.

[35] Testimony of Dr. Genevieve L. Huang. TSN, 1 February 1999, p. 67.

[36] *Id.* at 5.

[37] **INTERPRETATION:**

The EEG is abnormal showing:

1. Mild intermittent generalized slowing consistent with a diffuse cerebral dysfunction.
2. Fairly frequent intermittent arrhythmic theta/delta slow waves occasionally rhythm theta slow waves seen anteriorly, but more on the left frontal region compatible with irritative or deep focal pathology.
3. Occasional focal epileptiform activity arising from both region, but maximally and frequently on the Left, with phase reversal at F3 (EEG Report dated 11 July 1996. Records, Volume I, p. 351).

petitioner's deep brain injury. He also gave her pain killer for her headache and advised her to undergo physical therapy. Her symptoms, however, persisted all the more.[38]

In 1999, petitioner consulted another neurologist at the Makati Medical Center by the name of Dr. Martesio Perez (Dr. Perez) because of severe fleeting pains in her head, arms and legs; difficulty in concentration; and warm sensation of the legs, which symptoms also occurred after the 11 June 1995 incident. Upon examination, Dr. Perez observed that petitioner has been experiencing severe pains and she has a slight difficulty in concentration. He likewise noted that there was a slight spasm of petitioner's neck muscle but, otherwise, there was no objective neurologic finding. The rest of petitioner's neurologic examination was essentially normal.[39]

Dr. Perez's neurologic evaluation[40] of petitioner reflected, among others: (1) petitioner's past medical history, which includes, among others, mitral valve stenosis; (2) an interpretation of petitioner's EEG results in October 1995 and in January 1999, *i.e.*, the first EEG showed sharp waves seen bilaterally more on the left while the second one was normal; and (3) interpretation of petitioner's second MRI result, *i.e.*, petitioner has a permanent damage in the brain, which can happen either after a head injury or after a stroke. Dr. Perez concluded that petitioner has post-traumatic or post concussion syndrome.[41]

Respondents, on the other hand, denied all the material allegations of petitioner and, in turn, countered the latter's statement of facts, thus:

According to respondents PHI and DTPCI, a sufficient notice had been posted on the glass door of the hotel leading to the

---

[38] Testimony of Dr. Genevieve L. Huang, TSN, 12 February 1999, pp. 15-16.

[39] Testimony of Dr. Martesio Perez. TSN, 7 February 2001, pp. 9-10.

[40] Records, Volume I, pp. 618-619.

[41] Testimony of Dr. Martesio Perez. TSN, 7 February 2001, pp. 9-15.

swimming pool area to apprise the people, especially the hotel guests, that the swimming pool area is open only from 7:00 a.m. to 7:00 p.m.[42] Though the hotel's swimming pool area is open only between the aforestated time, the lights thereon are kept on until 10:00 p.m. for, (1) security reasons; (2) housekeeping personnel to do the cleaning of the swimming pool surroundings; and (3) people doing their exercise routine at the Slimmer's World Gym adjacent to the swimming pool area, which was then open until 10:00 p.m., to have a good view of the hotel's swimming pool. Even granting that the lights in the hotel's swimming pool area were turned off, it would not render the area completely dark as the Slimmer's World Gym near it was well-illuminated.[43]

Further, on 11 June 1995, at round 7:00 p.m., the hotel's swimming pool attendant advised petitioner and Delia to take their showers as it was already closing time. Afterwards, at around 7:40 p.m., Pearlie Benedicto-Lipana (Ms. Pearlie), the hotel staff nurse, who was at the hotel clinic located at the mezzanine floor, received a call from the hotel telephone operator informing her that there was a guest requiring medical assistance at the hotel's swimming pool area located one floor above the clinic.[44]

Immediately, Ms. Pearlie got hold of her medical kit and hurriedly went to the hotel's swimming pool area. There she saw Delia and petitioner, who told her that she was hit on the head by a folding wooden counter top. Although petitioner looked normal as there was no indication of any blood or bruise on her head, Ms. Pearlie still asked her if she needed any medical attention to which petitioner replied that she is a doctor, she was fine

---

[42] Respondents' Answer with Compulsory Counterclaims and Cross-claims. Records, Volume I, p. 70.

[43] Testimony of Engineer Dante L. Cotaz. TSN, 23 July 2003, pp. 27, 44-49 and 62; Respondents PHI and DTPCI's Answer with Compulsory Counterclaims and Cross-claims. Records, Volume I, p. 71.

[44] Testimony of Pearlie Benedicto-Lipana. TSN, 14 April 2003, pp. 13-15; CA Decision dated 9 August 2007, *rollo*, pp. 203-204.

and she did not need any medical attention. Petitioner, instead, requested for a hirudoid cream to which Ms. Pearlie acceded.[45]

At about 8:00 p.m., after attending to petitioner, Ms. Pearlie went back to the hotel clinic to inform Dr. Dalumpines of the incident at the hotel's swimming pool area. But before she could do that, Dr. Dalumpines had already chanced upon Delia and petitioner at the hotel's coffee shop and the latter reported to Dr. Dalumpines that her head was hit by a folding wooden counter top while she was inside the hotel's swimming pool area. When asked by Dr. Dalumpines how she was, petitioner responded she is a doctor, she was fine and she was already attended to by the hotel nurse, who went at the hotel's swimming pool area right after the accident. Dr. Dalumpines then called Ms. Pearlie to verify the same, which the latter confirmed.[46]

Afterwards, Dr. Dalumpines went back to petitioner and checked the latter's condition. Petitioner insisted that she was fine and that the hirudoid cream was enough. Having been assured that everything was fine, Dr. Dalumpines requested petitioner to execute a handwritten certification[47] regarding the incident that occurred that night. Dr. Dalumpines then suggested to petitioner to have an X-ray test. Petitioner replied that it was not necessary. Petitioner also refused further medical attention.[48]

On 13 June 1995, petitioner called up Dr. Dalumpines. The call, however, had nothing to do with the 11 June 1995 incident. Instead, petitioner merely engaged in small talk with Dr. Dalumpines while having her daily massage. The two talked about petitioner's personal matters, *i.e.*, past medical history, differences with siblings and family over inheritance and difficulty in practice. Petitioner even disclosed to Dr. Dalumpines that

---

[45] *Id.* at 16-20; *Id.* at 204.

[46] *Id.* at 20-22; Testimony of Dr. Violeta Dalumpines. TSN, 11 November 2000, pp. 12-16; CA Decision dated 9 August 2007, *rollo*, p. 204.

[47] Records, Volume I, pp. 83-84.

[48] Testimony of Dr. Violeta Dalumpines. TSN, 11 November 2000, pp. 17-22.

she once fell from a horse; that she had a stroke; had hysterectomy and is incapable of having children for her uterus had already been removed; that she had blood disorder, particularly lack of platelets, that can cause bleeding; and she had an "on" and "off" headaches. Petitioner oftentimes called Dr. Dalumpines at the hotel clinic to discuss topics similar to those discussed during their 13 June 1995 conversation.[49]

Also, during one of their telephone conversations, petitioner requested for a certification regarding the 11 June 1995 incident inside the hotel's swimming pool area. Dr. Dalumpines accordingly issued Certification dated 7 September 1995, which states that:[50]

C E R T I F I C A T I O N

This is to certify that as per Clinic records, duty nurse [Pearlie] was called to attend to an accident at the poolside at 7:45PM on [11 June 1995].

Same records show that there, **she saw [petitioner] who claimed the folding countertop fell on her head when she lifted it to enter the lifeguard's counter to use the phone**. She asked for Hirudoid.

The same evening [petitioner] met [Dr. Dalumpines] at the Coffee Shop. After narrating the poolside incident and **declining [Dr. Dalumpines'] offer of assistance, she reiterated that the Hirudoid cream was enough and that [petitioner] being a doctor herself, knew her condition and she was all right**.

This certification is given upon the request of [petitioner] for whatever purpose it may serve, [7 September 1995] at Makati City.[51] (Emphasis supplied).

Petitioner personally picked up the afore-quoted Certification at the hotel clinic without any objection as to its contents.[52]

---

[49] *Id.* at 22-28.

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

[51] Records, Volume I, p. 22.

[52] Testimony of Dr. Violeta Dalumpines. TSN, 11 November 2000, p. 33.

From 11 June 1995 until 7 September 1995, the hotel clinic never received any complaint from petitioner regarding the latter's condition. The hotel itself neither received any written complaint from petitioner.[53]

After trial, the court *a quo* in its Decision dated 21 February 2006 dismissed petitioner's Complaint for lack of merit.

The trial court found petitioner's testimony self-serving, thus, devoid of credibility. Petitioner failed to present any evidence to substantiate her allegation that the lights in the hotel's swimming pool area were shut off at the time of the incident. She did not even present her friend, Delia, to corroborate her testimony. More so, petitioner's testimony was contradicted by one of the witnesses presented by the respondents who positively declared that it has been a normal practice of the hotel management not to put off the lights until 10:00 p.m. to allow the housekeepers to do the cleaning of the swimming pool surroundings, including the toilets and counters. Also, the lights were kept on for security reasons and for the people in the nearby gym to have a good view of the swimming pool while doing their exercise routine. Besides, there was a remote possibility that the hotel's swimming pool area was in complete darkness as the aforesaid gym was then open until 10:00 p.m., and the lights radiate to the hotel's swimming pool area. **As such, petitioner would not have met the accident had she only acted with care and caution**.[54]

The trial court further struck down petitioner's contention that the hotel management did not extend medical assistance to her in the aftermath of the accident. Records showed that the hotel management immediately responded after being notified of the accident. The hotel nurse and the two chambermaids placed an ice pack on petitioner's head. They were willing to extend further emergency assistance but petitioner refused and merely asked for a hirudoid cream. Petitioner even told them she is a doctor and she was fine. Even the medical services offered by

---

[53] Testimony of Dr. Violeta Dalumpines. TSN, 27 November 2002, p. 12.

[54] RTC Decision dated 21 February 2006, *rollo*, pp. 102-103.

the hotel physician were turned down by petitioner. Emphatically, petitioner cannot fault the hotel for the injury she sustained as she herself did not heed the warning that the swimming pool area is open only from 7:00 a.m. to 7:00 p.m. **As such, since petitioner's own negligence was the immediate and proximate cause of her injury, she cannot recover damages**.[55]

The trial court similarly observed that the records revealed no indication that the head injury complained of by petitioner was the result of the alleged 11 June 1995 accident. *Firstly*, petitioner had a past medical history which might have been the cause of her recurring brain injury. *Secondly*, the findings of Dr. Perez did not prove a causal relation between the 11 June 1995 accident and the brain damage suffered by petitioner. Even Dr. Perez himself testified that the symptoms being experienced by petitioner might have been due to factors other than the head trauma she allegedly suffered. It bears stressing that petitioner had been suffering from different kinds of brain problems since she was 18 years old, which may have been the cause of the recurring symptoms of head injury she is experiencing at present. Absent, therefore, of any proof establishing the causal relation between the injury she allegedly suffered on 11 June 1995 and the head pains she now suffers, her claim must fail. *Thirdly*, Dr. Teresita Sanchez's (Dr. Sanchez) testimony cannot be relied upon since she testified on the findings and conclusions of persons who were never presented in court. Ergo, her testimony thereon was hearsay. *Fourthly*, the medical reports/evaluations/certifications issued by myriads of doctors whom petitioner sought for examination or treatment were neither identified nor testified to by those who issued them. Being deemed as hearsay, they cannot be given probative value. **Even assuming that petitioner suffered head injury as a consequence of the 11 June 1995 accident, she cannot blame anyone but herself for staying at the hotel's swimming pool area beyond its closing hours and for lifting the folding wooden counter top that eventually hit her head**.[56]

---

[55] *Id.* at 103.

[56] *Id.* at 103-107.

For petitioner's failure to prove that her serious and permanent injury was the result of the 11 June 1995 accident, thus, her claim for actual or compensatory damages, loss of income, moral damages, exemplary damages and attorney's fees, must all fail.[57]

With regard to respondent First Lepanto's liability, the trial court ruled that under the contract of insurance, suffice it to state that absent any cause for any liability against respondents PHI and DTPCI, respondent First Lepanto cannot be made liable thereon.

Dissatisfied, petitioner elevated the matter to the Court of Appeals with the following assignment of errors: *(1) the trial court erred in finding that the testimony of [petitioner] is self-serving and thus void of credibility; (2) the trial court erred in applying the doctrine of proximate cause in cases of breach of contract [and even] assuming arguendo that the doctrine is applicable, [petitioner] was able to prove by sufficient evidence the causal connection between her injuries and [respondents PHI and DTPCI's] negligent act; and (3) the trial court erred in holding that [petitioner]is not entitled to damages*.[58]

On 9 August 2007, the Court of Appeals rendered a Decision affirming the findings and conclusions of the trial court.

The Court of Appeals ratiocinated in this wise:

> At the outset, it is necessary for our purpose to determine whether to decide this case on the theory that [herein respondents PHI and DTPCI] are liable for breach of contract or on the theory of *quasi-delict*.
>
> x x x x x x x x x
>
> It cannot be gainsaid that [herein petitioner's] use of the hotel's pool was only upon the invitation of [Delia], the hotel's registered guest. As such, she cannot claim contractual relationship between

---

[57] *Id.* at 106-108.

[58] CA Decision dated 9 August 2007, *id.* at 205; Appellant's Brief dated 6 November 2006, *id.* at 118.

her and the hotel. **Since the circumstances of the present case do not evince a contractual relation between [petitioner] and [respondents], the rules on *quasi-delict,* thus, govern**.

The pertinent provision of Art. 2176 of the Civil Code which states: "Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called *quasi-delict*."

A perusal of Article 2176 shows that obligations arising from *quasi-delict* or tort, also known as extra-contractual obligations, arise only between parties not otherwise bound by contract, whether express or implied. Thus, to sustain a claim liability under *quasi-delict*, the following requisites must concur: (a) damages suffered by the plaintiff; (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.

Viewed from the foregoing, the question now is whether [respondents PHI and DTPCI] and its employees were negligent? We do not think so. Several factors militate against [petitioner's] contention.

One. [Petitioner] recognized the fact that the pool area's closing time is [7:00 p.m.]. She, herself, admitted during her testimony that she was well aware of the sign when she and [Delia] entered the pool area. Hence, upon knowing, at the outset, of the pool's closing time, she took the risk of overstaying when she decided to take shower and leave the area beyond the closing hour. In fact, it was only upon the advise of the pool attendants that she thereafter took her shower.

Two. She admitted, through her certification that she lifted the wooden bar countertop, which then fell onto her head. The admission in her certificate proves the circumstances surrounding the occurrence that transpired on the night of [11 June 1995]. This is contrary to her assertion in the complaint and testimony that, while she was passing through the counter door, she was suddenly knocked out by a hard and heavy object. In view of the fact that she admitted having lifted the counter top, it was her own doing, therefore, that made the counter top fell on to her head.

Three. We cannot likewise subscribe to [petitioner's] assertion that the pool area was totally dark in that she herself admitted that she saw a telephone at the counter after searching for one. It must be noted that [petitioner] and [Delia] had walked around the pool area with ease since they were able to proceed to the glass entrance door from shower room, and back to the counter area where the telephone was located without encountering any untoward incident. Otherwise, she could have easily stumbled over, or slid, or bumped into something while searching for the telephone. This negates her assertion that the pool area was completely dark, thereby, totally impairing her vision.

x x x x x x x x x

The aforementioned circumstances lead us to no other conclusion than that the **proximate and immediate cause of the injury of [petitioner] was due to her own negligence**.

Moreover, [petitioner] failed to sufficiently substantiate that the medical symptoms she is currently experiencing are the direct result of the head injury she sustained on [11 June 1995] as was aptly discussed in the lower court's findings.

x x x x x x x x x

It bears stressing that in civil cases, the law requires that the party who alleges a fact and substantially asserts the affirmative of the issue has the burden of proving it. Hence, for [petitioner] to be entitled to damages, she must show that she had suffered an actionable injury. Regrettably, [petitioner] failed in this regard.[59] (Emphasis supplied).

Petitioner's Motion for Reconsideration was denied for lack of merit in a Resolution dated 5 November 2007.

Hence, this Petition raising the following issues:

(1) Whether or not the findings of fact of the trial court and of the Court of Appeals are conclusive in this case.

(2) Whether or not [herein respondents PHI and DTPCI are] responsible by implied contract to exercise due care for the safety and welfare of the petitioner.

---

[59] *Id.* at 209-213.

(3) Whether or not the cause of action of the petitioner can be based on both breach of contract and tort.

(4) Whether or not it is [respondents PHI and DTPCI] and its employees who are liable to the petitioner for negligence, applying the well-established doctrines of *res ipsa loquitur* and *respondeat superior*.

(5) Whether the petitioner's debilitating and permanent injuries were a result of the accident she suffered at the hotel on [11 June 1995].

(6) Whether or not the petitioner is entitled to the payment of damages, attorney's fees, interest, and the costs of suit.

(7) Whether or not the respondent insurance company is liable, even directly, to the petitioner.

(8) Whether or not petitioner's motion for reconsideration of the decision of the Court of Appeals is *pro forma*.[60]

Petitioner argues that the rule that "findings of fact of the lower courts are conclusive and must be respected on appeal" finds no application herein because this case falls under the jurisprudentially established exceptions. Moreover, since the rationale behind the afore-mentioned rule is that "the trial judge is in a vantage point to appreciate the conduct and behavior of the witnesses and has the unexcelled opportunity to evaluate their testimony," one logical exception to the rule that can be deduced therefrom is when the judge who decided the case is not the same judge who heard and tried the case.

Petitioner further faults the Court of Appeals in ruling that no contractual relationship existed between her and respondents PHI and DTPCI since her use of the hotel's swimming pool facility was only upon the invitation of the hotel's registered guest. On the contrary, petitioner maintains that an implied contract existed between them in view of the fact that the hotel guest status extends to all those who avail of its services—its patrons and invitees. It follows then that all those who patronize the hotel and its facilities, including those who are invited to

[60] *Id.* at 26.

partake of those facilities, like petitioner, are generally regarded as guests of the hotel. As such, respondents PHI and DTPCI are responsible by implied contract for the safety and welfare of petitioner while the latter was inside their premises by exercising due care, which they failed to do.

Petitioner even asserts that the existence of a contract between the parties does not bar any liability for tort since the act that breaks a contract may also be a tort. Hence, the concept of change of theory of cause of action pointed to by respondents is irrelevant.

Petitioner similarly avows that the doctrines of *res ipsa loquitur* and *respondeat superior* are applicable in this case. She argues that a person who goes in a hotel without a "*bukol*" or hematoma and comes out of it with a "*bukol*" or hematoma is a clear case of *res ipsa loquitur*. It was an accident caused by the fact that the hotel staff was not present to lift the heavy counter top for petitioner as is normally expected of them because they negligently locked the main entrance door of the hotel's swimming pool area. Following the doctrine of *res ipsa loquitur*, respondents PHI and DTPCI's negligence is presumed and it is incumbent upon them to prove otherwise but they failed to do so. Further, respondents PHI and DTPCI failed to observe all the diligence of a good father of a family in the selection and supervision of their employees, hence, following the doctrine of *respondeat superior*, they were liable for the negligent acts of their staff in not verifying if there were still people inside the swimming pool area before turning off the lights and locking the door. Had respondents PHI and DTPCI's employees done so, petitioner would not have been injured. Since respondents PHI and DTPCI's negligence need not be proved, the lower courts erred in shifting the burden to petitioner and, thereafter, holding the hotel and its employees not negligent for petitioner's failure to prove their negligence. Moreover, petitioner alleges that there was no contributory negligence on her part for she did not do anything that could have contributed to her injury. And, even if there was, the same does not bar recovery.

Petitioner equally declares that the evidence on record, including the objective medical findings, had firmly established that her permanent debilitating injuries were the direct result of the 11 June 1995 accident inside the hotel's swimming pool area. This fact has not been totally disputed by the respondents. Further, the medical experts who had been consulted by petitioner were in unison in their diagnoses of her condition. Petitioner was also able to prove that the falling of the folding wooden counter top on her head while she was at the hotel's swimming pool area was the cause of her head, eye and neck injuries.

Petitioner reiterates her claim for an award of damages, to wit: actual, including loss of income; moral, exemplary; as well as attorney's fees, interest and costs of suit. She states that respondents PHI and DTPCI are liable for *quasi-delict* under Articles 19, 2176 and 2180 of the New Civil Code. At the same time, they are liable under an implied contract for they have a public duty to give due courtesy, to exercise reasonable care and to provide safety to hotel guests, patrons and invitees. Respondent First Lepanto, on the other hand, is directly liable under the express contract of insurance.

Lastly, petitioner contends that her Motion for Reconsideration before the Court of Appeals was not *pro forma* for it specifically pointed out the alleged errors in the Court of Appeals Decision.

The instant Petition is devoid of merit.

Primarily, only errors of law and not of facts are reviewable by this Court in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.[61] This Court is not a trier of facts and it is beyond its function to re-examine and weigh anew the respective evidence of the parties.[62] Besides, this Court adheres to the long standing doctrine that the factual findings of the trial court, especially when affirmed by the Court of Appeals,

---

[61] *Blanco v. Quasha*, 376 Phil. 480, 491 (1999).

[62] *Manila Electric Company v. South Pacific Plastic Manufacturing Corporation*, 526 Phil. 105, 111 (2006).

are conclusive on the parties and this Court.[63] Nonetheless, this Court has, at times, allowed exceptions thereto, to wit:

(a) When the findings are grounded entirely on speculation, surmises, or conjectures;
(b) When the inference made is manifestly mistaken, absurd, or impossible;
(c) When there is grave abuse of discretion;
(d) When the judgment is based on a misapprehension of facts;
(e) When the findings of facts are conflicting;
(f) When in making its findings the [Court of Appeals] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
(g) When the [Court of Appeals'] findings are contrary to those by the trial court;
(h) When the findings are conclusions without citation of specific evidence on which they are based;
(i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
(j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
(k) When the [Court of Appeals] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[64]

Upon meticulous perusal of the records, however, this Court finds that none of these exceptions is obtaining in this case. No such justifiable or compelling reasons exist for this Court to depart from the general rule. This Court will not disturb the factual findings of the trial court as affirmed by the Court of Appeals and adequately supported by the evidence on record.

Also, this Court will not review the factual findings of the trial court simply because the judge who heard and tried the case was not the same judge who penned the decision. This fact

---

[63] *Tuazon v. Heirs of Bartolome Ramos*, 501 Phil. 695, 701 (2005).

[64] *Abalos v. Heirs of Vicente Torio*, G.R. No. 175444, 14 December 2011, 662 SCRA 450, 456-457.

alone does not diminish the veracity and correctness of the factual findings of the trial court.[65] Indeed, "the efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is showing of grave abuse of discretion in the factual findings reached by him."[66] In this case, there was none.

It bears stressing that in this jurisdiction there is a disputable presumption that the trial court's decision is rendered by the judge in the regular performance of his official duties. While the said presumption is only disputable, it is satisfactory unless contradicted or overcame by other evidence. Encompassed in this presumption of regularity is the presumption that the trial court judge, in resolving the case and drafting the decision, reviewed, evaluated, and weighed all the evidence on record. That the said trial court judge is not the same judge who heard the case and received the evidence is of little consequence when the records and transcripts of stenographic notes (TSNs) are complete and available for consideration by the former,[67] just like in the present case.

Irrefragably, the fact that the judge who penned the trial court's decision was not the same judge who heard the case and received the evidence therein does not render the findings in the said decision erroneous and unreliable. While the conduct and demeanor of witnesses may sway a trial court judge in deciding a case, it is not, and should not be, his only consideration. Even more vital for the trial court judge's decision are the contents and substance of the witnesses' testimonies, as borne out by the TSNs, as well as the object and documentary evidence submitted and made part of the records of the case.[68]

This Court examined the records, including the TSNs, and found no reason to disturb the factual findings of both lower courts. This Court, thus, upholds their conclusiveness.

---

[65] *Ditche v. Court of Appeals*, 384 Phil. 35, 45 (2000).

[66] *People v. Sansaet*, 426 Phil. 826, 833 (2002).

[67] *Citibank, N.A. v. Sabeniano*, 535 Phil. 384, 413-414 (2006).

[68] *Id.* at 415.

In resolving the second and third issues, a determination of the cause of action on which petitioner's Complaint for Damages was anchored upon is called for.

Initially, petitioner was suing respondents PHI and DTPCI mainly on account of their negligence but not on any breach of contract. Surprisingly, when the case was elevated on appeal to the Court of Appeals, petitioner had a change of heart and later claimed that an implied contract existed between her and respondents PHI and DTPCI and that the latter were liable for breach of their obligation to keep her safe and out of harm. This allegation was never an issue before the trial court. It was not the cause of action relied upon by the petitioner not until the case was before the Court of Appeals. Presently, petitioner claims that her cause of action can be based both on *quasi-delict* and breach of contract.

A perusal of petitioner's Complaint evidently shows that her cause of action was based solely on *quasi-delict*. Telling are the following allegations in petitioner's Complaint:

> 6. THAT, **in the evening of [11 June 1995]**, between the hours from 7:00 to 8:00 o'clock, after [herein petitioner] and her friend from New York, [Delia], the latter being then a Hotel guest, were taking their shower after having a dip in the hotel's swimming pool, **without any notice or warning, the Hotel's staff put off all the lights within the pool area including the lights on the hallway and also locked the main entrance door of the pool area**, x x x;
>
> 7. THAT, Hotel guest [Delia] started to panic while [petitioner] pacified her by telling her not to worry as they would both find their way out. [Petitioner] knowing that within the area there is a house phone, started to look around while [Delia] was following her, eventually [petitioner] saw a phone behind the counter x x x, that while slowly moving on towards the phone on **a stooping manner due to the darkness** CAUSED BY UNTIMELY AND NEGLIGENTLY PUTTING OFF WITH THE LIGHTS BY THE [HEREIN RESPONDENTS PHI AND DTPCI'S] EMPLOYEE while passing through the open counter door with its Folding Counter Top also opened, x x x, a hard and heavy object fell onto the head of the [petitioner] that knocked her down almost unconscious which hard and heavy object turned out to be the Folding Counter Top;

8. THAT, [Delia] immediately got hold of the house phone and **notified the Hotel Telephone Operator about the incident, immediately the hotel staffs (sic) arrived but they were stranded behind the main door of the pool entrance and it too (sic) them more than twenty (20) minutes to locate the hotel maintenance employee who holds the key of the said main entrance door**;

9. THAT, when the door was opened, two Hotel Chamber Maids assisted the [petitioner] to get out of the counter door. [Petitioner] being a Physician tried to control her feelings although groggy and requested for a HURIDOID, a medicine for HEMATOMA, as a **huge lump developed on her head while the two Chamber Maids assisted [petitioner] by holding the bag of ice on her head and applying the medicine on the huge lump**;

10. THAT, [petitioner] after having recovered slightly from her nightmare, though still feeling weak, asked to be assisted to the Hotel Coffee Shop to take a rest but requested for the hotel's Physician. **Despite her insistent requests, the [Dusit Hotel] refused to lift a finger to assists [petitioner] who was then in distress until a lady approached and introduced herself as the Hotel's house Doctor. Instead however of assisting [petitioner]** by asking her what kind of assistance the Hotel could render, in a DISCOURTEOUS MANNER **presented instead a paper and demanding [petitioner] to affix her signature telling her that the Hotel Management would only assists and answer for all expenses incurred if [petitioner] signs the paper presented, but she refused and [petitioner] instead wrote a marginal note on the said paper stating her reason therefore, said paper later on turned out to be a WAIVER OF RIGHT or QUIT CLAIM**;

x x x x x x x x x

14. THAT, due to the unfortunate incident **caused by [respondents PHI and DTPCI's] gross negligence** despite medical assistance, [petitioner] started to **feel losing her memory that greatly affected and disrupted the practice of her chosen profession** x x x.

x x x x x x x x x

19. THAT, due to [respondents PHI and DTPCI's] gross negligence as being narrated which caused [petitioner] to suffer sleepless nights, depression, mental anguish, serious anxiety, wounded feelings, and embarrassment with her Diplomate friends in the profession and industry, her social standing in the community was greatly affected

and hence, [respondents PHI and DTPCI] must be imposed the hereunder damages, prayed for x x x and **Artile (sic) 2176 and 2199 of the New Civil Code of the Philippines** x x x.

x x x x x x x x x

22. THAT, as to Moral, Exemplary and Actual Damages, as well as [petitioner's] Loss of Income, the amounts are stated in its prayer hereunder.[69]

It is clear from petitioner's allegations that her Complaint for Damages was predicated on the alleged negligence of respondents PHI and DTPCI's staff in the untimely putting off of all the lights within the hotel's swimming pool area, as well as the locking of its main door, prompting her to look for a way out leading to the fall of the folding wooden counter top on her head causing her serious brain injury. The said negligence was allegedly compounded by respondents PHI and DTPCI's failure to render prompt and adequate medical assistance. These allegations in petitioner's Complaint constitute a cause of action for *quasi-delict*, which under the New Civil Code is defined as an act, or omission which causes damage to another, there being fault or negligence.[70]

It is evident from petitioner's Complaint and from her open court testimony that the reliance was on the alleged tortious acts committed against her by respondents PHI and DTPCI, through their management and staff. It is now too late in the day to raise the said argument for the first time before this Court.[71]

---

[69] *Rollo*, pp. 769-775.

[70] Article 2176 of the New Civil Code provides:

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict* and is governed by the provisions of this Chapter. (*Navida v. Dizon, Jr.*, G.R. Nos. 125078, 125598, 126654, 127856 &128398, 30 May 2011, 649 SCRA 33, 79).

[71] *Tokuda v. Gonzales*, 523 Phil. 213, 220 (2006).

Petitioner's belated reliance on breach of contract as her cause of action cannot be sanctioned by this Court. Well-settled is the rule that a party is not allowed to change the theory of the case or the cause of action on appeal. **Matters, theories or arguments not submitted before the trial court cannot be considered for the first time on appeal or *certiorari*.**[72] When a party adopts a certain theory in the court below, he will not be permitted to change his theory on appeal for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process.[73] Hence, a party is bound by the theory he adopts and by the cause of action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.[74]

In that regard, this Court finds it significant to take note of the following differences between *quasi-delict* (*culpa aquilina*) and breach of contract (*culpa contractual*). In *quasi-delict*, negligence is direct, substantive and independent, while in breach of contract, negligence is merely incidental to the performance of the contractual obligation; there is a pre-existing contract or obligation.[75] In *quasi-delict*, the defense of "good father of a family" is a complete and proper defense insofar as parents, guardians and employers are concerned, while in breach of contract, such is not a complete and proper defense in the selection and supervision of employees.[76] **In *quasi-delict,* there is no presumption of negligence** and it is incumbent upon the injured

---

[72] *Id.*

[73] *Drilon v. Court of Appeals*, G.R. No. 107019, 20 March 1997, 270 SCRA 211, 219.

[74] *Sta. Ana, Jr. v. Court of Appeals*, G.R. No. 115284, 13 November 1997, 281 SCRA 624, 629.

[75] Pineda, *Tort and Damages Annotated*, 2004 Edition, p. 17 citing *Rakes v. Atlantic, Gulf and Pacific Co.*, 7 Phil. 359, 369-374 (1907).

[76] *Id.* citing Article 2180 of the Civil Code (last paragraph) and *Cangco v. Manila Railroad Company*, 38 Phil. 768, 774 (1918); De Leon, *Comments and Cases on Torts and Damages*, Third Edition (2012), p. 188.

party to prove the negligence of the defendant, otherwise, the former's complaint will be dismissed, **while in breach of contract, negligence is presumed so long as it can be proved that there was breach of the contract** and the burden is on the defendant to prove that there was no negligence in the carrying out of the terms of the contract; the rule of *respondeat superior* is followed.[77]

Viewed from the foregoing, petitioner's change of theory or cause of action from *quasi-delict* to breach of contract only on appeal would necessarily cause injustice to respondents PHI and DTPCI. *First*, the latter will have no more opportunity to present evidence to contradict petitioner's new argument. *Second*, the burden of proof will be shifted from petitioner to respondents PHI and DTPCI. Petitioner's change of theory from *quasi-delict* to breach of contract must be repudiated.

As petitioner's cause of action is based on *quasi-delict*, it is incumbent upon her to prove the presence of the following requisites before respondents PHI and DTPCI can be held liable, to wit: (a) damages suffered by the plaintiff; (b) **fault or negligence of the defendant, or some other person for whose acts he must respond**; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.[78] **Further, since petitioner's case is for *quasi-delict*, the negligence or fault should be clearly established as it is the basis of her action**.[79] The burden of proof is upon petitioner. Section 1, Rule 131 of the Rules of Court provides that "burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." It is then up for the plaintiff to establish his cause of action or the defendant to establish his defense. **Therefore, if the plaintiff**

---

[77] *Id.* citing *Cangco v. Manila Railroad Company*, *id.*; De Leon, *Comments and Cases on Torts and Damages*, Third Edition (2012), *id.*

[78] *Philippine National Construction Corporation v. Honorable Court of Appeals*, 505 Phil. 87, 97-98 (2005).

[79] Pineda, *Torts and Damages, Annotated*, 2004 Edition, p. 9 citing *Calalas v. Court of Appeals*, 388 Phil. 146, 151 (2000).

alleged in his complaint that he was damaged because of the negligent acts of the defendant, he has the burden of proving such negligence. It is even presumed that a person takes ordinary care of his concerns. The quantum of proof required is preponderance of evidence.[80]

In this case, as found by the trial court and affirmed by the Court of Appeals, petitioner utterly failed to prove the alleged negligence of respondents PHI and DTPCI. Other than petitioner's self-serving testimony that all the lights in the hotel's swimming pool area were shut off and the door was locked, which allegedly prompted her to find a way out and in doing so a folding wooden counter top fell on her head causing her injury, no other evidence was presented to substantiate the same. Even her own companion during the night of the accident inside the hotel's swimming pool area was never presented to corroborate her allegations. Moreover, petitioner's aforesaid allegations were successfully rebutted by respondents PHI and DTPCI. Here, we quote with conformity the observation of the trial court, thus:

x x x Besides not being backed up by other supporting evidence, said statement is being contradicted by the testimony of Engineer Dante L. Costas,[81] who positively declared that it has been a normal practice of the Hotel management not to put off the lights until 10:00P.M. in order to allow the housekeepers to do the cleaning of the pool's surrounding, the toilets and the counters. It was also confirmed that the lights were kept on for security reasons and so that the people exercising in the nearby gym may be able to have a good view of the swimming pool. This Court also takes note that the nearby gymnasium was normally open until 10:00 P.M. so that there was a remote possibility the pool area was in complete darkness as was alleged by [herein petitioner], considering that the illumination which reflected from the gym. Ergo, considering that the area were sufficient (sic) illuminated when the alleged incident occurred, there

---

[80] Aquino, *Torts and Damages*, First Edition (2001), p. 154 citing *Taylor v. Manila Electric Railroad and Light Company*, 16 Phil. 8, 10 (1910) which further cited Scaevola, *Jurisprudencia del Codigo Civil*, Vol. 6, pp. 551-552.

[81] In the Transcript of Stenographic Notes dated 23 July 2003, Engineer Dante's surname is "Cotaz" and not "Costas."

could have been no reason for the [petitioner] to have met said accident, much less to have been injured as a consequence thereof, if she only acted with care and caution, which every ordinary person is expected to do.[82]

More telling is the ratiocination of the Court of Appeals, to wit:

Viewed from the foregoing, the question now is whether [respondents PHI and DTPCI] and its employees were negligent? We do not think so. Several factors militate against [petitioner's] contention.

One. [Petitioner] recognized the fact that the pool area's closing time is [7:00 p.m.]. She, herself, admitted during her testimony that she was well aware of the sign when she and [Delia] entered the pool area. Hence, upon knowing, at the outset, of the pool's closing time, she took the risk of overstaying when she decided to take shower and leave the area beyond the closing hour. In fact, it was only upon the advise of the pool attendants that she thereafter took her shower.

Two. She admitted, through her certification, that she lifted the wooden bar countertop, which then fell on to her head. The admission in her certificate proves the circumstances surrounding the occurrence that transpired on the night of [11 June 1995]. This is contrary to her assertion in the complaint and testimony that, while she was passing through the counter door, she was suddenly knocked out by a hard and heavy object. In view of the fact that she admitted having lifted the countertop, it was her own doing, therefore, that made the counter top fell on to her head.

Three. We cannot likewise subscribe to [petitioner's] assertion that the pool area was totally dark in that she herself admitted that she saw a telephone at the counter after searching for one. It must be noted that [petitioner] and [Delia] had walked around the pool area with ease since they were able to proceed to the glass entrance door from the shower room, and back to the counter area where the telephone was located without encountering any untoward incident. Otherwise, she could have easily stumbled over, or slid, or bumped into something while searching for the telephone. This negates her assertion that the pool area was completely dark, thereby, totally impairing her vision.

---

[82] RTC Decision dated 21 February 2006. *Rollo*, pp. 102-103.

x x x x x x x x x

The aforementioned circumstances lead us to no other conclusion than that the **proximate and immediate cause of the injury of [petitioner] was due to her own negligence**.[83] (Emphasis supplied)

Even petitioner's assertion of negligence on the part of respondents PHI and DTPCI in not rendering medical assistance to her is preposterous. Her own Complaint affirmed that respondents PHI and DTPCI afforded medical assistance to her after she met the unfortunate accident inside the hotel's swimming pool facility. Below is the portion of petitioner's Complaint that would contradict her very own statement, thus:

14. THAT, due to the unfortunate incident caused by [respondents PHI and DTPCI's] gross negligence **despite medical assistance**, [petitioner] started to feel losing her memory that greatly affected and disrupted the practice of her chosen profession. x x x.[84] (Emphasis supplied).

Also, as observed by the trial court, respondents PHI and DTPCI, indeed, extended medical assistance to petitioner but it was petitioner who refused the same. The trial court stated, thus:

Further, [herein petitioner's] asseverations that the Hotel Management did not extend medical assistance to her in the aftermath of the alleged accident is not true. Again, this statement was not supported by any evidence other that the sole and self-serving testimony of [petitioner]. Thus, this Court cannot take [petitioner's] statement as a gospel truth. It bears stressing that the Hotel Management immediately responded after it received notice of the incident. As a matter of fact, [Ms. Pearlie], the Hotel nurse, with two chambermaids holding an ice bag placed on [petitioner's] head came to the [petitioner] to extend emergency assistance when she was notified of the incident, but [petitioner] merely asked for Hirudoid, saying she was fine, and that she was a doctor and know how to take care of herself. Also, the Hotel, through its in-house physician, [Dr. Dalumpines] offered its medical services to [petitioner] when they met at the Hotel's coffee shop, but again [petitioner] declined

---

[83] *Id.* at 209-212.

[84] CA Decision dated 9 August 2007. *Id.* at 771.

the offer. Moreover, the Hotel as a show of concern for the [petitioner's] welfare, shouldered the expenses for the MRI services performed on [petitioner] at the Makati Medical Center. Emphatically, [petitioner] herself cannot fault the Hotel for the injury she allegedly suffered because she herself did not heed the warning at the pool to the effect that it was only open from 7:00 to 7:00 P.M. Thus, when the [petitioner's] own negligence was the immediate and proximate cause of his injury, [she] cannot recover damages x x x.[85]

With the foregoing, the following were clearly established, to wit: (1) petitioner stayed in the hotel's swimming pool facility beyond its closing hours; (2) she lifted the folding wooden counter top that eventually hit her head; and (3) respondents PHI and DTPCI extended medical assistance to her. As such, no negligence can be attributed either to respondents PHI and DTPCI or to their staff and/or management. Since the question of negligence is one of fact, this Court is bound by the said factual findings made by the lower courts. It has been repeatedly held that the trial court's factual findings, when affirmed by the Court of Appeals, are conclusive and binding upon this Court, if they are not tainted with arbitrariness or oversight of some fact or circumstance of significance and influence. Petitioner has not presented sufficient ground to warrant a deviation from this rule.[86]

With regard to petitioner's contention that the principles of *res ipsa loquitur* and *respondeat superior* are applicable in this case, this Court holds otherwise.

Res ipsa loquitur is a Latin phrase which literally means "the thing or the transaction speaks for itself." It relates to the fact of an injury that sets out an inference to the cause thereof or establishes the plaintiff's *prima facie* case. The doctrine rests on inference and not on presumption. The facts of the occurrence warrant the supposition of negligence and they furnish circumstantial evidence of negligence when direct evidence is

---

[85] RTC Decision dated 21 February 2006. *Id.* at 103.

[86] *Pantranco North Express, Inc. v. Standard Insurance Company, Inc.*, 493 Phil. 616, 624 (2005).

lacking.[87] Simply stated, this doctrine finds no application if there is direct proof of absence or presence of negligence. **If there is sufficient proof showing the conditions and circumstances under which the injury occurred, then the creative reason for the said doctrine disappears**.[88]

Further, the doctrine of *res ipsa loquitur* applies where, (1) the accident was of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.[89]

In the case at bench, even granting that respondents PHI and DTPCI's staff negligently turned off the lights and locked the door, the folding wooden counter top would still not fall on petitioner's head had she not lifted the same. Although the folding wooden counter top is within the exclusive management or control of respondents PHI and DTPCI, the falling of the same and hitting the head of petitioner was not due to the negligence of the former. As found by both lower courts, the folding wooden counter top did not fall on petitioner's head without any human intervention. Records showed that **petitioner lifted the said folding wooden counter top that eventually fell and hit her head**. The same was evidenced by the, (1) 11 June 1995 handwritten certification of petitioner herself; (2) her Letter dated 30 August 1995 addressed to Mr. Yoshikazu Masuda (Mr. Masuda), General Manager of Dusit Hotel; and, (3) Certification dated 7 September 1995 issued to her by Dr. Dalumpines upon her request, which contents she never questioned.

---

[87] *Perla Compaña de Seguros, Inc. v. Sps. Sarangaya III*, 510 Phil. 676, 686 (2005).

[88] Aquino, *Torts and Damages*, First Edition (2001), p. 164 citing *S. D. Martinez v. William Van Buskirk*, 18 Phil. 79, 85 (1910).

[89] *Capili v. Spouses Cardaña*, 537 Phil. 60, 67 (2006).

Here, we, respectively, quote the 11 June 1995 handwritten certification of petitioner; her letter to Mr. Masuda dated 30 August 1995; and Dr. Dalumpines' Certification dated 7 September 1995, to wit:

Petitioner's 11 June 1995 Handwritten Certification:

I was requested by [Dr.] Dalumpines to write that I was assured of assistance should it be necessary with regard an accident at the pool. x x x The phone was in an enclosed area on a chair — **I lifted the wooden bar counter top which then fell on my head producing a large hematoma** x x x.[90]

Petitioner's Letter addressed to Mr. Masuda dated 30 August 1995:

Dear Mr. Masuda,

x x x x x x x x x

x x x We searched and saw a phone on a chair behind a towel counter. However[,] **in order to get behind the counter I had to lift a hinged massive wooden section of the counter which subsequently fell and knocked me on my head** x x x.[91]

Dr. Dalumpines' Certification dated 7 September 1995:

C E R T I F I C A T I O N

This is to certify that as per Clinic records, duty nurse [Pearlie] was called to attend to an accident at the poolside at 7:45PM on [11 June 1995].

Same records show that there, **she saw [petitioner] who claimed the folding countertop fell on her head when she lifted it to enter the lifeguard's counter to use the phone**. She asked for Hirudoid.

The same evening [petitioner] met [Dr. Dalumpnes] at the Coffee Shop. After narrating the poolside incident and **declining [Dr. Dalumpines'] offer of assistance, she reiterated that the Hirudoid cream was enough and that [petitioner] being a doctor herself, knew her condition and she was all right**.

---

[90] Records, Volume I, pp. 83-84.

[91] *Rollo*, p. 761.

This certification is given upon the request of [petitioner] for whatever purpose it may serve, [7 September 1995] at Makati City.[92] (Emphasis supplied).

This Court is not unaware that in petitioner's Complaint and in her open court testimony, her assertion was, "while she was passing through the counter door, she was suddenly knocked out by a hard and heavy object, which turned out to be the folding wooden counter top." However, in her open court testimony, particularly during cross-examination, petitioner confirmed that she made such statement that "she lifted the hinge massive wooden section of the counter near the swimming pool."[93] In view thereof, this Court cannot acquiesce petitioner's theory that her case is one of *res ipsa loquitur* as it was sufficiently established how petitioner obtained that "*bukol*" or "hematoma."

The doctrine of *respondeat superior* finds no application in the absence of any showing that the employees of respondents PHI and DTPCI were negligent. Since in this case, the trial court and the appellate court found no negligence on the part of the employees of respondents PHI and DTPCI, thus, the latter cannot also be held liable for negligence and be made to pay the millions of pesos damages prayed for by petitioner.

The issue on whether petitioner's debilitating and permanent injuries were the result of the accident she suffered at the hotel's swimming pool area on 11 June 1995 is another question of fact, which is beyond the function of this Court to resolve. More so, this issue has already been properly passed upon by the trial court and the Court of Appeals. To repeat, this Court is bound by the factual findings of the lower courts and there is no cogent reason to depart from the said rule.

The following observations of the trial court are controlling on this matter:

Firstly, petitioner had a past medical history which might have been the cause of her recurring brain injury.

---

[92] *Id.* at 757.

[93] Testimony of Dr. Genevieve Huang. TSN, 8 September 1999, p. 23.

Secondly, the findings of Dr. Perez did not prove a causal relation between the 11 June 1995 accident and the brain damage suffered by petitioner. **Dr. Perez himself testified that the symptoms being experienced by petitioner might have been due to factors other than the head trauma she allegedly suffered**. Emphasis must be given to the fact that petitioner had been suffering from different kinds of brain problems since she was 18 years old, which may have been the cause of the recurring symptoms of head injury she is experiencing at present.

Thirdly, Dr. Sanchez's testimony cannot be relied upon since she testified on the findings and conclusions of persons who were never presented in court. Ergo, her testimony thereon was hearsay. A witness can testify only with regard to facts of which they have personal knowledge. Testimonial or documentary evidence is hearsay if it is based, not on the personal knowledge of the witness, but on the knowledge of some other person not on the witness stand. Consequently, hearsay evidence — whether objected to or not — has no probative value.[94]

Fourthly, the medical reports/evaluations/certifications issued by myriads of doctors whom petitioner sought for examination or treatment were neither identified nor testified to by those who issued them. Being deemed as hearsay, they cannot be given probative value.

The aforesaid medical reports/evaluations/certifications of different doctors in favor of petitioner cannot be given probative value and their contents cannot be deemed to constitute proof of the facts stated therein. It must be stressed that a document or writing which is admitted not as independent evidence but merely as part of the testimony of a witness does not constitute proof of the facts related therein.[95] In the same vein, the medical certificate which was identified and interpreted in court by another doctor was not accorded probative value because the doctor who prepared it was not presented for its identification. Similarly,

---

[94] *Mallari v. People*, 487 Phil. 299, 320-321 (2004).

[95] *Delfin v. Billones*, 519 Phil. 720, 736-737 (2006).

in this case, since the doctors who examined petitioner were not presented to testify on their findings, the medical certificates issued on their behalf and identified by another doctor cannot be admitted as evidence. Since a medical certificate involves an opinion of one who must first be established as an expert witness, it cannot be given weight or credit unless the doctor who issued it is presented in court to show his qualifications.[96] Thus, an unverified and unidentified private document cannot be accorded probative value. It is precluded because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Its executor or author should be presented as a witness to provide the other party to the litigation the opportunity to question its contents. Being mere hearsay evidence, failure to present the author of the letter renders its contents suspect and of no probative value.[97]

All told, in the absence of negligence on the part of respondents PHI and DTPCI, as well as their management and staff, they cannot be made liable to pay for the millions of damages prayed for by the petitioner. Since respondents PHI and DTPCI are not liable, it necessarily follows that respondent First Lepanto cannot also be made liable under the contract of insurance.

WHEREFORE, premises considered, the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 87065 dated 9 August 2007 and 5 November 2007, respectively, are hereby **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Brion (Acting Chairperson), Velasco, Jr.,[*] *Villarama, Jr.,*[**] and *Perlas-Bernabe, JJ.,* concur.

---

[96] *People v. Ugang*, 431 Phil. 552, 565 (2002) citing *People v. Aliviano*, 390 Phil. 692, 705 (2000).

[97] *Mallari v. People*, *supra* note 94 at 322.

[*] Per raffle dated 8 March 2010.

[**] Per raffle dated 5 December 2012.

FIRST DIVISION

[G.R. No. 181202. December 5, 2012]

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

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREON IS GIVEN GREAT WEIGHT ON APPEAL. — In the recent case of *People v. Bosi*, we reiterated a long held principle that when the credibility of the victim is at issue, the Court gives great weight to the trial court's assessment. Expounding on the said principle, we declared in that case that the trial court's finding of facts is even conclusive and binding if it is not shown to be tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The wisdom behind this rule is that the trial court had the full opportunity to observe directly the witnesses' deportment and manner of testifying, thus, it is in a better position than the appellate court to properly evaluate testimonial evidence. In the case at bar, both the trial court and the Court of Appeals categorically held that AAA is a credible witness and that her testimony deserves full faith and belief. In spite of the brevity of her testimony, the trial court considered the same as delivered in a clear and straightforward manner that is devoid of any pretense or equivocation.

2. CRIMINAL LAW; RAPE; ELEMENTS. — [T]he elements of rape under x x x [Article 266-A of the Revised Penal Code] are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age. Thus, sexual intercourse with a girl below 12 years old, which is the subject of this case, is considered as statutory rape in this jurisdiction.

3. ID.; QUALIFIED RAPE; PENALTY. — According to the sixth paragraph of Article 266-B, the death penalty shall be imposed if the crime of rape is committed "when the victim is under eighteen (18) years of age and the offender is a parent, ascendant,

stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim."

4. ID.; ID.; MINORITY; DULY ESTABLISHED IN CASE AT BAR. — In *People v. Pruna*, we formulated a set of guidelines that will serve as a jurisprudential benchmark in appreciating age either as an element of the crime or as a qualifying circumstance in order to address the seemingly conflicting court decisions regarding the sufficiency of evidence of the victim's age in rape cases. x x x In the case at bar, the prosecution may have been unable to present AAA's birth certificate or other authentic document such as a baptismal certificate during trial, however, that failure to present relevant evidence will not deter this Court from upholding that qualified rape was indeed committed by appellant because he himself admitted, in his counter-affidavit which formed part of the evidence for the defense and the contents of which he later affirmed in his testimony in open court, that AAA was below 7 years old around the time of the rape incident. In the Court's view, this admission from appellant, taken with the testimony of the victim, sufficiently proved the victim's minority.

5. ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS; PRESENT IN CASE AT BAR. — [T]he crime of acts of lasciviousness is composed of the following elements: "(1) That the offender commits any act of lasciviousness or lewdness; (2) That it is done under any of the following circumstances: a. By using force or intimidation; or b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age; and (3) That the offended party is another person of either sex." Utilizing the foregoing definition as a guide, it is beyond cavil that appellant's act of making AAA hold his penis and, subsequently, of touching her vagina with his fingers can be both characterized as constituting acts of lasciviousness. x x x [T]he moral influence or ascendancy exercised by appellant over AAA takes the place of the element of force and intimidation.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] dated July 20, 2007 of the Court of Appeals in CA-G.R. CEB-CR.-H.C. No. 00344, entitled *People of the Philippines v. Edgar Padigos*, which affirmed with modification the Judgment[2] dated September 26, 2005 of the Regional Trial Court (RTC) of Cebu City, Branch 14 in Criminal Case Nos. CBU-64584 & CBU-64585. The trial court found appellant Edgar Padigos guilty beyond reasonable doubt of the crime of rape as defined and penalized under Article 266-A of the Revised Penal Code, in relation to Republic Act No. 7610 or the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

The Information in Criminal Case No. CBU-64584 charged appellant with the crime of rape in relation to Republic Act No. 7610, while the Information in Criminal Case No. CBU-64585 charged him with the crime of acts of lasciviousness also in relation to Republic Act No. 7610. The relevant portions of said Informations read:

CRIMINAL CASE NO. CBU-64584

That sometime in the evening of the 26th day of August, 2002, at x x x and within the jurisdiction of this Honorable Court, the above-named accused, moved by lewd design, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge with his own daughter, "AAA"[3] who is a minor 6 years of age, that resulted to devirginizing her and causing her great dishonor.[4]

---

[1] *Rollo*, pp. 3-18; penned by Associate Justice Priscilla Baltazar Padilla with Associate Justices Pampio A. Abarintos and Stephen C. Cruz, concurring.

[2] CA *rollo*, pp. 30-38.

[3] The Court withholds the real name of the victims-survivors and uses fictitious initials instead to represent them. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed. (See *People v. Cabalquinto*, 533 Phil. 703 [2006].)

[4] Records, p. 1.

CRIMINAL CASE NO. CBU-64585

That sometime in the evening of the 27th day of August, 2002, at x x x and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with lewd design, did then and there willfully, unlawfully and feloniously let his own daughter, "AAA" who is a minor 6 years of age, masturbate his penis, which act is constitutive of physical abuse which debases, degrades or demeans the intrinsic worth and dignity of the victim as a human being.[5]

Upon arraignment, appellant pleaded not guilty to both charges.[6]

The facts of this case, as narrated in the assailed July 20, 2007 Decision of the Court of Appeals, are as follows:

The government presented as its witnesses, the minor victim and Dr. Naomi Poca. The defense, on the other hand, only had accused-appellant for its witness.

THE PROSECUTION'S THEORY—

The evidence for the [S]tate discloses that "AAA" who was then only six-years old was sleeping inside their house on August 26, 2002 when her father, herein accused-appellant raped her. He undressed her and removed her panty. He also took off his pants. He inserted his penis into her vagina and made push and pull movements. She felt pain in her private organ. Her mother was not around as it was only her and her father who were home.

The next day or on August 27, 2002, accused-appellant made her hold his penis. He, on the other hand, touched her genitals and inserted his fingers into her vagina causing her to feel pain.

She related the incidents to her mother who simply gave her father a fierce piercing stare but did nothing. She also confided to her aunt, sister of her mother, who brought her to a doctor for medical examination and to the police station to report the matter.

She was examined by Dr. Yu and Dr. Aznar of the Vicente Sotto Memorial Medical Center. Since the two physicians were no longer

---

[5] *Id.* at 2.

[6] *Id.* at 17.

connected with the said hospital, it was one Dr. Naomi Poca who was called to the witness stand who, testifying on the medical certificate (Exh. "B") issued by the two doctors, came-up with the following declarations, thus —

> "Based on the medical certificate issued by Dr. Yu and Dr. Aznar, their written findings include, 1x1 cm. healed circular scar frontal lateral side left sec. to varicella, healed circular scar with the torso back abdomen sec. to varicella, 3x3 cm. wound in left foot aspect sec. to varicella, height 110.5 cm., weight, 17.65 cm., well developed nourished cooperative if not explain, tunner crescent in shape with 2x1 11:00 o'clock position with minimal amount of vaginal bleeding. The first finding, 1x1 cm. healed circular scar refers to head and nect, (sic) the second, healed 1x1 cm. circular torso back refers to torso and abdomen, the third, 3x3 cm. open wounds refers to extremities, the well developed nourished cooperative refers to general development and the next finding, Tanner 1 refers to the hymen and the last."

THE ACCUSED-APPELLANT'S THEORY —

The present charges were merely fabricated by his wife as they have been estranged from each other because she was cohabiting with another man prior to the incidents complained of. His wife prevented their daughter/victim herein from returning to their house. On or before August 26, 2002, he met his wife and requested her to allow their daughter to live with him because she did not want their child to live under immoral circumstances. His wife strongly refused telling her he could get their child only over their child's dead body. A few days hence, to his surprise, he was arrested by police authorities and was detained at the Talisay City Jail for having raped his own daughter. Their daughter never returned to their house since he and his wife separated.[7] (Citation omitted.)

After trial on the merits, the trial court convicted appellant of the crimes of rape and acts of lasciviousness both in relation to Republic Act No. 7160. The dispositive portion of the September 26, 2005 Judgment of the trial court reads as follows:

WHEREFORE, in view of the foregoing premises, the court finds accused, **EDGAR PADIGOS, GUILTY** beyond reasonable doubt

[7] *Rollo*, pp. 5-7.

of **RAPE** in relation to R.A. 7[61]0 and, considering the aggravating qualifying circumstance of relationship to and minority of the victim, imposes upon him the supreme penalty of **DEATH** by lethal injection.

Accused is, likewise, sentenced to a penalty of imprisonment of **TEN (10) YEARS and ONE (1) DAY to TWELVE (12) YEARS of *PRISION MAYOR*** for the **ACTS OF LASCIVIOUSNESS** he committed and found GUILTY beyond reasonable doubt.

In addition, Accused is ordered to pay the victim, [AAA], the following amounts:

1.) ₱50,000.00, as damages *ex delito*;

2.) ₱50,000.00, as moral damages;

3.) ₱25,000.00, as exemplary damages;

The Department of Social Welfare and Development, Region VII, Cebu City is ordered to take custody of the minor, [AAA], for her to undergo rehabilitation.[8]

Hoping for a reversal of his conviction, appellant elevated his case to the Court of Appeals which denied his appeal and affirmed with modification the trial court judgment in a Decision dated July 20, 2007, the dispositive portion of which states:

WHEREFORE, the appealed Decision of the court *a quo* is **AFFIRMED** with modification as to the penalty.

Accused-appellant is found guilty of the crimes of Rape and Acts of Lasciviousness in relation to Republic Act 7610 and is hereby sentenced to *reclusion perpetua* for the first crime and to an indeterminate penalty of twelve (12) years, ten (10) months and twenty (2[0]) days as minimum to seventeen (17) years and four (4) months as maximum of *reclusion temporal*.

The award of civil damages is retained.[9] (Italicization added.)

Hence, appellant now seeks redress with this Court through the present appeal wherein he merely adopted the Appellant's Brief he submitted to the Court of Appeals in lieu of submitting

---

[8] CA *rollo*, p. 38.

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

a Supplemental Brief as permitted by this Court. In this appeal, appellant puts forward a single assignment of error, to wit:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED AGAINST HIM DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[10]

In his appeal, appellant asserts that the trial court should not have given full credence and weight to the testimony of AAA because she allegedly failed to give a straightforward and consistent narration of the events surrounding the incidents at issue. Appellant maintains that AAA's testimony is not worthy of belief because it allegedly lacked details as to how the crimes of rape and acts of lasciviousness were actually committed.

We are not persuaded.

Appellant's appeal is hinged principally on the credibility of the victim's testimony. Appellant insists that AAA's testimony is not credible enough to warrant appellant's conviction of the two felonies attributed to him.

In the recent case of *People v. Bosi*,[11] we reiterated a long held principle that when the credibility of the victim is at issue, the Court gives great weight to the trial court's assessment. Expounding on the said principle, we declared in that case that the trial court's finding of facts is even conclusive and binding if it is not shown to be tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The wisdom behind this rule is that the trial court had the full opportunity to observe directly the witnesses' deportment and manner of testifying, thus, it is in a better position than the appellate court to properly evaluate testimonial evidence.

In the case at bar, both the trial court and the Court of Appeals categorically held that AAA is a credible witness and that her testimony deserves full faith and belief. In spite of the brevity

---

[10] CA *rollo*, p. 20.

[11] G.R. No. 193665, June 25, 2012.

of her testimony, the trial court considered the same as delivered in a clear and straightforward manner that is devoid of any pretense or equivocation.

An examination of the transcript of AAA's testimony would indicate that the crime of rape was indeed committed by appellant. The relevant portion of said testimony reads:

PROS. CALDERON:

Q. Now, you were then in your house at that time. Can you remember now?

A. Yes, Sir.

Q. While you were sleeping, can you remember what happened to you?

A. Yes, Sir.

Q. Can you tell this court what happened to you?

A. I was raped, Sir.

Q. Who raped you?

A. My father.

Q. Is your father around?

A. Yes, Sir.

Q. Can you please point him out?

A. That one.

COURT INTERPRETER:

The witness is pointing to the accused who responded to his name as Edgar Padigos.

PROS. CALDERON:

Q. Do you understand the word rape?

A. Yes.

Q. What do you understand by the word rape?

A. [It is a] malicious word.

Q. What did your father do to you?

A. I was raped.

Q. How did he do it?

A. His penis was inserted in my vagina, Sir.

Q. How did he do it?

A. He made push and pull movements.

Q. What about your dress, were you still wearing it?

A. He undressed me, Sir.

Q. What about your panty?

A. Also without my panty.

Q. What about his pants?

A. He also took off his pants.

Q. When your father raped you, what did you do?

A. Very painful, Sir.

Q. Where did you feel the pain?

A. In my vagina.[12]

Pertinently, this Court has repeatedly stressed that no young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice.[13]

Article 266-A of the Revised Penal Code which deals with the offense of rape provides:

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:

---

[12] TSN, February 7, 2005, pp. 4-5.

[13] *People v. Osma*, G.R. No. 187734, August 29, 2012.

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.

As cemented in jurisprudence, the elements of rape under the said provision of law are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.[14] Thus, sexual intercourse with a girl below 12 years old, which is the subject of this case, is considered as statutory rape in this jurisdiction.

According to the sixth paragraph of Article 266-B, the death penalty shall be imposed if the crime of rape is committed "when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim."

It would appear from the death penalty imposed by the trial court that it found appellant guilty of qualified rape. This ruling was affirmed by the Court of Appeals, albeit reduced to *reclusion perpetua* in accordance with Republic Act No. 9346.

After a careful review of the records of this case, we are persuaded that appellant is indeed guilty of qualified rape. In

---

[14] *People v. Manjares*, G.R. No. 185844, November 23, 2011, 661 SCRA 227, 242.

People v. Pruna,[15] we formulated a set of guidelines that will serve as a jurisprudential benchmark in appreciating age either as an element of the crime or as a qualifying circumstance in order to address the seemingly conflicting court decisions regarding the sufficiency of evidence of the victim's age in rape cases. The *Pruna* guidelines are as follows:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

   a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

   b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

   c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.[16] (Citation omitted.)

[15] 439 Phil. 440 (2002).

[16] *Id.* at 470-471.

In the case at bar, the prosecution may have been unable to present AAA's birth certificate or other authentic document such as a baptismal certificate during trial, however, that failure to present relevant evidence will not deter this Court from upholding that qualified rape was indeed committed by appellant because he himself admitted, in his counter-affidavit which formed part of the evidence for the defense and the contents of which he later affirmed in his testimony in open court, that AAA was below 7 years old around the time of the rape incident. In the Court's view, this admission from appellant, taken with the testimony of the victim, sufficiently proved the victim's minority.

Parenthetically, we are not unmindful of the observation of the trial court, to wit:

> Back to the instant case, by no stretch of even a fertile imagination can this Court, observing her frail and diminutive mien, hold that AAA, at the age of 6 when she was raped, could be mistaken to be above eleven (11) years old for the offense to fall under simple rape, much more could it be mistaken that she was above 17 years old, for the accused to be saved from the supreme penalty: death. The offense of rape could, thus, only fall under subparagraph d), par. 1), ART. 266-A of R.A. 7877 – The Anti-Rape Law of 1997 (statutory rape).[17]

Anent the charge of acts of lasciviousness, Article 336 of the Revised Penal Code provides:

> Art. 336. *Acts of lasciviousness.* — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

Therefore, the crime of acts of lasciviousness is composed of the following elements:

> (1) That the offender commits any act of lasciviousness or lewdness;
>
> (2) That it is done under any of the following circumstances:

---

[17] CA *rollo*, p. 36.

a. By using force or intimidation; or

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

c. When the offended party is under 12 years of age; and

(3) That the offended party is another person of either sex.[18] (Citation omitted.)

Utilizing the foregoing definition as a guide, it is beyond cavil that appellant's act of making AAA hold his penis and, subsequently, of touching her vagina with his fingers can be both characterized as constituting acts of lasciviousness. As previously discussed, the moral influence or ascendancy exercised by appellant over AAA takes the place of the element of force and intimidation.

AAA's testimony in this regard provides adequate basis for appellant's guilt:

PROS. CALDERON:

Q. What about the following day?

A. He told me to hold his penis.

Q. That was the next day?

A. Yes, Sir.

Q. That would be on August 27, 2002?

A. Yes, Sir.

Q. When he made you hold his penis, what happened?

A. My father also touched my vagina.

Q. How did he touch your vagina?

A. He touched all the parts of my vagina.

Q. Did he insert his fingers?

---

[18] *Flordeliz v. People*, G.R. No. 186441, March 3, 2010, 614 SCRA 225, 240-241.

A. Yes, Sir.

Q. What did you feel?

A. I felt pain, Sir.[19]

In view of the foregoing, we therefore affirm the conviction of appellant for qualified rape and acts of lasciviousness. Further, he is to suffer the penalty imposed by the Court of Appeals which is *reclusion perpetua*.

The amount of actual damages and moral damages awarded by the trial court and affirmed by the Court of Appeals which is ₱50,000.00 each is correct. However, in line with jurisprudence, the award of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00.[20]

WHEREFORE, premises considered, the Decision dated July 20, 2007 of the Court of Appeals in CA-G.R. CEB-CR.-H.C. No. 00344, finding appellant Edgar Padigos guilty in Criminal Case Nos. CBU-64584 and CBU-64585, is hereby **AFFIRMED** with the **MODIFICATIONS** that:

(1) The award of exemplary damages is increased to Thirty Thousand Pesos (₱30,000.00); and

(2) Appellant Edgar Padigos is ordered to pay the private offended party interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

Bersamin, Villarama, Jr., Perez,[*] and *Reyes, JJ.,* concur.

---

[19] TSN, February 7, 2005, pp. 5-6.

[20] *People v. Ortega*, G.R. No. 186235, January 25, 2012, 664 SCRA 273, 292.

[*] Per Special Order No. 1385 dated December 4, 2012.

FIRST DIVISION

[G.R. No. 181623. December 5, 2012]

ALEJANDRO BINAYUG and ANA BINAYUG, *petitioners, vs.* **EUGENIO UGADDAN, NORBERTO UGADDAN, PEDRO UGADDAN, ANGELINA UGADDAN, TERESO UGADDAN, DOMINGA UGADDAN, GERONIMA UGADDAN, and BASILIA LACAMBRA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; RAISES ONLY QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. — According to Rule 41, Section 2(c) of the Rules of Court, a decision or order of the RTC may be appealed to the Supreme Court by petition for review on *certiorari* under Rule 45, provided that such petition raises only questions of law. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.

2. CIVIL LAW; PUBLIC LAND ACT; HOMESTEAD; A CONTRACT WHICH PURPORTS TO ALIENATE OR ENCUMBER ANY HOMESTEAD WITHIN THE FIVE-YEAR PROHIBITORY PERIOD IS VOID FROM ITS EXECUTION. — Section 118 of the Public Land Act, as amended, reads that "[e]xcept in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or

alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant x x x." The provisions of law are clear and explicit. A contract which purports to alienate, transfer, convey, or encumber any homestead within the prohibitory period of five years from the date of the issuance of the patent is void from its execution. In a number of cases, this Court has held that such provision is mandatory.

3. ID.; OBLIGATIONS AND CONTRACTS; VOID CONTRACT; PRODUCES NO LEGAL EFFECT AND IS NOT SUSCEPTIBLE OF RATIFICATION. — In the present case, it is settled that Homestead Patent No. V-6269 was issued to Gerardo on **January 12, 1951** and the Absolute Deed of Sale between Gerardo and Juan was executed on **July 10, 1951**, after a lapse of only **six months**. Irrefragably, the alienation of the subject properties took place within the five-year prohibitory period under Section 118 of the Public Land Act, as amended; and as such, the sale by Gerardo to Juan is null and void right from the very start. As a void contract, the Absolute Deed of Sale dated July 10, 1951 produces no legal effect whatsoever in accordance with the principle "*quod nullum est nullum producit effectum*," thus, it could not have transferred title to the subject properties from Gerardo to Juan and there could be no basis for the issuance of TCT No. T-106394 in Juan's name. A void contract is also not susceptible of ratification, and the action for the declaration of the absolute nullity of such a contract is imprescriptible.

4. ID.; PUBLIC LAND ACT; HOMESTEAD; IN CASES WHERE THE HOMESTEAD HAS BEEN THE SUBJECT OF VOID CONVEYANCES, THE LAW STILL REGARDS THE ORIGINAL OWNER AS THE RIGHTFUL OWNER SUBJECT TO ESCHEAT PROCEEDINGS BY THE STATE. — In *Arsenal v. Intermediate Appellate Court*, the Court adjudged that in cases where the homestead has been the subject of void conveyances, the law still regards the original owner as the rightful owner subject to escheat proceedings by the State. Still in *Arsenal*, the Court referred to *Menil v. Court of Appeals* and *Manzano v. Ocampo*, wherein the land was awarded back to the original owner notwithstanding the fact that he was equally guilty with the vendee in circumventing the law. Jurisprudence, therefore, supports the return of the

subject properties to respondents as Gerardo's heirs following the declaration that the Absolute Deed of Sale dated July 10, 1951 between Gerardo and Juan is void for being in violation of Section 118 of the Public Land Act, as amended. That the subject properties should revert to the State under Section 124 of the Public Land Act, as amended, is a non-issue, the State not even being a party herein.

APPEARANCES OF COUNSEL

Melchor A. Battung for petitioners.
Constantino B. Consigna for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated August 6, 2007 and Order[2] dated January 15, 2008 of the Regional Trial Court (RTC) of Tuguegarao City, Branch IV[3] in Civil Case No. 5395.

At the crux of this controversy are two parcels of land located in Barangay Libag, Tuguegarao, Cagayan (subject properties) covered by Original Certificate of Title (OCT) No. P-311 issued by the Registry of Deeds of Cagayan in the name of Gerardo Ugaddan (Gerardo), husband of respondent Basilia Lacambra (Basilia) and father of the other respondents Eugenio, Norberto, Pedro, Angelina, Tereso, Dominga, and Geronima, all bearing the surname Ugaddan. OCT No. P-311 particularly described the subject properties as follows:

A parcel of land, [L]ot No. 1,H-186034, containing an area of 31,682 sq.m., more or less; bounded on the North by public land on the southeast, by lot 2 of plan H-186034 and lot 9556 of Tuguegarao Cadastre; on the south by public land and on the southwest by Cagayan River;

[1] *Rollo*, pp. 17-25; penned by Presiding Judge Lyliha L. Abella-Aquino.

[2] *Id.* at 26.

[3] Designated as a Family Court.

A parcel of land of Lot No. 2, H-186034, containing an area of (1,723) sq.m., more or less. Bounded on the N., by Lot 9546 of Tuguegarao Cadastre; on the E., by Lot 9556; and on the SW., by Lot 1 of plan H-186034.[4]

Gerardo acquired title over the subject properties through the grant of Homestead Patent No. V-6269 in his favor on January 12, 1951. Said patent was registered and OCT No. P-311 was issued in Gerardo's name on March 5, 1951.[5]

Upon Gerardo's death, respondents discovered that OCT No. P-311 had been cancelled. The records of the Registry of Deeds show that Gerardo, with the consent of his wife Basilia, sold the subject properties on July 10, 1951 to Juan Binayug (Juan) for the sum of ₱3,000.00.[6] As a result of the sale, OCT No. P-311 in Gerardo's name was cancelled and Transfer Certificate of Title (TCT) No. T-106394 in Juan's name was issued. Juan was the father of petitioner Alejandro Binayug (Alejandro) and the subject properties passed on to him and his wife Ana Ugaddan Binayug (Ana) upon Juan's death.

After conducting their own investigation, respondents filed on October 22, 1998 a complaint "for declaration of nullity of title, annulment of instrument, [and] declaration of ownership with damages" against petitioners. Respondents averred that the purported sale between Gerardo and Juan was prohibited under Commonwealth Act No. 141, otherwise known as the Public Land Act, as amended; and that the Absolute Deed of Sale dated July 10, 1951 between Gerardo (with Basilia's consent) and Juan was forged. Respondents specifically alleged in their complaint[7] that:

9. The said deed of sale which led to the cancellation of OCT No. P-311 in favor of Juan Binayug has been falsified as said Gerardo Ugaddan and herein [respondent] Basilia Lacambra could legibly

---

[4] *Rollo,* p. 17.

[5] Records, pp. 9-10.

[6] *Id.* at 22.

[7] *Id.* at 1-6.

write their names but the deed of sale presented to the Registry of Deeds of Cagayan appears to have been thumbmarked;

10. [Respondents] cannot recall any deed or instrument of sale which was executed in favor of Juan Binayug in the year 1951, particularly that deed of sale dated July 10, 1951, allegedly notarized by Atty. Jose P. Carag under Doc. No. 100; Page No. 20; Book No. VII; Series of 1951 x x x;

11. The affixed [thumbmark] above the name of [respondent] Basilia Lacambra is a forgery as shown in the Technical Investigation/ Identification Report FP Case No. 98-347 of the National Bureau of Investigation [NBI], Manila x x x;

12. OCT No. P-311 having been issued pursuant to a homestead patent cannot be "alienated, transferred or conveyed after five (5) years and before twenty-five (25) years next following the issuance thereof in the year 1951, without the approval of the Secretary of Agriculture and Natural Resources x x x as annotated at the back of the same, x x x;

13. On April 8, 1997, without any legal personality or right, [petitioner] Ana Ugaddan executed a Confirmation of Sale concerning said lots embraced under [OCT No.] P-311, stating thereat that she is a surviving heir of the deceased Gerardo Ugaddan which is a falsehood as she is not related in any manner to the deceased Gerardo Ugaddan, save for the same family name, "Ugaddan", x x x;

14. Earlier in November 11, 1996, [petitioner] Ana Ugaddan filed a notice of loss of OCT No. P-311 with the Register of Deeds of Cagayan stating among others that the original duplicate copy of OCT No. P-311 was lost while in her possession, x x x;

15. Thereafter, [petitioner] Ana Ugadan petitioned for the issuance of another owner's copy of OCT No. P-311 which ultimately led to the issuance of TCT No. T-106394 in the name of Juan Binayug, deceased father of [petitioner] Alejandro Binayug;

16. The original owner's duplicate copy of OCT No. P-311 was never lost as the same has been and is still in the possession of [respondent] Basilia Lacambra, hence the manner by which [petitioners] caused the transfer of title in the name of Juan Binayug was a fraud[.][8]

---

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

Hence, respondents asserted that TCT No. T-106394 in Juan's name was void for having been obtained through fraudulent means.

Petitioners essentially denied that the Absolute Deed of Sale dated July 10, 1951 was forged and that they fraudulently obtained TCT No. T-106394. Petitioners' Answer[9] contained the following averments:

> 3. x x x that, the [respondents], except Geronima Ugaddan and Basilia Lacambra, are tenants over the parcels of land covered by TCT No. T-106394; that due to the failure of the said [respondents] to pay the agreed lease rentals, the herein [petitioners] were constrained to file an action against them at the [Department of Agrarian Reform Adjudication Board] x x x;
>
> x x x x x x x x x
>
> 8. That [respondent] Ana Ugaddan reported the loss of the owner's duplicate copy of OCT No. P-311 because when [respondents] demanded from Basilia Lacambra and her children the surrender of the said title so that [the] deed of sale in favor of Juan Binayug could be registered, they told said [petitioner] that it was lost, and when asked to sign an affidavit of loss, they also refused to do so;
>
> x x x x x x x x x
>
> 10. That if the owner's duplicate copy of said OCT No. P-311 was not actually lost, then said Basilia Lacambra and her children have only themselves to blame if the loss was reported by said Ana Ugaddan because, as above stated, when the [petitioners] demanded the surrender to them of the said title, Basilia Lacambra and her children, told them that it was lost;
>
> x x x x x x x x x
>
> 12. That after [respondents'] predecessor-in-interest had already long sold the subject property to [petitioners'] predecessor-in-interest, the former have no more existing legal rights over the same which is one of the requisites before an injunction can be issued[.][10]

---

[9] *Id.* at 18-21.

[10] *Id.* at 18-19.

During trial on the merits, respondents submitted, among other pieces of evidence, Technical Investigation/Identification Report FP Case No. 98-347 dated September 28, 1998 of the National Bureau of Investigation (NBI) to prove their allegation of fraud. According to the NBI, the thumbmark found in the original and duplicate original Absolute Deed of Sale dated July 10, 1951 did not match the specimen obtained from respondent Basilia.[11]

The RTC rendered a Decision on August 6, 2007.

The RTC found that petitioners have been in possession of the subject properties for some time now. Petitioners were able to support their testimonies with tax declarations and official receipts, proving that they and their predecessor-in-interest have been paying real property tax on the subject properties. In contrast, respondents failed to produce before the court their own tax declaration for the subject properties despite being given ample opportunity to do so; respondents merely claimed that said document was already with their lawyer. The RTC also questioned how respondents could insist on having possession of the subject properties but they could not even identify with certainty the boundaries of the same. Furthermore, the RTC gave weight to the fact that petitioners filed against respondents an agrarian case (based on allegations that respondents are agrarian tenants who failed to pay their lease rentals) and an action for malicious mischief (based on allegations that respondents destroyed the crops planted on the subject properties). The RTC stated that "[o]ne who firmly believes to be the owner of a property is expected to protect it from intruders and necessarily avail of the legal remedies to defend his rights."[12] Admittedly, respondents were acquitted of the criminal charge for malicious mischief, but the RTC herein stressed that the acquittal was because respondents' guilt was not proven beyond reasonable doubt and not because respondents did not at all commit the crime charged. Hence, the RTC was convinced that the Absolute Deed of Sale dated July 10, 1951 was genuine and in existence, actually executed by Gerardo in favor of Juan.

---

[11] *Id.* at 8.

[12] *Rollo*, p. 21.

Despite its foregoing findings, the RTC pronounced that it did not necessarily follow that the Absolute Deed of Sale dated July 10, 1951 was valid or legal. In fact, the RTC expressly declared that said Deed suffered from legal infirmities.

The RTC determined that respondent Basilia did not actually give her consent to and affix her thumbmark on said Absolute Deed of Sale, to wit:

> The first witness presented by the [respondents] is Jose Palma, an employee of the Dactyloscopic Division of the National Bureau of Investigation. He testified that in his examinations, the [thumbmark] of Basilia Lacambra in the purported deed of sale is different from her standard fingerprint. This finding was not refuted by the [petitioners]. Instead, they pointed their argument that the [thumbmark] of Gerardo is genuine and likewise affixed his [thumbmark] on the questioned deed of sale and it is placed a little bit above the name of Basilia. [Petitioners'] theory in a nutshell is that, Gerardo laid his thumbmarks on both his name and of Basilia. They however presented no evidence to prove this contention. At best, it is merely surmises. The court sees no reason either why Gerardo would utilize his own [thumbmark] in lieu of his wife['s]. If the [petitioners] claim that spouses Gerardo and Basilia were alive when the supposed deed of sale was executed, then it is presumed that both assented to the conveyance of the contested lots absent of any indication that it was only Gerardo who participated. But having found that the [thumbmark] of Basilia is spurious, the genuineness and authenticity of the deed of sale become suspect.
>
> The findings of witness-Palma is bolstered by the testimony of Guillermo Casagan when he testified that Basilia knows how to write instead of resorting to her [thumbmarks] on documents:
>
> ATTY. MARTIN
>
> x x x x x x x x x
>
> Q- Do you know whether or not Basilia Ladambra has the ability to write?
>
> A- Yes sir. She knows how to write.
>
> Q- Why do you know that she can write?
>
> A- I know that she knows how to write because she had a store before and I have often seen her write.

Q- Mr. witness, how old were you in the year 1951?

A- Thirteen years old, sir.

x x x x x x x x x

In his cross-examination, his declaration on this subject was not touched by the [petitioners'] counsel. In light of this factual milieu, the court finds that the thumbprint of Basilia Lacambra in the Absolute Deed of Sale dated July 10, 1951 is not her own. There is no dispute that Gerardo and Basilia were married. Thus, there is hardly any reason to reject that the homestead property is conjugal [in] nature. And since no consent was given by Basilia in the alleged transfer, it necessarily follows that the document has no force and effect.[13]

The RTC then declared the Absolute Deed of Sale dated July 10, 1951 as null and void for the following reasons:

First, as proven by the testimonies of [respondents'] witnesses, the marital consent was not obtained by Gerardo.

Second, Section 118 of the Public Land Law, amended by Commonwealth Act No. 456, reads as follows:

> "Section 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.
>
> "No alienation, transfer, or conveyance of any homestead after five and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources, which approval shall be denied except on constitutional and legal grounds."

On the basis of the afore-quoted section, a homestead patent cannot be alienated or encumbered within five (5) years from the approval

---

[13] *Id.* at 19-20.

of application except in favor of the government or any of its branches or institutions. Where a homestead was sold during the prohibited period, even if the sale is approved by the Director of Lands subsequently after five (5) years, the approval will not give it any valid curative effect. Such sale is illegal, inexistent, and null and void *ab initio*. The action to declare the existence of such contract will not prescribe. **As a matter of fact, the vendor never lost his title or ownership over the homestead, and there is no need for him or his heirs to repurchase the same from the vendee, or for the latter to execute a deed of reconveyance.** Of course, the purchaser may recover the price which he has paid, and where the homesteader vendor died, the recovery may be pursued as a claim filed against his estate in the corresponding proceeding.

[Petitioners] do not deny that the contested lots were originally covered by a homestead patent. It then behooves on their part to prove that the purported deed of sale was executed outside the five-year prohibitory period. Failure to do so, the court has no choice but to declare null and void the deed of sale executed by spouses Gerardo and Basilia in favor of Juan Binayug.

Evident from the records is that the issuance of the Patent was on 12 January 1951. The registration thereof to the Register of Deeds was on 5 March 1951 and the supposed deed of sale was executed on July 10, 1951. From the pleadings and testimonies of [petitioners] and their witness, none can be carved out from them that the sale was beyond the prohibitory period. In fact, they seemed to have evaded this issue. Coupled in considering the relevant months in the year 1951, months which are too close to shield [petitioners] from Section 118, this court can only conclude that even if it is to presume the genuineness of the deed of sale, the conveyance is void as it falls within the period of five (5) years. Thus, the title obtained by the vendee-Juan Binayug, is also null and void *ab initio*. So also, where a homestead was sold during the prohibitory period of five years and upon the expiration of said period a new deed of sale was executed[,] such as a mere reproduction of the previous one, it was held that the latter deed of sale was invalid as the prior deed which intended to ratify. For the purpose of declaring such sale null and void, **neither laches nor prescription can operate for the action is imprescriptible**.[14] (Citations omitted.)

---

[14] *Id.* at 22-24.

The RTC, however, recognized petitioners' good faith and did not leave them empty handed, to wit:

> This court is convinced that [petitioners] firmly believe in good faith that the land is theirs when they took over from their parents. It however agonizes over the fact that the law is against them as their forebears' ignorance of the law has finally caught them. Of course all [is not] lost. Even [if] we are to declare the sale as invalid, they can recover the price on the basis of the cited jurisprudence. Considering that the sale was consummated in 1951, it is beyond the sphere of competence of anybody to know the price. The court will then grant a reasonable amount of ₱100,000 for the Thirty-Three Thousand Four-hundred Five (33,405) square meters of land.[15]

Ultimately, the RTC decreed thus:

> WHEREFORE, premises considered, **Transfer Certificate of Title No. T-106394** issued in the name of **Juan Binayug** is declared null and void and is hereby ordered cancelled. **Original Certificate of Title No. P-311 in the name of Gerardo Ugaddan** is declared still subsisting and valid. The Register of Deeds of the Province of Cagayan is hereby directed to cause the necessary annotations thereof. [Respondents are] hereby ordered to pay [petitioners] ₱100,000.00 as payment for the price of lots. For lack of merit, the claim for other damages is hereby dismissed.[16]

Petitioners filed a Motion for Reconsideration of the aforementioned RTC judgment arguing that the trial court contradicted itself in finding that the Absolute Deed of Sale dated July 10, 1951 is genuine and in existence, then nullifying TCT No. T-106394 in Juan's name. Petitioners likewise asserted that a Torrens title such as TCT No. T-106394 is not susceptible to collateral attack.

In an Order dated January 15, 2008, the RTC denied petitioners' Motion for Reconsideration due to lack of substantial argument.

---

[15] *Id.* at 24-25.

[16] *Id.* at 25.

Aggrieved, petitioners immediately resorted to this Court by filing the instant Petition under Rule 45 of the Rules of Court, which presented a lone assignment of error:

THE HONORABLE REGIONAL TRIAL COURT BRANCH IV OF TUGUEGARAO CITY GRAVELY ERRED IN APPLYING THE PROVISION OF SECTION 118 OF THE PUBLIC LAND ACT INSTEAD OF APPLYING THE PROVISION OF SECTION 124 OF THE SAME LAW.[17]

Before discussing the merits of the case, the Court notes that petitioners no longer appealed the RTC judgment before the Court of Appeals, going directly before this Court through a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

According to Rule 41, Section 2(c)[18] of the Rules of Court, a decision or order of the RTC may be appealed to the Supreme Court by petition for review on *certiorari* under Rule 45, provided that such petition raises only questions of law.[19] A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when

---

[17] *Id.* at 10.

[18] Section 2. *Modes of Appeal*. x x x (c) *Appeal by certiorari*. —In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

[19] Section 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.[20]

Petitioners raise and argue only one issue in their Petition: whether or not Section 118 of the Public Land Act is applicable to their case. They no longer challenge the appreciation of evidence and factual conclusions of the RTC. Consequently, petitioners' resort directly to this Court via the instant Petition for Review on *Certiorari* is in accordance with procedural rules.

Nonetheless, the Court finds no merit in the Petition and denies the same.

To reiterate, Section 118 of the Public Land Act, as amended, reads that "[e]xcept in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant x x x." The provisions of law are clear and explicit. A contract which purports to alienate, transfer, convey, or encumber any homestead within the prohibitory period of five years from the date of the issuance of the patent is void from its execution. In a number of cases, this Court has held that such provision is mandatory.[21]

In the present case, it is settled that Homestead Patent No. V-6269 was issued to Gerardo on **January 12, 1951** and the Absolute Deed of Sale between Gerardo and Juan was executed on **July 10, 1951**, after a lapse of only **six months**. Irrefragably, the alienation of the subject properties took place within the five-year prohibitory period under Section 118 of the Public

---

[20] *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank and Trust Co.*, 501 Phil. 516, 526 (2005).

[21] *Arsenal v. Intermediate Appellate Court*, 227 Phil. 36, 45-46 (1986).

Land Act, as amended; and as such, the sale by Gerardo to Juan is null and void right from the very start.[22]

As a void contract, the Absolute Deed of Sale dated July 10, 1951 produces no legal effect whatsoever in accordance with the principle "*quod nullum est nullum producit effectum*,"[23] thus, it could not have transferred title to the subject properties from Gerardo to Juan and there could be no basis for the issuance of TCT No. T-106394 in Juan's name. A void contract is also not susceptible of ratification, and the action for the declaration of the absolute nullity of such a contract is imprescriptible.[24]

Petitioners contend that only the State can bring action for violation of Section 118 of the Public Land Act, as amended. Moreover, Section 124 of the same Act explicitly provides for the consequence of such a violation:

> Section 124. Any acquisition, conveyance, alienation, transfer, or other contract made or executed in violation of any of the provisions of Sections one hundred and eighteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three of this Act shall be unlawful and null and void from its execution and shall produce the effect of annulling and cancelling the grant, title, patent or permit originally issued, recognized or confirmed, actually or presumptively, and cause the reversion of the property and its improvement to the State.

Petitioners' contentions are not novel.

In *De los Santos v. Roman Catholic Church of Midsayap*,[25] a homestead patent covering a tract of land in Midsayap, Cotabato was granted to Julio Sarabillo (Sarabillo) on December 9, 1938. OCT No. RP-269 was issued to Sarabillo on March 17, 1939. On December 31, 1940, Sarabillo sold two hectares of land to

---

[22] *PVC Investment & Management Corporation v. Borcena*, 507 Phil. 668, 680 (2005).

[23] *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta*, G.R. No. 165748, September 14, 2011, 657 SCRA 555, 580.

[24] *Id.*

[25] 94 Phil. 405 (1954).

the Roman Catholic Church of Midsayap (Church). Upon Sarabillo's death, Catalina de los Santos (De los Santos) was appointed administratrix of his estate. In the course of her administration, De los Santos discovered that Sarabillo's sale of land to the Church was in violation of Section 118 of the Public Land Act, prompting her to file an action for the annulment of said sale. The Church raised as defense Section 124 of the Public Land Act, as well as the principle of *pari delicto*. The Court, in affirming the CFI judgment favoring De los Santos, ratiocinated:

> The principles thus invoked by [the Church, *et al.*] are correct and cannot be disputed. They are recognized not only by our law but by our jurisprudence. Section 124 of the Public Land Act indeed provides that any acquisition, conveyance or transfer executed in violation of any of its provisions shall be null and void and shall produce the effect of annulling and cancelling the grant or patent and cause the reversion of the property to the State, and the principle of *pari delicto* has been applied by this Court in a number of cases wherein the parties to a transaction have proven to be guilty of having effected the transaction with knowledge of the cause of its invalidity. But we doubt if these principles can now be invoked considering the philosophy and the policy behind the approval of the Public Land Act. The principle underlying *pari delicto* as known here and in the United States is not absolute in its application. It recognizes certain exceptions one of them being when its enforcement or application runs counter to an avowed fundamental policy or to public interest. As stated by us in the Rellosa case, "This doctrine is subject to one important limitation, namely, "whenever public policy is considered advanced by allowing either party to sue for relief against the transaction."
>
> The case under consideration comes within the exception above adverted to. Here [De Los Santos] desires to nullify a transaction which was done in violation of the law. Ordinarily the principle of *pari delicto* would apply to her because her predecessor-in-interest has carried out the sale with the presumed knowledge of its illegality, but **because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from re-acquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated.** This right cannot be waived. "It is

not within the competence of any citizen to barter away what public policy by law seeks to preserve". **We are, therefore, constrained to hold that [De Los Santos] can maintain the present action it being in furtherance of this fundamental aim of our homestead law.**

As regards the contention that because the immediate effect of the nullification of the sale is the reversion of the property to the State[, De Los Santos] is not the proper party to institute it but the State itself, that is a point which we do not have, and do not propose, to decide. That is a matter between the State and the Grantee of the homestead, or his heirs. **What is important to consider now is who of the parties is the better entitled to the possession of the land while the government does not take steps to assert its title to the homestead**. **Upon annulment of the sale**, **the purchaser's claim is reduced to the purchase price and its interest**. **As against the vendor or his heirs, the purchaser is no more entitled to keep the land than any intruder**. Such is the situation of the [the Church, *et al.*]. Their right to remain in possession of the land is no better than that of [De Los Santos] and, therefore, they should not be allowed to remain in it to the prejudice of [De Los Santos] during and until the government takes steps toward its reversion to the State.[26] (Emphases supplied, citations omitted.)

In *Arsenal v. Intermediate Appellate Court*,[27] the Court adjudged that in cases where the homestead has been the subject of void conveyances, the law still regards the original owner as the rightful owner subject to escheat proceedings by the State. Still in *Arsenal*, the Court referred to *Menil v. Court of Appeals*[28] and *Manzano v. Ocampo*,[29] wherein the land was awarded back to the original owner notwithstanding the fact that he was equally guilty with the vendee in circumventing the law.

Jurisprudence, therefore, supports the return of the subject properties to respondents as Gerardo's heirs following the

---

[26] *Id.* at 410-412.

[27] *Supra* note 21 at 51.

[28] 173 Phil. 584 (1978).

[29] 111 Phil. 283 (1961).

declaration that the Absolute Deed of Sale dated July 10, 1951 between Gerardo and Juan is void for being in violation of Section 118 of the Public Land Act, as amended. That the subject properties should revert to the State under Section 124 of the Public Land Act, as amended, is a non-issue, the State not even being a party herein.

As a final note, although not assigned as an error in their Petition, petitioners raise as an issue and argue extensively in their Memorandum that they had acquired acquisitive prescription over the subject properties. The issue of prescription involves questions of fact, *i.e.*, when and for how long petitioners have possessed the subject properties and whether their possession is open, continuous, exclusive, notorious, and adverse. The RTC's findings that petitioners and their predecessor-in-interest have been in possession of the subject properties for "quite some time now" or "through the years" are clearly insufficient. To resolve the issue of prescription, the Court must necessarily go through the evidence presented by the parties, which it cannot do. This Court is not a trier of facts. To reiterate, the Court only allowed petitioners to come directly before this Court from the RTC through the instant Petition because they raise a pure question of law, namely, the applicability of Sections 118 and 124 of the Public Land Act, as amended. The Court cannot take cognizance of the issue of acquisitive prescription.

WHEREFORE, the Petition is hereby **DENIED.** The Decision dated August 6, 2007 and Order dated January 15, 2008 of the Regional Trial Court of Tuguegarao City, Branch IV in Civil Case No. 5395 are hereby **AFFIRMED.**

Costs against petitioners.

SO ORDERED.

Bersamin, Villarama, Jr., Perez,[*] and *Reyes, JJ.,* concur.

---

[*] Per Special Order No. 1385 dated December 4, 2012.

THIRD DIVISION

[G.R. No. 181891. December 5, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ZOOMAK R.P.C., INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; REPUBLIC ACT NO. 26; RECONSTITUTION OF TITLE; NATURE. —** The reconstitution of a certificate of title under Republic Act (R.A.) 26 denotes the restoration in the original form and condition of a lost or destroyed instrument, thus attesting the title of a person to a piece of land. Its purpose is to have the title reproduced in exactly the same way it was before its loss or destruction after observing the procedures prescribed by law.

2. **ID.; ID.; ID.; ID.; THE CERTIFICATIONS OF THE LAND REGISTRATION AUTHORITY AND THE REGIONAL TRIAL COURT ARE ESSENTIAL PROOFS OF THE EXISTENCE OF THE LOST TITLE IN CASE AT BAR. —** [T]he Government did not object to the admission of the separate LRA and RTC certifications when they were presented and offered in evidence at the hearing of the reconstitution case. The rule is that when the adverse party fails to object to the evidence when it is offered, such party may be deemed to agree to its admission. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. The OSG of course argues that admissibility is different from probative value and that the certifications mentioned are of no value to the application for reconstitution of title. But the determination of probative value or the evidentiary weight of a piece of evidence depends, not on the party making a belated objection to such evidence, but on the court or courts that decide the merit of the case. Here, both the trial court and the CA found such certifications worthy of belief and essential proof of the existence of the lost title that respondent sought to reconstitute. Indeed, these courts can under Section 2(f) of R.A. 26 consider the LRA Certification of August 28, 1997 as evidence that Lot 1950 was issued Decree 416517 pursuant to the decision in

the cadastral case. They may also consider the RTC Certification of the same date as evidence that the docket entry of Lot 1950 with Decree 416517 appeared in Teresa Macawili's name.

3. ID.; ID.; ID.; ID.; THE LOT PLAN AND ITS TECHNICAL DESCRIPTIONS ARE NOT BY THEMSELVES SOURCES FOR RECONSTITUTION OF TITLE UNDER SECTION 2(f). — With respect to the issue on the LRA's non-submission of a report on the plan and technical descriptions, the RTC considered the non-submission as a waiver on the part of the LRA, an agency of oppositor Republic, of the opportunity to contest their correctness when it failed to submit the requested report despite being furnished with all the documents it needed. The OSG of course insists that the RTC should have used its compulsory processes to extract compliance. But the RTC cannot be faulted because the plan for Lot 1950 and its technical descriptions are mere additional requirements of the law if reconstitution is to be made under Section 2(f), and not by themselves sources for reconstitution of title.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

D E C I S I O N

ABAD, *J.*:

This case concerns the reconstitution of a certificate of title from a source other than a copy of said certificate of title or of the decree of registration.

The Facts and the Case

On January 7, 1930 the land registration court of Sta. Cruz, Laguna, rendered a decision in a cadastral case (GLRO Cad. Rec. 201, Cad. Case 10), adjudicating Lot 1950 of the Longos Cadastre, Laguna, having an area of almost one hectare, in favor of one Teresa Macawili. On December 26, 1930 the Court issued Decree 416517 in her favor. During World War II, however, Teresa Macawili's copy of the Original Certificate

Title (OCT) and the copy of the Register of Deeds (RD) covering the lot were lost or destroyed.

In 1996 respondent Zoomak R.P.C., Inc. (Zoomak) bought the land from Nestor Macawili, Jr., who in turn had bought it from his uncle, Galicano Macatangga, Teresa Macawili's sole heir.[1] On February 26, 1998 Zoomak filed with the Regional Trial Court (RTC) of Sta. Cruz, Laguna, a petition for reconstitution of the original or RD copy of the title of the land, the number of which was unknown, as well as the owner's duplicate copy.

On January 18, 2000 the RTC granted Zoomak's petition and ordered the Laguna RD to reconstitute the OCT covering the subject property. But the Republic of the Philippines, represented by the Office of the Solicitor General (OSG), appealed the order to the Court of Appeals (CA). On May 31, 2007 the CA dismissed the appeal and affirmed the RTC Decision, hence, this petition.

The Issue Presented

The only issue presented in this case is whether or not the CA erred in affirming the RTC's Decision that granted Zoomak's application for the reconstitution of Teresa Macawili's lost title over the subject property.

The Ruling of the Court

The reconstitution of a certificate of title under Republic Act (R.A.) 26[2] denotes the restoration in the original form and condition of a lost or destroyed instrument, thus attesting the title of a person to a piece of land. Its purpose is to have the title reproduced in exactly the same way it was before its loss or destruction after observing the procedures prescribed by law.[3]

---

[1] CA *rollo*, p. 49.

[2] ENTITLED AN ACT PROVIDING A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATES OF TITLE LOST OR DESTROYED.

[3] *Republic of the Philippines v. Court of Appeals*, 368 Phil. 412, 420 (1999).

One of the evidence Zoomak presented is a Land Registration Authority (LRA) certification dated August 28, 1997. The certification stated that, based on LRA records, on December 26, 1930 the land registration court of Sta. Cruz, Laguna, issued in a cadastral case before it Decree 416517 covering Lot 1950 in favor of Teresa Macawili. The OSG contends, however, that the certification has no force and effect and cannot bind the LRA since it was not signed by the Acting Chief of the Ordinary and Cadastral Decree Division, the officer authorized to issue the same for and in behalf of the LRA Administrator. The OSG also points out that the RTC Certification dated August 28, 1997 adjudicating Lot 1950 in favor of Teresa Macawili was a mere photocopy.

But, notably, the Government did not object to the admission of the separate LRA and RTC certifications when they were presented and offered in evidence at the hearing of the reconstitution case. The rule is that when the adverse party fails to object to the evidence when it is offered, such party may be deemed to agree to its admission. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[4]

The OSG of course argues that admissibility is different from probative value and that the certifications mentioned are of no value to the application for reconstitution of title. But the determination of probative value or the evidentiary weight of a piece of evidence depends, not on the party making a belated objection to such evidence, but on the court or courts that decide the merit of the case.[5]

Here, both the trial court and the CA found such certifications worthy of belief and essential proof of the existence of the lost title that respondent sought to reconstitute. Indeed, these courts

---

[4] *Interpacific Transit, Inc. v. Aviles*, 264 Phil, 753, 760 (1990).

[5] Evidence (A Restatement for the Bar), Willard B. Riano, 2006, p. 16; citing *Heirs of Lourdes Saez Sabanpan v. Comorposa*, 456 Phil. 161, 172 (2003).

can under Section 2(f) of R.A. 26[6] consider the LRA Certification of August 28, 1997 as evidence that Lot 1950 was issued Decree 416517 pursuant to the decision in the cadastral case. They may also consider the RTC Certification of the same date as evidence that the docket entry of Lot 1950 with Decree 416517 appeared in Teresa Macawili's name.

The OSG likewise contends that the RD's Certification of September 16, 1997, which states that Lot 1950 was not covered by any title, serves as proof that such lot has never been titled. But, as the CA aptly held, such certification merely states that Lot 1950 was not covered by any title as of September 16, 1997. The same is true with the *Kasulatan ng Bilihang Patuluyan ng Lupa* and *Kasulatan ng Pagbibilihan*. This private document merely shows that Lot 1950 was not covered by a registered title at the time the transaction was entered into. These private documents merely show that Lot 1950 was not registered at the time of their execution, precisely because the title was yet to be reconstituted following its loss or destruction. These documents could not possibly be taken as conclusive evidence that Lot 1950 has never been issued a registered title in the past as the OSG would have it.

---

[6] **Section 2.** Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;
(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;
(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;
(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;
(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and
(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title. (Emphasis ours)

With respect to the issue on the LRA's non-submission of a report on the plan and technical descriptions, the RTC considered the non-submission as a waiver on the part of the LRA, an agency of oppositor Republic, of the opportunity to contest their correctness when it failed to submit the requested report despite being furnished with all the documents it needed. The OSG of course insists that the RTC should have used its compulsory processes to extract compliance. But the RTC cannot be faulted because the plan for Lot 1950 and its technical descriptions are mere additional requirements of the law if reconstitution is to be made under Section 2(f), and not by themselves sources for reconstitution of title.[7]

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the Court of Appeals decision in CA-G.R. CV 66572 dated May 31, 2007.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 185945. December 5, 2012]

FIDELIZA J. AGLIBOT, *petitioner, vs.* **INGERSOL L. SANTIA,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; GUARANTY; THE LIABILITY OF THE GUARANTOR IS ONLY SUBSIDIARY. — It is settled that the liability of the guarantor

[7] *Dordas v. Court of Appeals*, 337 Phil. 59, 66 (1997).

is only subsidiary, and all the properties of the principal debtor, the PLCC in this case, must first be exhausted before the guarantor may be held answerable for the debt. Thus, the creditor may hold the guarantor liable only after judgment has been obtained against the principal debtor and the latter is unable to pay, "for obviously the 'exhaustion of the principal's property' — the benefit of which the guarantor claims — cannot even begin to take place before judgment has been obtained." This rule is contained in Article 2062 of the Civil Code, which provides that the action brought by the creditor must be filed against the principal debtor alone, except in some instances mentioned in Article 2059 when the action may be brought against both the guarantor and the principal debtor.

2. ID.; ID.; ID.; A GUARANTY AGREEMENT MUST BE IN WRITING. — [C]oncerning a guaranty agreement, which is a promise to answer for the debt or default of another, the law clearly requires that it, or some note or memorandum thereof, be in writing. Otherwise, it would be unenforceable unless ratified, although under Article 1358 of the Civil Code, a contract of guaranty does not have to appear in a public document. Contracts are generally obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present, and the Statute of Frauds simply provides the method by which the contracts enumerated in Article 1403 (2) may be proved, but it does not declare them invalid just because they are not reduced to writing. Thus, the form required under the Statute is for convenience or evidentiary purposes only.

3. ID.; ID.; ID.; MUST BE EXPRESS AND CANNOT EXTEND TO MORE THAN WHAT IS STIPULATED THEREIN. — Article 2055 of the Civil Code also provides that a guaranty is not presumed, but must be express, and cannot extend to more than what is stipulated therein. This is the obvious rationale why a contract of guarantee is unenforceable unless made in writing or evidenced by some writing. For as pointed out by Santia, Aglibot has not shown any proof, such as a contract, a secretary's certificate or a board resolution, nor even a note or memorandum thereof, whereby it was agreed that she would issue her personal checks in behalf of the company to guarantee the payment of its debt to Santia. Certainly, there is nothing shown in the Promissory Note signed by Aglibot herself remotely

containing an agreement between her and PLCC resembling her guaranteeing its debt to Santia. And neither is there a showing that PLCC thereafter ratified her act of "guaranteeing" its indebtedness by issuing her own checks to Santia.

4. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; ACCOMMODATION PARTY; THE RELATION BETWEEN AN ACCOMMODATION PARTY AND THE PARTY ACCOMMODATED IS ONE OF PRINCIPAL AND SURETY. — The relation between an accommodation party and the party accommodated is, in effect, one of principal and surety — the accommodation party being the surety. It is a settled rule that a surety is bound equally and absolutely with the principal and is deemed an original promisor and debtor from the beginning. The liability is immediate and direct. It is not a valid defense that the accommodation party did not receive any valuable consideration when he executed the instrument; nor is it correct to say that the holder for value is not a holder in due course merely because at the time he acquired the instrument, he knew that the indorser was only an accommodation party.

5. ID.; ID.; ID.; THE LIABILITY OF THE ACCOMMODATION PARTY IS PRIMARY AND UNCONDITIONAL TO A HOLDER FOR VALUE. — [I]t was held in *Aruego* that unlike in a contract of suretyship, the liability of the accommodation party remains not only primary but also unconditional to a holder for value, such that even if the accommodated party receives an extension of the period for payment without the consent of the accommodation party, the latter is still liable for the whole obligation and such extension does not release him because as far as a holder for value is concerned, he is a solidary co-debtor.

APPEARANCES OF COUNSEL

Regino Palma Raagas Esguerra & Associates Law Office for petitioner.

Villamor A. Tolete for respondent.

D E C I S I O N

REYES, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision[1] dated March 18, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 100021, which reversed the Decision[2] dated April 3, 2007 of the Regional Trial Court (RTC) of Dagupan City, Branch 40, in Criminal Case Nos. 2006-0559-D to 2006-0569-D and entered a new judgment. The *fallo* reads as follows:

> **WHEREFORE,** the instant petition is **GRANTED** and the assailed Joint Decision dated April 3, 2007 of the RTC of Dagupan City, Branch 40, and its Order dated June 12, 2007 are **REVERSED AND SET ASIDE** and a new one is entered ordering private respondent Fideliza J. Aglibot to pay petitioner the total amount of [₱]3,000,000.00 with 12% interest per annum from the filing of the Informations until the finality of this Decision, the sum of which, inclusive of interest, shall be subject thereafter to 12% annual interest until fully paid.
>
> **SO ORDERED**.[3]

On December 23, 2008, the appellate court denied herein petitioner's motion for reconsideration.

Antecedent Facts

Private respondent-complainant Engr. Ingersol L. Santia (Santia) loaned the amount of ₱2,500,000.00 to Pacific Lending & Capital Corporation (PLCC), through its Manager, petitioner Fideliza J. Aglibot (Aglibot). The loan was evidenced by a Promissory Note dated July 1, 2003, issued by Aglibot in behalf

---

[1] Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin (now also a member of this Court), concurring; *rollo*, pp. 88-94.

[2] *Id.* at 40-44.

[3] *Id.* at 93.

of PLCC, payable in one year subject to interest at 24% *per annum*. Allegedly as a guaranty or security for the payment of the note, Aglibot also issued and delivered to Santia eleven (11) post-dated personal checks drawn from her own demand account maintained at Metrobank, Camiling Branch. Aglibot is a major stockholder of PLCC, with headquarters at 27 Casimiro Townhouse, Casimiro Avenue, Zapote, Las Piñas, Metro Manila, where most of the stockholders also reside.[4]

Upon presentment of the aforesaid checks for payment, they were dishonored by the bank for having been drawn against insufficient funds or closed account. Santia thus demanded payment from PLCC and Aglibot of the face value of the checks, but neither of them heeded his demand. Consequently, eleven (11) Informations for violation of Batas Pambansa Bilang 22 (B.P. 22), corresponding to the number of dishonored checks, were filed against Aglibot before the Municipal Trial Court in Cities (MTCC), Dagupan City, Branch 3, docketed as Criminal Case Nos. 47664 to 47674. Each Information, except as to the amount, number and date of the checks, and the reason for the dishonor, uniformly alleged, as follows:

> That sometime in the month of September, 2003 in the City of Dagupan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, **FIDELIZA J. AGLIBOT**, did then and there, willfully, unlawfully and criminally, draw, issue and deliver to one Engr. Ingersol L. Santia, a METROBANK Check No. 0006766, Camiling Tarlac Branch, postdated November 1, 2003, in the amount of **[₱]50,000.00**, Philippine Currency, payable to and in payment of an obligation with the complainant, although the said accused knew full[y] well that she did not have sufficient funds in or credit with the said bank for the payment of such check in full upon its presentment, such [t]hat when the said check was presented to the drawee bank for payment within ninety (90) days from the date thereof, the same was dishonored for reason "DAIF", and returned to the complainant, and despite notice of dishonor, accused failed and/or refused to pay and/or make good the amount of said check within five (5) days banking days [sic], to the damage and prejudice

[4] *Id.* at 75-80.

of one Engr. Ingersol L. Santia in the aforesaid amount of [₱]50,000.00 and other consequential damages.[5]

Aglibot, in her counter-affidavit, admitted that she did obtain a loan from Santia, but claimed that she did so in behalf of PLCC; that before granting the loan, Santia demanded and obtained from her a security for the repayment thereof in the form of the aforesaid checks, but with the understanding that upon remittance in cash of the face amount of the checks, Santia would correspondingly return to her each check so paid; but despite having already paid the said checks, Santia refused to return them to her, although he gave her assurance that he would not deposit them; that in breach of his promise, Santia deposited her checks, resulting in their dishonor; that she did not receive any notice of dishonor of the checks; that for want of notice, she could not be held criminally liable under B.P. 22 over the said checks; and that the reason Santia filed the criminal cases against her was because she refused to agree to his demand for higher interest.

On August 18, 2006, the MTCC in its Joint Decision decreed as follows:

WHEREFORE, in view of the foregoing, the accused, **FIDELIZA J. AGLIBOT**, is hereby **ACQUITTED** of all counts of the crime of violation of the bouncing checks law on reasonable doubt. However, the said accused is ordered to pay the private complainant the sum of **[₱]3,000,000.00** representing the total face value of the eleven checks plus interest of 12% per annum from the filing of the cases on November 2, 2004 until fully paid, attorney's fees of [**₱]30,000.00** as well as the cost of suit.

SO ORDERED.[6]

On appeal, the RTC rendered a Decision dated April 3, 2007 in Criminal Case Nos. 2006-0559-D to 2006-0569-D, which further absolved Aglibot of any civil liability towards Santia, to wit:

---

[5] *Id.* at 10-11.

[6] *Id.* at 26.

WHEREFORE, premises considered, the Joint Decision of the court *a quo* regarding the civil aspect of these cases is reversed and set aside and a new one is entered dismissing the said civil aspect on the ground of failure to fulfill, a condition precedent of exhausting all means to collect from the principal debtor.

SO ORDERED.[7]

Santia's motion for reconsideration was denied in the RTC's Order dated June 12, 2007.[8] On petition for review to the CA docketed as CA-G.R. SP No. 100021, Santia interposed the following assignment of errors, to wit:

"In brushing aside the law and jurisprudence on the matter, the Regional Trial Court seriously erred:

1. In reversing the joint decision of the trial court by dismissing the civil aspect of these cases;
2. In concluding that it is the Pacific Lending and Capital Corporation and not the private respondent which is principally responsible for the amount of the checks being claimed by the petitioner;
3. In finding that the petitioner failed to exhaust all available legal remedies against the principal debtor Pacific Lending and Capital Corporation;
4. In finding that the private respondent is a mere guarantor and not an accommodation party, and thus, cannot be compelled to pay the petitioner unless all legal remedies against the Pacific Lending and Capital Corporation have been exhausted by the petitioner;
5. In denying the motion for reconsideration filed by the petitioner."[9]

In its now assailed decision, the appellate court rejected the RTC's dismissal of the civil aspect of the aforesaid B.P. 22 cases based on the ground it cited, which is that the "failure to

---

[7] *Id.* at 44.

[8] *Id.* at 90.

[9] *Id.* at 91.

fulfill a condition precedent of exhausting all means to collect from the principal debtor." The appellate court held that since Aglibot's acquittal by the MTCC in Criminal Case Nos. 47664 to 47674 was upon a reasonable doubt[10] on whether the prosecution was able to satisfactorily establish that she did receive a notice of dishonor, a requisite to hold her criminally liable under B.P. 22, her acquittal did not operate to bar Santia's recovery of civil indemnity.

> It is axiomatic that the "extinction of penal action does not carry with it the eradication of civil liability, unless the extinction proceeds from a declaration in the final judgment that the fact from which the civil liability might arise did not exist. Acquittal will not bar a civil action in the following cases: (1) where the acquittal is based on reasonable doubt as only preponderance of evidence is required in civil cases; (2) where the court declared the accused's liability is not criminal but only civil in nature[;] and (3) where the civil liability does not arise from or is not based upon the criminal act of which the accused was acquitted."[11] (Citation omitted)

The CA therefore ordered Aglibot to personally pay Santia ₱3,000,000.00 with interest at 12% *per annum*, from the filing of the Informations until the finality of its decision. Thereafter, the sum due, to be compounded with the accrued interest, will in turn be subject to annual interest of 12% from the finality of its judgment until full payment. It thus modified the MTCC judgment, which simply imposed a straight interest of 12% *per annum* from the filing of the cases on November 2, 2004 until the ₱3,000,000.00 due is fully paid, plus attorney's fees of ₱30,000.00 and the costs of the suit.

Issue

Now before the Court, Aglibot maintains that it was error for the appellate court to adjudge her personally liable for issuing her own eleven (11) post-dated checks to Santia, since she did so in behalf of her employer, PLCC, the true borrower and beneficiary of the loan. Still maintaining that she was a mere

---

[10] *Id.*

[11] *Id.*

guarantor of the said debt of PLCC when she agreed to issue her own checks, Aglibot insists that Santia failed to exhaust all means to collect the debt from PLCC, the principal debtor, and therefore he cannot now be permitted to go after her subsidiary liability.

Ruling of the Court

The petition is bereft of merit.

Aglibot cannot invoke the benefit of excussion

The RTC in its decision held that, "It is obvious, from the face of the Promissory Note x x x that the accused-appellant signed the same on behalf of PLCC as Manager thereof and nowhere does it appear therein that she signed as an accommodation party."[12] The RTC further ruled that what Aglibot agreed to do by issuing her personal checks was merely to guarantee the indebtedness of PLCC. So now petitioner Aglibot reasserts that as a guarantor she must be accorded the benefit of excussion — prior exhaustion of the property of the debtor — as provided under Article 2058 of the Civil Code, to wit:

> Art. 2058. The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor.

It is settled that the liability of the guarantor is only subsidiary, and all the properties of the principal debtor, the PLCC in this case, must first be exhausted before the guarantor may be held answerable for the debt.[13] Thus, the creditor may hold the guarantor liable only after judgment has been obtained against the principal debtor and the latter is unable to pay, "for obviously the 'exhaustion of the principal's property' — the benefit of which the guarantor claims — cannot even begin to take place

---

[12] *Id.* at 43.

[13] *Baylon v. Court of Appeals*, 371 Phil. 435, 443 (1999), citing *World Wide Insurance and Surety Co., Inc. v. Jose*, 96 Phil. 45 (1954); *Visayan Surety and Insurance Corp. v. De Laperal*, 69 Phil. 688 (1940).

before judgment has been obtained."[14] This rule is contained in Article 2062[15] of the Civil Code, which provides that the action brought by the creditor must be filed against the principal debtor alone, except in some instances mentioned in Article 2059[16] when the action may be brought against both the guarantor and the principal debtor.

The Court must, however, reject Aglibot's claim as a mere guarantor of the indebtedness of PLCC to Santia for want of proof, in view of Article 1403(2) of the Civil Code, embodying the Statute of Frauds, which provides:

Art. 1403. The following contracts are unenforceable, unless they are ratified:

x x x x x x x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

---

[14] *Id.* at 443-444, citing *Viuda de Syquia v. Jacinto*, 60 Phil. 861, 868 (1934).

[15] Art. 2062. In every action by the creditor, which must be against the principal debtor alone, except in the cases mentioned in Article 2059, the former shall ask the court to notify the guarantor of the action. The guarantor may appear so that he may, if he so desire, set up such defenses as are granted him by law. The benefit of excussion mentioned in Article 2058 shall always be unimpaired, even if judgment should be rendered against the principal debtor and the guarantor in case of appearance by the latter.

[16] Art. 2059. This excussion shall not take place:

(1) If the guarantor has expressly renounced it;

(2) If he has bound himself solidarily with the debtor;

(3) In case of insolvency of the debtor;

(4) When he has absconded, or cannot be sued within the Philippines unless he has left manager or representative;

(5) If it may be presumed that an execution on the property of the principal debtor would not result in the satisfaction of the obligation.

a) An agreement that by its terms is not to be performed within a year from the making thereof;
b) *A special promise to answer for the debt, default, or miscarriage of another*;
c) An agreement made in consideration of marriage, other than a mutual promise to marry;
d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, or such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of purchasers and person on whose account the sale is made, it is a sufficient memorandum;
e) An agreement for the leasing of a longer period than one year, or for the sale of real property or of an interest therein;
f) A representation to the credit of a third person. (Italics ours)

Under the above provision, concerning a guaranty agreement, which is a promise to answer for the debt or default of another,[17] the law clearly requires that it, or some note or memorandum thereof, be in writing. Otherwise, it would be unenforceable unless ratified,[18] although under Article 1358[19] of the Civil Code, a contract of guaranty does not have to appear in a public

[17] Article 2047 of the Civil Code defines it as follows:

By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

[18] *Prudential Bank v. Intermediate Appellate Court*, G.R. No. 74886, December 8, 1992, 216 SCRA 257, 275-276.

[19] Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

document.[20] Contracts are generally obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present, and the Statute of Frauds simply provides the method by which the contracts enumerated in Article 1403(2) may be proved, but it does not declare them invalid just because they are not reduced to writing. Thus, the form required under the Statute is for convenience or evidentiary purposes only.[21]

On the other hand, Article 2055 of the Civil Code also provides that a guaranty is not presumed, but must be express, and cannot extend to more than what is stipulated therein. This is the obvious rationale why a contract of guarantee is unenforceable unless made in writing or evidenced by some writing. For as pointed out by Santia, Aglibot has not shown any proof, such as a contract, a secretary's certificate or a board resolution, nor even a note or memorandum thereof, whereby it was agreed that she would issue her personal checks in behalf of the company to guarantee the payment of its debt to Santia. Certainly, there is nothing shown in the Promissory Note signed by Aglibot herself remotely containing an agreement between her and PLCC resembling her guaranteeing its debt to Santia. And neither is there a showing that PLCC thereafter ratified her act of "guaranteeing" its indebtedness by issuing her own checks to Santia.

Thus did the CA reject the RTC's ruling that Aglibot was a mere guarantor of the indebtedness of PLCC, and as such could

---

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person; and

(4) The cession of actions or rights proceeding from an act appearing in a public document. All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by Articles 1403, No. 2 and 1405.

[20] *Supra* note 18.

[21] *Orduña v. Fuentebella*, G.R. No. 176841, June 29, 2010, 622 SCRA 146, 158; *Municipality of Hagonoy, Bulacan v. Dumdum, Jr.*, G.R. No. 168289, March 22, 2010, 616 SCRA 315.

not "be compelled to pay [Santia], unless the latter has exhausted all the property of PLCC, and has resorted to all the legal remedies against PLCC x x x."[22]

Aglibot is an accommodation party and therefore liable to Santia

Section 185 of the Negotiable Instruments Law defines a check as "a bill of exchange drawn on a bank payable on demand," while Section 126 of the said law defines a bill of exchange as "an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer."

The appellate court ruled that by issuing her own post-dated checks, Aglibot thereby bound herself personally and solidarily to pay Santia, and dismissed her claim that she issued her said checks in her official capacity as PLCC's manager merely to guarantee the investment of Santia. It noted that she could have issued PLCC's checks, but instead she chose to issue her own checks, drawn against her personal account with Metrobank. It concluded that Aglibot intended to personally assume the repayment of the loan, pointing out that in her Counter-Affidavit, she even admitted that she was personally indebted to Santia, and only raised payment as her defense, a clear admission of her liability for the said loan.

The appellate court refused to give credence to Aglibot's claim that she had an understanding with Santia that the checks would not be presented to the bank for payment, but were to be returned to her once she had made cash payments for their face values on maturity. It noted that Aglibot failed to present any proof that she had indeed paid cash on the above checks as she claimed. This is precisely why Santia decided to deposit the checks in order to obtain payment of his loan.

The facts below present a clear situation where Aglibot, as the manager of PLCC, agreed to accommodate its loan to Santia

[22] *Rollo,* p. 92.

by issuing her own post-dated checks in payment thereof. She is what the Negotiable Instruments Law calls an accommodation party.[23] Concerning the liability of an accommodation party, Section 29 of the said law provides:

> Sec. 29. *Liability of an accommodation party*. — An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

As elaborated in *The Phil. Bank of Commerce v. Aruego*:[24]

> An accommodation party is one who has signed the instrument as maker, drawer, indorser, without receiving value therefor and for the purpose of lending his name to some other person. Such person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of the taking of the instrument knew him to be only an accommodation party. In lending his name to the accommodated party, the accommodation party is in effect a surety for the latter. He lends his name to enable the accommodated party to obtain credit or to raise money. He receives no part of the consideration for the instrument but assumes liability to the other parties thereto because he wants to accommodate another. x x x.[25] (Citation omitted)

The relation between an accommodation party and the party accommodated is, in effect, one of principal and surety — the accommodation party being the surety. It is a settled rule that a surety is bound equally and absolutely with the principal and is deemed an original promisor and debtor from the beginning. The liability is immediate and direct.[26] It is not a valid defense

---

[23] See *Stelco Marketing Corporation v. Court of Appeals*, G.R. No. 96160, June 17, 1992, 210 SCRA 51, 57 citing Agbayani, *COMMERCIAL LAWS OF THE PHILIPPINES*, 1975 ed., Vol. I.

[24] 102 SCRA 530.

[25] *Id.* at 539-540.

[26] *Garcia v. Llamas*, 462 Phil. 779, 794 (2003), citing *Spouses Gardose v. Tarroza*, 352 Phil. 797 (1998), *Palmares v. CA*, 351 Phil. 664 (1998).

that the accommodation party did not receive any valuable consideration when he executed the instrument; nor is it correct to say that the holder for value is not a holder in due course merely because at the time he acquired the instrument, he knew that the indorser was only an accommodation party.[27]

Moreover, it was held in *Aruego* that unlike in a contract of suretyship, the liability of the accommodation party remains not only primary but also unconditional to a holder for value, such that even if the accommodated party receives an extension of the period for payment without the consent of the accommodation party, the latter is still liable for the whole obligation and such extension does not release him because as far as a holder for value is concerned, he is a solidary co-debtor.

The mere fact, then, that Aglibot issued her own checks to Santia made her personally liable to the latter on her checks without the need for Santia to first go after PLCC for the payment of its loan.[28] It would have been otherwise had it been shown that Aglibot was a mere guarantor, except that since checks were issued ostensibly in payment for the loan, the provisions of the Negotiable Instruments Law must take primacy in application.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED** and the Decision dated March 18, 2008 of the Court of Appeals in CA-G.R. SP No. 100021 is hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), del Castillo,[*] *Villarama, Jr.*, and *Perez,*[**] *JJ.*, concur.

---

[27] *Ang Tiong v. Ting*, 130 Phil. 741, 744 (1968).

[28] *Sps. Gardose v. Tarroza*, 352 Phil. 797 (1998).

[*] Additional member per Raffle dated November 7, 2012 *vice* Associate Justice Lucas P. Bersamin.

[**] Acting member per Special Order No. 1385 dated December 4, 2012 *vice* Chief Justice Maria Lourdes P. A. Sereno.

SECOND DIVISION

[G.R. No. 187337. December 5, 2012]

LOADSTAR INTERNATIONAL SHIPPING, INC., *petitioner, vs.* **THE HEIRS OF THE LATE ENRIQUE C. CALAWIGAN Represented by the Legal Spouse MARITESS C. CALAWIGAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN. — [G]rave abuse of discretion is beyond the scope of appeals by *certiorari* like the one at bench. Considering that only questions of law may be raised in a Rule 45 petition for review on *certiorari*, the well-entrenched doctrine is also to the effect that questions of fact are not proper subjects in this mode of appeal. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties, and are not reviewed by this Court except when the findings are contrary with those of the lower court or quasi-judicial bodies. Since the CA's factual findings can be questioned if they are, as here, contrary to those of the lower court and/or administrative agency, we find that respondents cannot, in turn, argue that this Court has no jurisdiction to entertain the questions of fact pertinent to the grounds raised in support of LISI's petition.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA STANDARD EMPLOYMENT CONTRACT FOR FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS; COMPENSATION AND BENEFITS FOR INJURY AND ILLNESS; FOR THE SEAMAN'S CLAIM TO PROSPER, IT IS MANDATORY THAT HE BE EXAMINED BY A COMPANY-DESIGNATED PHYSICIAN WITHIN THREE DAYS FROM HIS REPATRIATION. — In *Coastal Safeway Marine Services v. Esguerra*, we ruled that x x x [Section 20-B(3) of the 2000 POEA-SEC] means that "it is the company designated-physician

who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC."

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; QUANTUM OF EVIDENCE REQUIRED TO ESTABLISH A CASE BEFORE QUASI-JUDICIAL BODIES. — Time and again, we have ruled that self-serving and unsubstantiated declarations are insufficient to establish a case before quasi-judicial bodies where the quantum of evidence required to establish a fact is substantial evidence. Often described as more than a mere scintilla, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise. To our mind, Calawigan's unsubstantiated assertion that he requested for a post-employment medical examination from LISI does not even come close to approximating the foregoing quantum of proof. Given that compliance with said requirement is mandatory and the unexplained omission thereof will bar the filing of a claim for disability benefits, the CA clearly erred when it adjudged Calawigan entitled to sickness allowance and permanent disability compensation despite his failure to abide by the procedure outlined under the POEA-SEC. As it would be fairly easy for a physician to determine whether the injury or ailment is work-related within three-days from repatriation, to ignore the requirement would set a precedent with negative repercussions which would open the floodgates to a limitless number of seafarers claiming disability benefits.

4. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA STANDARD EMPLOYMENT CONTRACT FOR FILIPINO SEAFARERS ON-BOARD OCEAN GOING VESSELS; OCCUPATIONAL DISEASE AND THE RESULTING DISABILITY; WHEN COMPENSABLE. — For an occupational disease and the resulting disability to be compensable, all of the following conditions must be satisfied under the POEA-SEC: (1) the seafarer's work must involve the risks described in the contract; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer.

5. ID.; ID.; ID.; THE RULE ON INTERPRETATION OF CONTRACTS THAT IF THE TERMS OF THE CONTRACT ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATION SHALL CONTROL, APPLIES THERETO. — Deafness is listed as an occupational disease for work in "any industrial operation having excessive noise particularly in the higher frequencies" or "any process carried on in compressed or rarified air." Sec. 32 of the POEA-SEC assigns the x x x disability grades for ear injuries or ailments x x x. Undoubtedly also applicable to the POEA-SEC, it is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control. Considering that Calawigan was only diagnosed to be suffering from "moderate bilateral sensorineural hearing loss," LISI correctly argues that the CA erred in giving credence to Dr. Mendiola's assessment of a Grade 3 disability rating which corresponds to complete loss of hearing on both ears. Absent a finding that the "ossicular disarticulation" detected on Calawigan's right ear amounts to a complete loss of the sense of hearing in one ear, it would also appear that said seafarer is not even entitled to compensation for a Grade 11 disability rating. Granted that strict rules of evidence are not applicable in claims therefor, compensation and disability benefits under the POEA-SEC cannot be awarded to ailment or injuries not falling within its purview.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; QUITCLAIMS; WHEN CONSIDERED VALID. — Although releases and quitclaims executed by employees are commonly frowned upon as being contrary to public policy, the transaction evidenced thereby is recognized as a valid and binding undertaking where the consideration therefor is credible and reasonable and the person making the waiver has done so voluntarily, with a full understanding thereof. No defect in respondent's waivers was proven in the instant case.

APPEARANCES OF COUNSEL

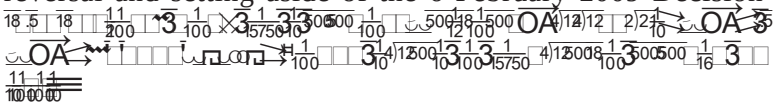
Eufracio Segundo Pagunuran and Dennis P. Ancheta for petitioner.

Ed Anthony P. Guerra for respondents.

D E C I S I O N

PEREZ, *J.*:

This Rule 45 Petition for Review on *Certiorari* seeks the reversal and setting aside of the 6 February 2009 Decision[1]



WHEREFORE, premises considered, the petition is GRANTED. The Decision dated April 30, 2008 and the Resolution dated June 18, 2008 of the NLRC, Third Division in NLRC NCR CA No. 048098 (NLRC NCR OFW-05-07-01593-00) are REVERSED and SET ASIDE.

Respondent Loadstar International Shipping, Inc. is hereby ordered to pay petitioners Heirs of the late Enrique C. Calawigan, represented by Maritess Calawigan, US$5,520.00 as sickness allowance, US$39,180.00 as permanent disability compensation which should

---

[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr. concurring.

[2] *Rollo,* pp. 33-45.

be paid in Philippine Currency equivalent to the prevailing rate of exchange at the time of payment and 10% attorney's fees.[3]

Likewise assailed is the 30 March 2009 Resolution issued in the case which denied the motion for reconsideration of the foregoing decision, for lack of merit.[4]

The Facts

On 14 September 2004, Enrique C. Calawigan (Calawigan) was hired by petitioner Loadstar International Shipping, Inc. (LISI) as a Chief Engineer for the vessel ***M/V Foxhound***, for a contract period of ten months and a basic monthly salary of US$1,380.00.[5] Deployed on 22 September 2004, Calawigan immediately commenced his shipboard employment which primarily entailed responsibilities pertaining to the operation of the vessels' engine room, maintenance of its equipment and books and supervision of the engine crew.[6] About a month prior to the expiration of his contract, however, it appears that Calawigan, citing personal reasons, filed with LISI a request for disembarkation/resignation letter postdated 20 June 2005.[7] With the approval of the request/resignation, Calawigan disembarked the vessel at the Port of Davao on 5 June 2005[8] and, upon receipt of his monetary entitlements in the sum of ₱39,441.32, executed a *Release and Quitclaim* dated 29 June 2005 in favor of LISI.[9]

On 4 July 2005, Calawigan filed against LISI the complaint for medical reimbursement, sickness allowance, permanent disability benefits, compensatory damages, moral damages, exemplary damages and attorney's fees which was docketed

---

[3] *Id.* at 44.

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

[5] *Id.* at 49. Contract of Employment.

[6] *Id.* at 50. Engine Officer's Written Instructions Prior Embarkation.

[7] *Id.* at 51.

[8] *Id.* at 62.

[9] *Id.* at 55. Release and Quitclaim.

before the arbitral level of the National Labor Relations Commission (NLRC) as NLRC NCR OFW-05-07-01593-00.[10] Contending that his shipboard employment exposed him to stress, depression, chemical irritants and rigors of the sea, Calawigan alleged that he suffered blurring of vision and a roaring sound in his ears while overhauling a piston in the vessel's engine room sometime in March 2005. In view of his worsening condition which he initially attributed to overfatigue, Calawigan claimed that he requested for a reliever and a medical check up when the vessel docked at Ishinomaki, Japan. On 16 May 2005, he was diagnosed by a Japanese doctor to be suffering from "Uveitis" and advised to disembark the vessel for medical treatment.[11]

Upon his 5 June 2005 disembarkation, Calawigan maintained that he requested for a medical examination from LISI which simply referred his request to the Social Security System (SSS) as a sickness benefit claim. As a consequence, he was supposedly constrained to consult Dr. Luis Mendiola (Dr. Mendiola) at the Manila Hearing Aid Center (MHAC) on 27 June 2005 and to undergo an ultrasonography of his right eye at the St. Luke's Medical Center (SLMC) where he was diagnosed to be suffering from "Retinal Detachment w/ Vitreous Opacities, O.D."[12] On the strength of the MHAC diagnosis that he was likewise suffering "moderate bilateral sensorineural hearing loss" in the right ear,[13] Calawigan was issued a Medical Certificate dated 5 July 2005 by Dr. Mendiola who assessed his disability as Grade 3[14] under the *POEA Standard Employment Contract for Filipino Seafarers On-Board Ocean-Going Vessels* (POEA-SEC). Ultimately, Calawigan asserted that LISI unjustifiably turned a deaf ear to his demands for payment of the disability and medical benefits due him.[15]

---

[10] *Id.* at 57-58. Undated Complaint.

[11] Records, pp. 41-42. Undated Statement of Account and Receipt.

[12] *Id.* at 46. Ultrasonography Result.

[13] *Id.* at 44-45. Audiogram and Tympanogram Report.

[14] *Id.* at 48. Medical Certificate.

[15] *Rollo,* pp. 59-72. Calawigan's 2 September 2005 Position Paper.

LISI, on the other hand, denied liability for Calawigan's monetary claims. Maintaining that the latter complained of no ailment while on-board the vessel M/V Foxhound, LISI averred that Calawigan voluntarily pre-terminated his employment contract for personal reasons, as evidenced by his request for disembarkation/resignation letter. Not having been repatriated for medical reasons, Calawigan allegedly reported to LISI's office to claim his last salary and benefits in the sum of ₱39,441.32 which he was accordingly paid as likewise evidenced by the *Release and Quitclaim* he executed in its favor on 29 June 2005. In essence, LSI claimed that Calawigan did not sustain any injury or illness in the course of his employment and, as a consequence, was not entitled to medical reimbursement, sickness allowance and permanent disability benefits, much more to the compensatory damages, moral damages, exemplary damages and attorney's fees sought in the complaint.[16]

On 28 December 2005, Labor Arbiter Veneranda C. Guerrero (Labor Arbiter) rendered a decision, dismissing Calawigan's complaint for lack of merit. Finding no showing in the record that said seafarer was repatriated for medical reasons on account of an illness or injury suffered while on board M/V Foxhound, the Labor Arbiter brushed aside the claim for medical reimbursement, sickness allowance and permanent disability benefits on the additional ground that Calawigan's disability was not assessed by a company-designated physician as required under Sec. 20-B of the POEA-SEC. Absent the names of the doctor and hospital as well as the time and date of consultation in the Statement of Account supposedly issued to Calawigan in Ishinomaki, Japan, the Labor Arbiter also discounted the probative value of said document which was additionally found to contain typewritten entries "markedly similar, if not the same as the typewritten entries in the complaint form."[17]

Dissatisfied with the foregoing decision, Calawigan perfected the appeal which was docketed as NLRC NCR CA No. 048098-06

---

[16] *Id.* 73-78. LISI's 1 September 2005 Position Paper.

[17] *Id.* at 102-108. Labor Arbiter's Decision.

before the Third Division of the NLRC. In view of his death from a heart attack during the pendency of his appeal, Calawigan was, however, substituted in the case by his heirs, namely, his wife, respondent Maritess C. Calawigan, and their minor daughter, respondent Rikki Jule C. Calawigan. On 30 April 2008, the NLRC rendered a decision, denying the appeal for lack of merit and affirming *in toto* the Labor Arbiter's decision dated 28 December 2005. Finding that Calawigan failed to establish that he was repatriated for medical reasons, the NLRC ruled that said seafarer's monetary claims were correctly dismissed for lack of showing that his moderate hearing loss was attributable to his working conditions and that he submitted himself for a post-employment medical examination by a company-designated physician within three days from repatriation. Echoing the Labor Arbiter's rejection thereof, the Statement of Account Calawigan claimed he was issued in Ishinomaki, Japan was also pronounced to be of dubious authenticity by the NLRC.[18]

Unfazed by the NLRC's 18 June 2008 denial of their motion for reconsideration of the foregoing decision,[19] ***respondents*** Heirs of Enrique C. Calawigan filed a Petition for *Certiorari* under Rule 65 which was docketed as CA-G.R. SP No. 105075 before the CA.[20] On 6 February 2009, the CA's Fifth Division rendered the herein assailed decision, reversing the NLRC's decision upon the following findings and conclusions: (a) the entries made in Japanese characters in the Statement of Account indicate that Calawigan was treated for an eye complaint which was confirmed by the results of the ultrasonography he underwent at the SLMC; (b) complete deafness resulting from working conditions involving any industrial operation having excessive noise particularly in high frequencies is an occupational disease and is compensable as such under Sec. 32 of the POEA-SEC; (c) Calawigan's non-submission to a post-employment medical examination by a company-designated physician was due to LISI's inaction on

---

[18] *Id.* at 131-138. NLRC's Decision.

[19] *Id.* at 157-158. NLRC's Resolution.

[20] *Id.* at 159-176. Respondents' 1 September 2008 Petition for *Certiorari*.

his request therefor; and (d) designed for the benefit of Filipino seafarers, the POEA-SEC provides for compensation where work has contributed, even in a small degree, in bringing about the disability.[21]

LISI's motion for reconsideration of the foregoing decision was denied for lack of merit in the CA's likewise assailed Resolution dated 30 March 2009,[22] hence, this Petition for Review on *Certiorari* under Rule 45.

The Issues

LISI seeks the reversal and setting aside of the CA's assailed decision and resolution on the following grounds, to wit:

I

THE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IT REVERSED AND SET ASIDE THE DECISION DATED APRIL 30, 2008 AND RESOLUTION DATED JUNE 18, 2008 OF THE NATIONAL LABOR RELATIONS COMMISSION.

II

THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT THE LATE CALAWIGAN IS ENTITLED TO PERMANENT DISABILITY COMPENSATION AS HIS MODERATE HEARING LOSS IS NOT CONSIDERED AN OCCUPATIONAL DISEASE WITH A GRADE THREE (3) IMPEDIMENT PURSUANT TO SECTION 32 OF THE STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS.

III

THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT THE LATE CALAWIGAN IS ENTITLED TO SICKNESS ALLOWANCE

---

[21] *Id.* at 33-45, CA's Decision.

[22] *Id.* at 47-48, CA's Resolution.

AS HE FAILED TO SUBMIT HIMSELF TO A POST-EMPLOYMENT MEDICAL EXAMINATION BY A COMPANY DESIGNATED PHYSICIAN WITHIN THREE (3) WORKING DAYS FROM HIS DISEMBARKATION ON JUNE 6, 2006 PURSUANT TO SECTION 20-B (3) OF THE STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS.

IV

THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT ALL THE ELEMENTS FOR AN OCCUPATIONAL DISEASE TO BE COMPENSABLE ARE PRESENT IN THE CASE AT BAR PURSUANT TO SECTION 32-A OF THE STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS.[23]

The Court's Ruling

The petition is impressed with merit.

The tenor of the first ground raised by LISI in support of its petition impels us to call its counsel's attention to the basic rule that grave abuse of discretion is beyond the scope of appeals by *certiorari* like the one at bench.[24] Considering that only questions of law may be raised in a Rule 45 petition for review on *certiorari*, the well-entrenched doctrine is also to the effect that questions of fact are not proper subjects in this mode of appeal.[25] When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties, and are not reviewed by this Court except when the findings are contrary with those of the lower court or quasi-judicial bodies.[26] Since the CA's factual findings can be questioned

---

[23] *Id.* at 12.

[24] *Mackay v. Judge Angeles*, 458 Phil. 1031 (2003).

[25] *Larena vs. Mapili*, 455 Phil. 944, 950 (2003).

[26] *Muaje-Tuazon v. Wenphil Corp.*, 540 Phil. 516, 524 (2006).

if they are, as here, contrary to those of the lower court and/or administrative agency,[27] we find that respondents cannot, in turn, argue that this Court has no jurisdiction to entertain the questions of fact pertinent to the grounds raised in support of LISI's petition.

Much had likewise been made of the Statement of Account that Calawigan claimed he had been issued for an eye examination in Ishinomaki, Japan where he was diagnosed to be suffering from "Uveitis". Rejected by both the Labor Arbiter and the NLRC on grounds of dubious authenticity, said document was given credence by the CA in view of the fact, among others, that Calawigan's eye complaint was supposedly confirmed by the results of the ultrasonography he underwent at the SLMC which, in turn, resulted in the diagnosis that he was suffering from "Retinal Detachment w/ Vitreous Opacities, O.D." The record shows, however, that Calawigan was declared entitled to sickness allowance and permanent disability compensation by the CA on the strength of Dr. Mendiola's finding that said seafarer's "moderate bilateral sensorineural hearing loss" in the right ear warrants a Grade 3 disability rating under the POEA-SEC. Thus, we find further discussions of said Statement of Account as well as the results of the SLMC ultrasonography to be, on the whole, immaterial in determining the merit of the petition at bench.

Unfettered by the extraneous, we now go to respondent's "moderate x x x deafness."

Deemed written in the seafarer's contract of employment, the 2000 POEA-SEC was designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels.[28] Anent a seafarer's entitlement to compensation and benefits for injury and illness, Section 20-B (3) thereof provides as follows:

---

[27] *Air Philippines Corp. v. Inter'l. Aviation Services Phils., Inc.,* 481 Phil. 366, 394 (2004).

[28] *Bergensen D.Y. Philippines, Inc. v. Estenzo*, 513 Phil. 254, 262 (2005).

Section 20-B. *Compensation and Benefits for Injury and Illness.* —

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis added.)

In *Coastal Safeway Marine Services v. Esguerra*,[29] we ruled that the foregoing provision means that "it is the company designated-physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in

---

[29] G.R. No. 185352, 10 August 2011, 655 SCRA 300, 307-308, citing *Magsaysay Maritime Corp. v. Velasquez*, G.R. No. 179802, 14 November 2008, 571 SCRA 239, 248; *German Marine Agencies, Inc. v. NLRC*, 403 Phil. 572, 588 (2001); *NYK-Fil Ship Management, Inc. v. Talavera*, G.R. No. 175894, 14 November 2008, 571 SCRA 183, 193; *HFS Philippines, Inc. v. Pilar*, G.R. No. 168716, 16 April 2009, 585 SCRA 315, 326; *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, 15 March 2010, 615 SCRA 529, 543; *Sarocam v. Interorient Maritime Ent., Inc.*, G.R. No. 167813, 27 June 2006, 493 SCRA 502, 512.

which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC."

Viewed in light of the foregoing considerations, we find that LISI correctly faults the CA for awarding sickness allowance and permanent disability compensation in favor of Calawigan. Shown to have requested for his disembarkation and/or resignation one month prior to the expiration of his contract,[30] Calawigan failed to establish compliance with the requirement for him to undergo post-employment medical examination by a company-designated physician within three working days from his repatriation on 5 June 2005. But for Calawigan's bare allegation that he requested said medical examination from LISI which supposedly referred his request to the SSS as a sickness benefit claim, the record is bereft of any showing of any justification for said seafarer's non-compliance with the requirement. If a written notice is required of a seafarer who is physically incapacitated for purposes of abiding with the requirement of a post-employment medical examination, it stands to reason that a more tangible proof of compliance should be expected of Calawigan who appears to have been well enough to consult with Dr. Mendiola at the MHAC for his ear complaint.

Time and again, we have ruled that self-serving and unsubstantiated declarations are insufficient to establish a case before quasi-judicial bodies where the quantum of evidence required to establish a fact is substantial evidence.[31] Often described as more than a mere scintilla,[32] substantial evidence

---

[30] *Rollo,* p. 51.

[31] *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, G.R. No. 154503, 29 February 2008, 547 SCRA 220, 238.

[32] *Spouses Aya-ay, Sr. v. Arpahil Shipping Corp.*, 516 Phil. 628, 639 (2006).

is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[33] To our mind, Calawigan's unsubstantiated assertion that he requested for a post-employment medical examination from LISI does not even come close to approximating the foregoing quantum of proof. Given that compliance with said requirement is mandatory and the unexplained omission thereof will bar the filing of a claim for disability benefits,[34] the CA clearly erred when it adjudged Calawigan entitled to sickness allowance and permanent disability compensation despite his failure to abide by the procedure outlined under the POEA-SEC. As it would be fairly easy for a physician to determine whether the injury or ailment is work-related within three-days from repatriation, to ignore the requirement would set a precedent with negative repercussions which would open the floodgates to a limitless number of seafarers claiming disability benefits.[35]

Even if we were to disregard the fact, however, that the POEA-SEC recognizes only the disability grading provided by the company-designated physician,[36] LISI correctly faults the CA for awarding disability benefits corresponding to the Grade 3 disability rating assessed by Dr. Mendiola. The record shows that on 5 July 2005, Dr. Mendiola issued the following medical certificate in favor of Calawigan, to wit:

This is to certify that **Mr. Enrique Calawigan**, 46 years old, was seen and examined by the undersigned last June 26, 2005 due to hearing impairment on both ears.

---

[33] *Oriental Shipmanagement Co., Inc. v. Bastol*, G.R. No. 186289, 29 June 2010, 622 SCRA 352, 377.

[34] *Maunlad Transport, Inc. v. Manigo, Jr.,* G.R. No. 161416, 13 June 2008, 554 SCRA 446, 459.

[35] *Jebsens Maritime, Inc. v. Undag,* G.R. No. 191491, 14 December 2011, 662 SCRA 670, 680-681.

[36] *Magsaysay Maritime Corp. v. Velasquez,* G.R. No. 179802, 14 November 2008, 571 SCRA 239, 248.

Pure tone audiometry was requested which revealed ***moderate bilateral sensorineural hearing loss (Grade 3).*** Tympanometry ***showed ossicular disarticulation on right ear; normal findings on left ear.***

This medical certificate was issued upon request for whatever purpose it may serve.[37]

For an occupational disease and the resulting disability to be compensable, all of the following conditions must be satisfied under the POEA-SEC: (1) the seafarer's work must involve the risks described in the contract; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer.[38] Deafness is listed as an occupational disease for work in "any industrial operation having excessive noise particularly in the higher frequencies" or "any process carried on in compressed or rarified air."[39] Sec. 32 of the POEA-SEC assigns the following disability grades for ear injuries or ailments, *viz.*:

SECTION 32. SCHEDULE OF DISABILITY OR IMPEDIMENT FOR INJURIES SUFFERED AND DISEASES INCLUDING OCCUPATIONAL DISEASES OR ILLNESS CONTRACTED.

x x x x x x x x x

EARS

1. For the complete loss of the sense of hearing on both ears .. Gr. 3
2. Loss of two (2) external ears…….. Gr. 8
3. Complete loss of the sense of hearing in one ear…. Gr. 11
4. Loss of one external ear……..... Gr. 12
5. Loss of one half (½) of an external ear……..... Gr. 14

Undoubtedly also applicable to the POEA-SEC, it is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting

---

[37] Records, p. 48.

[38] POEA-SEC, Sec. 32-A. *Occupational Diseases.*

[39] *Id.*

parties, the literal meaning of its stipulation shall control.[40] Considering that Calawigan was only diagnosed to be suffering from "moderate bilateral sensorineural hearing loss," LISI correctly argues that the CA erred in giving credence to Dr. Mendiola's assessment of a Grade 3 disability rating which corresponds to complete loss of hearing on both ears. Absent a finding that the "ossicular disarticulation" detected on Calawigan's right ear amounts to a complete loss of the sense of hearing in one ear, it would also appear that said seafarer is not even entitled to compensation for a Grade 11 disability rating. Granted that strict rules of evidence are not applicable in claims therefor,[41] compensation and disability benefits under the POEA-SEC cannot be awarded to ailment or injuries not falling within its purview.

His entitlement to sickness allowance and disability compensation thus discounted, attorney's fees are not likewise due to Calawigan who filed his complaint on 4 July 2005 or even prior to Dr. Mendiola's assessment of his disability. Having requested disembarkation/resigned from employment, Calawigan also executed a 29 June 2005 *Release and Quitclaim,* acknowledging his receipt from LISI of the sum of ₱39,441.32 by way of salaries and benefits.[42] Although releases and quitclaims executed by employees are commonly frowned upon as being contrary to public policy, the transaction evidenced thereby is recognized as a valid and binding undertaking where the consideration therefor is credible and reasonable and the person making the waiver has done so voluntarily, with a full understanding thereof.[43] No defect in respondent's waivers was proven in the instant case. Thus, while we sympathize with Calawigan's plight, we are, constrained to disallow the sickness allowance, disability benefits and attorney's fees awarded by the CA.

---

[40] *German Marine Agencies, Inc. v. NLRC,* 403 Phil. 572, 588-589 (2001).

[41] *Rivera v. Wallem Maritime Services, Inc.,* 511 Phil. 338, 348 (2005).

[42] *Rollo,* p. 55.

[43] *Ison v. Crewserve, Inc.,* G.R. No. 173951, 16 April 2012.

WHEREFORE, premises considered, the petition is **GRANTED** and the CA's assailed 6 February 2009 Decision and 30 March 2009 Resolution are, accordingly, **REVERSED** and **SET ASIDE.** In lieu thereof, another is entered **REINSTATING** the NLRC's 30 April 2008 Decision.

SO ORDERED.

Carpio[*] *(Chairperson), Brion, del Castillo,* and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 188107. December 5, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALD M. DEL ROSARIO @ "AGING",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; SALE OF DANGEROUS DRUGS; ELEMENTS. — In a prosecution for the sale of a dangerous drug, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Simply put, "[in] prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence."

2. ID.; ID.; TO SUCCESSFULLY PROSECUTE THE CASE, THE PROSECUTION MUST ACCOUNT FOR EACH LINK IN THE CHAIN OF CUSTODY OVER THE SEIZED

---

[*] Per Special Order No. 1384 dated 4 December 2012.

DANGEROUS DRUGS. — It must be remembered that to successfully prosecute a case of illegal sale of dangerous drugs, it is not enough that the buyer, seller, and consideration for the transaction are identified. It is equally important that the object of the case is identified with certainty. The prosecution must be able to account for each link in the chain of custody over the *shabu*, from the moment it was seized from Del Rosario, up to the time it was presented in court as proof of the *corpus delicti*, "*i.e.*, the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction."

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 review is the October 28, 2008 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02653, which affirmed the Regional Trial Court's (RTC) September 27, 2006 Decision[2] in Criminal Case No. 03-0300, wherein accused-appellant Ronald M. del Rosario (Del Rosario), also known as Aging, was found guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165.

On May 6, 2003, Del Rosario was charged before the Las Piñas City RTC, Branch 275 of violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The pertinent portion of the Information[3] reads as follows:

[1] *Rollo*, pp. 2-13; penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca De Guia-Salvador and Arcangelita M. Romilla-Lontok, concurring.

[2] CA *rollo*, pp. 32-39.

[3] Records, p. 1.

That on or about the 26th day of April, 2003, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorize[d] by law, did then and there willfully, unlawfully and knowingly sell, deliver, give away to another, distribute or transport 0.03 gram of Methylamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

Del Rosario pleaded not guilty to the charge upon his arraignment on July 3, 2003.[4]

During the pre-trial held on August 7, 2003, the prosecution dispensed with the testimony of Police Inspector Richard Allan B. Mangalip, the Forensic Chemist who examined the evidence related to this case, upon Del Rosario's counsel's stipulation that Mangalip was being presented in court to identify the items he examined, but with the qualification that he had no personal knowledge of the source of such items.[5]

On August 31, 2004, PO2 Rufino Dalagdagan's testimony was likewise dispensed with, upon Del Rosario's counsel's stipulation that PO2 Dalagdagan, if placed on the witness stand, would testify in accordance with the Police Investigation Report, identify Del Rosario as the person he had investigated, and identify the items turned over to him by the arresting officers, but with the qualification that he had no personal knowledge from whom the items were recovered.[6]

During the trial, the prosecution placed on the witness stand PO2 Jerome Mendoza[7] and PO3 Herminio Besmonte.[8] The testimonies of Del Rosario[9] and Saulito Granada[10] were presented

---

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

[5] *Id.* at 22.

[6] *Id.* at 42.

[7] TSN, June 9, 2004.

[8] TSN, October 4, 2005.

[9] TSN, February 28, 2006.

[10] TSN, August 9, 2006.

by the defense. The testimony of Del Rosario's father, Rolando del Rosario, was also presented by the defense; however, on June 27, 2006, it was ordered stricken off the record[11] for Rolando del Rosario's failure to appear for cross-examination despite notice.

The facts, as summarized by the Court of Appeals, from the records, is as follows:

> Around 6:00 o'clock in the evening of April 26, 2003, PO2 Jerome Mendoza, PO2 Virgilio Dolleton and PO3 Herminio Besmonte, while on duty at the Office of the Drug Enforcement Unit of Las Piñas City, received information from a confidential informant about the illegal drug-selling activities of appellant, then known as a certain *alias* "Aging." The place of the illegal drug trade was pinpointed as Atis St., Golden Acres Subdivision, Talon 1, Las Piñas City.
>
> The information was relayed to their Chief, Police Senior Inspector Vicente Vargas Raquion, who, acting on the information, organized a buy-bust team for [Del Rosario]'s entrapment. Chief Raquion provided a One Hundred Peso (₱100.00) Bill as buy-bust money and marked the same with his initials "VVR." After a short briefing, the intended buy-bust operation was recorded in the police blotter, after which, the team, composed of PO3 Besmonte as the poseur buyer, PO2 Mendoza and PO2 Dolleton, was deployed to the target area. The team reached the place at about [9 to][12] 9:30 in the evening of April 26, 2003. The confidential informant met them there and led PO3 Besmonte to the house of [Del Rosario], while PO2 Mendoza and PO2 Dolleton positioned themselves and watched from a distance of more or less five (5) to six (6) meters. The confidential informant introduced PO3 Besmonte to [Del Rosario] who, at that time, was in front of his house. After talking with [Del Rosario], PO3 Besmonte handed the marked money to [Del Rosario] who took it, and, in turn, gave an item to PO3 Besmonte. The transaction having been consummated, PO3 Besmonte gave a signal by waiving his hand. PO2 Mendoza and PO2 Dolleton, thus, responded. PO3 Besmonte apprised [Del Rosario] of his constitutional rights while PO2 Mendoza frisked appellant and recovered one (1) pair of scissors, one (1) bamboo clip and a black belt with a knife. [PO3 Besmonte said

---

[11] Records, p. 89.

[12] TSN, June 9, 2004, p. 8.

that upon reaching the office, he marked the plastic sachet with "RMR-April 26, '03" before turning it over to PO2 Dalagdagan, the investigator on duty that night.[13]]

[Del Rosario] was brought to the Office of the Drug Enforcement Unit [DEU] of Las Piñas City and the confiscated items, including the sachet containing white crystalline substance, and the ₱100 marked money were turned over to the duty investigator, PO3 Rufino Dalagdagan. [According to PO2 Mendoza,][14] PO3 Dalagdagan placed [Del Rosario]'s initials "RMR" and the date "April 27, 03" on the confiscated sachet and prepared a request for its laboratory examination. When subjected to qualitative examination at the Southern Police District Crime Laboratory Office, the content of the plastic sachet was found to weigh 0.03 gram and tested positive for *methylamphetamine hydrochloride* or *shabu*, a dangerous drug.

[Del Rosario] interposed the defense of denial. He testified that he was in his house with his wife and his 10-month old child watching television when the three police officers, in civilian clothes, kicked the door open and forcibly entered his house, searched the same, and when they found nothing, handcuffed him for a purportedly fabricated charge of selling *shabu*. [Del Rosario] further narrated that his father, Rolando Del Rosario, summoned the officials of the *Barangay* and came to his rescue but [he] was still taken by the police officers. [Del Rosario] added that it was only in front of the *Barangay* officials that the police officers introduced themselves as such.

At the DEU Office, PO2 Dolleton allegedly asked for money from [Del Rosario] and for a night with [Del Rosario]'s wife in exchange for his release, but [Del Rosario] allegedly refused to give in to the police officer's demands.

The defense presented another witness in the person of Saulito Granada, who testified that, from a distance of six (6) meters, he saw three (3) persons in civilian clothes carrying firearms inside the house of [Del Rosario]. These three persons allegedly kicked the door of [Del Rosario]'s house, ransacked the house, and arrested [Del Rosario] who was, at that time, wearing only his brief. Granada narrated that [Del Rosario]'s father and the *Barangay* officials arrived.

---

[13] TSN, October 4, 2005, p. 15.

[14] TSN, June 9, 2004, p. 16.

The police officers allegedly did not introduce themselves and it was the *Barangay* officials who identified them and mentioned their names.[15] (Citations omitted.)

On September 27, 2006, the RTC rendered its Decision, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered finding accused Ronald M. del Rosario GUILTY beyond reasonable doubt of Violation of Section 5 Art. II of R.A. 9165 and sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 and suffer the accessory penalty provided for by law and pay the costs.
>
> Let the *shabu* in this case be sent to the Philippine Drug Enforcement Agency for proper disposition.[16]

In convicting Del Rosario, the RTC found the illegal sale by Del Rosario of the dangerous drug to have been clearly established. Moreover, the RTC rejected Del Rosario's claim that the police officers tried to extort money from him, and ascribed to the police officers the presumption that they performed their duties with regularity.[17]

Del Rosario appealed[18] this decision to the Court of Appeals, which, on October 28, 2008 affirmed the RTC.[19]

The Court of Appeals rebuffed Del Rosario's defenses of denial and extortion in light of the positive testimonies of the police officers and the inconsistent testimony of his only witness as to how the police officers were identified as such. Finding the task of assigning values to the testimony of a witness to belong to the RTC, the Court of Appeals accorded great weight and respect to the RTC's assessment of the witnesses' credibility in the case at bar. The Court of Appeals also agreed with the

---

[15] *Rollo*, pp. 4-7.

[16] CA *rollo*, p. 39.

[17] *Id.* at 38.

[18] *Id.* at 41.

[19] *Rollo*, p. 12.

RTC that in the absence of evidence to the contrary, the police officers are presumed to have performed their duties regularly.[20]

As to Del Rosario's allegation that the validity of the buy-bust operation was doubtful for non-compliance by the police officers with Section 21, Article II of Republic Act No. 9165, the Court of Appeals declared that there was no reason to question the identity of the confiscated dangerous drug in this case, as it was established during trial that the sachet of *shabu* presented in court was the same one recovered from Del Rosario.[21]

Aggrieved, Del Rosario is now before us[22] with the same errors he assigned in his Appellant's Brief,[23] 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 REASONABLE DOUBT OF THE CRIME CHARGED NOTWITHSTANDING THE POLICE OFFICERS' FAILURE TO REGULARLY PERFORM THEIR OFFICIAL FUNCTIONS.[24]

Del Rosario posits that his guilt was not proven beyond reasonable doubt as he was convicted because of the weakness of his defense, rather than the strength of the prosecution's evidence. He highlighted the inconsistencies in the prosecution witnesses' testimonies, which are material to the establishment of the identity of the dangerous drug allegedly confiscated from

---

[20] *Id.* at 8-9.

[21] *Id.* at 10-11.

[22] *Id.* at 14-15.

[23] CA *rollo*, pp. 52-72.

[24] *Id.* at 54.

him. Del Rosario also points out the non-compliance by the police officers with the guidelines in the chain of custody of seized drugs.[25]

Issue

The sole issue in this case is whether or not del Rosario's guilt for the illegal sale of *shabu*, a dangerous drug, was proven beyond reasonable doubt.

The Court's Ruling

After a thorough deliberation, this Court resolves to ***acquit*** Del Rosario for the prosecution's failure to prove his guilt beyond reasonable doubt. This Court finds that the prosecution failed to satisfactorily establish that the plastic sachet of *shabu* presented in court was the same one confiscated from Del Rosario.

As Del Rosario asserts,[26] the Constitution[27] demands that an accused like him be presumed innocent until otherwise proven beyond reasonable doubt.[28] Section 2, Rule 133 of the Rules of Court likewise requires proof beyond reasonable doubt to justify a conviction in a criminal case; otherwise, the accused is entitled to an acquittal.

Del Rosario was charged and convicted for selling methylamphetamine hydrochloride, more popularly known as *shabu*, in violation of Section 5, Article II of Republic Act No. 9165, which provides:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00)

---

[25] *Id.* at 61 and 67.

[26] *Id.* at 61.

[27] Article III, Section 14(2).

[28] *People v. Cantalejo*, G.R. No. 182790, April 24, 2009, 586 SCRA 777, 783.

shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

In a prosecution for the sale of a dangerous drug, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[29] Simply put, "[in] prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence."[30]

We now look into pertinent provisions of the governing law and rules. Section 21 of Republic Act No. 9165 provides:

SEC. 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

---

[29] *People v. Amansec*, G.R. No. 186131, December 14, 2011, 662 SCRA 574, 597.

[30] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 274-275.

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;

Its Implementing Rules and Regulations state:

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 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.

While it is true that in many cases[31] this Court has overlooked the non-compliance with the requirements under the foregoing

[31] *People v. Mendoza*, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 368; *People v. Amansec*, *supra* note 30 at 594; *People v. Daria, Jr.*, G.R. No. 186138, September 11, 2009, 599 SCRA 688, 700-701; *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 595; *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 447.

provisions, it did so only when the integrity and the evidentiary value of the seized items had been preserved.

While it is admitted that the police officers failed to conduct an inventory and to photograph the seized *shabu* in Del Rosario's presence immediately after he was apprehended, as required under the above provisions, what creates a cloud on the admissibility of the evidence seized, the plastic sachet of *shabu* in particular, is the failure of the prosecution to prove that the sachet of *shabu* they presented in court was the very same one they confiscated from Del Rosario.

It must be remembered that to successfully prosecute a case of illegal sale of dangerous drugs, it is not enough that the buyer, seller, and consideration for the transaction are identified. It is equally important that the object of the case is identified with certainty. The prosecution must be able to account for each link in the chain of custody over the *shabu*, from the moment it was seized from Del Rosario, up to the time it was presented in court as proof of the *corpus delicti*, "*i.e.*, the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction."[32] Elucidating on the importance of the foregoing, this Court, in *People v. Alcuizar*,[33] held:

> The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails. (Citation omitted.)

---

[32] *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 243.

[33] G.R. No. 189980, April 6, 2011, 647 SCRA 431, 437.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[34] which implements the Comprehensive Dangerous Drugs Act of 2002, defines "chain of custody" as follows:

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *People v. Guru*,[35] this Court, citing *Malillin v. People*,[36] explained the importance of the chain of custody:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or

---

[34] Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

[35] G.R. No. 189808, October 24, 2012.

[36] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

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. (Citations omitted.)

This Court has reviewed and scrutinized in detail the testimonies of the prosecution witnesses and found glaring inconsistencies that relate to the identity of the prohibited drug allegedly confiscated from Del Rosario.

The patent inconsistency between the testimonies of PO2 Mendoza and PO3 Besmonte necessarily leads us to doubt that the plastic sachet of *shabu* identified in court is the same one allegedly seized from Del Rosario.

During his testimony, PO2 Mendoza averred that the plastic sachet of *shabu* seized from Del Rosario was marked by PO2 Dalagdagan upon its turn-over by PO3 Besmonte:

Q. What did PO2 Besmonte do with those items [*i.e.*, the items confiscated from del Rosario]?

A. He confiscated the same and gave it to the investigator.

Q. What did PO2 Dalagdagan do with the items turned over to him by PO2 Besmonte?

A. He put markings RMR, which is the initial of the suspect.

Q. What mark did he put on those items?

A. RMR and the date.

Q. If you will again see those items, will you be able to identify them?

A. Yes, Sir.

Q. I am showing to you a brown mailing envelope marked as Exh. "G" which contains a white mailing previously marked as Exh. "G-1" please examine the contents of this white mailing envelope and tell us if you could identify them?

The witness

A. This is the item brought by PO2 Besmonte.

The Court Interpreter

The witness is referring to Exh. "G-2".

Pros. Castillo

Q. Where is the marked place by PO2 Dalagdagan on that item?

The witness

A. RMR April27,03.[37] (Emphases supplied.)

When PO3 Besmonte testified, he not only contradicted PO2 Mendoza's testimony, he also contradicted his own statements both in his direct and cross examinations:

On direct examination, PO3 Besmonte testified that he turned over the confiscated plastic sachet of *shabu* to PO2 Dalagdagan, whom he said marked it with "RMR." Later, when he was asked to identify such plastic sachet, he identified the one marked as "RMR-2003-buy-bust" as the same one he seized from Del Rosario:

FISCAL CASTILLO:

Q What happened to the plastic sachet that [Del Rosario] gave you [in] exchange for the ₱100 bill buy-bust money?

A We turned it over to our Duty-Investigator.

Q What about the buy-bust money itself?

A Same.

Q To whom did you turn over?

A To PO3 Rufino Dalagdagan.

Q What did PO3 Dalagdagan do with those items after receiving them from you?

A He marked them and he prepared the Certification to bring them to Crime Lab.

---

[37] TSN, June 9, 2004, pp. 15-16.

Q What marking did he put on the plastic sachet containing white crystalline substance?

A "RMR", Sir.

x x x x x x x x x

Q Now, the plastic sachet that, according to you, was given to you by Ronald del Rosario in exchange for the ₱100 bill that you gave him on which later on was marked by PO3 Dalagdagan with the initial "RMR", now, if that item will be shown to you, will you be able to identify it?

A Yes, Sir.

Q I am showing to you a plastic sachet containing white crystalline substance marked as **"RMR-2003-buy-bust",** please tell us what is the relation of that item with the item handed to you by [Del Rosario] in exchange for ₱100 buy-bust money?

A **This is the item that I bought from him.** (Witness is referring to Exh. "G-2".)[38] (Emphases supplied.)

Upon cross-examination, PO3 Besmonte, again made conflicting declarations by stating that he marked the plastic sachet with "RMR-April 26,'03" before turning it over to PO2 Dalagdagan. Moreover, despite a categorical statement that the plastic sachet presented in Court was the same one he seized from Del Rosario, he could not explain why it was marked differently:

ATTY. CALMA:

Q Now, regarding the plastic sachet, to whom did you turn over the plastic sachet after taking it from the accused?

A I kept it, and when we arrived [at] the office, I turned it over to the Investigator on duty.

Q And you marked the plastic sachet?

A Yes, Sir.

Q And what is the marking?

[38] TSN, October 4, 2005, pp. 9-11.

A "RMR-April 26, '03".

Q Are you sure that that was the precise marking of the plastic sachet?

WITNESS

A Yes, Sir.

ATTY. CALMA:

Q I am showing it to you. Is this the sachet you are referring to?

A Yes, Sir.

Q Can you read the marking of the sachet?

A "RMR-27 April 2003".

Q But you said you marked it "26". You mean to say that this was not the plastic sachet recovered from the suspect?

x x x x x x x x x

COURT:

Q How come that it is "27"?

A **Sir, it was "26", but it will be the Investigator who will explain why it is "27".**[39] (Emphases supplied.)

A reading of the foregoing readily shows how confused the police officers were as to the exact marking made on the plastic sachet, and as to who actually marked it. While PO2 Mendoza categorically stated the marking made on the plastic sachet and who did so, PO3 Besmonte, the police officer who had custody of the seized plastic sachet contradicted himself not only upon cross-examination, but also during his direct examination.

The prosecution was not able to salvage the above inconsistencies with a logical and rational explanation. Moreover, it offered no explanation as to how PO3 Besmonte was able to identify the plastic sachet presented in court as the one he seized from Del Rosario, considering that it contained a marking different

[39] TSN, October 4, 2005, pp. 15-17.

from the one he just said he made. PO3 Besmonte's testimony on the matter ended with the statement that the Investigator would be the best person to explain the different marking on the plastic sachet;[40] however, it must be remembered that the Investigator's testimony was already dispensed with early in the trial.

The Court of Appeals' explanation as to why the marking on the plastic sachet presented in court was different from the marking supposedly made by the one who actually seized such plastic sachet has no basis at all from the facts as borne by the records submitted to this Court. Therefore, this Court cannot subscribe to the Court of Appeals' pronouncement that there is no reason to doubt the identity of the subject dangerous drug in this case.

While it is true that Del Rosario's defense of denial is an inherently weak one, it bears stressing that his conviction should be based not on such weak defense, but on the strength of the evidence of the prosecution.[41]

In light of the foregoing, we find merit in Del Rosario's claim that the prosecution failed to discharge its burden of proving his guilt beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED.** The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02653 dated October 28, 2008 is **REVERSED** and **SET ASIDE.** Accused-Appellant Ronald M. del Rosario, also known as Aging, is hereby **ACQUITTED** in Criminal Case No. 03-0300 for the failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for another lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to implement this Decision and to report to this Court on the action taken within five (5) days from receipt of this Decision.

---

[40] TSN, October 4, 2005, p. 18.

[41] *Cacao v. People*, G.R. No. 180870, January 22, 2010, 610 SCRA 636, 650.

No pronouncement as to costs.

SO ORDERED.

Bersamin, Villarama, Jr., Perez,[*] and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 189277. December 5, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO REMIGIO *Y* ZAPANTA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — In order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu,* the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. On the other hand, a case of illegal possession of dangerous drugs will prosper if the following elements are present: (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.

2. ID.; ID.; ID.; IT IS INDISPENSABLE FOR THE PROSECUTION TO ESTABLISH THE *CORPUS DELICTI* OF THE CRIME WHICH IS THE PRESENTATION OF THE DRUG ITSELF IN COURT; NO *CORPUS DELICTI* IN CASE AT BAR. — In both cases of illegal sale and illegal

---

[*] Per Special Order No. 1385 dated December 4, 2012.

possession of dangerous drugs, it is important for the prosecution to show the chain of custody over the dangerous drug in order to establish the *corpus delicti*. Jurisprudence consistently pronounces that 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. As such, the presentation in court of the *corpus delicti* — the body or substance of the crime — establishes the fact that a crime has actually been committed. In this case, no illegal drug was presented as evidence before the trial court. As pointed out by appellant, what were presented were pictures of the supposedly confiscated items. But, in the current course of drugs case decisions, a picture is not worth a thousand words. The image without the thing even prevents the telling of a story. It is indispensable for the prosecution to present the drug itself in court. We have decided that in prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt. To emphasize the importance of the *corpus delicti* in drug charges, we have held that it is essential that the prohibited drug confiscated or recovered from the suspect is **the very same substance** offered in court as exhibit; and that **the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt.** Thus, there are two indispensables. The illegal drug must be offered before the court as exhibit and that which is exhibited must be the very same substance recovered from the suspect. x x x In this case, there is no *corpus delicti*. The prosecution failed to present the drug itself in court; it relied only on the pictures of the alleged drugs. Nowhere in the records is it shown that the prosecution made any effort to present the very *corpus delicti* of the two drug offenses.

3. ID.; ID.; ID.; CHAIN OF CUSTODY, DEFINED AND EXPLAINED; DIFFERENT LINKS TO ESTABLISH THE CHAIN OF CUSTODY, ENUMERATED. — [T]he vitalness in court of both the recovered substance and the certainty that what was recovered from the accused is that which is presented in evidence are underscored by the rule on the chain of custody of evidence. Compliance with the chain of custody of evidence is provided for in Section 21, Article II of R.A. No. 9165. x x x By definition, "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. The case of *People v. Kamad* enumerates the different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely: *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

4. ID.; ID.; ID.; ID.; ID.; FAILURE TO PROVE THE CRUCIAL LINKS IN THE CHAIN OF CUSTODY OF DANGEROUS DRUGS SEIZED FROM THE ACCUSED RENDERS FATALLY FLAWED THE DECISION OF CONVICTION. — We could have stopped at the point where the prosecution failed to present the substance allegedly recovered from the appellant. The failure already renders fatally flawed the decision of conviction. x x x There was no showing when, where and how the seized plastic sachets were marked. It was not shown that there was a marking of evidence at the place of arrest or at the police station. It was unexplained why the five plastic sachets containing white crystalline substance were already marked as "RZR-1," "RZR-2," "RZR-3," "RZR-4" and "RZR-5" when transmitted to the forensic chemist. Already, the omission of the first link in the chain tainted the identification of the drugs that was allegedly seized from the accused. What followed was no less a series of violations of the procedure in the conduct of buy-bust operations. x x x PO2 Ramos x x x did not transfer the seized items to the investigating officer. And nothing in the records reveals that there was such a transfer. From his statements, he kept the alleged *shabu* from the time of confiscation until the time he transferred them to the forensic chemist. x x x [I]n the records of the Request for Laboratory

> Examination, a different person named as PO2 Halim was indicated as having delivered the five pieces of heat-sealed plastic sachets to the laboratory for examination. No document or testimony was offered to clarify who PO2 Halim is and what his participation was in the chain of custody of the alleged illegal drug. The failure to produce the *corpus delicti* in court cannot be remedied by the stipulation regarding the forensic chemist. Forensic Chemist Annalee Forro failed to testify in court regarding the result of the qualitative examination of the substance in the sachets. x x x Proceeding from the vacuity of proof of identification of the supposedly seized item and of the transfer of its custody, from the arresting officer to the forensic chemist, no value can be given to the document that merely states that the sachets presented to the forensic chemist contained prohibited drugs.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

For review through this appeal[1] is the Decision[2] dated 29 May 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03169 which affirmed the conviction of herein accused-appellant RICARDO REMIGIO *y* ZAPANTA for illegal sale of dangerous drugs in violation of Section 5, Article II[3] and

---

[1] *Rollo*, p. 10. Via a notice of appeal, pursuant to Section 2 (c) of Rule 122 of the Rules of Court.

[2] *Id.* at 2-9.

[3] **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver,

illegal possession of dangerous drugs in violation of Section 11, Article II[4] of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The factual rendition of the prosecution as presented by its only witness PO2 Romelito Ramos (PO2 Ramos), a member of the Cainta Police Station, follows:

PO2 Ramos testified that on 17 April 2003 at about six o'clock in the evening, while giving assistance to the devotees going to Antipolo City in the corner of General Ricarte Street and Ortigas Avenue, Cainta, Rizal, one of the police informants named Angel approached and told him that an *Alyas* Footer was somewhere in the store near General Ricarte Street.[5] Immediately, PO2 Ramos informed his Deputy Chief of Police, Colonel Bagtas (Col. Bagtas) for the conduct of a buy-bust operation. At that time, there were about seven to eight police officers in the area also giving assistance to the devotees.[6] Col. Bagtas so ordered that such operation be done with PO2 Ramos as the poseur-buyer.[7] PO2

---

give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x x x x x x

[4] **Section 11.** *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

[5] TSN, 9 July 2003, pp. 5-6.

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

[7] *Id.* at 7-8.

Ramos prepared the One Hundred Peso bill (₱100.00) to be used as marked money in the operation. He put his initials, RDR, on the face of the bill.[8]

Having told the informant Angel that they will conduct a buy-bust operation, the policeman and Angel proceeded to the store in General Ricarte Street where *Alyas* Footer was.[9] Angel approached *Alyas* Footer first and PO2 Ramos waited for his signal from a distance of more or less ten arms length.[10] After Angel and *Alyas* Footer talked for a while, Angel called PO2 Ramos to come forward. Upon approaching, PO2 Ramos immediately told *Alyas* Footer, "[*p*]*are paiskor ng piso*."[11] This meant One Hundred Pesos worth of illegal drugs.[12] Alyas Footer, prompted by the question, took a sachet of *shabu* from his pocket and handed it over to PO2 Ramos. PO2 Ramos then handed the marked money to *Alyas* Footer as payment.[13]

After the transaction, PO2 Ramos introduced himself as a policeman and asked *Alyas* Footer to take out all the contents of his pocket. *Alyas* Footer complied and brought out the One Hundred Peso bill marked money and another plastic sachet of illegal drug.[14] Three more sachets of illegal drugs were found in the compartment of the motorcycle of the accused. He also turned over his student driver's license to PO2 Ramos which indicated his name as Remigio Zapanta.[15] The name of the accused would later be clarified by the prosecution through PO2 Ramos as referring to the same person as the accused Ricardo Zapanta Remigio (Remigio).

---

[8] *Id.* at 7-9.

[9] *Id.* at 8-9.

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

[11] *Id.* at 10.

[12] *Id.* at 11.

[13] *Id.*

[14] *Id.* at 12.

[15] *Id.* at 14.

The plastic sachets taken from Remigio were brought by PO2 Ramos to Camp Crame for laboratory examination. He testified that he personally transmitted the request for actual testing of the contents of the sachets to the chemist.[16]

Towards the end of his direct examination, he identified the marked money as the one used in the transaction and the picture of the motorcycle marked as Exhibit "C" as the one possessed by Remigio when the buy-bust operation was conducted.[17]

During his cross examination,[18] PO2 Ramos admitted that the buy-bust operation was recorded only after the arrest.[19] He also revealed that he already knew that there was a standing *alias* warrant against Remigio and that they have been conducting surveillance against Remigio for some time prior to the buy-bust operation.[20] He also added that he was then wearing civilian clothes unlike the other police officers visible in the area.[21]

On the other hand, the factual version of the defense as presented by accused Remigio is as follows:

He testified that at about seven o'clock in the evening of 17 April 2003, he was at Helen's Best store in Ortigas Extension, Cainta, Rizal.[22] He said that he rode his motorcycle going there and parked it in front of the store before buying food.[23] There were about six policemen in the area while he was in front of the store.[24]

He thereafter described the conduct of his arrest.

---

[16] *Id.* at 14-15.

[17] *Id.* at 19.

[18] TSN, 16 July 2003, pp. 1-11.

[19] *Id.* at 8-9.

[20] *Id.* at 10-11.

[21] *Id.* at 7.

[22] TSN, 3 March 2004, pp. 4-5.

[23] *Id.* at 6.

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

PO2 Ramos, wearing his official uniform, together with an asset he knew by the name of Angel, approached and told him to take the things out of his pocket.[25] PO2 Ramos then asked for his name in this manner, "[*i*]*kaw ba si Futter?*"[26] He replied that he is not the person. Just the same, he complied and took out his keys and wallet from his pocket and gave them to PO2 Ramos.[27] PO2 Ramos opened his wallet and was thereafter shown one (1) plastic sachet of illegal drug which was allegedly taken from his wallet.[28] He told them that the sachet did not belong to him but still was handcuffed.[29] PO2 Ramos then brought him together with Angel to the police station at Karangalan Village on board a taxi.[30] His motorcycle was left in front of the store after his arrest.[31]

Upon reaching the police station, one of the police officers there named Oscar Soliven told him that for ₱20,000.00 the police would not file the case for violation of Section 5 or illegal sale of dangerous drugs under R.A. No. 9165. He did not agree to the proposal and was detained at the station until his inquest on 21 April 2003.[32]

Subjected to cross-examination, Remigio was questioned by the prosecution regarding a previous arrest relative to dangerous drugs. He said that he was just a suspect in that case and that he had filed a complaint against the person who arrested him.[33]

A witness who was presented to corroborate the version of Remigio was Nelia Diolata, his elementary school classmate. She testified that she went to Helen's Best store in General

---

[25] *Id.* at 7-9.

[26] *Id.* at 9.

[27] *Id.* at 10-11.

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

[29] *Id.* at 12.

[30] *Id.* at 13-14.

[31] *Id.* at 14.

[32] *Id.* at 14-15.

[33] TSN, 7 April 2005, pp. 3-4.

Ricarte St. and Ortigas Avenue to buy food.[34] There, she saw Remigio already waiting for the food he bought.[35] While leaving the store after she got her food, she heard someone being asked if his name was Footer.[36] She saw a uniformed police officer asking the question. She was able to identify the policeman as "Ramos" through his nameplate,[37] as she was only two meters away from them.[38] She then heard Remigio answer composedly.[39] She saw Remigio pull out his wallet and a piece of paper which she recognized as registration paper of a motor vehicle. Two more persons in civilian clothes approached PO2 Ramos and Remigio. She thereafter turned her back and proceeded home.[40] Two years after the arrest, she learned from Remigio's mother that he was arrested so she voluntarily offered to testify.[41]

Eventually, two sets of Information were filed as follows:

For Criminal Case No. 03-25497 for illegal sale of dangerous drugs:

> That on or about the 17th day of April 2003 in the Municipality of Cainta, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to another 0.03 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which was found positive to the test for Methamphetamine Hydrochloride, commonly known as "*Shabu*[,]" a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.[42]

---

[34] TSN, 20 April 2006, pp. 4-5.

[35] *Id.* at 5.

[36] *Id.* at 6.

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

[38] *Id.* at 8.

[39] *Id.* at 7.

[40] *Id.* at 8-9.

[41] *Id.* at 4 and 10.

[42] Records, p. 1.

For Criminal Case No. 03-25498 for possession of dangerous drugs:

That on or about the 17th day of April 2003 in the Municipality of Cainta, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did, then and there willfully, unlawfully and knowingly have in his possession, direct custody and control 0.03 gram, 0.03 gram, 0.03 gram and 0.03 gram with a total weight of 0.12 gram of white crystalline substance contained in four (4) heat-sealed transparent plastic sachets which were found positive to the test for Methamphetamine Hydrochloride, also known as "*Shabu*[,]" a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[43]

Upon arraignment on 29 May 2003, accused Remigio with the assistance of his counsel, pleaded NOT GUILTY to the offenses charged against him.[44]

Trial ensued and on 12 October 2007, the trial court[45] found the accused guilty of the offenses charged against him. The disposition reads:

WHEREFORE, premises considered, accused Ricardo Remigio is found guilty of the offense charged in the Informations and is sentenced to *Reclusion Perpetua* in Criminal Case No. 03-25497. In Criminal case No. 03-25498, accused Ricardo Remigio is sentenced to suffer an Imprisonment of Twelve (12) years and one (1) day to twenty (20) years and a fine of ₱300,000.00 as provided for under Section 11, Par. (3) [o]f RA 9165. As amended.[46]

Upon appeal, the accused-appellant argued that the trial court erred in finding that the prosecution was able to prove the requisites of a buy-bust operation.[47] He doubted the entrapment

---

[43] *Id.* at 10.

[44] Certificate of Arraignment. *Id.* at 27.

[45] Regional Trial Court, Branch 73, Antipolo City.

[46] RTC Decision; records, p. 121.

[47] Accused-Appellant's Brief; CA *rollo*, p. 30.

operation as there was already an existing warrant of arrest against him.[48] Further, he emphasized the failure of the prosecution to establish the *corpus delicti* of the case as the five plastic sachets allegedly containing dangerous drug were not presented in court. What were presented were only pictures which do not prove that those in the pictures were the same ones tested at the forensic laboratory.[49] Finally, he questioned the non-adherence to the procedures to establish the chain of custody of evidence such as the marking of the five sachets of confiscated drugs at the time and in the place where the accused was arrested.[50]

The People, through the Office of the Solicitor General, stressed the legality of a buy-bust operation.[51] It relied on the presumption of regularity of performance of police officers in fulfilling their duties,[52] and on the prosecution's proof of all the elements of illegal sale of *shabu*.[53]

After review, the CA affirmed the ruling of the trial court with modification on the penalty imposed. The dispositive portion reads:

> WHEREFORE, in light of the foregoing, the decision subject of the present appeal is hereby ***AFFIRMED*** save for a modification in the penalty imposed by the trial court. Accordingly, the accused-appellant is sentenced to suffer life imprisonment and a fine of five hundred thousand pesos (₱500,000.00).[54]

The appellate court gave great weight on the findings of facts of the trial court and full credit to the presumption of regularity of performance of the arresting officer Ramos. It discredited the argument of the defense of frame-up and upheld the presence

---

[48] *Id.* at 31.

[49] *Id.* at 33-34.

[50] *Id.*

[51] Appellee's Brief; *id.* at 53.

[52] *Id.* at 54.

[53] *Id.* at 56.

[54] *Rollo,* p. 9.

of the requisites to prove illegal sale of dangerous drugs.[55] No weight was given by the CA to the argument about non-compliance with the procedures laid down in Section 21 of R.A. No. 9165 to establish the chain of custody of evidence ruling that there was no taint in the integrity of the evidentiary value of the seized items.[56]

This appeal is moored on the contention about the break in the chain of custody and the absence of identification of illegal drugs.[57] Appellant capitalizes on the non-marking of the sachets allegedly recovered from his wallet and compartment of his motorcycle, the non-preparation of an inventory report, the absence of photographs of the arrest, and non-presentation of the actual dangerous drugs before the court. The argument is that without the requisite proof, there is insurmountable doubt whether the sachets allegedly confiscated from him were the same ones delivered to the forensic laboratory for examination,[58] and then presented during the trial.

We agree fully with the accused-appellant.

In order to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.[59]

On the other hand, a case of illegal possession of dangerous drugs will prosper if the following elements are present: (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

---

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

[56] *Id.* at 7.

[57] Supplemental Brief of the Accused-Appellant; *id.* at 27.

[58] *Id.* at 28.

[59] *People v. Unisa*, G.R. No. 185721, 28 September 2011, 658 SCRA 305, 324; *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 463.

by law; and (3) the accused freely and consciously possessed the drug.[60]

In both cases of illegal sale and illegal possession of dangerous drugs, it is important for the prosecution to show the chain of custody over the dangerous drug in order to establish the *corpus delicti*.[61]

Jurisprudence consistently pronounces that 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.[62] As such, the presentation in court of the *corpus delicti* — the body or substance of the crime — establishes the fact that a crime has actually been committed.[63]

In this case, no illegal drug was presented as evidence before the trial court. As pointed out by appellant, what were presented were pictures of the supposedly confiscated items. But, in the current course of drugs case decisions, a picture is not worth a thousand words.[64] The image without the thing even prevents the telling of a story. It is indispensable for the prosecution to present the drug itself in court.

We have decided that in prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and its existence is vital to sustain a judgment of conviction beyond reasonable doubt. To emphasize the importance of the *corpus delicti* in drug charges, we have held that it is essential that the prohibited drug confiscated or recovered from the suspect is **the very same substance** offered in court as exhibit;

---

[60] *People v. Alcuizar*, G.R. No. 189980, 6 April 2011, 647 SCRA 431, 445.

[61] *People v. Climaco*, G.R. No. 199403, 13 June 2012.

[62] *Zafra and Marcelino v. People*, G.R. No. 190749, 25 April 2012.

[63] *People v. Fermin*, G.R. No. 179344, 3 August 2011, 655 SCRA 92, 100; *People v. Gutierrez*, G.R. No. 179213, 3 September 2009, 598 SCRA 92, 101.

[64] A-picture-is-worth-a-thousand-words.http://www.phrases.org.uk/meanings. 19 November 2012.

and that **the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt**.[65]

Thus, there are two indispensables. The illegal drug must be offered before the court as exhibit and that which is exhibited must be the very same substance recovered from the suspect. The needfulness of both was stressed in *People v. Lorena*,[66] where We, after reiterating the elements of the crime of sale of illegal drug, proceeded to state that all these require evidence that the sale transaction transpired coupled with the presentation in court of the *corpus delicti*, *i.e*. the body or substance of the crime, which in *People v. Martinez*,[67] equates as simply in *People v. Gutierrez*,[68] was referred to as "the drug itself."

In this case, there is no *corpus delicti*.

The prosecution failed to present the drug itself in court; it relied only on the pictures of the alleged drugs. Nowhere in the records is it shown that the prosecution made any effort to present the very *corpus delicti* of the two drug offenses. This is evident in the pertinent portions of the direct testimony of PO2 Ramos:

> PUBLIC PROSECUTOR: May we request Your Honor that this picture be marked as Exhibit "C" and another picture showing the whole body of motorcycle be marked as Exhibit "C-1[.]"
>
> COURT: Mark them.
>
> PUBLIC PROSECUTOR:
>
> Q: Where is the coin purse here, Mister witness?
>
> A: Witness pointing to white object.
>
> Q: Where is the plastic sachet?

---

[65] *People v. Salonga*, G.R. No. 186390, 2 October 2009, 602 SCRA 783, 795.

[66] G.R. No. 184954, 10 January 2011, 639 SCRA 139, 155.

[67] G.R. No. 191366, 13 December 2010, 637 SCRA 791.

[68] G.R. No. 179213, 3 September 2009, 598 SCRA 92.

A: Witness pointing to other 3 white objects depicting (*sic*) in the picture.

PUBLIC PROSECUTOR:May we request Your Honor that this picture be marked as Exhibit "C-2[.]"[69]

As already above indicated, the vitalness in court of both the recovered substance and the certainty that what was recovered from the accused is that which is presented in evidence are underscored by the rule on the chain of custody of evidence. Compliance with the chain of custody of evidence is provided for in Section 21, Article II of R.A. No. 9165. We quote:

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;

x x x x x x x x x

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused/and or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and

---

[69] TSN, 9 July 2003, pp. 19-20.

> burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

These requirements are substantially complied with through the proviso in Section 21(a) of the Implementing Rules and Regulations of R.A. No. 9165:

> Sec. 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 so confiscated, seized and/or surrendered, for 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 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 copy thereof. Provided, that the physical inventory and the photograph shall be conducted at the place where the search warrant is served; or at least 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 team/officer, shall not render void and invalid such seizures of and custody over said items.** (Emphasis supplied)

By definition,[70] "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

---

[70] Dangerous Drugs Board Regulation No. 1, Series of 2002, Sec. 1 (b).

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.

The case of *People v. Kamad*[71] enumerates the different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[72]

We could have stopped at the point where the prosecution failed to present the substance allegedly recovered from the appellant. The failure already renders fatally flawed the decision of conviction. Indeed, an examination of the chain of custody of the substance, without the substance itself, is nonsensical. We, however, see more than an academic need for a discussion of the concept of chain of custody. We want to depict the carelessness, if not the brazen unlawfulness, of the law enforcers in the implementation of the Comprehensive Dangerous Drugs Act of 2002. What happened in this case is a one-man operation, seemingly towards the objective of the law, but by means of outlawing those specifically outlined in the statute, in the rules implementing the statute and in our decisions interpreting law and rule. As testified to by the prosecution's sole witness, PO2

---

[71] G.R. No. 174198, 19 January 2010, 610 SCRA 295, 307-308.

[72] *Id.* at 307-308. See also *People v. Arriola*, G.R. No. 187736, 8 February 2012, 665 SCRA 581, 598.

Ramos, he was the one who conceived the operation; who, although with his informant as the lone actor, conducted the operation by himself being the poseur-buyer with a one hundred peso bill he himself pre-marked and recorded in the police blotter only after the arrest. PO2 Ramos was himself the apprehending officer who confiscated the sachets of illegal drugs together with the wallet of the accused.

There was no showing when, where and how the seized plastic sachets were marked. It was not shown that there was a marking of evidence at the place of arrest or at the police station. It was unexplained why the five plastic sachets containing white crystalline substance were already marked as "RZR-1," "RZR-2," "RZR-3," "RZR-4" and "RZR-5" when transmitted to the forensic chemist.

Already, the omission of the first link in the chain tainted the identification of the drugs that was allegedly seized from the accused. What followed was no less a series of violations of the procedure in the conduct of buy-bust operations.

As testified by PO2 Ramos, he did not transfer the seized items to the investigating officer. And nothing in the records reveals that there was such a transfer. From his statements, he kept the alleged *shabu* from the time of confiscation until the time he transferred them to the forensic chemist. We quote:

> PUBLIC PROSECUTOR: Now, what happened to the plastic sachets of alleged *shabu* which were taken from Alyas Footer?
>
> A: It was brought to the Camp Crame laboratory for examination, Sir.
>
> Q: If you know, Mister witness, who personally transmitted the request for chemist and actual testing of said sachet of *shabu*.
>
> A: Me, Sir.[73]

PO2 Ramos testified that he personally brought the seized items to the forensic chemist. In further muddlement of the

---

[73] TSN, 9 July 2003, pp. 14-15.

prosecution's evidence, in the records of the Request for Laboratory Examination, a different person named as PO2 Halim was indicated as having delivered the five pieces of heat-sealed plastic sachets to the laboratory for examination.[74] No document or testimony was offered to clarify who PO2 Halim is and what his participation was in the chain of custody of the alleged illegal drug.

The failure to produce the *corpus delicti* in court cannot be remedied by the stipulation regarding the forensic chemist.

Forensic Chemist Annalee Forro failed to testify in court regarding the result of the qualitative examination of the substance in the sachets. The prosecution proposed a stipulation about her findings. This was admitted by the defense but with qualification. We quote the pertinent portions:

PUBLIC PROSECUTOR: I am offering the following for stipulations: that Annalee Forro is a forensic chemist officer connected with the PNP Crime Laboratory Service and that on April 18, 2003, she conducted the chemical examination on the contents of the five plastic sachets with markings RZR-1 to RZR-5 and found the same to be positive for methamphetamine hydrochloride, a dangerous drug and the name of the suspect as mentioned in the information is Ricardo Remigio.

DEFENSE COUNSEL: Admitted with qualification that she merely copied the name of the suspect on the request for laboratory examination delivered by member of the Cainta Police Station.[75]

Proceeding from the vacuity of proof of identification of the supposedly seized item and of the transfer of its custody, from the arresting officer to the forensic chemist, no value can be given to the document that merely states that the sachets presented to the forensic chemist contained prohibited drugs.

WHEREFORE, the appeal is **GRANTED.** The 29 May 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03169

---

[74] Records, p. 13.

[75] TSN, 6 November 2003, pp. 2-3.

affirming the judgment of conviction dated 12 October 2007 of the Regional Trial Court, Branch 73 of Antipolo City in Criminal Case Nos. 03-25497 and 03-25498 is hereby **REVERSED** and **SET ASIDE.** Accused-appellant Ricardo Remigio *y* Zapanta is hereby **ACQUITTED** and ordered immediately released from detention unless his continued confinement is warranted for some other cause or ground.

SO ORDERED.

Carpio[*] *(Chairperson), Brion, del Castillo,* and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 191281. December 5, 2012]

BEST WEAR GARMENTS and/or WARREN PARDILLA, *petitioners, vs.* **ADELAIDA B. DE LEMOS and CECILE M. OCUBILLO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; DISMISSAL OF EMPLOYEE; WHERE TRANSFER OF PIECE-RATE WORKERS TO NEW WORK ASSIGNMENT DOES NOT CONSTITUTE CONSTRUCTIVE DISMISSAL. — Being piece-rate workers assigned to individual sewing machines, respondents' earnings depended on the quality and quantity of finished products. That their work output might have been affected by the change in their specific work assignments does not necessarily imply that any resulting reduction in pay is tantamount to constructive dismissal. Workers

---

[*] Per Special Order No. 1384 dated 4 December 2012.

under piece-rate employment have no fixed salaries and their compensation is computed on the basis of accomplished tasks. As admitted by respondent De Lemos, some garments or by-products took a longer time to finish so they could not earn as much as before. Also, the type of sewing jobs available would depend on the specifications made by the clients of petitioner company. Under these circumstances, it cannot be said that the transfer was unreasonable, inconvenient or prejudicial to the respondents. Such deployment of sewers to work on different types of garments as dictated by present business necessity is within the ambit of management prerogative which, in the absence of bad faith, ill motive or discrimination, should not be interfered with by the courts. The records are bereft of any showing of clear discrimination, insensibility or disdain on the part of petitioners in transferring respondents to perform a different type of sewing job. It is unfair to charge petitioners with constructive dismissal simply because the respondents insist that their transfer to a new work assignment was against their will. We have long stated that "the objection to the transfer being grounded on solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer." That respondents eventually discontinued reporting for work after their plea to be returned to their former work assignment was their personal decision, for which the petitioners should not be held liable particularly as the latter did not, in fact, dismiss them.

2. ID.; ID.; ID.; WHERE THERE WAS NO EVIDENCE OF ILLEGAL DISMISSAL, THE REMEDY IS REINSTATEMENT BUT WITHOUT BACKWAGES. — [T]here was no evidence that respondents were dismissed from employment. In fact, petitioners expressed willingness to accept them back to work. There being no termination of employment by the employer, the award of backwages cannot be sustained. It is well settled that backwages may be granted only when there is a finding of illegal dismissal. In cases where there is no evidence of dismissal, the remedy is reinstatement but without backwages.

APPEARANCES OF COUNSEL

Espinosa Aldea-Espinosa & Associates Law Offices for petitioners.

Evasco Abinales & Evasco Law Offices for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

This is a petition for review on *certiorari* under Rule 45 assailing the Decision[1] dated February 24, 2009 and Resolution[2] dated February 10, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 102002. The CA reversed the Decision[3] dated August 28, 2007 of the National Labor Relations Commission (NLRC) and reinstated the September 5, 2005 Decision[4] of the Labor Arbiter.

Petitioner Best Wear Garments is a sole proprietorship represented by its General Manager Alex Sitosta. Respondents Cecile M. Ocubillo and Adelaida B. De Lemos were hired as sewers on piece-rate basis by petitioners on October 27, 1993 and July 12, 1994, respectively.

On May 20, 2004, De Lemos filed a complaint[5] for illegal dismissal with prayer for back wages and other accrued benefits, separation pay, service incentive leave pay and attorney's fees. A similar complaint[6] was filed by Ocubillo on June 10, 2004.

---

[1] *Rollo*, pp. 49-57. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Amelita G. Tolentino and Myrna Dimaranan Vidal concurring.

[2] *Id.* at 58-59. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Amelita G. Tolentino and Francisco P. Acosta concurring.

[3] *Id.* at 182-188. Penned by Presiding Commissioner Lourdes C. Javier with Commissioners Tito F. Genilo and Gregorio O. Bilog III concurring.

[4] *Id.* at 113-120. Penned by Labor Arbiter Arden S. Anni.

[5] CA *rollo*, p. 209.

[6] *Id.* at 210-211.

Both alleged in their position paper that in August 2003, Sitosta arbitrarily transferred them to other areas of operation of petitioner's garments company, which they said amounted to constructive dismissal as it resulted in less earnings for them.

De Lemos claimed that after two months in her new assignment, she was able to adjust but Sitosta again transferred her to a "different operation where she could not earn [as] much as before because by-products require long period of time to finish." She averred that the reason for her transfer was her refusal "to render [overtime work] up to 7:00 p.m." Her request to be returned to her previous assignment was rejected and she was "constrained not to report for work as Sitosta had become indifferent to her since said transfer of operation." She further alleged that her last salary was withheld by petitioner company.[7]

On her part, Ocubillo alleged that her transfer was precipitated by her having "incurred excessive absences since 2001." Her absences were due to the fact that her father became very sick since 2001 until his untimely demise on November 9, 2003; aside from this, she herself became very sickly. She claimed that from September to October 2003, Sitosta assigned her to different machines "whichever is available" and that "there were times, she could not earn for a day because there was no available machine to work for *[sic]*." Sitosta also allegedly required her to render overtime work up to 7:00 p.m. which she refused "because she was only paid up to 6:25 p.m."[8]

Petitioners denied having terminated the employment of respondents who supposedly committed numerous absences without leave (AWOL). They claimed that sometime in February 2004, De Lemos informed Sitosta that due to personal problem, she intends to resign from the company. She then demanded the payment of separation pay. In March 2004, Ocubillo likewise intimated her intention to resign and demanded separation pay. Sitosta explained to both De Lemos and Ocubillo that the company had no existing policy on granting separation pay, and hence

---

[7] *Id.* at 48.

[8] *Id.* at 49.

he could not act on their request. De Lemos never reported back to work since March 2004, while Ocubillo failed to report for work from October 2004 to the present.

As to the allegation of respondents that the reason for their transfer was their refusal to render overtime work until 7:00 p.m., petitioners asserted that respondents are piece-rate workers and hence they are not paid according to the number of hours worked.

On September 5, 2005, Labor Arbiter Arden S. Anni rendered a Decision granting respondents' claims, as follows:

> WHEREFORE, ALL THE FOREGOING CONSIDERED, judgment is rendered, as follows:
>
> 1. Declaring that complainants were constructively, nay, illegally dismissed from employment;
>
> 2. Ordering respondents to pay each of the complainants SEPARATION PAY equivalent to one-month salary for every year of service, a fraction of at least six (6) months being considered as one (1) whole year;
>
> 3. Ordering respondents to pay each of the complainants BACKWAGES computed from the time of their dismissal up to the finality of this decision.
>
> For this purpose, both parties are directed to submit their respective computations of the total amount awarded for approval by this office.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[9]

Labor Arbiter Anni ruled that since respondents neither resigned nor abandoned their jobs, the ambiguities in the circumstances surrounding their dismissal are resolved in favor of the workers. It was emphasized that respondents could no longer be deemed terminated for reason of AWOL because this prerogative should have been exercised before the dismissals have been effected. Moreover, it would have been illogical for respondents to resign and then file a complaint for illegal dismissal.

---

[9] *Rollo,* p. 120.

Petitioners appealed to the NLRC which reversed the Labor Arbiter's decision and dismissed respondents' complaints. The NLRC found no basis for the charge of constructive dismissal, thus:

> Complainants' alleged demotion is vague. They simply allege that by reason of their transfer in August 2003, *they did not earn as much as they earned in their previous assignments.* They failed to state how much they earned before and after their transfer, if only to determine whether or not there was indeed a diminution in their earnings. Further, it is to be stressed that complainants were paid on a piece rate basis, which simply means that the more output, they produced the more earnings they will have. In other words, the earning is dependent upon complainants.
>
> We find more credible respondents' assertion that **complainants' transfer was a valid exercise of management prerogative**. Respondent company points out that it is engaged in the business of garments manufacturing as a sub-contractor. That, **the kind of work it performs is dependent into with its client which specifies the work it has to perform**. And, that corollary thereto, **the work to be performed by its employees will depend on the work specifications in the contract**. **Thus, if complainants have been assigned to different operations, it was pursuant to the requirements of its contracts**. x x x.
>
> In furtherance of their defense that complainants were not dismissed, either actual or constructive in August 2003, respondents allege that complainants continued to report for work until February 2004 for complainant De Lemos and August 2004 for complainant Ocubillo. We lend credence to this allegation of respondents because it remains unrebutted by complainants.
>
> It is to be noted that **it was only** [on] **May 20, 2004 and June 10, 2004 that the instant consolidated cases were filed** by complainant De Lemos and Ocubillo, respectively. It may not be amiss to state that the date of filing jibe with respondents' allegation that sometime in February and March 2004, complainants intimated their intention to resign and demanded for payment of separation pay but was not favorably acted upon by management.
>
> Be that as it may, considering that complainants were not dismissed by respondents, they should be ordered to report back to work without backwages and for the respondents to accept them.

WHEREFORE, premises considered, the Decision dated September 5, 2005 is hereby SET ASIDE and a new one entered dismissing complainants' charge of illegal dismissal for lack of merit. However, there being no dismissal, complainants Adelaida B. De Lemos and Cecile M. Ocubillo are hereby directed to report back to work without backwages within ten (10) days from receipt of this Resolution and for the respondent Company to accept them under the same terms and conditions at the time of their employment.

SO ORDERED.[10] (Italics in the original; emphasis supplied)

Respondents filed a motion for reconsideration which the NLRC denied. Thus, they elevated the case to the CA alleging grave abuse of discretion on the part of the NLRC.

By Decision dated February 24, 2009, the CA granted the petition for *certiorari*, reversed the ruling of the NLRC and reinstated the Labor Arbiter's decision with modification that the service incentive leave pay shall be excluded in the computation of the monetary award. The CA found no valid and legitimate business reason for the transfer order which entailed the reduction of respondents' earnings. Because respondents' plea to be returned to their former posts was not heeded by petitioners, no other conclusion "is discernible from the attendant circumstances except the fact that [respondents'] transfer was unreasonable, inconvenient and prejudicial to them which [is] tantamount to a constructive dismissal."[11] Moreover, the unauthorized absences of respondents did not warrant a finding of abandonment in view of the length of their service with petitioner company and the difficulty in finding similar employment. The CA further invoked the rule that an employee who forthwith takes steps to protest his layoff cannot by any logic be said to have abandoned his work.

Petitioners filed a motion for partial reconsideration which was denied by the CA.

Hence, this petition alleging that the CA has glaringly overlooked and clearly erred in its findings of fact and in applying the law on constructive dismissal.

---

[10] *Id.* at 186-187.

[11] *Id.* at 55.

At the outset, it must be stated that the main issue in this case involves a question of fact. It is an established rule that the jurisdiction of the Supreme Court in cases brought before it from the CA via Rule 45 of the 1997 Rules of Civil Procedure is generally limited to reviewing errors of law. This Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding and consequently, it is not our function to analyze or weigh evidence all over again.[12]

There are, however, recognized exceptions[13] to this rule such as when there is a divergence between the findings of facts of the NLRC and that of the CA.[14] In this case, the CA's findings are contrary to those of the NLRC. There is, therefore, a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[15]

The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving

---

[12] *Sugue v. Triumph International (Phils.), Inc.,* G.R. Nos. 164804 & 164784, January 30, 2009, 577 SCRA 323, 331-332, citing *Rizal Commercial Banking Corporation v. Alfa RTW Manufacturing Corporation*, G.R. No. 133877, November 14, 2001, 368 SCRA 611, 617 and *Gabriel v. Mabanta*, G.R. No. 142403, March 26, 2003, 399 SCRA 573, 579-580.

[13] (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjecture; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same are contrary to the admission of both the appellant and the appellee; (7) **when the findings are contrary to those of the trial court;** (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed evidence and contradicted by the evidence on record. (*Sugue v. Triumph International (Phils.), Inc., id.*, citing *Sta. Maria v. Court of Appeals*, G.R. No. 127549, January 28, 1998, 285 SCRA 351, 357-358.)

[14] *Dimagan v. Dacworks United, Incorporated,* G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445, citing *Sugue, et al.v. Triumph International (Phils.), Inc., supra*.

[15] *Dimagan v. Dacworks United, Incorporated, id.* at 445-446.

management of its prerogative to change their assignments or to transfer them. Thus, an employer may transfer or assign employees from one office or area of operation to another, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[16]

In *Blue Dairy Corporation v. NLRC*,[17] we held that:

> x x x. The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker. In particular, the employer must be able to show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay. Likewise, constructive dismissal exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.[18]

With the foregoing as guidepost, we hold that the CA erred in reversing the NLRC's ruling that respondents were not constructively dismissed.

Being piece-rate workers assigned to individual sewing machines, respondents' earnings depended on the quality and

---

[16] *Morales v. Harbour Centre Port Terminal, Inc.,* G.R. No. 174208, January 25, 2012, 664 SCRA 110, 119-120, citing *Mendoza v. Rural Bank of Lucban,* G.R. No. 155421, July 7, 2004, 433 SCRA 756, 766 and *Herida v. F & C Pawnshop and Jewelry Store,* G.R. No. 172601, April 16, 2009, 585 SCRA 395, 401.

[17] G.R. No. 129843, September 14, 1999, 314 SCRA 401.

[18] *Id.* at 408-409.

quantity of finished products. That their work output might have been affected by the change in their specific work assignments does not necessarily imply that any resulting reduction in pay is tantamount to constructive dismissal. Workers under piece-rate employment have no fixed salaries and their compensation is computed on the basis of accomplished tasks. As admitted by respondent De Lemos, some garments or by-products took a longer time to finish so they could not earn as much as before. Also, the type of sewing jobs available would depend on the specifications made by the clients of petitioner company. Under these circumstances, it cannot be said that the transfer was unreasonable, inconvenient or prejudicial to the respondents. Such deployment of sewers to work on different types of garments as dictated by present business necessity is within the ambit of management prerogative which, in the absence of bad faith, ill motive or discrimination, should not be interfered with by the courts.

The records are bereft of any showing of clear discrimination, insensibility or disdain on the part of petitioners in transferring respondents to perform a different type of sewing job. It is unfair to charge petitioners with constructive dismissal simply because the respondents insist that their transfer to a new work assignment was against their will. We have long stated that "the objection to the transfer being grounded on solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer."[19] That respondents eventually discontinued reporting for work after their plea to be returned to their former work assignment was their personal decision, for which the petitioners should not be held liable particularly as the latter did not, in fact, dismiss them.

Indeed, there was no evidence that respondents were dismissed from employment. In fact, petitioners expressed willingness to accept them back to work. There being no termination of employment by the employer, the award of backwages cannot

---

[19] *Mercury Drug Corporation v. Domingo,* G.R. No. 143998, April 29, 2005, 457 SCRA 578, 592, citing *Phil. Telegraph and Telephone Corp. v. Laplana,* G.R. No. 76645, July 23, 1991, 199 SCRA 485.

be sustained. It is well settled that backwages may be granted only when there is a finding of illegal dismissal.[20] In cases where there is no evidence of dismissal, the remedy is reinstatement but without backwages.[21]

The constitutional policy of providing full protection to labor is not intended to oppress or destroy management.[22] While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its rights which are entitled to respect and enforcement in the interest of simple fair play.[23] Thus, where management prerogative to transfer employees is validly exercised, as in this case, courts will decline to interfere.

WHEREFORE, the petition for review on *certiorari* is **GRANTED.** The Decision dated February 24, 2009 and Resolution dated February 10, 2010 of the Court of Appeals in CA-G.R. SP No. 102002 are **SET ASIDE.** The Decision dated August 28, 2007 of the National Labor Relations Commission is hereby **REINSTATED and UPHELD.**

No pronouncement as to costs.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), Bersamin, Perez,[*] and *Reyes, JJ.,* concur.

---

[20] *J.A.T. General Services v. National Labor Relations Commission,* G.R. No. 148340, January 26, 2004, 421 SCRA 78, 91, citing *Industrial Timber Corp.-Stanply Operations v. NLRC,* G.R. No. 112069, February 14, 1996, 253 SCRA 623, 629.

[21] *Exodus International Construction Corporation v. Biscocho,* G.R. No. 166109, February 23, 2011, 644 SCRA 76, 92.

[22] *Capili v. National Labor Relations Commission,* G.R. No. 117378, March 26, 1997, 270 SCRA 489, 495.

[23] *Javier v. Fly Ace Corporation,* G.R. No. 192558, February 15, 2012, 666 SCRA 382, 399-400.

[*] Designated additional member per Special Order No. 1385 dated December 4, 2012.

FIRST DIVISION

[G.R. No. 191993. December 5, 2012]

EDUARDO T. ABAD, *petitioner, vs.* **LEONARDO BIASON and GABRIEL A. MAGNO,** *respondents.*

SYLLABUS

REMEDIAL LAW; MOOT CASE; A PETITION ASSAILING THE REGULARITY IN THE APPOINTMENT OF A GUARDIAN IS RENDERED MOOT AND ACADEMIC BY THE LATTER'S DEATH. — An issue or a case becomes moot and academic when it ceases to present a justiciable controversy, so that a determination of the issue would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition. In his petition, Abad prayed for the nullification of the CA Decision dated August 28, 2009 and Resolution dated April 19, 2010, which dismissed his appeal from the Decision dated September 26, 2007 of the RTC and denied his motion for reconsideration, respectively. Basically, he was challenging Biason's qualifications and the procedure by which the RTC appointed him as guardian for Maura. However, with Biason's demise, it has become impractical and futile to proceed with resolving the merits of the petition. It is a well-established rule that the relationship of guardian and ward is necessarily terminated by the death of either the guardian or the ward. The supervening event of death rendered it pointless to delve into the propriety of Biason's appointment since the juridical tie between him and Maura has already been dissolved. The petition, regardless of its disposition, will not afford Abad, or anyone else for that matter, any substantial relief.

APPEARANCES OF COUNSEL

Luis Manuel U. Bugayong for petitioner.
Cesar M. Cariño for Leonardo Biason.
Leoncio M. Pausanes for Gabriel Magno.
Jaime A. Paredes, Jr. for Movant Maura B. Abad.

RESOLUTION

REYES, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated August 28, 2009 and Resolution[2] dated April 19, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 90145.

The facts show that on March 19, 2007, petitioner Eduardo Abad (Abad) filed a petition for guardianship over the person and properties of Maura B. Abad (Maura) with the Regional Trial Court (RTC), Dagupan City, Branch 42, which was docketed as Sp. Proc. No. 2007-0050-D. In support thereof, Abad alleged that he maintains residence at No. 14 B St. Paul Street, Horseshoe Village, Quezon City and that he is Maura's nephew. He averred that Maura, who is single, more than ninety (90) years old and a resident of Rizal Street, Poblacion, Mangaldan, Pangasinan, is in dire need of a guardian who will look after her and her business affairs. Due to her advanced age, Maura is already sickly and can no longer manage to take care of herself and her properties unassisted thus becoming an easy prey of deceit and exploitation.[3]

Finding the petition sufficient in form and substance, the RTC gave due course to the same and scheduled it for hearing. When the petition was called for hearing on April 27, 2007, nobody entered an opposition and Abad was allowed to present evidence *ex parte*. After Abad formally offered his evidence and the case was submitted for decision, Atty. Gabriel Magno filed a Motion for Leave to Intervene, together with an Opposition-in-Intervention. Subsequently, on June 14, 2007, Leonardo Biason (Biason) filed a Motion for Leave to File Opposition to the Petition and attached therewith his Opposition to the Appointment

---

[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Estela M. Perlas-Bernabe (now member of this Court) and Stephen C. Cruz, concurring; *rollo*, pp. 37-51.

[2] *Id.* at 52-53.

[3] *Id.* at 38.

of Eduardo Abad as Guardian of the Person and Properties of Maura B. Abad. Specifically, Biason alleged that he is also a nephew of Maura and that he was not notified of the pendency of the petition for the appointment of the latter's guardian. He vehemently opposed the appointment of Abad as Maura's guardian as he cannot possibly perform his duties as such since he resides in Quezon City while Maura maintains her abode in Mangaldan, Pangasinan. Biason prayed that he be appointed as Maura's guardian since he was previously granted by the latter with a power of attorney to manage her properties.[4]

On September 26, 2007, the RTC rendered a Decision,[5] denying Abad's petition and appointing Biason as Maura's guardian. The RTC disposed thus:

> WHEREFORE, the petition is hereby denied. Petitioner Eduardo T. Abad is found to be disqualified to act as guardian of incompetent Maura B. Abad. Oppositor Leonardo A. Biason is established by this Court to be in a better position to be the guardian of said incompetent Maura B. Abad.
>
> The Court hereby fixes the guardianship bond at [₱]500,000.00 and the letters of guardianship shall be issued only upon the submission of the bond, conditioned on the following provisions of the Rule 94[,] Section 1, of the 1997 Rules of Civil Procedure:
>
> a. To make and return to the Court within three (3) months true and complete inventory of all the estate, real and personal, of his ward which shall come to his possession or knowledge or to the possession or knowledge of any other person for him;
>
> b. To faithfully execute the duties of his trust, to manage and dispose of the estate according to these rules for the best interests of the ward, and to provide for the proper care, custody x x x of the ward;
>
> c. To render a true and just account of all the estate of the ward in his hands, and of all proceeds or interest derived therefrom, and of the management and disposition of the

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

[5] *Id.* at 83-86.

same, at the time designated by these rules and such other times as the court directs, and at the expiration of his trust to settle his accounts with the court and deliver and pay over all the estate, effects, and moneys remaining in his hands, or due from him on such settlement, to the person lawfully entitled thereto;

d. To perform all orders of the court by him to be performed.

SO ORDERED.[6]

Unyielding, Abad filed a motion for reconsideration of the foregoing decision but the RTC denied the same in an Order dated December 11, 2007.

Abad filed an appeal to the CA. He argued that the RTC erred in disqualifying him from being appointed as Maura's guardian despite the fact that he has all the qualifications stated under the Rules. That he was not a resident of Mangaldan, Pangasinan should not be a ground for his disqualification as he had actively and efficiently managed the affairs and properties of his aunt even if he is residing in Metro Manila. Moreover, he was expressly chosen by Maura to be her guardian.[7]

Abad further averred that no hearing was conducted to determine the qualifications of Biason prior to his appointment as guardian. He claimed that the RTC also overlooked Maura's express objection to Biason's appointment.[8]

On August 28, 2009, the CA issued a Decision,[9] affirming the decision of the RTC, the pertinent portions of which read:

The petitioner-appellant may have been correct in arguing that there is no legal requirement that the guardian must be residing in the same dwelling place or municipality as that of the ward or incompetent, and that the *Vancil vs. Belmes* case cited by the court *a quo* which held that "courts should not appoint as guardians persons

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

[7] *Id.* at 43.

[8] *Ibid.*

[9] *Supra* note 1.

who are not within the jurisdiction of our courts" pertains to persons who are not residents of the country.

However, we do not find that the court *a quo*, by deciding to appoint the oppositor-appellee as guardian, has fallen into grievous error.

For one, the oppositor-appellee, like petitioner-appellant, is also a relative, a nephew of the incompetent. There are no vices of character which have been established as to disqualify him from being appointed as a guardian.

x x x x x x x x x

Anent the claim of the petitioner-appellant that he has been expressly chosen by her aunt to be her guardian as evidenced by her testimony, although it could be given weight, the same could not be heavily relied upon, especially considering the alleged mental state of the incompetent due to her advanced age.

x x x x x x x x x

WHEREFORE, premises considered, the instant petition is ***DISMISSED*** for lack of merit. The assailed decision of the Regional Trial Court of Dagupan City, Branch 42 is ***AFFIRMED IN TOTO***.

SO ORDERED.[10]

Dissatisfied, Abad filed a motion for reconsideration but the CA denied the same in a Resolution[11] dated April 19, 2010, the dispositive portion of which reads:

WHEREFORE, premises considered, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.[12]

On June 7, 2010, Abad filed a Petition for Review on *Certiorari* with this Court. Subsequently, Maura filed a Motion for Leave to Intervene,[13] together with a Petition-in-Intervention.[14]

---

[10] *Id.* at 47-48, 50; citation omitted.

[11] *Supra* note 2.

[12] *Id.* at 53.

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

[14] *Id.* at 71-80.

The instant petition raises the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT DENIED THE PETITIONER'S APPEAL AND AFFIRMED THE TRIAL COURT'S DECISION DESPITE VERY CLEAR VIOLATIONS OF DUE PROCESS, DISREGARD OF THE RULES, AND IRREGULARITIES IN THE APPOINTMENT OF RESPONDENT BIASON AS GUARDIAN;

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT DENIED THE PETITIONER'S APPEAL AND ERRONEOUSLY UPHELD RESPONDENT BIASON'S APPOINTMENT AS GUARDIAN BASED ON SOLE GROUND OF RESIDENCE, AND FAILED TO CONSIDER THE REQUIREMENTS AND QUALIFICATIONS PRESCRIBED BY THE SUPREME COURT FOR THE APPOINTMENT OF GUARDIAN.[15]

Abad contends that the CA erred in affirming the RTC's decision despite the fact that it did not hold any hearing to determine whether Biason possessed all the qualifications for a guardian as provided by law. Further, he was not given the opportunity to submit evidence to controvert Biason's appointment.[16]

Abad also bewails his disqualification as guardian on the sole basis of his residence. He emphasizes that it is not a requirement for a guardian to be a resident of the same locality as the ward, or to be living with the latter under the same roof in order to qualify for the appointment. The more significant considerations are that the person to be appointed must be of good moral character and must have the capability and sound judgment in order that he may be able to take care of the ward and prudently manage his assets.[17]

---

[15] *Id.* at 21.

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

[17] *Id.* at 29.

Unfortunately, pending the resolution of the instant petition, Biason died. On May 11, 2012, Maura filed a Manifestation and Motion,[18] informing this Court that Biason passed away on April 3, 2012 at SDS Medical Center, Marikina City due to multiple organ failure, septic shock, community acquired pneumonia high risk, prostate CA with metastasis, and attached a copy of his Death Certificate.[19] Maura averred that Biason's death rendered moot and academic the issues raised in the petition. She thus prayed that the petition be dismissed and the guardianship be terminated.

On June 20, 2012, this Court issued a Resolution,[20] requiring Abad to comment on the manifestation filed by Maura. Pursuant to the Resolution, Abad filed his Comment[21] on August 9, 2012 and expressed his acquiescence to Maura's motion to dismiss the petition. He asseverated that the issues raised in the petition pertain to the irregularity in the appointment of Biason as guardian which he believed had been rendered moot and academic by the latter's death. He also supported Maura's prayer for the termination of the guardianship by asseverating that her act of filing of a petition-in-intervention is indicative of the fact that she is of sound mind and that she can competently manage her business affairs.

We find Maura's motion meritorious.

An issue or a case becomes moot and academic when it ceases to present a justiciable controversy, so that a determination of the issue would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition.[22]

---

[18] *Id.* at 254-255.

[19] *Id.* at 256.

[20] *Id.* at 260.

[21] *Id.* at 261-262.

[22] *Roxas v. Tipon*, G.R. No. 160641, June 20, 2012, citing *Romero II v. Estrada*, G.R. No. 174105, April 2, 2009, 583 SCRA 396, 404.

In his petition, Abad prayed for the nullification of the CA Decision dated August 28, 2009 and Resolution dated April 19, 2010, which dismissed his appeal from the Decision dated September 26, 2007 of the RTC and denied his motion for reconsideration, respectively Basically, he was challenging Biason's qualifications and the procedure by which the RTC appointed him as guardian for Maura. However, with Biason's demise, it has become impractical and futile to proceed with resolving the merits of the petition. It is a well-established rule that the relationship of guardian and ward is necessarily terminated by the death of either the guardian or the ward.[23] The supervening event of death rendered it pointless to delve into the propriety of Biason's appointment since the juridical tie between him and Maura has already been dissolved. The petition, regardless of its disposition, will not afford Abad, or anyone else for that matter, any substantial relief.

Moreover, Abad, in his Comment, shared Maura's belief that the petition has lost its purpose and even consented to Maura's prayer for the dismissal of the petition.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is hereby **DISMISSED.**

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), Bersamin, Villarama, Jr., and *Perez,*[*] *JJ.,* concur.

---

[23] *Cañiza v. CA*, 335 Phil. 1107, 1120 (1997), citing Francisco, *The Revised Rules of Court in the Phils.*, Vol. V-B, 1970 Ed., citing 25 Am. Jur. 37.

[*] Acting member per Special Order No. 1385 dated December 4, 2012 *vice* Chief Justice Maria Lourdes P. A. Sereno.

FIRST DIVISION

[G.R. No. 200531. December 5, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RADBY ESTOYA *Y* MATEO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON ACCORDED RESPECT. — Estoya's appeal primarily hinges on the issue of credibility of the prosecution witnesses. It is axiomatic that when it comes to evaluating the credibility of the testimonies of the witnesses, 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. After a painstaking review of the records of this case, including the exhibits and transcript of stenographic notes, we find no reason to deviate from the findings and conclusions of the RTC.

2. CRIMINAL LAW; RAPE; ELEMENTS, SUFFICIENTLY ESTABLISHED. — AAA's testimony, given positively and candidly, established the elements of carnal knowledge accomplished by Estoya through force, threat, and/or intimidation[.] x x x AAA recognized Estoya because Estoya had previously introduced himself to AAA. Three times prior to April 5, 2006, Estoya visited BBB's house to ask for cold water. Estoya also lives just six to seven meters away from BBB's house, where AAA was staying on vacation for about a month already. We give weight to AAA's categorical declaration in the earlier part of her testimony that while Estoya was on top of her, she felt something enter her vagina. AAA's testimony was corroborated by Dr. Carpio who conducted a physical examination of AAA right after the incident[.] x x x When the victim's testimony of her violation is corroborated by the physician's findings of penetration, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.

3. ID.; ID.; FAILURE TO OFFER TENACIOUS RESISTANCE DOES NOT NEGATE COMMISSION OF RAPE. — Estoya

further attempts to raise doubts in AAA's testimony by questioning AAA's failure to offer tenacious resistance during the supposed sexual assault. We are not swayed. We must keep in mind that AAA was only 14 years of age at the time of the rape, and at such a tender age, she could not be expected to put up resistance as would be expected from a mature woman. Also, Estoya had threatened AAA that he would stab her with a knife if she resisted. In any case, the law does not impose upon a rape victim the burden of proving resistance. Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for life and personal safety.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE STATEMENTS OF A WITNESS DO NOT IMPAIR HIS CREDIBILITY. — Estoya likewise makes much of the inconsistencies between CCC's *Sinumpaang Salaysay* and his testimony in open court. Said inconsistencies do not at all damage CCC's credibility as a witness. It is doctrinally settled that discrepancies and/or inconsistencies between a witness' affidavit and testimony in open court do not impair credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer. We also add that CCC was only 10 years of age when he executed his *Sinumpaang Salaysay* and testified in court. It is not difficult to imagine that CCC was also overwhelmed by the circumstances, young as he was when these all happened. The important thing is that CCC was consistent in saying that he saw Estoya with AAA in BBB's house; he saw AAA crying; and he immediately ran to ask help from their neighbor, DDD.

5. ID.; ID.; DEFENSE OF DENIAL AND ALIBI, NOT ESTABLISHED. — Equally undeserving of consideration is Estoya's defense of denial and alibi. Alibi cannot prevail over the positive testimony of the victim with no improper motive to testify falsely against him. In addition, for his defense of alibi to prosper, Estoya must prove not only that he was somewhere else when the crime was committed but he must also satisfactorily establish that it was physically impossible for him to be at the crime scene at the time of commission. On April 5, 2006, at around 3:00 p.m., Estoya claimed to be at his house, which was only around six to seven meters away

from BBB's house, where AAA was raped. The very short distance between the two houses does not foreclose the possibility of Estoya's presence at BBB's house at the time of AAA's rape. Lastly, Estoya did not present any evidence to corroborate his alibi. He averred that he spent the day with his nephews and nieces, yet he did not present a single one to support his averment. In the face of AAA's unwavering testimony and very positive and firm identification of Estoya as her assailant, Estoya could no longer hide behind the protective shield of his presumed innocence, but he should have come forward with credible and strong evidence of his lack of authorship of the crime. Considering that the burden of evidence had shifted to Estoya but he did not discharge his burden at all, there is no other outcome except to affirm his guilt beyond reasonable doubt for the crime of simple rape of AAA, under Article 226-A, paragraph (1) (a) of the Revised Penal Code, as amended.

6. CRIMINAL LAW; RAPE; PENALTY AND CIVIL LIABILITY. — Article 226-B of the Revised Penal Code, as amended, provides that rape under paragraph (1) of Article 226-A of the same Code shall be punished by *reclusion perpetua*. As for the award of damages in AAA's favor, we affirm the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages; but we increase to ₱30,000.00 the amount of exemplary damages in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For Our resolution is the appeal filed by accused-appellant Radby M. Estoya (Estoya) from the Decision[1] dated April 28,

[1] *Rollo*, pp. 2-13; penned by Associate Justice Vicente S.E. Veloso with Associate Justices Francisco P. Acosta and Edwin D. Sorongon, concurring.

2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04364, which affirmed with modification the Decision[2] dated February 26, 2010 of the Regional Trial Court (RTC) of Malolos, Bulacan, in Criminal Case No. 1136-M-O6, finding Estoya guilty of raping AAA.[3]

Estoya was charged through an Information[4] filed with the RTC by the Office of the City Prosecutor of Bulacan on April 24, 2006, which reads:

> That on or about the 5th day of April, 2006, in x x x and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of the innocence of the offended party, [AAA], a minor 14 years of age, by means of force, threats, and intimidation, did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of said [AAA], against her will and without her consent, thereby placing said minor in conditions prejudicial to her normal growth and development.

When arraigned on June 5, 2006, Estoya pleaded not guilty.[5] Trial on the merits followed.

The prosecution presented three witnesses: (1) AAA, the victim; (2) BBB, AAA's aunt; and (3) CCC, AAA's brother.[6] The prosecution also submitted, among other documentary evidence, AAA's Birth Certificate,[7] establishing that AAA was born on September 18, 1991 and was 14 years old at the time of the

---

[2] Records, pp. 112-115; penned by Presiding Judge Andres B. Soriano.

[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.

[6] AAA identified CCC as her nephew (TSN, December 11, 2006, p. 16) while CCC recognized AAA as his "*ate*" (TSN, September 24, 2007, p. 3). However, in the pleadings of the prosecution and the decisions of the RTC and Court of Appeals, CCC was referred to as AAA's brother.

[7] Records, p. 81.

incident; and the Medico Legal Report[8] of Dr. Pierre Paul F. Carpio (Carpio) dated April 5, 2006, finding "a shallow fresh laceration at 6 o'clock position" of the hymen and "clear evidence of penetrating trauma to the hymen."

The defense offered as sole evidence Estoya's testimony.

On February 26, 2010, the RTC rendered its Decision finding Estoya guilty beyond reasonable doubt of raping AAA and sentencing him as follows:

> WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime of rape as charged herein and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA*.
>
> The accused is likewise directed to indemnify the private complainant in the amount of ONE HUNDRED THOUSAND (₱100,000.00) PESOS.[9]

Aggrieved by the above decision, Estoya filed an appeal before the Court of Appeals.

The Office of the Solicitor General summarized the evidence for the prosecution in Plaintiff-Appellee's Brief, to wit:

> During her school vacation in 2006 while her parents were in x x x, AAA stayed at the house of her maternal aunt, BBB, in x x x. Appellant Radby Estoya lives six (6) to seven (7) meters away from BBB's house.
>
> On April 5, 2006, around 3:00 o'clock in the afternoon, AAA was sleeping on her aunt's bed when she was awakened because someone was on top of her. When she realized that it was appellant, she attempted to shout but her resistance was subdued by his threat that he will stab her with a knife. She realized that appellant had undressed her and suddenly felt appellant's penis entering her vagina. Due to fear, the two (2) nephews of AAA and her brother CCC, hurriedly ran out of the house to report AAA's ordeal to DDD, a neighbor.

---

[8] *Id.* at 84.

[9] *Id.* at 115.

After satisfying his lust, appellant ran away and climbed to the roof of the house. However, he immediately returned to the room and taunted AAA to report to the police if she can prove that rape was committed. Then appellant left.

Soon after, CCC and DDD arrived and saw AAA crying on the bed. DDD accompanied AAA to the police station to report the incident and later, accompanied her to the doctor for physical examination. The medical examination yielded the following result: a shallow fresh laceration at 6:00 o'clock position and clear evidence of penetrating trauma to the hymen.[10] (Citations omitted.)

Estoya very briefly stated his defense in his Accused-Appellant's Brief, thus:

Accused **Radby Estoya**, x x x, a 22-year old resident of Sweden Street, Harmony 1, San Jose Del Monte City, denied the imputation against him. In truth, he was cleaning his house with his nephews and nieces. Although he knew the private complainant, he was not close to her as she was, at that time, a plain acquaintance and neighbor.[11]

In its Decision dated April 28, 2011, the Court of Appeals affirmed Estoya's conviction by the RTC, but modified the damages awarded to AAA. The appellate court decreed:

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed February 26, 2010 Decision is however **MODIFIED** by reducing the award of civil indemnity to ₱50,000.00 and granting on the other hand the awards of moral damages in the amount of ₱50,000.00 and exemplary damages in the amount of ₱25,000.00.[12]

Hence, Estoya comes before us through the instant appeal with the same lone assignment of error which he raised before the Court of Appeals:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE

---

[10] CA *rollo*, pp. 62-64.

[11] *Id.* at 36.

[12] *Rollo*, p. 13.

DOUBT FOR THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO CONVINCINGLY PROVE HIS GUILT.[13]

Estoya admits that although he was not able to adduce any evidence to corroborate his denial and alibi, he should not be convicted based on the weakness of his evidence. Citing *People v. Manansala*,[14] Estoya argues that the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense. Estoya points out several purported inconsistencies, ambiguities, and improbabilities in the evidence of the prosecution, *viz*, (1) CCC alleged in his *Sinumpaang Salaysay* that he was able to enter the house and thereupon, he saw AAA naked and crying while Estoya was on top of AAA, but on cross-examination, CCC admitted that he only saw AAA crying as Estoya already closed the door and CCC was unable to enter the house; (2) BBB's testimony was hearsay because she was in Manila at the time of the incident and she only received a text message from her sister, AAA's mother, that AAA had been raped; (3) AAA testified that Estoya surreptitiously entered the room where AAA was sleeping, however, it is very doubtful that Estoya could have gained entrance into the house with no one from the household noticing; and (4) it is contrary to human experience that AAA, as she was being raped, did not cry out aloud or manifest a tenacious resistance to repel the impending threat on her honor.

We find no merit in Estoya's appeal.

Estoya's appeal primarily hinges on the issue of credibility of the prosecution witnesses. It is axiomatic that when it comes to evaluating the credibility of the testimonies of the witnesses, 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.[15] After a painstaking review of the

---

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

[14] G.R. Nos. 110974-81, June 17, 1997, 273 SCRA 517, 519.

[15] *People v. Pastorete, Jr.*, 441 Phil. 286, 295 (2002).

records of this case, including the exhibits and transcript of stenographic notes, we find no reason to deviate from the findings and conclusions of the RTC.

The Revised Penal Code, as amended, describes the different ways by which rape is committed:

Article 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. (Emphases ours.)

AAA's testimony, given positively and candidly, established the elements of carnal knowledge accomplished by Estoya through force, threat, and/or intimidation:

Prosecutor Joson:

Q On April 5, 2006 at around 3:00 in the afternoon, do you recall of any unusual incident that happened to you, which has connection with the name Radby Estoya *y* Mateo?

A There was, sir.

Q What was that unusual incident that happened to you on that particular date and time?

A He undressed me, sir.

Q When you said, "he undressed me", whom are you referring to?

A (The witness pointed to the accused)

Q Where were you at the time he undressed you?

A In the room, sir.

Q What were you doing?

A I was sleeping, sir.

Q When you said you were sleeping and he undressed you, do you mean that you were awakened?

A I was awakened when he placed himself on top of me, sir.

Q You said, "he undressed you." What clothes did he undress from you?

x x x x x x x x x

A Lower apparel, sir.

x x x x x x x x x

Q You said that he placed his body on top of you. What happened thereafter?

A I was awakened because he placed himself on top of me, sir. I just felt that something entered my vagina, sir.

Q What happened thereafter?

A I wanted to shout at that time but he threatened to stab me with a knife, sir.

Q What happened thereafter?

A Since my two (2) nephews went outside someone shouted "Ate [DDD], Ate [DDD], help my sister!" and then somebody came into the room, sir.

Q Who entered the room? Who responded to the cry for help?

A Ate [DDD], sir.

x x x x x x x x x

Q When the accused was on top of your body, actually what was he doing?

A When he was still on top of me, he kissed my cheeks, sir.

Q What else did he do?

A Only that, sir. And when Ate Candida entered the room he went to the roof, sir.[16]

AAA recognized Estoya because Estoya had previously introduced himself to AAA. Three times prior to April 5, 2006, Estoya visited BBB's house to ask for cold water. Estoya also lives just six to seven meters away from BBB's house, where AAA was staying on vacation for about a month already.

We give weight to AAA's categorical declaration in the earlier part of her testimony that while Estoya was on top of her, she felt something enter her vagina. AAA's testimony was corroborated by Dr. Carpio who conducted a physical examination of AAA right after the incident and reported the following:

FINDINGS: HYMEN: There is a shallow fresh laceration at 6'oclock position.

ANUS: Unremarkable

CONCLUSION : Medicolegal examination shows clear evidence of penetrating trauma to the hymen.[17]

When the victim's testimony of her violation is corroborated by the physician's findings of penetration, then there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[18]

Estoya further attempts to raise doubts in AAA's testimony by questioning AAA's failure to offer tenacious resistance during the supposed sexual assault. We are not swayed. We must keep in mind that AAA was only 14 years of age at the time of the rape, and at such a tender age, she could not be expected to put up resistance as would be expected from a mature woman. Also, Estoya had threatened AAA that he would stab her with a knife if she resisted. In any case, the law does not impose upon a rape victim the burden of proving resistance. Physical resistance

---

[16] TSN, December 11, 2006, pp. 13-17.

[17] Records, p. 84.

[18] *People v. Dizon*, 453 Phil. 858, 883 (2003).

need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for life and personal safety.[19]

Estoya has failed to allege and prove any improper motive on AAA's part for AAA to falsely accuse Estoya of rape. Since there was no showing of any improper motive on the part of the victim to testify falsely against the accused or to falsely implicate him in the commission of the crime, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence.[20] We have in many cases held that no young Filipina would publicly admit that she had been criminally abused and ravished, unless it is the truth, for it is her natural instinct to protect her honor.[21] We simply cannot believe that a 14-year old girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.[22]

Estoya likewise makes much of the inconsistencies between CCC's *Sinumpaang Salaysay* and his testimony in open court. Said inconsistencies do not at all damage CCC's credibility as a witness. It is doctrinally settled that discrepancies and/or inconsistencies between a witness' affidavit and testimony in open court do not impair credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer.[23] We also add that CCC was only 10 years of age when he executed his *Sinumpaang Salaysay* and testified in court. It is not difficult to imagine that CCC was also overwhelmed by the circumstances, young as he was when these all happened. The important thing

---

[19] *People v. Liwanag*, 415 Phil. 271, 297 (2001).

[20] *People v. Manayan*, 420 Phil. 357, 378-379 (2001).

[21] *People v. Celocelo*, G.R. No. 173798, December 15, 2010, 638 SCRA 576, 588.

[22] *People v. Alberio*, G.R. No. 152584, July 6, 2004, 433 SCRA 469, 478.

[23] *People v. Dizon*, *supra* note 18 at 882.

is that CCC was consistent in saying that he saw Estoya with AAA in BBB's house; he saw AAA crying; and he immediately ran to ask help from their neighbor, DDD. Moreover, as we pronounced previously herein, AAA's testimony alone already established the elements of rape committed against her by Estoya. At most, CCC's testimony on the events that occurred on April 5, 2006 is merely corroborative.

As AAA's rape by Estoya had been satisfactorily proven by AAA's testimony, corroborated on several aspects by CCC's testimony, we need not belabor the issue raised by Estoya as regards BBB's testimony being hearsay.

Equally undeserving of consideration is Estoya's defense of denial and alibi. Alibi cannot prevail over the positive testimony of the victim with no improper motive to testify falsely against him.[24] In addition, for his defense of alibi to prosper, Estoya must prove not only that he was somewhere else when the crime was committed but he must also satisfactorily establish that it was physically impossible for him to be at the crime scene at the time of commission.[25] On April 5, 2006, at around 3:00 p.m., Estoya claimed to be at his house, which was only around six to seven meters away from BBB's house, where AAA was raped.[26] The very short distance between the two houses does not foreclose the possibility of Estoya's presence at BBB's house at the time of AAA's rape. Lastly, Estoya did not present any evidence to corroborate his alibi. He averred that he spent the day with his nephews and nieces, yet he did not present a single one to support his averment. In the face of AAA's unwavering testimony and very positive and firm identification of Estoya as her assailant, Estoya could no longer hide behind the protective shield of his presumed innocence, but he should have come forward with credible and strong evidence of his lack of authorship of the crime. Considering that the burden of evidence had shifted to Estoya but he did not discharge his burden at all, there is no

---

[24] *People v. Toquero*, 393 Phil. 446, 452 (2000).

[25] *People v. Galladan*, 376 Phil. 682, 686 (1999).

[26] TSN, December 11, 2006, p. 12.

other outcome except to affirm his guilt beyond reasonable doubt[27] for the crime of simple rape of AAA, under Article 226-A, paragraph (1)(a) of the Revised Penal Code, as amended.

Article 226-B of the Revised Penal Code, as amended, provides that rape under paragraph (1) of Article 226-A of the same Code shall be punished by *reclusion perpetua*. As for the award of damages in AAA's favor, we affirm the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages; but we increase to ₱30,000.00 the amount of exemplary damages in line with prevailing jurisprudence.[28]

WHEREFORE, the Decision dated April 28, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04364, finding Radby M. Estoya **GUILTY** beyond reasonable doubt of the crime of **RAPE** is **AFFIRMED** with **MODIFICATION.** Estoya is **ORDERED** to pay private complainant the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, plus interest at the rate of 6% per annum on all damages from the date of finality of this judgment. No costs.

SO ORDERED.

Bersamin, Villarama, Jr., Perez,[*] and *Reyes, JJ.,* concur.

---

[27] *People v. Butiong,* G.R. No. 168932, October 19, 2011, 659 SCRA 557, 576.

[28] *People v. Guillermo,* G.R. No. 177138, January 26, 2010, 611 SCRA 169, 177. In this case we held that "[w]hile the use of a deadly weapon is not one of the generic aggravating circumstances in Article 14 of the RPC, under Article 266-B thereof, the presence of such circumstance in the commission of rape increases the penalty, provided that it has been alleged in the Information and proved during trial. This manifests the legislative intent to treat the accused who resorts to this particular circumstance as one with greater perversity and, concomitantly, to address it by imposing a greater degree of liability. Thus, even if the use of a deadly weapon is not alleged in the Information but is proven during the trial, it may be appreciated to justify the award of civil liability, particularly exemplary damages." (Citations omitted.)

[*] Per Special Order No. 1385 dated December 4, 2012.

FIRST DIVISION

[A.M. No. 12-8-160-RTC. December 10, 2012]

AMBASSADOR HARRY C. ANGPING and ATTY. SIXTO BRILLANTES, *petitioners, vs.* **JUDGE REYNALDO G. ROS, Regional Trial Court, Branch 33, Manila,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; THE CHARGES OF PARTIALITY, MALICE, BAD FAITH, FRAUD, AND DISHONESTY MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE. — [T]his Court partially agrees with the OCA when it recommended the dismissal of the present administrative complaint in so far as the respondent's liability under Canon 3 of the Code of Judicial Conduct is concerned. The OCA is correct in its observation that petitioners failed to present evidence necessary to prove respondent's partiality, malice, bad faith, fraud, dishonesty or corruption. In *Alicia E. Asturias v. Attys. Manuel Serrano and Emiliano Samson,* the Court held that a complainant has the burden of proof in administrative complaints. He must establish his charge by clear, convincing and satisfactory proof. In the instant case, petitioners Amb. Angping and Atty. Brillantes failed to discharge by clear, convincing and satisfactory evidence the *onus* of proving their charges under Canon 3 against respondent Judge Ros.

2. ID.; ID.; WHERE IMMEDIATE DISMISSAL OF A CRIMINAL CASE BY A JUDGE CONSTITUTES A SEMBLANCE OF BIAS AND PARTIALITY. — The respondent Judge claimed that he had carefully evaluated the evidence on record before he issued his order dismissing the criminal cases. He asserted that even if the petitioners' reply was considered, his position would not change. However, because he failed to consider the reply in his evaluation of the criminal cases, he appeared to have decided without the cold neutrality of an impartial judge. In not waiting for the petitioners' reply, the respondent Judge exhibited the appearance of bias and partiality. x x x At the very least, the respondent Judge failed to consider further arguments which the petitioners might have

proffered when he failed to wait for their reply. Whether or not such argument may justify the reconsideration of the dismissal of the concerned criminal cases, the respondent Judge is at all times duty bound to render just, correct and impartial decisions in a manner free of any suspicion as to his fairness, impartiality or integrity. We cannot blame the petitioners if they became suspicious of the action of the respondent. The manner by which the latter handled the dismissal of the concerned criminal cases was of such a character that could cause distrust, especially in the wary eyes of a concerned party-litigant. In his comment, the respondent Judge apologized for his omission and averred that he acted in good faith. While we do not belittle the respondent's sincerity, we cannot simply ignore his lack of prudence. This Court is duty bound to protect and preserve public confidence in our judicial system. The careless manner at which he arrived at his March 23, 2010 Order and denied the petitioners' motion for consideration raised an air of suspicion and an appearance of impropriety in the proceedings. Verily, in this instance, the respondent Judge failed to live up to the demand and degree of propriety required of him by the Code of Judicial Conduct.

R E S O L U T I O N

REYES, *J.*:

Before this Court is a complaint of petitioners Ambassador Harry C. Angping (Amb. Angping) and Atty. Sixto Brillantes (Atty. Brillantes) filed against respondent Judge Reynaldo G. Ros (Judge Ros) of the Regional Trial Court (RTC), Manila, Branch 33. Petitioners charged Judge Ros for the violation of Canons 2 and 3 of the Code of Judicial Conduct.

The Facts[1]

Herein petitioner Amb. Angping with his counsel petitioner Atty. Brillantes filed before this Court a letter-complaint dated June 28, 2010. The petitioners charged respondent Judge Ros for violating Canons 2 and 3 of the Code of Judicial Conduct.

[1] As culled from the Report and Recommendation of the Office of the Court Administrator dated July 20, 2012.

The said letter-complaint emanated from the actions and rulings of Judge Ros relative to Criminal Case Nos. 10-274696 to 10-274704 entitled, *"People of the Philippines vs. Julian Camacho and Bernardo Ong,"* for qualified theft.

Petitioners Amb. Angping and Atty. Brillantes were the representatives of the Philippine Sports Commission (PSC), the private complainant in the aforesaid criminal cases. Petitioners alleged that on March 23, 2010, the above cases were raffled to Branch 33, RTC-Manila. However, on the very same day the said case was raffled to the respondent judge, the latter issued an order dismissing the criminal cases for lack of probable cause.

Petitioners subsequently filed a motion for reconsideration. After which, the respondent issued an Order dated April 16, 2010 directing the accused in the above-cited criminal cases (**Julian Camacho** and **Bernardo Ong**) to file within fifteen (15) days their comment. In the same Order, respondent Judge Ros gave PSC another fifteen (15) days from receipt of a copy of the accused's comment to file a reply and thereafter the motion for reconsideration would be resolved.

On May 26, 2010, the accused filed their comment after several motions for extension. The petitioners averred that the PSC received its copy of the comment on June 3, 2010. Thus, the petitioners claimed that they have timely filed their reply on June 18, 2010 since they were given a period of fifteen (15) days to file the same. However, on the date petitioners filed their reply, the PSC received respondent Judge Ros' Order dated May 28, 2010, denying the motion for reconsideration. Petitioners asserted that the respondent Judge resolved the motion for reconsideration without waiting for PSC's reply — a direct contravention of respondent's Order dated April 16, 2010 where petitioners were given fifteen (15) days to file their reply.

The aforesaid incidents started to create reservations in the mind of the petitioners on the respondent Judge's impartiality. They doubted Judge Ros' fairness in handling the aforementioned criminal cases because of the speed at which he disposed them when they had just been raffled to him. The petitioners could

not believe that he could resolve the cases **within the same day** considering that the **records thereof are voluminous and that the criminal cases were raffled to him on the day he issued the order of dismissal.**

Nevertheless, the petitioners continued to respect the respondent's order and sought other legal remedies such as the filing of a motion for reconsideration. However, when Judge Ros issued the order resolving the motion for reconsideration after **two (2) days from the filing of the comment and without awaiting for PSC's reply**, petitioners were convinced that respondent Judge Ros acted with partiality and malice. Thus, the petitioners filed the letter-complaint subject of this administrative case where the petitioners charged respondent Judge Ros for violation of Canons 2 and 3 of the Code of Judicial Conduct.

In his comment, respondent Judge Ros claimed that he overlooked the directive in his order which gave the PSC fifteen (15) days to file its reply. He apologized, and averred that he acted in good faith. He alleged that the oversight was due to his policy of promptly acting on a motion for reconsideration within thirty (30) days after it has been submitted for resolution. Notwithstanding the speed of the disposition of the criminal cases, respondent Judge Ros claimed that the PSC was accorded due process because he had taken into consideration the petitioners' legal arguments in their motion for reconsideration. The respondent also pointed out that, even if PSC's reply had been taken into account, his position would remain the same because petitioners did not raise any new matter. He claimed that PSC merely rebutted the arguments raised in the comment/objection of the accused in the concerned criminal cases, which arguments were not even relied upon in his dismissal of the cases.

The respondent denied acting with partiality and malice. He maintained that he ordered the dismissal of the criminal cases on the same day he had received them only after a careful evaluation of the evidence on record. He also noted that the complainants never questioned his ruling before the appellate

court. Thus, respondent Judge Ros prayed for the dismissal of the instant administrative case against him.

In its recommendation, the **Office of the Court Administrator** (OCA) recommended the dismissal of the instant administrative complaint against respondent Judge Ros for lack of merit. The OCA pointed out that, while the speed at which the respondent Judge rendered the March 23, 2010 Order may be surprising to those accustomed to court delays, a judge is not precluded from deciding a case with dispatch. It also found that the respondent Judge issued the said Order based on his independent evaluation or assessment of the merits of the case. Furthermore, although there was a lapse in judgment on the part of the respondent judge when he promulgated the May 28, 2010 Order without waiting for the petitioners' reply, the OCA noted that the petitioners failed to prove that the respondent's action was motivated by bad faith, fraud, dishonesty or corruption. The OCA added that the correctness of the judge's evaluation is judicial in nature, thus, it is not a proper subject of administrative proceedings.

Issue

Whether or not respondent Judge Ros is liable for violation of Canons 2 and 3 of the Code of Judicial Conduct.

Our Ruling

After a careful evaluation of the records of the instant administrative complaint, this Court partly concurs with the findings and recommendations of the OCA.

The respondent was charged with the violation of Canons 2 and 3 of the Code of Judicial Conduct. The said canons provide:

Canon 2 – A judge should avoid impropriety and the appearance of impropriety in all activities.

Canon 3 – A judge should perform official duties honestly, and with impartiality and diligence.

From the foregoing provisions, this Court partially agrees with the OCA when it recommended the dismissal of the present

administrative complaint in so far as the respondent's liability under Canon 3 of the Code of Judicial Conduct is concerned. The OCA is correct in its observation that petitioners failed to present evidence necessary to prove respondent's partiality, malice, bad faith, fraud, dishonesty or corruption. In *Alicia E. Asturias v. Attys. Manuel Serrano and Emiliano Samson*,[2] the Court held that a complainant has the burden of proof in administrative complaints. He must establish his charge by clear, convincing and satisfactory proof. In the instant case, petitioners Amb. Angping and Atty. Brillantes failed to discharge by clear, convincing and satisfactory evidence the *onus* of proving their charges under Canon 3 against respondent Judge Ros.

Notwithstanding the above findings, this Court is not prepared to concede respondent Judge's liability as to Canon 2 of the Code of Judicial Conduct, which provides: "A judge should avoid impropriety and the appearance of impropriety in all activities." **The failure of the petitioners to present evidence that the respondent acted with partiality and malice can only negate the allegation of impropriety, but not the appearance of impropriety**. In *De la Cruz v. Judge Bersamira*,[3] this Court underscored the need to show not only the fact of propriety but the appearance of propriety itself. It held that the standard of morality and decency required is exacting so much so that a judge should avoid impropriety and the appearance of impropriety in all his activities. The Court explains thus:

By the very nature of the bench, judges, more than the average man, are required to observe an exacting standard of morality and decency. The character of a judge is perceived by the people not only through his official acts but also through his private morals as reflected in his external behavior. It is therefore paramount that a judge's personal behavior both in the performance of his duties and his daily life, be free from the appearance of impropriety as to be beyond reproach. Only recently, in *Magarang v. Judge Galdino B. Jardin, Sr.*, the Court pointedly stated that:

---

[2] 512 Phil. 496 (2005).

[3] 402 Phil. 671 (2001).

While every public office in the government is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the judiciary. Hence, judges are strictly mandated to abide by the law, the Code of Judicial Conduct and with existing administrative policies in order to maintain the faith of the people in the administration of justice.

Judges must adhere to the highest tenets of judicial conduct. They must be the embodiment of competence, integrity and independence. A judge's conduct must be above reproach. **Like Caesar's wife, a judge must not only be pure but above suspicion. A judge's private as well as official conduct must at all times be free from all appearances of impropriety, and be beyond reproach.**

In *Vedana v. Valencia*, the Court held:

> The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala as a private individual. There is no dichotomy of morality: a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have recently explained, a judge's official life can not simply be detached or separated from his personal existence. Thus:
>
> Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.
>
> A judge should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion.

As stated earlier, in Canon 2 of the Code of Judicial Conduct, a judge should avoid impropriety and the appearance of impropriety in all his activities. A judge is not only required to be impartial; he must also *appear* to be impartial. Public confidence

in the judiciary is eroded by irresponsible or improper conduct of judges.

Viewed *vis-à-vis* the factual landscape of this case, it is clear that respondent judge violated Rule 1.02, as well as Canon 2, Rule 2.01 and Canon 3. In this connection, the Court pointed out in *Joselito Rallos, et al. v. Judge Ireneo Lee Gako Jr., RTC Branch 5, Cebu City,* that:

> **Well-known is the judicial norm that "judges should not only be impartial but should also appear impartial."** Jurisprudence repeatedly teaches that litigants are entitled to nothing less than the cold neutrality of an impartial judge. The other elements of due process, like notice and hearing, would become meaningless if the ultimate decision is rendered by a partial or biased judge. **Judges must not only render just, correct and impartial decisions, but must do so in a manner free of any suspicion as to their fairness, impartiality and integrity.**
>
> *This reminder applies all the more sternly to municipal, metropolitan and regional trial court judges like herein respondent, because they are judicial front-liners who have direct contact with the litigating parties*. They are the intermediaries between conflicting interests and the embodiments of the people's sense of justice. Thus, their official conduct should be beyond reproach.[4] (Citations omitted and emphasis supplied)

In the instant administrative complaint, while no evidence directly shows partiality and malice on the respondent's action, this Court cannot ignore the fact that the dispatch by which the respondent Judge dismissed the criminal cases provokes in the minds of the petitioners doubt in the partiality of the respondent. *First*, Judge Ros cannot deny the fact that the Information for Criminal Case Nos. 10-274696 to 10-274704 dated February 10, 2010 filed on March 22, 2010 with the RTC-OCC of Manila against therein accused Camacho and Ong involved nine (9) counts of Qualified Theft. Thus, the records of these cases were voluminous. *Second*, respondent cannot deny the fact that the

---

[4] *Id.* at 679-682.

criminal cases were raffled to his office only on March 23, 2010 and that he immediately rendered the questioned Order dismissing the charges against therein accused on the same day for lack of probable cause. Thus, considering the nine (9) counts of Qualified Theft, the records at hand, and the speed in arriving at a decision, the respondent Judge would either appear to have decided with partiality in favor of the accused or appear to have failed to thoroughly study the case. *Third*, granting *por arguendo* that the dispatch by which he dispensed of the criminal cases were done in good faith, this Court cannot close its eyes on the liberality by which the respondent Judge granted several Motions for Extension of Time to File Comment by therein accused, while the same liberality was missing when it was the turn of the petitioners to file their reply. After the accused filed their comment, and even despite the fifteen-day period available to the petitioners, the respondent Judge simply disregarded his earlier Order directing the petitioners to file their reply and went ahead with the denial of the petitioners' Motion for Reconsideration. And he denied the Motion for Reconsideration barely two days after therein accused filed their comment. From the foregoing, this Court cannot but conclude that there was some semblance of partiality and malice on the part of the respondent Judge.

The respondent Judge claimed that he had carefully evaluated the evidence on record before he issued his order dismissing the criminal cases. He asserted that even if the petitioners' reply was considered, his position would not change. However, because he failed to consider the reply in his evaluation of the criminal cases, he appeared to have decided without the cold neutrality of an impartial judge. In not waiting for the petitioners' reply, the respondent Judge exhibited the appearance of bias and partiality.

In *Borromeo-Garcia v. Pagayatan*,[5] this Court had the occasion to state:

---

[5] A.M. No. RTJ-08-2127 (Formerly OCA I.P.I No. 07-2697-RTJ), September 25, 2008, 566 SCRA 320.

[T]he appearance of bias or prejudice can be as damaging to public confidence and the administration of justice as actual bias or prejudice.

Lower court judges, such as respondent, play a pivotal role in the promotion of the people's faith in the judiciary. They are front-liners who give (sic) human face to the judicial branch at the grassroots level in their interaction with litigants and those who do business with the courts. Thus, the admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to them.[6] (Citations omitted)

At the very least, the respondent Judge failed to consider further arguments which the petitioners might have proffered when he failed to wait for their reply. Whether or not such argument may justify the reconsideration of the dismissal of the concerned criminal cases, the respondent Judge is at all times duty bound to render just, correct and impartial decisions in a manner free of any suspicion as to his fairness, impartiality or integrity.[7]

We cannot blame the petitioners if they became suspicious of the action of the respondent. The manner by which the latter handled the dismissal of the concerned criminal cases was of such a character that could cause distrust, especially in the wary eyes of a concerned party-litigant.

In his comment, the respondent Judge apologized for his omission and averred that he acted in good faith. While we do not belittle the respondent's sincerity, we cannot simply ignore his lack of prudence. This Court is duty bound to protect and preserve public confidence in our judicial system. The careless manner at which he arrived at his March 23, 2010 Order and denied the petitioners' motion for consideration raised an air of suspicion and an appearance of impropriety in the proceedings. Verily, in this instance, the respondent Judge failed to live up to the demand and degree of propriety required of him by the Code of Judicial Conduct.

---

[6] *Id*. at 330-331.

[7] *Supra* note 3, at 682.

Finally, this Court must emphasize that it is commendable when a judge, by his dedication to the speedy administration of justice, attempts or causes the immediate dismissal of a case. Normally, we do not dwell on the question of propriety of a judge's action if he decides with speed the dismissal of a case based on lawful grounds. However, apart from the strict observance of proper procedure, the entire affair should be handled with care and reasonable sensitivity so as not to unduly offend litigants and destroy the public's confidence in our justice system. This Court exhorts all judges to act with prudence so as not to compromise the integrity of court processes and orders.

WHEREFORE, in view of the foregoing, the charge against Judge Reynaldo G. Ros for violation of Canon 3 of the Code of Judicial Conduct is hereby **DISMISSED.** However, for failing to live up to the degree of propriety required of him under Canon 2 of the same Code, he is hereby **ADMONISHED** and **STERNLY WARNED** that a repetition of the same or similar acts would be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. RTJ-12-2331. December 10, 2012]
(Formerly OCA I.P.I. No. 11-3776-RTJ)

MARCELINO A. MAGDADARO, *complainant, vs.* **JUDGE BIENVENIDO R. SANIEL, JR., Regional Trial Court, Branch 20, Cebu City,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; IGNORANCE OF THE LAW AND KNOWINGLY RENDERING AN UNJUST DECISION, NOT ESTABLISHED. —** In this case, there is absolutely no showing that respondent was motivated by bad faith or ill motive in rendering the Decision dated December 28, 2009 in Civil Case No. CEB-27778. Thus, any error respondent may have committed in dismissing Civil Case No. CEB-27778 may be corrected by filing an appeal of respondent's Decision before the Court of Appeals, not by instituting an administrative case against the respondent before this Court. x x x Clearly, at this point, there is no basis for complainant's administrative charges against respondent for gross ignorance of the law and knowingly rendering unjust judgment, and said charges are accordingly dismissed.

2. **ID.; ID.; UNDUE DELAY IN THE DISPOSITION OF CASES, COMMITTED; THAT THE COURT WAS UNDERSTAFFED IS NOT AN EXCUSE. —** [E]vidence on record satisfactorily establish respondent's guilt for undue delay in resolving Civil Case No. CEB-27778 and in acting upon complainant's Notice of Appeal. x x x Judges are oft-reminded of their duty to promptly act upon cases and matters pending before their courts. Canon 6, Section 5 of the New Code of Judicial Conduct for the Philippine Judiciary dictates that "Judges shall perform all duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Administrative Circular No. 1 dated January 28, 1988 once more enjoins all magistrates to observe scrupulously the periods prescribed in Section 15, Article VIII of the Constitution, and to act promptly on all motions and interlocutory matters pending before their courts. x x x Unfortunately, respondent failed to live up to the exacting standards of duty and responsibility that his position requires. Complainant had already submitted his Memorandum in Civil Case No. CEB-27778 on **November 11, 2008,** yet, respondent rendered a decision in the case only on **December 28, 2009**. Indeed, respondent failed to decide Civil Case No. CEB-27778 within the three-month period mandated by the Constitution for lower courts to decide or resolve cases. Records do not show that respondent made any previous attempt to report and request for extension of time to resolve Civil Case No. CEB-27778. Respondent, without providing a reasonable explanation

for the delay, is deemed to have admitted the same. x x x [I]t took RTC-Branch 20 of Cebu City, presided over by respondent, 10 months to approve and act upon complainant's Notice of Appeal. The Court is not convinced by respondent's excuse that his court was understaffed. Even with just one clerk of record in charge of both civil and special proceedings cases, 10 months is an unreasonable length of time for photocopying and preparing records for transmittal to the Court of Appeals. Judges, clerks of court, and all other court employees share the same duty and obligation to dispense justice promptly. They should strive to work together and mutually assist each other to achieve this goal. But judges have the primary responsibility of maintaining the professional competence of their staff. Judges should organize and supervise their court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.

3. ID.; ID.; ID.; PENALTY. — Section 9, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision or order, or in transmitting the records of a case, as a less serious charge for which the penalty is suspension from office without salary and other benefits for one month to three months, or a fine of ₱10,000.00 to ₱20,000.00. However, in A.M. No. RTJ-11-2277, respondent was already found guilty of incompetence and undue delay in resolving a motion and was fined Ten Thousand Pesos (₱10,000.00) with a stern warning that a repetition of the same offense in the future shall be dealt with more severely. Since this is respondent's second infraction of a similar nature in his 10 years in the judiciary, a penalty of a fine in the amount of Fifteen Thousand Pesos (₱15,000.00) is appropriate under the circumstances.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an administrative complaint filed by complainant Marcelino A. Magdadaro against respondent Judge Bienvenido R. Saniel, Jr. of the Regional Trial Court (RTC), Branch 20, Cebu City, for unreasonable delay, gross ignorance of the law,

and bias and partiality, in violation of the Code of Judicial Conduct, relative to Civil Case No. CEB-27778, entitled *Marcelino Magdadaro v. Bathala Marketing Industries Inc., Throva Dore Toboso, Bing Borlasa, Vincent Visara, Antonio Bayato and Vismin Hilacan.*

The antecedent facts of the case are as follows:

Civil Case No. CEB-27778 was an action for breach of contract with damages[1] instituted on May 30, 2002 by complainant against Bathala Marketing Industries, Inc. (BMII), Throva Dore Toboso, Bing Borlasa, Vincent Visara, Antonio Bayato, and Vismin Hilacan (collectively referred to herein as BMII, *et al*.), which was raffled to the RTC-Branch 20 of Cebu City, presided over by respondent. Complainant alleged that he was the owner of a Nissan car with Plate No. FDX, covered by Philippine National Bank (PNB)-General Insurers Company, Inc. (GICI) Comprehensive Insurance Policy No. PC-351003 for the period May 31, 2001 to May 31, 2002. On September 27, 2001, complainant's car figured in an accident at SM Megamall. As required by PNB-GICI, complainant submitted at least two repair estimates of the damage that his car sustained. On September 28, 2001, complainant had his car inspected by the Nissan Distributors, Inc. (NDI) to determine the extent of the damage, the parts needed to be replaced, and the repairs to be undertaken. NDI issued Repair Estimate No. 23811 enumerating specifically the damaged parts, which did not include the radiator tank. Complainant also obtained a repair estimate from BMII, which similarly did not mention any damage to the radiator tank. Pending approval of complainant's insurance claim, he continued using his car. However, on several occasions, the car overheated because the radiator had no more water. After repeated follow-ups on his request for repair, the manager of PNB-GICI finally instructed complainant to deliver his car to BMII. Complainant informed BMII that on several occasions, he encountered problems with his car's radiator. Complainant was told that the radiator was not included in the repair estimate and would require a

---

[1] *Rollo,* pp. 10-21.

supplemental request and approval before it could be considered for repair. The repair of complainant's car lasted for a month. Complainant was able to get his car on December 26, 2001 after he was required to pay the amount of ₱9,120.50 as his share in the repair cost. Immediately after recovery, complainant drove his car around, but after just 20 to 30 minutes, the car's engine started to overheat again. This time, complainant brought his car to Global Motors Cebu Distributors Corp. (Global Motors) and had the radiator tank installed by BMII removed in the presence of a BMMI representative. Global Motors issued a certification stating that the replacement radiator tank that BMII installed in complainant's car was not brand new but a reconditioned old radiator tank. Complainant had to spend ₱500.00 for the services performed by Global Motors, plus he had to buy a brand new replacement radiator tank from Gemini Parts Center for ₱9,500.00. Complainant prayed for judgment awarding in his favor ₱29,182.50 as actual damages, ₱300,000.00 as unearned profits, ₱700,000.00 as moral damages, ₱700,000.00 as exemplary damages, and ₱250,000.00 as attorney's fees.

At the end of the trial, respondent directed the parties to submit their respective memoranda, after which, the case would be submitted for decision. Complainant submitted his Memorandum on November 9, 2008, which was received by RTC-Branch 20 of Cebu City on November 11, 2008.[2]

Respondent rendered a Decision[3] on December 28, 2009 dismissing the complaint in Civil Case No. CEB-27778 for lack of cause of action against the defendants therein.

Complainant filed a Notice of Appeal[4] with RTC-Branch 20 of Cebu City on February 22, 2010 which was acted upon by said court only on December 2, 2010.

In the meantime, frustrated with how RTC-Branch 20 of Cebu City was handling Civil Case No. CEB-27778, complainant

---

[2] *Id.* at 22-40.

[3] *Id.* at 41-58.

[4] *Id.* at 59-61.

filed the present administrative complaint[5] against respondent on October 17, 2011, alleging unreasonable delay by the respondent in the disposition of Civil Case No. CEB-27778, to the damage and prejudice of complainant. Complainant alleged that there was delay in resolving Civil Case No. CEB-27778, because it took respondent more than one year to decide the case from the time it was submitted for decision. To make matters worse, it took the court almost another year to act on his Notice of Appeal and transmit the records of the case to the appellate court.

Complainant also asserted that respondent was ignorant of the law considering that the latter did not know the respective liabilities and obligations of the parties in a comprehensive car insurance contract. Complainant further claimed that respondent was partial or biased in favor of BMII because respondent, in his Decision dated December 28, 2009 in Civil Case No. CEB-27778, cited certain statements purportedly made by complainant when he testified before the trial court, but which complainant did not actually say; and there were questions and answers which were incorrectly translated or transcribed in the Transcript of Stenographic Notes (TSN) which respondent used against complainant.

In an undated Supplemental Discussion,[6] complainant additionally pointed out that on the first page of the Decision dated December 28, 2009 in Civil Case No. CEB-27778, there was a stamp mark "RECEIVED" by the RTC of Cebu City with the date "12/29/09" and time "8:16." Complainant questioned why the RTC needed to receive its own Decision. Complainant suspected that respondent was not the one who actually wrote the said Decision, but it was written by one of the defendants and then submitted to, and thus, received by the RTC for respondent's signature.

In his Comment[7] dated January 17, 2012, respondent alleged that complainant instituted the instant administrative complaint

[5] *Id.* at 1-9.

[6] *Id.* at 66-67.

[7] *Id.* at 76-80.

because the latter felt resentful towards the former for rendering the Decision dated December 28, 2009 dismissing Civil Case No. CEB-27778.

Respondent further argued that the filing of the instant complaint was premature given that complainant's appeal of the Decision dated December 28, 2009 in Civil Case No. CEB-27778 was still pending before the Court of Appeals. Respondent cannot be held liable for gross ignorance of the law for the appellate court may still affirm respondent's ruling in the appealed judgment.

With respect to the delay in acting upon complainant's Notice of Appeal and the transmittal of the records of Civil Case No. CEB-27778 to the Court of Appeals, respondent explained that his office was undermanned. There was only one clerk in charge of the civil and special proceedings cases, both current and appealed. When a party appeals, machine copies of the records have to be made. Also, the records must be prepared for transmission. All these take time especially when appeals in two or more cases are made at about the same time, as what had happened in this case.

Notably, respondent did not address at all in his Comment the more than one year delay in the resolution of Civil Case No. CEB-27778.

In its Report[8] dated March 7, 2012, the Office of the Court Administrator (OCA) made the following recommendations:

1. The instant complaint against respondent **Judge Bienvenido R. Saniel, Jr**., Regional Trial Court, Branch 20, Cebu City, Cebu, be **RE-DOCKETED** as a regular administrative matter; and

2. Respondent **Judge Bienvenido R. Saniel, Jr**., be **HELD LIABLE** for **Undue Delay in Rendering a Decision** and **Undue Delay in the Proceeding** and be **FINED** in the amount of **Twenty Thousand Pesos (₱20,000.00)** with a **STERN WARNING** that a repetition of the same or any similar act in the future shall merit a more severe penalty.

[8] *Id.* at 95-103.

The Court then issued a Resolution[9] dated July 4, 2012 re-docketing the administrative complaint against respondent as a regular administrative matter and requiring the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Complainant submitted his Manifestation[10] dated September 24, 2012, while respondent filed his Manifestation[11] dated October 8, 2012.

Complainant is allegedly challenging respondent's Decision dated December 28, 2009 in Civil Case No. CEB-27778, for being illegal, rendered with no basis in fact and law. In truth, however, complainant is already asking this Court, through the present administrative complaint, to review the merits of respondent's Decision — something the Court cannot and will not do.

In *Salvador v. Limsiaco, Jr.*,[12] the Court described the instances when a judge may be held administratively liable for a judicial error, to wit:

> It is settled that a judge's failure to interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable. **Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith, or deliberate intent to do an injustice will be administratively sanctioned.** To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment. As we held in *Balsamo v. Suan*:
>
> > It should be emphasized, however, that as a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. He cannot be subjected to liability — civil, criminal or administrative — for any of his official acts, no matter how erroneous, as long

---

[9] *Id.* at 104.

[10] *Id.* at 110.

[11] *Id.* at 107-108.

[12] *Salvador v. Limsiaco, Jr.*, 519 Phil. 683, 687-688 (2006).

> as he acts in good faith. In such a case, the remedy of the aggrieved party is not to file an administrative complaint against the judge but to elevate the error to the higher court for review and correction. The Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial. Thus, **not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice**. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge. (Emphases supplied, citations omitted.)

In this case, there is absolutely no showing that respondent was motivated by bad faith or ill motive in rendering the Decision dated December 28, 2009 in Civil Case No. CEB-27778. Thus, any error respondent may have committed in dismissing Civil Case No. CEB-27778 may be corrected by filing an appeal of respondent's Decision before the Court of Appeals, not by instituting an administrative case against the respondent before this Court.

Moreover, records show that complainant did file an appeal of the Decision dated December 28, 2009 in Civil Case No. CEB-27778 before the Court of Appeals. Said appeal, docketed as CA-G.R. CEB No. 03708, is still pending before the appellate court. An administrative complaint against a judge cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by his erroneous order or judgment. Administrative remedies are neither alternative nor cumulative to judicial review where such review is available to aggrieved parties and the same has not yet been resolved with finality. For until there is a final declaration by the appellate court that the challenged order or judgment is manifestly erroneous, there will be no basis to conclude whether respondent judge is administratively liable.[13] The Court more extensively explained in *Flores v. Abesamis*[14] that:

---

[13] *Roxas v. Eugenio, Jr.*, 527 Phil. 514, 517-518 (2006).

[14] 341 Phil. 299, 312-313 (1997).

As everyone knows, the law provides ample judicial remedies against errors or irregularities being committed by a Trial Court in the exercise of its jurisdiction. The *ordinary remedies* against errors or irregularities which may be regarded as normal in nature (*i.e.*, error in appreciation or admission of evidence, or in construction or application of procedural or substantive law or legal principle) include a motion for reconsideration (or after rendition of a judgment or final order, a motion for new trial), and appeal. The *extraordinary remedies* against error or irregularities which may be deemed extraordinary in character (*i.e.*, whimsical, capricious, despotic exercise of power or neglect of duty, *etc*.) are *inter alia* the special civil actions of *certiorari*, prohibition or *mandamus*, or a motion for inhibition, a petition for change of venue, as the case may be.

Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal [in] nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.

Clearly, at this point, there is no basis for complainant's administrative charges against respondent for gross ignorance of the law and knowingly rendering unjust judgment, and said charges are accordingly dismissed.

However, evidence on record satisfactorily establish respondent's guilt for undue delay in resolving Civil Case No. CEB-27778 and in acting upon complainant's Notice of Appeal.

Section 15(1), Article VIII of the Constitution, mandates that cases or matters filed with the lower courts must be decided or resolved within **three months** from the date they are submitted for decision or resolution.

As a general principle, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are

considered absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. By their very nature, these rules are regarded as mandatory.[15]

Judges are oft-reminded of their duty to promptly act upon cases and matters pending before their courts. Canon 6, Section 5 of the New Code of Judicial Conduct for the Philippine Judiciary dictates that "Judges shall perform all duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Administrative Circular No. 1 dated January 28, 1988 once more enjoins all magistrates to observe scrupulously the periods prescribed in Section 15, Article VIII of the Constitution, and to act promptly on all motions and interlocutory matters pending before their courts.

That judges must decide cases promptly and expeditiously cannot be overemphasized, for justice delayed is justice denied. Delay in the disposition of cases undermines the people's faith and confidence in the judiciary. If they cannot decide cases within the period allowed by the law, they should seek extensions from this Court to avoid administrative liability.[16]

Unfortunately, respondent failed to live up to the exacting standards of duty and responsibility that his position requires. Complainant had already submitted his Memorandum in Civil Case No. CEB-27778 on **November 11, 2008**, yet, respondent rendered a decision in the case only on **December 28, 2009**. Indeed, respondent failed to decide Civil Case No. CEB-27778 within the three-month period mandated by the Constitution for lower courts to decide or resolve cases. Records do not show that respondent made any previous attempt to report and request for extension of time to resolve Civil Case No. CEB-27778. Respondent, without providing a reasonable explanation for the delay, is deemed to have admitted the same.

---

[15] *Gachon v. Devera, Jr.*, G.R. No. 116695, June 20, 1997, 274 SCRA 540, 548-549, citing *Cf. Valdez v. Ocumen*, 106 Phil. 929, 933 (1960); *Alvero v. De la Rosa*, 76 Phil. 428, 434 (1946).

[16] *Sanchez v. Eduardo,* 413 Phil. 551, 557 (2001).

As if to rub salt into complainant's wound, it took RTC-Branch 20 of Cebu City, presided over by respondent, 10 months to approve and act upon complainant's Notice of Appeal. The Court is not convinced by respondent's excuse that his court was understaffed. Even with just one clerk of record in charge of both civil and special proceedings cases, 10 months is an unreasonable length of time for photocopying and preparing records for transmittal to the Court of Appeals. Judges, clerks of court, and all other court employees share the same duty and obligation to dispense justice promptly. They should strive to work together and mutually assist each other to achieve this goal. But judges have the primary responsibility of maintaining the professional competence of their staff. Judges should organize and supervise their court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.[17]

Section 9, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision or order, or in transmitting the records of a case, as a less serious charge for which the penalty is suspension from office without salary and other benefits for one month to three months, or a fine of ₱10,000.00 to ₱20,000.00.

However, in A.M. No. RTJ-11-2277,[18] respondent was already found guilty of incompetence and undue delay in resolving a motion and was fined Ten Thousand Pesos (₱10,000.00) with a stern warning that a repetition of the same offense in the future shall be dealt with more severely. Since this is respondent's second infraction of a similar nature in his 10 years in the judiciary, a penalty of a fine in the amount of Fifteen Thousand Pesos (₱15,000.00) is appropriate under the circumstances.

WHEREFORE, respondent Judge Bienvenido R. Saniel, Jr. is found **GUILTY** of undue delay in rendering a decision and in

---

[17] *Office of the Court Administrator v. Trocino*, A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262, 276.

[18] *Villarin v. Judge Saniel, Jr.*, A.M. No. RTJ-11-2277, March 28, 2011.

transmitting the records of a case and is **FINED** in the amount of Fifteen Thousand (₱15,000.00) Pesos.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164201. December 10, 2012]

EFREN PAÑA, *petitioner, vs.* **HEIRS OF JOSE JUANITE, SR. and JOSE JUANITE, JR.,** *respondents.*

SYLLABUS

CIVIL LAW; FAMILY CODE; CONJUGAL PARTNERSHIP OF GAINS; CIVIL LIABILITY OF A SPOUSE ARISING FROM A CONVICTION IN A MURDER CASE MAY BE ENFORCED AGAINST THE CONJUGAL ASSETS AFTER THE RESPONSIBILITIES ENUMERATED IN ARTICLE 121 OF THE FAMILY CODE HAVE BEEN COVERED. — What is clear is that Efren and Melecia were married when the Civil Code was still the operative law on marriages. The presumption, absent any evidence to the contrary, is that they were married under the regime of the conjugal partnership of gains. x x x [T]he Family Code contains terms governing conjugal partnership of gains that supersede the terms of the conjugal partnership of gains under the Civil Code. x x x Consequently, the Court must refer to the Family Code provisions in deciding whether or not the conjugal properties of Efren and Melecia may be held to answer for the civil liabilities imposed on Melecia in the murder case. x x x Since Efren does not dispute the RTC's finding that Melecia has no exclusive property of her own, [Article 122 of the Family Code] applies.

> The civil indemnity that the decision in the murder case imposed on her may be enforced against their conjugal assets after the responsibilities enumerated in Article 121 of the Family Code have been covered. x x x Contrary to Efren's contention, Article 121 above allows payment of the criminal indemnities imposed on his wife, Melecia, out of the partnership assets even before these are liquidated. Indeed, it states that such indemnities "may be enforced against the partnership assets after the responsibilities enumerated in the preceding article have been covered." No prior liquidation of those assets is required. This is not altogether unfair since Article 122 states that "at the time of liquidation of the partnership, such [offending] spouse shall be charged for what has been paid for the purposes above-mentioned."

APPEARANCES OF COUNSEL

Dollfuss R. Go & Associates Law Office for petitioner.
Noel P. Catre for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the propriety of levy and execution on conjugal properties where one of the spouses has been found guilty of a crime and ordered to pay civil indemnities to the victims' heirs.

The Facts and the Case

The prosecution accused petitioner Efren Paña (Efren), his wife Melecia, and others of murder before the Regional Trial Court (RTC) of Surigao City in Criminal Cases 4232 and 4233.[1]

On July 9, 1997 the RTC rendered a consolidated decision[2] acquitting Efren of the charge for insufficiency of evidence but finding Melecia and another person guilty as charged and

---

[1] Records, pp. 20-21; 24-25.

[2] CA *rollo*, pp. 45-70.

sentenced them to the penalty of death. The RTC ordered those found guilty to pay each of the heirs of the victims, jointly and severally, ₱50,000.00 as civil indemnity, ₱50,000.00 each as moral damages, and ₱150,000.00 actual damages.

On appeal to this Court, it affirmed on May 24, 2001 the conviction of both accused but modified the penalty to *reclusion perpetua*. With respect to the monetary awards, the Court also affirmed the award of civil indemnity and moral damages but deleted the award for actual damages for lack of evidentiary basis. In its place, however, the Court made an award of ₱15,000.00 each by way of temperate damages. In addition, the Court awarded ₱50,000.00 exemplary damages per victim to be paid solidarily by them.[3] The decision became final and executory on October 1, 2001.[4]

Upon motion for execution by the heirs of the deceased, on March 12, 2002 the RTC ordered the issuance of the writ,[5] resulting in the levy of real properties registered in the names of Efren and Melecia.[6] Subsequently, a notice of levy[7] and a notice of sale on execution[8] were issued.

On April 3, 2002, petitioner Efren and his wife Melecia filed a motion to quash the writ of execution, claiming that the levied properties were conjugal assets, not paraphernal assets of Melecia.[9] On September 16, 2002 the RTC denied the motion.[10] The spouses moved for reconsideration but the RTC denied the same on March 6, 2003.[11]

---

[3] Records, pages not indicated; *Paña v. Judge Buyser*, 410 Phil. 433, 450 (2001).

[4] CA *rollo*, p. 74.

[5] *Id.* at 74-75.

[6] Original Certificates of Title 9138, 512 and 511.

[7] CA *rollo*, pp. 76-77.

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

[9] *Id.* at 87-93.

[10] *Rollo*, p. 54.

[11] *Id.* at 55-59.

Claiming that the RTC gravely abused its discretion in issuing the challenged orders, Efren filed a petition for *certiorari* before the Court of Appeals (CA). On January 29, 2004 the CA dismissed the petition for failure to sufficiently show that the RTC gravely abused its discretion in issuing its assailed orders.[12] It also denied Efren's motion for reconsideration,[13] prompting him to file the present petition for review on *certiorari*.

The Issue Presented

The sole issue presented in this case is whether or not the CA erred in holding that the conjugal properties of spouses Efren and Melecia can be levied and executed upon for the satisfaction of Melecia's civil liability in the murder case.

Ruling of the Court

To determine whether the obligation of the wife arising from her criminal liability is chargeable against the properties of the marriage, the Court has first to identify the spouses' property relations.

Efren claims that his marriage with Melecia falls under the regime of conjugal partnership of gains, given that they were married prior to the enactment of the Family Code and that they did not execute any prenuptial agreement.[14] Although the heirs of the deceased victims do not dispute that it was the Civil Code, not the Family Code, which governed the marriage, they insist that it was the system of absolute community of property that applied to Efren and Melecia. The reasoning goes:

> Admittedly, the spouses were married before the effectivity of the Family Code. But that fact does not prevent the application of [A]rt. 94, last paragraph, of the Family Code because their property regime is precisely governed by the law on absolute community. This finds support in Art. 256 of the Family Code which states:

---

[12] Penned by Associate Justice Amelita G. Tolentino, and concurred in by Associate Justices Eloy R. Bello, Jr. and Arturo D. Brion (now a member of this Court), *rollo*, pp. 120-123.

[13] *Rollo*, p. 127.

[14] *Id.* at 170.

> "This code shall have retroactive effect in so far as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws."
>
> None of the spouses is dead. Therefore, no vested rights have been acquired by each over the properties of the community. Hence, the liabilities imposed on the accused-spouse may properly be charged against the community as heretofore discussed.[15]

The RTC applied the same reasoning as above.[16] Efren and Melecia's property relation was admittedly conjugal under the Civil Code but, since the transitory provision of the Family Code gave its provisions retroactive effect if no vested or acquired rights are impaired, that property relation between the couple was changed when the Family Code took effect in 1988. The latter code now prescribes in Article 75 absolute community of property for all marriages unless the parties entered into a prenuptial agreement. As it happens, Efren and Melecia had no prenuptial agreement. The CA agreed with this position.[17]

Both the RTC and the CA are in error on this point. While it is true that the personal stakes of each spouse in their conjugal assets are inchoate or unclear prior to the liquidation of the conjugal partnership of gains and, therefore, none of them can be said to have acquired vested rights in specific assets, it is evident that Article 256 of the Family Code does not intend to reach back and automatically convert into absolute community of property relation all conjugal partnerships of gains that existed before 1988 excepting only those with prenuptial agreements.

The Family Code itself provides in Article 76 that marriage settlements cannot be modified except prior to marriage.

> Art. 76. In order that any modification in the marriage settlements may be valid, it must be made before the celebration of the marriage, subject to the provisions of Articles 66, 67, 128, 135 and 136.

---

[15] CA *rollo*, p. 95.

[16] *Rollo*, pp. 56-57.

[17] *Id.* at 121.

Clearly, therefore, the conjugal partnership of gains that governed the marriage between Efren and Melecia who were married prior to 1988 cannot be modified except before the celebration of that marriage.

Post-marriage modification of such settlements can take place only where: (a) the absolute community or conjugal partnership was dissolved and liquidated upon a decree of legal separation;[18] (b) the spouses who were legally separated reconciled and agreed to revive their former property regime;[19] (c) judicial separation of property had been had on the ground that a spouse abandons the other without just cause or fails to comply with his obligations to the family;[20] (d) there was judicial separation of property under Article 135; (e) the spouses jointly filed a petition for the voluntary dissolution of their absolute community or conjugal partnership of gains.[21] None of these circumstances exists in the case of Efren and Melecia.

What is more, under the conjugal partnership of gains established by Article 142 of the Civil Code, the husband and the wife place only the fruits of their separate property and incomes from their work or industry in the common fund. Thus:

> Art. 142. By means of the conjugal partnership of gains the husband and wife place in a common fund the fruits of their separate property and the income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage.

This means that they continue under such property regime to enjoy rights of ownership over their separate properties. Consequently, to automatically change the marriage settlements of couples who got married under the Civil Code into absolute community of property in 1988 when the Family Code took

---

[18] FAMILY CODE, Art. 66.

[19] *Id.*, Art. 67.

[20] *Id.*, Art. 128.

[21] *Id.*, Art. 136.

effect would be to impair their acquired or vested rights to such separate properties.

The RTC cannot take advantage of the spouses' loose admission that absolute community of property governed their property relation since the record shows that they had been insistent that their property regime is one of conjugal partnership of gains.[22] No evidence of a prenuptial agreement between them has been presented.

What is clear is that Efren and Melecia were married when the Civil Code was still the operative law on marriages. The presumption, absent any evidence to the contrary, is that they were married under the regime of the conjugal partnership of gains. Article 119 of the Civil Code thus provides:

> Art. 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife.

Of course, the Family Code contains terms governing conjugal partnership of gains that supersede the terms of the conjugal partnership of gains under the Civil Code. Article 105 of the Family Code states:

> "x x x x x x x x x
>
> The provisions of this Chapter [on the Conjugal Partnership of Gains] shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256."[23]

Consequently, the Court must refer to the Family Code provisions in deciding whether or not the conjugal properties

---

[22] CA *rollo*, pp. 88, 91.

[23] *Muñoz, Jr. v. Ramirez*, G.R. No. 156125, August 25, 2010, 629 SCRA 38, 49-50.

of Efren and Melecia may be held to answer for the civil liabilities imposed on Melecia in the murder case. Its Article 122 provides:

> Art. 122. The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal properties partnership except insofar as they redounded to the benefit of the family.
>
> Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.
>
> However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purpose abovementioned.

Since Efren does not dispute the RTC's finding that Melecia has no exclusive property of her own,[24] the above applies. The civil indemnity that the decision in the murder case imposed on her may be enforced against their conjugal assets after the responsibilities enumerated in Article 121 of the Family Code have been covered.[25] Those responsibilities are as follows:

> Art. 121. The conjugal partnership shall be liable for:
>
> (1) The support of the spouse, their common children, and the legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;
>
> (2) All debts and obligations contracted during the marriage by the designated administrator-spouse for the benefit of the conjugal partnership of gains, or by both spouses or by one of them with the consent of the other;

---

[24] *Rollo*, p. 58.

[25] See *Muñoz, Jr. v. Ramirez*, *supra* note 23, at 49; *Dewara v. Lamela*, G.R. No. 179010, April 11, 2011, 647 SCRA 483, 491-492.

(3) Debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have benefited;

(4) All taxes, liens, charges, and expenses, including major or minor repairs upon the conjugal partnership property;

(5) All taxes and expenses for mere preservation made during the marriage upon the separate property of either spouse;

(6) Expenses to enable either spouse to commence or complete a professional, vocational, or other activity for selfimprovement;

(7) Antenuptial debts of either spouse insofar as they have redounded to the benefit of the family;

(8) The value of what is donated or promised by both spouses in favor of their common legitimate children for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement; and

(9) Expenses of litigation between the spouses unless the suit is found to be groundless.

If the conjugal partnership is insufficient to cover the foregoing liabilities, the spouses shall be solidarily liable for the unpaid balance with their separate properties.

Contrary to Efren's contention, Article 121 above allows payment of the criminal indemnities imposed on his wife, Melecia, out of the partnership assets even before these are liquidated. Indeed, it states that such indemnities "may be enforced against the partnership assets after the responsibilities enumerated in the preceding article have been covered."[26] No prior liquidation of those assets is required. This is not altogether unfair since Article 122 states that "at the time of liquidation of the partnership, such [offending] spouse shall be charged for what has been paid for the purposes above-mentioned."

WHEREFORE, the Court **AFFIRMS** with **MODIFICATION** the Resolutions of the Court of Appeals in CA-G.R. SP 77198 dated January 29, 2004 and May 14, 2004. The Regional Trial Court of Surigao City, Branch 30, shall first ascertain that, in enforcing the writ of execution on the conjugal properties of spouses Efren and Melecia Paña for the satisfaction of the indemnities

---

[26] See *People v. Lagrimas*, 139 Phil. 612, 617 (1969).

imposed by final judgment on the latter accused in Criminal Cases 4232 and 4233, the responsibilities enumerated in Article 121 of the Family Code have been covered.

SO ORDERED.

Peralta[*] *(Acting Chairperson), Bersamin,*[**] *Mendoza,* and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 170217. December 10, 2012]

HPS SOFTWARE AND COMMUNICATION CORPORATION and HYMAN YAP, *petitioners, vs.* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY (PLDT), JOSE JORGE E. CORPUZ, in his capacity as the Chief of the PNP-Special Task Force Group-Visayas, PHILIP YAP, FATIMA CIMAFRANCA, and EASTERN TELECOMMUNICATIONS PHILIPPINES, INC.,** *respondents.*

[G.R. No. 170694. December 10, 2012]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, *petitioner, vs.* **HPS SOFTWARE AND COMMUNICATION CORPORATION, including its Incorporators, Directors, Officers: PHILIP YAP, STANLEY T. YAP, ELAINE JOY T. YAP, JULIE Y. SY, HYMAN A. YAP and OTHER PERSONS UNDER**

---

[*] Per Special Order 1394 dated December 6, 2012.

[**] Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order 1395-A dated December 6, 2012.

THEIR EMPLOY, JOHN DOE AND JANE DOE, IN THE PREMISES LOCATED AT HPS BUILDING, PLARIDEL ST., BRGY. ALANG-ALANG, MANDAUE CITY, CEBU, *respondents.*

SYLLABUS

1. CRIMINAL LAW; THEFT; INTERNATIONAL SIMPLE RESALE (ISR) IS CONSIDERED A CRIMINAL ACT OF THEFT. — [F]rom the aforementioned doctrinal pronouncement, this Court had categorically stated and still maintains that an ISR activity is an act of subtraction covered by the provisions on Theft, and that the business of providing telecommunication or telephone service is personal property, which can be the object of Theft under Article 308 of the Revised Penal Code.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; IN A SEARCH WARRANT PROCEEDING, A PARTY MAY FILE A PETITION WITHOUT THE PARTICIPATION AND CONFORMITY OF THE PUBLIC PROSECUTOR; CASE AT BAR. — The petition filed by PLDT before this Court does not involve an ordinary criminal action which requires the participation and conformity of the City Prosecutor or the Solicitor General when raised before appellate courts. On the contrary, what is involved here is a search warrant proceeding which is not a criminal action, much less a civil action, but a special criminal process. x x x Since a search warrant proceeding is not a criminal action, it necessarily follows that the requirement set forth in Section 5, Rule 110 of the Rules on Criminal Procedure which states that "all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor" does not apply.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*: PECULIAR CIRCUMSTANCES THAT JUSTIFY GIVING DUE COURSE TO THE PETITION DESPITE NON-FILING OF A MOTION FOR RECONSIDERATION, PRESENT. — [T]his Court declares that, due to the peculiar circumstances obtaining in this case, the petition for *certiorari* was properly given due course by the Court of Appeals despite the non-fulfillment of the requirement of the filing of a motion for reconsideration. The general rule is that a motion for

reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case. However, the rule is not absolute and jurisprudence has laid down x x x exceptions when the filing of a petition for *certiorari* is proper notwithstanding the failure to file a motion for reconsideration[.] x x x In the case at bar, it is apparent that PLDT was deprived of due process when the trial court expeditiously released the items seized by virtue of the subject search warrants without waiting for PLDT to file its memorandum and despite the fact that no motion for execution was filed by respondents which is required in this case because, as stated in the assailed March 26, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 65682, the May 23, 2001 Joint Order of the trial court is a final order which disposes of the action or proceeding and which may be the subject of an appeal. Thus, it is not immediately executory. Moreover, the items seized by virtue of the subject search warrants had already been released by the trial court to the custody of respondents thereby creating a situation wherein a motion for reconsideration would be useless. For these foregoing reasons, the relaxation of the settled rule by the former Fourth Division of the Court of Appeals is justified.

4. ID.; CIVIL PROCEDURE; FORUM SHOPPING, NOT A CASE OF; FILING OF PETITION FOR *CERTIORARI* DOES NOT CONSTITUTE FORUM SHOPPING DESPITE PREVIOUS APPEAL TO THE COURT OF APPEALS AS BOTH CASES POSED DIFFERENT CAUSES OF ACTION. — In the case at bar, forum shopping cannot be considered to be present because the appeal that PLDT elevated to the Court of Appeals is an examination of the validity of the trial court's action of quashing the search warrants that it initially issued while, on the other hand, the petition for *certiorari* is an inquiry on whether or not the trial court judge committed grave abuse of discretion when he ordered the release of the seized items subject of the search warrants despite the fact that its May 23, 2001 Joint Order had not yet become final and executory, nor had any motion for execution pending appeal been filed by the HPS Corporation, *et al.* Therefore, it is readily apparent that both cases posed different causes of action.

5. ID.; CRIMINAL PROCEDURE; SEARCH WARRANT; FACTORS TO BE CONSIDERED TO DETERMINE THE VALIDITY OF A SEARCH WARRANT. — This Court has consistently held that the validity of the issuance of a search warrant rests upon the following factors: (1) **it must be issued upon probable cause**; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons and things to be seized. Probable cause, as a condition for the issuance of a search warrant, is such reasons supported by facts and circumstances as will warrant a cautious man to believe that his action and the means taken in prosecuting it are legally just and proper. It requires facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and that the objects sought in connection with that offense are in the place to be searched.

6. ID.; ID.; ID.; PROBABLE CAUSE FOR ISSUANCE OF A SEARCH WARRANT, PRESENT. — Taken together, the aforementioned pieces of evidence are more than sufficient to support a finding that test calls were indeed made by PLDT's witnesses using *Mabuhay* card with PIN code number 332 1479224 and, more importantly, that probable cause necessary to engender a belief that HPS Corporation, *et al*. had probably committed the crime of Theft through illegal ISR activities exists. To reiterate, evidence to show probable cause to issue a search warrant must be distinguished from proof beyond reasonable doubt which, at this juncture of the criminal case, is not required.

7. ID.; ID.; ID.; SUBJECT WARRANTS ARE NOT GENERAL WARRANTS. — [T]his Court finds that the subject search warrants are not general warrants because the items to be seized were sufficiently identified physically and were also specifically identified by stating their relation to the offenses charged which are Theft and Violation of Presidential Decree No. 401 through the conduct of illegal ISR activities.

8. ID.; ID.; ID.; PREMATURE HASTE ATTENDED THE RELEASE OF THE ITEMS SEIZED BY VIRTUE OF THE SUBJECT SEARCH WARRANTS. — We quote with approval

> the disquisition of the Court of Appeals on this particular issue in its assailed Decision x x x It would appear that despite the absence of any motion for execution, the respondent judge enforced his Joint Order by directing the release of the seized items from the physical custody of the PNP Special Task Force on June 5, 2001 — less than the fifteen-day prescribed period within which an aggrieved party may file an appeal or for such Joint Order to become final and executory in the absence of an appeal. Clearly the release of the seized items was enforced prematurely and without any previous motion for execution on record. x x x [W]e agree with the former Fourth Division of the Court of Appeals that there was indeed grave abuse of discretion on the part of the trial court in the premature haste attending the release of the items seized.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for PLDT.

Muntuerto Miel Duyongco Law Offices and *Roque E. Paloma, Jr.* for HPS Software & Communication Corp., Hyman Yap, Stanley Yap, Elaine Joy Yap & Julie Sy.

Senining Belciña Atup Entise Limalima Jumao-as & Bantilan Law Offices for Fatima Cimafranca.

Teodoro C. Villarmia, Jr. for Philip Yap.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court are two consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court each seeking to annul and set aside a ruling of the Court of Appeals concerning the May 23, 2001 Joint Order[1] issued by the Regional Trial Court of Mandaue City, Branch 55. In G.R. No. 170217, petitioners HPS Software and Communication Corporation and Hyman Yap (HPS Corporation, *et al.*) seek to nullify the March

---

[1] *Rollo* (G.R. No. 170217), pp. 318-327; penned by Judge Ulric R. Cañete.

26, 2004 Decision[2] as well as the September 27, 2005 Resolution[3] of the former Fourth (4th) Division of the Court of Appeals in CA-G.R. SP No. 65682, entitled "*Philippine Long Distance Telephone Company v. Hon. Judge Ulric Cañete, in his capacity as the Presiding Judge of the Regional Trial Court, Branch 55, Mandaue City, HPS Software and Communications Corporation; its Officers and/or Directors: Philip Yap, Hyman Yap, Fatima Cimafranca; Eastern Telecommunications Phils., Inc., and Jose Jorge E. Corpuz, in his capacity as the Chief of the PNP - Special Task Force Group-Visayas.*" The March 26, 2004 Decision modified the May 23, 2001 Joint Order of the trial court by setting aside the portion directing the immediate return of the seized items to HPS Corporation and, as a consequence, directing the Philippine National Police (PNP) — Special Task Force Group — Visayas to retrieve possession and take custody of all the seized items pending the final disposition of the appeal filed by Philippine Long Distance Telephone Company (PLDT) on the said May 23, 2001 Joint Order. The September 27, 2005 Resolution denied for lack of merit HPS Corporation, *et al.*'s subsequent Motion for Reconsideration. On the other hand, in G.R. No. 170694, petitioner PLDT seeks to set aside the April 8, 2005 Decision[4] as well as the December 7, 2005 Resolution[5] of the former Eighteenth Division of the Court of Appeals in CA-G.R. CV No. 75838, entitled "*People of the Philippines, Philippine Long Distance Telephone Company v. HPS Software and Communication Corporation, its Incorporators, Directors, Officers: Philip Yap, Stanley T. Yap, Elaine Joy T. Yap, Julie Y. Sy, Hyman A. Yap and Other Persons Under Their Employ,*

---

[2] *Id.* at 30-37; penned by Associate Justice Elvi John S. Asuncion with Associate Justices Godardo A. Jacinto and Lucas P. Bersamin (now a member of this Court), concurring.

[3] *Id.* at 38-39.

[4] *Rollo* (G.R. No. 170694), pp. 82-94; penned by Associate Justice Ramon M. Bato, Jr. with Executive Justice Mercedes Gozo-Dadole and Associate Justice Pampio A. Abarintos, concurring.

[5] *Id.* at 96-97.

John Doe and Jane Doe, in the premises located at HPS Building, Plaridel St., Brgy. Alang-Alang, Mandaue City, Cebu." The April 8, 2005 Decision affirmed the May 23, 2001 Joint Order of the trial court while the December 7, 2005 Resolution denied for lack of merit PLDT's subsequent Motion for Reconsideration.

The undisputed thread of facts binding these consolidated cases, as summarized in the assailed May 23, 2001 Joint Order, follows:

> [O]n October 20, 2000, the complainant PAOCTF filed with this Honorable Court two applications for the issuance of search warrant for Violation of Article 308 of the Revised Penal Code for Theft of Telephone Services and for Violation of P.D. 401 for unauthorized installation of telephone communication equipments following the complaint of the Philippine Long Distance Telephone Company or PLDT that they were able to monitor the use of the respondents in their premises of Mabuhay card and equipments capable of receiving and transmitting calls from the USA to the Philippines without these calls passing through the facilities of PLDT.
>
> Complainant's witnesses Richard Dira and Reuben Hinagdanan testified under oath that Respondents are engaged in the business of International [S]imple Resale or unauthorized sale of international long distance calls. They explained that International Simple Resale (ISR) is an alternative call pattern employed by communication provider outside of the country. This is a method of routing and completing international long distance call using pre-paid card which respondents are selling in the States. These calls are made through access number and by passes the PLDT International Gate Way Facilities and by passes the monitoring system, thus making the international long distance calls appear as local calls, to the damage and prejudice of PLDT which is deprived of revenues as a result thereof.
>
> Complainant's witnesses Richard Dira and Reuben Hinagdanan testified that they found out that respondents are engaged in the business of International Simple Resale on September 13, 2000 when they conducted a test call using Mabuhay Card. They followed the dialing instructions found at the back of the card and dialed "00" and the access code number 18008595845 of the said Mabuhay Card. They were then prompted by a voice to enter the PIN code to validate and after entering the PIN code number 332 1479224, they were

again prompted to dial the country code of the Philippines 011-6332 and then dialed telephone number 2563066. Although the test calls were incoming international calls from the United States, they discovered in the course of their test calls that PLDT telephone lines/numbers were identified as the calling party, specifically 032-3449294 and 032-3449280. They testified that the test calls passing through the Mabuhay Card were being reflected as local calls only and not overseas calls. Upon verification, they discovered that the lines were subscribed by Philip Yap whose address is HPS Software Communication Corporation at Plaridel St., Alang-alang, Mandaue City. They also testified that the lines subscribed by Philip Yap were transferred to HPS Software and Communications Corporation of the same address. They further testified that the respondents committed these crimes by installing telecommunication equipments like multiplexers, lines, cables, computers and other switching equipments in the HPS Building and connected these equipments with PLDT telephone lines which coursed the calls through international privatized lines where the call is unmonitored and coursed through the switch equipments in Cebu particularly in Philip Yap's line and distributed to the subscribers in Cebu.

Satisfied with the affidavits and sworn testimony of the complainant's witnesses that they were able to trace the long distance calls that they made on September 13, 2000 from the record of these calls in the PLDT telephone numbers 032 3449280 and 032 3449294 of Philip Yap and/or later on transferred to HPS Software and Communication Corporation using the said Mabuhay Card in conducting said test calls, and that they saw the telephone equipments like lines, cables, antennas, computers, modems, multiplexers and other switching equipments, Cisco 2600/3600, Nokia BB256K (with Bayantel marking) inside the compound of the respondents being used for this purpose, this court issued the questioned search warrants to seize the instruments of the crime.[6]

On October 20, 2000, the trial court issued two search warrants denominated as S.W. No. 2000-10-467[7] for Violation of Article 308 of the Revised Penal Code (Theft of Telephone Services) and S.W. No. 2000-10-468[8] for violation of Presidential Decree

---

[6] *Rollo* (G.R. No. 170217), pp. 318-320.

[7] *Rollo* (G.R. No. 170694), pp. 191-192.

[8] *Id.* at 193-194.

No. 401 (Unauthorized Installation of Telephone Connections) which both contained identical orders directing that several items are to be seized from the premises of HPS Corporation and from the persons of Hyman Yap, *et al.*

The search warrants were immediately implemented on the same day by a PAOCTF-Visayas team led by Police Inspector (P/Insp.) Danilo Villanueva. The police team searched the premises of HPS Corporation located at HPS Building, Plaridel St., Brgy. Alang-Alang, Mandaue City, Cebu and seized the articles specified in the search warrants.[9]

Subsequently, a preliminary investigation was conducted by Assistant City Prosecutor Yope M. Cotecson (Pros. Cotecson) of the Office of the City Prosecutor of Mandaue City who thereafter issued a Resolution dated April 2, 2001[10] which found probable cause that all the crimes charged were committed and that Philip Yap, Hyman Yap, Stanley Yap, Elaine Joy Yap, Julie Y. Sy, as well as Gene Frederick Boniel, Michael Vincent Pozon, John Doe and Jane Doe were probably guilty thereof. The dispositive portion of the said April 2, 2001 Resolution reads as follows:

> Wherefore, all the foregoing considered, the undersigned finds the existence of probable cause for the crimes of Theft and Violation of PD 401 against all the respondents herein, excluding Fatima Cimafranca, hence, filing in court of corresponding Informations is hereby duly recommended.[11]

On November 23, 2000, Philip Yap and Hyman Yap filed a Motion to Quash and/or Suppress Illegally Seized Evidence.[12] Then on December 11, 2000, HPS Corporation filed a Motion to Quash Search Warrant and Return of the Things Seized.[13]

---

[9] *Rollo* (G.R. No. 170217), pp. 358-361.

[10] *Id.* at 366-377.

[11] *Id.* at 377.

[12] *Id.* at 408-415.

[13] *Id.* at 378-407.

Both pleadings sought to quash the search warrants at issue on the grounds that the same did not refer to a specific offense; that there was no probable cause; and that the search warrants were general warrants and were wrongly implemented. In response, PLDT formally opposed the aforementioned pleadings through the filing of a Consolidated Opposition.[14]

The trial court then conducted hearings on whether or not to quash the subject search warrants and, in the course thereof, the parties produced their respective evidence. HPS Corporation, *et al*. presented, as testimonial evidence, the testimonies of Mr. Jesus M. Laureano, the Chief Enforcement and Operation Officer of the National Telecommunications Commission (NTC)-Region VII and Ms. Marie Audrey Balbuena Aller, HPS Corporation's administrative officer, while PLDT presented Engr. Policarpio Tolentino, who held the position of Engineer II, Common Carrier Authorization Division of the NTC.[15]

In the course of Engr. Tolentino's testimony, he identified certain pieces of evidence which PLDT caused to be marked as its own exhibits but was objected to by HPS Corporation, *et al.* on the grounds of immateriality. The trial court sustained the objection and accordingly disallowed the production of said exhibits. Thus, PLDT filed a Manifestation with Tender of Excluded Evidence[16] on April 18, 2001 which tendered the excluded evidence of (a) *Mabuhay* card with Personal Identification Number (PIN) code number 349 4374802 (Exhibit "E"), and (b) Investigation Report dated October 2, 2000 prepared by Engr. Tolentino in connection with the validation he made on the complaints of PLDT against ISR activities in Cebu City and Davao City (Exhibit "G").

Subsequently, on April 19, 2001, PLDT formally offered in evidence, as part of Engr. Tolentino's testimony and in support of PLDT's opposition to HPS Corporation, *et al.*'s motion to

---

[14] *Id.* at 321.

[15] *Id.* at 323-325.

[16] *Rollo* (G.R. No. 170694), pp. 262-269.

quash, the following: (a) Subpoena *Duces Tecum* and *Ad Testificandum* issued by the trial court to Engr. Tolentino, commanding him to appear and testify before it on March 26, 27 and 28, 2001 (Exhibit "A"); (b) Identification Card No. 180 of Engr. Tolentino (Exhibit "B"); (c) PLDT's letter dated September 22, 2000, addressed to then NTC Commissioner Joseph A. Santiago (Exhibit "C"); (d) Travel Order No. 52-9-2000 issued to Engr. Tolentino and signed by then NTC Commissioner Joseph Santiago (Exhibit "D"); and (e) Travel Order No. 07-03-2001 dated March 23, 2001 issued to Engr. Tolentino by then NTC Commissioner Eliseo M. Rio, Jr., authorizing Engr. Tolentino to appear and testify before the trial court (Exhibit "F").[17]

PLDT then filed a Motion for Time to File Memorandum[18] asking the trial court that it be allowed to submit a Memorandum in support of its opposition to the motion to quash search warrants filed by HPS Corporation, *et al.* within a period of twenty (20) days from receipt of the trial court's ruling. Consequently, in an Order[19] dated May 3, 2001, the trial court admitted Exhibits "A", "B", "C", "D", and "F" as part of the testimony of Engr. Tolentino. The trial court also directed PLDT to file its Memorandum within twenty (20) days from receipt of said Order. As PLDT's counsel received said Order on May 16, 2001, it reckoned that it had until June 5, 2001 to file the aforementioned Memorandum.

However, the trial court issued the assailed Joint Order on May 23, 2001, before the period for the filing of PLDT's Memorandum had lapsed. The dispositive portion of said Order states:

> WHEREFORE, premises considered, the motion to quash the search warrants and return the things seized is hereby granted. Search Warrant Nos. 2000-10-467 and 2000-10-468 are ordered quashed.

---

[17] *Id.* at 270-280.

[18] *Rollo* (G.R. No. 170217), pp. 424-427.

[19] *Id.* at 428.

The things seized under the said search warrants are hereby ordered to be immediately returned to respondent HPS Software and Communication Corporation.[20]

When PLDT discovered this development, it filed a Notice of Appeal[21] on June 7, 2001 which the trial court gave due course via an Order[22] dated June 13, 2001. This case would be later docketed as CA-G.R. CV No. 75838.

PLDT likewise asserted that, without its knowledge, the trial court caused the release to HPS Corporation, *et al.* of all the seized items that were in custody and possession of the PNP Task Force Group-Visayas. According to PLDT, it would not have been able to learn about the precipitate discharge of said items were it not for a Memorandum[23] dated June 13, 2001 issued by Police Superintendent Jose Jorge E. Corpuz which PLDT claimed to have received only on June 27, 2001. Said document indicated that the items seized under the search warrants at issue were released from the custody of the police and returned to HPS Corporation, *et al.* through its counsel, Atty. Roque Paloma, Jr.

Thus, on July 18, 2001, PLDT filed a Petition for *Certiorari* under Rule 65[24] with the Court of Appeals assailing the trial court's release of the seized equipment despite the fact that the Joint Order dated May 23, 2001 had not yet attained finality. This petition became the subject matter of CA-G.R. SP No. 65682.

The former Fourth Division of the Court of Appeals issued a Decision dated March 26, 2004 in CA-G.R. SP No. 65682 which granted PLDT's petition for *certiorari* and set aside the trial court's May 23, 2001 Joint Order insofar as it released the seized equipment at issue. The dispositive portion of the March 26, 2004 Decision reads:

---

[20] *Id.* at 327.

[21] *Id.* at 429-431.

[22] *Id.* at 434.

[23] *Id.* at 435.

[24] CA *rollo*, pp. 2-41.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the respondent judge's May 23, 2001 Joint Order is **MODIFIED** by **SETTING ASIDE** that portion directing the immediate return of the seized items to respondent HPS. Consequently, the respondent PNP Special Task Force is directed to retrieve possession and take custody of all the seized items, as enumerated in the inventory *a quo*, pending the final disposition of the appeal filed by the petitioner on respondent judge's May 23, 2001 Joint Order.[25]

HPS Corporation, *et al.* moved for reconsideration of said Court of Appeals ruling but this motion was denied for lack of merit via a Resolution dated September 27, 2005. Subsequently, HPS Corporation, *et al.* filed a Petition for Review on *Certiorari* under Rule 45[26] with this Court on November 16, 2005. The petition was docketed as G.R. No. 170217.

On the other hand, PLDT's appeal docketed as CA-G.R. CV No. 75838 was resolved by the former Eighteenth Division of the Court of Appeals in a Decision dated April 8, 2005. The dispositive portion of the April 8, 2005 Decision states:

WHEREFORE, the Joint Order of the Regional Trial Court, Branch 55, Mandaue City, dated May 23, 2001, is hereby **AFFIRMED**.[27]

PLDT moved for reconsideration but this was rebuffed by the Court of Appeals through a Resolution dated December 7, 2005. Unperturbed, PLDT filed a Petition for Review on *Certiorari* under Rule 45[28] with this Court on January 26, 2006. The petition was, in turn, docketed as G.R. No. 170694.

In a Resolution[29] dated August 28, 2006, the Court resolved to consolidate G.R. No. 170217 and G.R. No. 170694 in the interest of speedy and orderly administration of justice.

---

[25] *Rollo* (G.R. No. 170217), pp. 36-37.

[26] *Id.* at 5-29.

[27] *Rollo* (G.R. No. 170694), p. 93.

[28] *Id.* at 12-80.

[29] *Id.* at 1164-1165.

HPS Corporation, *et al.*'s Joint Memorandum (for respondents HPS Software and Communication Corporation, Hyman Yap, Stanley Yap, Elaine Joy Yap and Julie Sy)[30] dated June 23, 2008 to the consolidated cases of G.R. No. 170217 and G.R. No. 170694 raised the following issues for consideration:

IV.1. Whether or not the above-entitled two (2) petitions are already moot and academic with this Honorable Supreme Court's promulgation of the doctrinal decision for the case of *Luis Marcos P. Laurel vs. Hon. Zeus C. Abrogar, People of the Philippines and Philippine Long Distance Telephone Company, G.R. No. 155076, February 27, 2006*, declaring that: "x x x the telecommunication services provided by PLDT and its business of providing said services are not personal properties under Article 308 of the Revised Penal Code.

x x x In the Philippines, Congress has not amended the Revised Penal Code to include theft of services or theft of business as felonies. Instead, it approved a law, Republic Act No. 8484, otherwise known as the Access Devices Regulation Act of 1998, on February 11, 1998. x x x."?

In the most unlikely event that the above-entitled two (2) petitions have not yet been rendered moot by the doctrinal decision in the said *Laurel* case, HPS respectfully submit that the following are the other issues:

IV.2. Whether or not the Court of Appeals committed grave abuse of discretion when it declared that the subject warrants are general warrants?

IV.3. Whether or not the factual findings of the trial court in its May 23, 2001 Order that there was no probable cause in issuing the subject warrants is already conclusive, when the said factual findings are duly supported with evidence; were confirmed by the Court of Appeals; and, PLDT did not refute the damning evidence against it when it still had all the opportunity to do so?

IV.4. Whether or not the trial court committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it stated in its May 23, 2001 Joint Order that:

---

[30] *Rollo* (G.R. No. 170217), pp. 725-799.

"WHEREFORE, premises considered, the motion to quash the search warrants and return the things seized is hereby granted. Search Warrant Nos. 2000-10-467 and 2000-10-468 are ordered quashed. The things seized under the said search warrants are hereby ordered to be immediately returned to respondent HPS Software and Communications Corporation."

IV.5. Whether or not PLDT's memorandum was necessary before a decision can be rendered by the trial court?

IV.6. Whether or not there was a need for PLDT to first file a Motion for Reconsideration before filing its petition for *certiorari* in the subject case?

IV.7. Whether or not a Petition for *Certiorari* was the appropriate remedy for PLDT when it had recourse to other plain remedy other than the Petition for *Certiorari*?

IV.8. Whether or not PLDT has the legal interest and personality to file the present petition when the complainant PAOCTF has already voluntarily complied with or satisfied the Joint Order.

IV.9. Whether or not the Court of Appeals can, in a petition for *certiorari*, nullify a litigant's or the Search Warrants Applicant's exercise of its prerogative of accepting and complying with the said May 23, 2001 Joint Order of the trial court?

IV.10. Whether or not there was forum shopping when PLDT filed an appeal and a petition for *certiorari* on the same May 23, 2001 Joint Order issued by the trial court?

IV.11. Whether or not the Court of Appeals gravely abused its discretion when it upheld the trial court's decision to disallow the testimony of Engr. Policarpio Tolentino during the hearings of the motion to quash the subject search warrants when the said Engr. Tolentino was not even presented as witness during the hearing for the application of the subject search warrants; and, as the Court of Appeals had declared: *". . . We cannot but entertain serious doubts as to the regularity of the performance of his official function"*?

IV.12. Whether or not PLDT's counsel can sue its own client, the applicant of the subject search warrant?[31]

On the other hand, PLDT raised the following arguments in its Memorandum[32] dated June 16, 2008 to the consolidated cases of G.R. No. 170217 and G.R. No. 170694:

I

THE COURT OF APPEALS GRAVELY MISAPPREHENDED THE FACTS WHEN IT SUSTAINED THE QUASHAL OF THE SEARCH WARRANTS DESPITE THE CLEAR AND SUFFICIENT EVIDENCE ON RECORD ESTABLISHING PROBABLE CAUSE FOR THE ISSUANCE THEREOF.

II

THE COURT OF APPEALS GRAVELY ERRED IN INDISCRIMINATELY RELYING UPON RULINGS OF THIS HONORABLE COURT THAT ARE NOT APPLICABLE TO THIS CASE.

A. THE RULING IN *LAGON V. HOOVEN COMALCO INDUSTRIES, INC.* THAT LITIGATIONS SHOULD NOT BE RESOLVED ON THE BASIS OF SUPPOSITIONS, DEDUCTIONS IS NOT PROPER IN THIS CASE CONSIDERING THAT:

1. The Search Warrant Case is merely a step preparatory to the filing of criminal cases against the Respondents. Thus, the applicant needed only to establish probable cause for the issuance of the search warrants and not proof beyond reasonable doubt.

2. Even assuming *arguendo* that there is some controversy as to the value remaining in the *Mabuhay* card, the totality of evidence submitted during the applications for the Search Warrant is more than sufficient to establish probable cause.

B. THE RULING IN *DAYONOT V. NATIONAL LABOR RELATIONS COMMISSION* THAT AN ADVERSE

---

[31] *Id.* at 769-771.

[32] *Id.* at 647-724.

INFERENCE ARISES FROM A PARTY'S FAILURE TO REBUT AN ASSERTION THAT WOULD HAVE NATURALLY INVITED AN IMMEDIATE AND PERVASIVE OPPOSITION IS INAPPLICABLE IN THIS CASE CONSIDERING THAT:

1. PLDT sufficiently rebutted Respondents' claim that PLDT has no cause to complain because of its prior knowledge of HPS's internet services.

2. Assuming *arguendo* that PLDT had knowledge of HPS's internet services, such fact is immaterial in the determination of the propriety of the Search Warrants issued in this case. The Search Warrants were issued because the evidence presented by PAOCTF overwhelmingly established the existence of probable cause that Respondents were probably committing a crime and the objects used for the crime are in the premises to be searched.

III

THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE DISALLOWANCE OF A PORTION OF ENGR. TOLENTINO'S TESTIMONY AND OF THE INTRODUCTION OF THE *MABUHAY* CARD AND HIS INVESTIGATION REPORT IN VIOLATION OF THE PRESUMPTION THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED.

IV

THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE TRIAL COURT'S JOINT ORDER WHICH WAS ISSUED WITH UNDUE HASTE. THE COURT OF APPEALS OVERLOOKED FACTS WHICH CLEARLY DEMONSTRATED THE TRIAL COURT'S PREJUDGMENT OF THE CASE IN FAVOR OF RESPONDENTS, IN VIOLATION OF PLDT'S RIGHT TO DUE PROCESS.

V

THE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT THE CONTESTED SEARCH WARRANTS ARE IN THE NATURE OF GENERAL WARRANTS CONSIDERING THAT:

A. THE ISSUE OF WHETHER THE SEARCH WARRANTS ARE GENERAL WARRANTS WAS NEVER RAISED IN THE APPEAL BEFORE IT.

B. IN ANY CASE, THE SEARCH WARRANTS STATED WITH SUFFICIENT PARTICULARITY THE PLACE TO BE SEARCHED AND THE OBJECTS TO BE SEIZED, IN CONFORMITY WITH THE CONSTITUTIONAL AND JURISPRUDENTIAL REQUIREMENTS IN THE ISSUANCE OF SEARCH WARRANTS.

VI

RESPONDENTS' ALLEGATION THAT PLDT FAILED TO COMPLY WITH THE REQUIREMENTS OF SECTION 3, RULE 45 AND SECTION 4, RULE 7 OF THE RULES OF COURT IS COMPLETELY BASELESS CONSIDERING THAT:

A. PLDT COMPLIED WITH THE RULES ON PROOF OF SERVICE.

B. THE PETITION WAS PROPERLY VERIFIED. ASSUMING *ARGUENDO* THAT THE ORIGINAL VERIFICATION SUBMITTED WAS DEFICIENT, THE SAME WAS PROMPTLY CORRECTED BY PLDT, IN FULL COMPLIANCE WITH THE DIRECTIVE OF THIS HONORABLE COURT.

C. PLDT DID NOT ENGAGE IN FORUM-SHOPPING.

1. The issues, subject matter and reliefs prayed for in the Appeal Case and the *Certiorari* Case are distinct and separate from one another.

2. Assuming *arguendo* that the Appeal Case involves the same parties, subject matter and reliefs in the *Certiorari* Case, then Respondents are equally guilty of forum-shopping when they elevated the Decision of the Court of Appeals in the *Certiorari* Case to this Honorable Court.

VII

RESPONDENTS' RELIANCE ON THE CASE OF *LAUREL V. ABROGAR* IS ERRONEOUS AND MISLEADING. *LAUREL V. ABROGAR* IS NOT YET FINAL AND EXECUTORY, HENCE,

CANNOT BIND EVEN THE PARTIES THERETO, MUCH LESS RESPONDENTS HEREIN.[33] (Citations omitted.)

A year later, on June 1, 2009, PLDT submitted a Supplemental Memorandum[34] to its June 16, 2008 Memorandum. In the said pleading, PLDT pointed out the reversal by the Supreme Court *En Banc* of the February 27, 2006 Decision in *Laurel v. Abrogar*[35] and raised it as a crucial issue in the present consolidated case:

IN A RESOLUTION DATED 13 JANUARY 2009, THIS HONORABLE COURT *EN BANC* SET ASIDE THE 27 FEBRUARY 2006 DECISION IN *LAUREL V. ABROGAR*. THEREFORE, THE PREVAILING DOCTRINE WITH RESPECT TO THE ACT OF CONDUCTING ISR OPERATIONS IS THAT IT IS AN ACT OF SUBTRACTION COVERED BY THE PROVISIONS ON THEFT, AND THAT THE BUSINESS OF PROVIDING TELECOMMUNICATION OR TELEPHONE SERVICE IS CONSIDERED PERSONAL PROPERTY WHICH CAN BE THE OBJECT OF THEFT UNDER ARTICLE 308 OF THE REVISED PENAL CODE. THUS, RESPONDENTS CAN NO LONGER RELY ON THE 27 FEBRUARY 2006 DECISION OF THIS HONORABLE COURT IN *LAUREL V. ABROGAR*.[36]

After evaluating the aforementioned submissions, the Court has identified the following questions as the only relevant issues that need to be resolved in this consolidated case:

I

WHETHER OR NOT PLDT HAS LEGAL PERSONALITY TO FILE THE PETITION FOR SPECIAL CIVIL ACTION OF *CERTIORARI* IN CA-G.R. SP No. 65682 AND, SUBSEQUENTLY, THE PETITION FOR REVIEW IN G.R. NO. 170694 WITHOUT THE CONSENT OR APPROVAL OF THE SOLICITOR GENERAL.

---

[33] *Id.* at 668-671.

[34] *Id.* at 816-824.

[35] 518 Phil. 409 (2006).

[36] *Rollo* (G.R. No. 170217), pp. 816-817.

II

WHETHER OR NOT PLDT'S PETITION FOR *CERTIORARI* SHOULD HAVE BEEN DISMISSED OUTRIGHT BY THE COURT OF APPEALS SINCE NO MOTION FOR RECONSIDERATION WAS FILED BY PLDT FROM THE ASSAILED MAY 23, 2001 JOINT ORDER OF THE TRIAL COURT.

III

WHETHER OR NOT PLDT COMMITTED FORUM-SHOPPING.

IV

WHETHER OR NOT THE TWO (2) SEARCH WARRANTS WERE IMPROPERLY QUASHED.

V

WHETHER OR NOT THE SUBJECT SEARCH WARRANTS ARE IN THE NATURE OF GENERAL WARRANTS.

VI

WHETHER OR NOT THE RELEASE OF THE ITEMS SEIZED BY VIRTUE OF THE SUBJECT SEARCH WARRANTS WAS PROPER.

Before resolving the aforementioned issues, we will first discuss the state of jurisprudence on the issue of whether or not the activity referred to as "international simple resale" (ISR) is considered a criminal act of Theft in this jurisdiction.

To recall, HPS Corporation, *et al.* contends that PLDT's petition in G.R. No. 170694 has already become moot and academic because the alleged criminal activity which PLDT asserts as having been committed by HPS Corporation, *et al.* has been declared by this Court as not constituting the crime of Theft or any other crime for that matter. HPS Corporation, *et al.* draws support for their claim from the February 27, 2006 Decision of this Court in *Laurel v. Abrogar*.[37]

In that case, PLDT sued Baynet Co., Ltd. (Baynet) and its corporate officers for the crime of Theft through stealing the

[37] *Supra* note 35.

international long distance calls belonging to PLDT by conducting ISR which is a method of routing and completing international long distance calls using lines, cables, antennae, and/or air wave frequency which connect directly to the local or domestic exchange facilities of the country where the call is destined. One of those impleaded in the Amended Information, Luis Marcos P. Laurel (Laurel), moved for the quashal of the Amended Information arguing that an ISR activity does not constitute the felony of Theft under Article 308 of the Revised Penal Code (RPC). Both the trial court and the Court of Appeals did not find merit in his motion. However, this Court speaking through its First Division upheld Laurel's contention by ruling that the Amended Information does not contain material allegations charging petitioner with theft of personal property since international long distance calls and the business of providing telecommunication or telephone services are not personal properties under Article 308 of the Revised Penal Code. The Court then explained the basis for this previous ruling in this wise:

> In defining theft, under Article 308 of the Revised Penal Code, as the taking of personal property without the consent of the owner thereof, the Philippine Legislature could not have contemplated the human voice which is converted into electronic impulses or electrical current which are transmitted to the party called through the PSTN of respondent PLDT and the ISR of Baynet Card Ltd. within its coverage. When the Revised Penal Code was approved, on December 8, 1930, international telephone calls and the transmission and routing of electronic voice signals or impulses emanating from said calls, through the PSTN, IPL and ISR, were still non-existent. Case law is that, where a legislative history fails to evidence congressional awareness of the scope of the statute claimed by the respondents, a narrow interpretation of the law is more consistent with the usual approach to the construction of the statute. Penal responsibility cannot be extended beyond the fair scope of the statutory mandate.[38]

Undaunted, PLDT filed a Motion for Reconsideration with Motion to Refer the Case to the Supreme Court *En Banc*. This motion was acted upon favorably by the Court *En Banc* in a

---

[38] *Id.* at 438-439.

Resolution[39] dated January 13, 2009 thereby reconsidering and setting aside the February 27, 2006 Decision. In resolving PLDT's motion, the Court *En Banc* held that:

The acts of "subtraction" include: (a) tampering with any wire, meter, or other apparatus installed or used for generating, containing, conducting, or measuring electricity, telegraph or telephone service; (b) tapping or otherwise wrongfully deflecting or taking any electric current from such wire, meter, or other apparatus; and (c) using or enjoying the benefits of any device by means of which one may fraudulently obtain any current of electricity or any telegraph or telephone service.

In the instant case, the act of conducting ISR operations by illegally connecting various equipment or apparatus to private respondent PLDT's telephone system, through which petitioner is able to resell or re-route international long distance calls using respondent PLDT's facilities constitutes all three acts of subtraction mentioned above.

The business of providing telecommunication or telephone service is likewise personal property which can be the object of theft under Article 308 of the Revised Penal Code. Business may be appropriated under Section 2 of Act No. 3952 (Bulk Sales Law), hence, could be the object of theft:

> "Section 2. Any sale, transfer, mortgage, or assignment of a stock of goods, wares, merchandise, provisions, or materials otherwise than in the ordinary course of trade and the regular prosecution of the business of the vendor, mortgagor, transferor, or assignor, or any sale, transfer, mortgage, or assignment of all, or substantially all, of the business or trade theretofore conducted by the vendor, mortgagor, transferor or assignor, or all, or substantially all, of the fixtures and equipment used in and about the business of the vendor, mortgagor, transferor, or assignor, shall be deemed to be a sale and transfer in bulk, in contemplation of the Act. x x x."

In *Strocheker v. Ramirez*, this Court stated:

> "With regard to the nature of the property thus mortgaged, which is one-half interest in the business above described, such interest is a personal property capable of appropriation

---

[39] *Laurel v. Abrogar*, G.R. No. 155076, January 13, 2009, 576 SCRA 41.

> and not included in the enumeration of real properties in Article 335 of the Civil Code, and may be the subject of mortgage."
>
> Interest in business was not specifically enumerated as personal property in the Civil Code in force at the time the above decision was rendered. Yet, interest in business was declared to be personal property since it is capable of appropriation and not included in the enumeration of real properties. Article 414 of the Civil Code provides that all things which are or may be the object of appropriation are considered either real property or personal property. Business is likewise not enumerated as personal property under the Civil Code. Just like interest in business, however, it may be appropriated. Following the ruling in *Strochecker v. Ramirez*, business should also be classified as personal property. Since it is not included in the exclusive enumeration of real properties under Article 415, it is therefore personal property.
>
> As can be clearly gleaned from the above disquisitions, petitioner's acts constitute theft of respondent PLDT's business and service, committed by means of the unlawful use of the latter's facilities. x x x.[40] (Citations omitted.)

Plainly, from the aforementioned doctrinal pronouncement, this Court had categorically stated and still maintains that an ISR activity is an act of subtraction covered by the provisions on Theft, and that the business of providing telecommunication or telephone service is personal property, which can be the object of Theft under Article 308 of the Revised Penal Code.

Having established that an ISR activity is considered as Theft according to the prevailing jurisprudence on the matter, this Court will now proceed to discuss the central issues involved in this consolidated case.

Anent the first issue of whether PLDT possesses the legal personality to file the petition in G.R. No. 170694 in light of respondents' claim that, in criminal appeals, it is the Solicitor General which has the exclusive and sole power to file such appeals in behalf of the People of the Philippines, this Court rules in the affirmative.

---

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

The petition filed by PLDT before this Court does not involve an ordinary criminal action which requires the participation and conformity of the City Prosecutor or the Solicitor General when raised before appellate courts.

On the contrary, what is involved here is a search warrant proceeding which is not a criminal action, much less a civil action, but a special criminal process. In the seminal case of *Malaloan v. Court of Appeals*,[41] we expounded on this doctrine in this wise:

> The basic flaw in this reasoning is in erroneously equating the application for and the obtention of a search warrant with the institution and prosecution of a criminal action in a trial court. It would thus categorize what is only a special criminal *process*, the power to issue which is inherent in *all* courts, as equivalent to a criminal *action*, jurisdiction over which is reposed in *specific* courts of indicated competence. It ignores the fact that the requisites, procedure and purpose for the issuance of a search warrant are completely different from those for the institution of a criminal action.
>
> For, indeed, a warrant, such as a warrant of arrest or a search warrant, merely constitutes process. A search warrant is defined in our jurisdiction as an order in writing issued in the name of the People of the Philippines signed by a judge and directed to a peace officer, commanding him to search for personal property and bring it before the court. A search warrant is in the nature of a criminal process akin to a writ of discovery. It is a special and peculiar remedy, drastic in its nature, and made necessary because of a public necessity.
>
> In American jurisdictions, from which we have taken our jural concept and provisions on search warrants, such warrant is definitively considered merely as a process, generally issued by a court in the exercise of its ancillary jurisdiction, and not a criminal action to be entertained by a court pursuant to its original jurisdiction. We emphasize this fact for purposes of both issues as formulated in this opinion, with the catalogue of authorities herein.
>
> Invariably, a judicial process is defined as a writ, *warrant*, subpoena, or other formal writing issued by authority of law; also the means of accomplishing an end, including judicial proceedings, or all writs,

---

[41] G.R. No. 104879, May 6, 1994, 232 SCRA 249.

warrants, summonses, and *orders* of courts of justice or judicial officers. It is likewise held to include a writ, summons, or *order* issued in a judicial proceeding to acquire jurisdiction of a person or his property, to expedite the cause or enforce the judgment, or a writ, *warrant*, mandate, or other process issuing from a court of justice.[42] (Citations omitted.)

Since a search warrant proceeding is not a criminal action, it necessarily follows that the requirement set forth in Section 5, Rule 110 of the Rules on Criminal Procedure which states that "all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor" does not apply.

In *Columbia Pictures Entertainment, Inc. v. Court of Appeals*,[43] we sustained the legal personality of a private complainant to file an action or an appeal without the imprimatur of government prosecutors on the basis of the foregoing ratiocination:

> The threshold issue that must first be determined is whether or not petitioners have the legal personality and standing to file the appeal.
>
> Private respondent asserts that the proceedings for the issuance and/or quashal of a search warrant are criminal in nature. Thus, the parties in such a case are the "People" as offended party and the accused. A private complainant is relegated to the role of a witness who does not have the right to appeal except where the civil aspect is deemed instituted with the criminal case.
>
> Petitioners, on the other hand, argue that as the offended parties in the criminal case, they have the right to institute an appeal from the questioned order.
>
> From the records it is clear that, as complainants, petitioners were involved in the proceedings which led to the issuance of Search Warrant No. 23. In *People v. Nano*, the Court declared that while the general rule is that it is only the Solicitor General who is authorized to bring or defend actions on behalf of the People or the Republic of the Philippines once the case is brought before this Court or the

---

[42] *Id.* at 256-257.

[43] 330 Phil. 771, 778 (1996).

Court of Appeals, if there appears to be grave error committed by the judge or a lack of due process, the petition will be deemed filed by the private complainants therein as if it were filed by the Solicitor General. In line with this ruling, the Court gives this petition due course and will allow petitioners to argue their case against the questioned order in lieu of the Solicitor General. (Citation omitted.)

Similarly, in the subsequent case of *Sony Computer Entertainment, Inc. v. Bright Future Technologies, Inc.*,[44] we upheld the right of a private complainant, at whose initiative a search warrant was issued, to participate in any incident arising from or in connection with search warrant proceedings independently from the State. We quote the relevant discussion in that case here:

> The issue of whether a private complainant, like SCEI, has the right to participate in search warrant proceedings was addressed in the affirmative in *United Laboratories, Inc. v. Isip*:
>
> > . . . [A] private individual or a private corporation complaining to the NBI or to a government agency charged with the enforcement of special penal laws, such as the BFAD, may *appear, participate and file pleadings* in the search warrant proceedings ***to maintain****, inter alia, the validity of the search warrant* issued by the court and the ***admissibility*** *of the properties seized* in anticipation of a criminal case to be filed; such private party may do so in collaboration with the NBI or such government agency. The party *may file an opposition to a motion to quash* the search warrant issued by the court, *or a motion for the reconsideration* of the court order granting such motion to quash.[45]

With regard to the second issue of whether or not PLDT's petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure should have been dismissed outright by the Court of Appeals since no motion for reconsideration was filed by PLDT from the assailed May 23, 2001 Joint Order of the trial court, this Court declares that, due to the peculiar circumstances

---

[44] G.R. No. 169156, February 15, 2007, 516 SCRA 62.

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

obtaining in this case, the petition for *certiorari* was properly given due course by the Court of Appeals despite the non-fulfillment of the requirement of the filing of a motion for reconsideration.

The general rule is that a motion for reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case.[46]

However, the rule is not absolute and jurisprudence has laid down the following exceptions when the filing of a petition for *certiorari* is proper notwithstanding the failure to file a motion for reconsideration:

(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

(b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and,

---

[46] *Pineda v. Court of Appeals* (*Former Ninth Division*), G.R. No. 181643, November 17, 2010, 635 SCRA 274, 281.

(i) where the issue raised is one purely of law or public interest is involved.[47]

In the case at bar, it is apparent that PLDT was deprived of due process when the trial court expeditiously released the items seized by virtue of the subject search warrants without waiting for PLDT to file its memorandum and despite the fact that no motion for execution was filed by respondents which is required in this case because, as stated in the assailed March 26, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 65682, the May 23, 2001 Joint Order of the trial court is a final order which disposes of the action or proceeding and which may be the subject of an appeal. Thus, it is not immediately executory. Moreover, the items seized by virtue of the subject search warrants had already been released by the trial court to the custody of respondents thereby creating a situation wherein a motion for reconsideration would be useless. For these foregoing reasons, the relaxation of the settled rule by the former Fourth Division of the Court of Appeals is justified.

Moving on to the third issue of whether PLDT was engaged in forum shopping when it filed a petition for *certiorari* under Rule 65 with the Court of Appeals despite the fact that it had previously filed an appeal from the assailed May 23, 2001 Joint Order, this Court rules in the negative.

In *Metropolitan Bank and Trust Company v. International Exchange Bank*,[48] we reiterated the jurisprudential definition of forum shopping in this wise:

Forum shopping has been defined as an act of a party, against whom an adverse judgment has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, **other than by appeal or a special civil action for *certiorari***, or the institution of two or more actions or proceedings grounded on the

---

[47] *Republic v. Pantranco North Express, Inc. (PNEI)*, G.R. No. 178593, February 15, 2012, 666 SCRA 199, 205-206, citing *Sim v. National Labor Relations Commission*, G.R. No.157376, October 2, 2007, 534 SCRA 515, 521-522.

[48] G.R. Nos. 176008 & 176131, August 10, 2011, 655 SCRA 263, 274.

same cause on the supposition that one or the other court would make a favorable disposition. (Citation omitted.)

Thus, there is forum shopping when, between an action pending before this Court and another one, there exist: (1) identity of parties, or at least such parties as represent the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites also constitutive of the requisites for *auter action pendant* or *lis pendens*.[49]

In the case at bar, forum shopping cannot be considered to be present because the appeal that PLDT elevated to the Court of Appeals is an examination of the validity of the trial court's action of quashing the search warrants that it initially issued while, on the other hand, the petition for *certiorari* is an inquiry on whether or not the trial court judge committed grave abuse of discretion when he ordered the release of the seized items subject of the search warrants despite the fact that its May 23, 2001 Joint Order had not yet become final and executory, nor had any motion for execution pending appeal been filed by the HPS Corporation, *et al.* Therefore, it is readily apparent that both cases posed different causes of action.

As to the fourth issue of whether or not the two search warrants at issue were improperly quashed, PLDT argues that the Court of Appeals erroneously appreciated the facts of the case and the significance of the evidence on record when it sustained the quashal of the subject search warrants by the trial court mainly on the basis of test calls using a *Mabuhay* card with PIN code number 332 1479224[50] which was the same *Mabuhay* card that was presented by PLDT to support its application for a search warrant against HPS Corporation, *et al.* These test calls were

---

[49] *Making Enterprises, Inc. v. Marfori*, G.R. No. 152239, August 17, 2011, 655 SCRA 528, 537.

[50] *Rollo* (G.R. No. 170694), p. 113.

conducted in NTC-Region VII Office on November 3, 2000 and in open court on January 10, 2001. PLDT insists that these test calls, which were made after the issuance of the subject search warrants, are immaterial to the issue of whether or not HPS Corporation, *et al.* were engaged in ISR activities using the equipment seized at the time the subject search warrants were issued and implemented. PLDT further argues that a search warrant is merely a preparatory step to the filing of a criminal case; thus, an applicant needs only to establish probable cause for the issuance of a search warrant and not proof beyond reasonable doubt. In this case, PLDT believes that it had established probable cause that is sufficient enough to defeat the motion to quash filed by HPS Corporation, *et al.*

We find that the contention is impressed with merit.

This Court has consistently held that the validity of the issuance of a search warrant rests upon the following factors: (1) **it must be issued upon probable cause**; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons and things to be seized.[51]

Probable cause, as a condition for the issuance of a search warrant, is such reasons supported by facts and circumstances as will warrant a cautious man to believe that his action and the means taken in prosecuting it are legally just and proper. It requires facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and that the objects sought in connection with that offense are in the place to be searched.[52]

---

[51] *People v. Tuan*, G.R. No. 176066, August 11, 2010, 628 SCRA 226, 245.

[52] *Tan v. Sy Tiong Gue*, G.R. No. 174570, February 17, 2010, 613 SCRA 98, 106.

In *Microsoft Corporation v. Maxicorp, Inc.*,[53] this Court held that the quantum of evidence required to prove probable cause is not the same quantum of evidence needed to establish proof beyond reasonable doubt which is required in a criminal case that may be subsequently filed. We ruled in this case that:

> The determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full-blown trial.[54] (Citation omitted.)

In the case at bar, both the trial court and the former Eighteenth Division of the Court of Appeals agree that no probable cause existed to justify the issuance of the subject search warrants. In sustaining the findings of the trial court, the Court of Appeals in its assailed Decision dated April 8, 2005 in CA-G.R. CV No. 75838 ratiocinated in this manner:

> As a giant in the telecommunications industry, PLDT's declaration in page 21 of its appellant's brief that it would "take sometime, or after a certain number of minutes is consumed, before the true value of the card is correspondingly reflected", by way of further explaining the nature of the subject Mabuhay Card as not being a "smart" card, is conceded with much alacrity.
>
> We are not, however, prepared to subscribe to the theory that the twenty (20) minutes deducted from the balance of the subject Mabuhay Card after a couple of test calls were completed in open court on January 10, 2001 already included the time earlier consumed by the PLDT personnel in conducting their test calls prior to the application for the questioned warrants but belatedly deducted only during the test calls conducted by the court *a quo*. It is beyond cavil that litigations cannot be properly resolved by suppositions, deductions, or even presumptions, with no basis in evidence, for the truth must have to be determined by the hard rules of admissibility

---

[53] 481 Phil. 550 (2004).

[54] *Id.* at 566-567.

and proof. This Court cannot quite fathom why PLDT, with all the resources available to it, failed to substantiate this particular supposition before the court *a quo*, when it could have helped their case immensely. We note that at the hearing held on January 10, 2001, the trial judge allowed the conduct of test calls in open court in order to determine if the subject Mabuhay Card had in fact been used, as alleged by PLDT. However, it was proven that the Card retained its original value of $10 despite several test calls already conducted in the past using the same. PLDT should have refuted this damning evidence while it still had all the opportunity to do so, but it did not.

Moreover, if we go by the gauge set by PLDT itself that it would take a certain number of minutes before the true value of the card is reflected accordingly, then we fail to see how the test calls conducted by its personnel on September 13, 2000 could only be deducted on January 10, 2001, after almost four (4) months.

PLDT cannot likewise capitalize on the fact that, despite the series of test calls made by Engr. Jesus Laureno at the NTC, Region VII office on November 3, 2000, the subject Mabuhay Card still had $10 worth of calls. Had PLDT closely examined the testimony of Engr. Laureno in open court, it would have realized that not one of said calls ever got connected to a destination number. Thus:

> "Q You said that after you heard that female voice which says that you still have ten (10) dollars and you entered your call at the country of destination, you did not proceed that call. Will you please tell the Court of the six test calls that were conducted, how many calls were up to that particular portion?
>
> A Five (5).
>
> Q Will you please tell the Court who… since that were five (5) test calls, how many calls did you personally make up to that particular portion?
>
> A Only one (1).
>
> Q In whose presence?
>
> A In the presence of Director Butaslac, Engr. Miguel, Engr. Yeban, Engr. Hinaut and three (3) PNP personnel, Atty. Muntuerto and Atty. Paloma.

Q What about the other four (4)? You mentioned of five (5) test calls and you made only one, who did the other four (4) test calls which give the said results?

A The third call was done by Engr. Yeban using the same procedure and then followed by the PNP personnel. Actually, the first one who dial or demonstrate is Atty. Muntuerto, me is the second; third is Engr. Yeban; the fourth is the PNP personnel and also the fifth; and the sixth test calls was Engr. Yeban and with that call, we already proceeded to the dialing the destination number which we call one of the numbers of our office.

Q What number of the office was called following the instruction that you have ten (10) dollars and that you enter your destination number now?

A 346-06-87.

Q What happened? You said that, that was done on the sixth test calls, what happened after that destination number was entered?

A The call is not completed and the female voice said to retry again." (TSN, January 10, 2001, pp. 45-48)

In fine, PLDT cannot argue that the court *a quo* should not have relied heavily upon the result of the test calls made by the NTC-Regional Office as well as those done in open court on January 10, 2001, as there are other convincing evidence such as the testimonies of its personnel showing that, in fact, test calls and ocular inspections had been conducted yielding positive results. Precisely, the trial court anchored its determination of probable cause for the issuance of the questioned warrants on the sworn statements of the PLDT personnel that test calls had been made using the subject Mabuhay Card. However, said statements were later proven to be wanting in factual basis.[55]

Essentially, the reasoning of the Court of Appeals relies solely on the fact that the *Mabuhay* card with PIN code number 332 1479224 with a card value of $10.00 did not lose any of its $10.00 value before it was used in the test calls conducted at

[55] *Rollo* (G.R. No. 170217), pp. 109-111.

the NTC-Region VII office and in open court. Thus, the Court of Appeals concluded that, contrary to PLDT's claims, no test calls using the same *Mabuhay* card were actually made by PLDT's witnesses when it applied for a search warrant against HPS Corporation, *et al.*; otherwise, the *Mabuhay* card should have had less than $10.00 value left in it.

This Court cannot subscribe to such a hasty conclusion because the determination of whether or not test calls were indeed made by PLDT on *Mabuhay* card with PIN code number 332 1479224 cannot be ascertained solely by checking the value reflected on the aforementioned *Mabuhay* card. In fact, reliance on this method of verification is fraught with questions that strike deep into the capability of the said *Mabuhay* card to automatically and accurately reflect the fact that it had indeed been used by PLDT's witnesses to make test calls.

We find that indeed PLDT never represented that the *Mabuhay* card had an accurate recording system that would automatically deduct the value of a call from the value of the card at the time the call was made. Certainly, PLDT was not in a position to make such an assertion as it did not have a hand in the production and programming of said *Mabuhay* card.

Furthermore, several plausible reasons could be entertained for the non-deduction of the value of the *Mabuhay* card other than the trial court's assertion that the said phone card could not have been utilized in test calls made by PLDT's witnesses.

One explanation that PLDT offered is that the said *Mabuhay* card might not be a "smart" card which, in telecommunications industry parlance, is a card that automatically debits the value of a call as it is made as opposed to a non-"smart" card which takes a considerable amount of time before the true value of the card is correspondingly reflected in the balance.

Another explanation that PLDT suggests is that the test calls that were conducted in NTC-Region VII on November 3, 2000 and in open court on January 10, 2001 were made long after the subject search warrants were issued which was on October 20, 2000. During the time in between said events, the identity

of the *Mabuhay* card was already a matter of judicial record and, thus, easily ascertainable by any interested party. PLDT asserts this circumstance could have provided HPS Corporation, *et al.* the opportunity to examine the prosecution's evidence, identify the specific *Mabuhay* card that PLDT's witnesses used and manipulate the remaining value reflected on the said phone card. This idea is not farfetched considering that if HPS Corporation, *et al.* did indeed engage in illegal ISR activities using *Mabuhay* cards then it would not be impossible for HPS Corporation, *et al.* to possess the technical knowledge to reconfigure the *Mabuhay* card that was used in evidence by PLDT. In support of this tampering theory, PLDT points to HPS Corporation, *et al.*'s vehement opposition to the introduction of a different *Mabuhay* card during the testimony of Engr. Tolentino, which PLDT attributes to HPS Corporation, *et al.*'s lack of opportunity to identify and manipulate this particular phone card.

Since the value of the subject *Mabuhay* card may be susceptible to tampering, it would have been more prudent for the trial court and the Court of Appeals to weigh the other evidence on record. As summarized in its memorandum, PLDT submitted the following to the trial court, during the application for the subject search warrants and during the hearing on HPS Corporation, *et al.*'s motion to suppress the evidence:

a. The affidavit[56] and testimony[57] of PLDT employee Engr. Reuben C. Hinagdanan (Engr. Hinagdanan) which was given during the application for the issuance of the subject search warrants. In his affidavit and testimony, Engr. Hinagdanan averred that PLDT conducted surveillance on the ISR activities of HPS Corporation, *et al.* and that the said surveillance operation yielded positive results that PLDT telephone lines subscribed by Philip Yap and/or HPS Corporation were being utilized for illegal ISR operations.

---

[56] *Rollo* (G.R. No. 170694), pp. 98-169.

[57] *Id.* at 565-588.

b. The call detail records[58] which are attached as Annex "C" to Engr. Hinagdanan's affidavit which indicated that test calls were made by Engr. Hinagdanan using the *Mabuhay* card with PIN code number 332 1479224. The said document also indicated that even if the calls originated from the United States of America, the calling party reflected therein are local numbers of telephone lines which PLDT had verified as the same as those subscribed by Philip Yap and/or HPS Corporation.

c. The affidavit[59] and testimony[60] of PLDT employee Engr. Richard L. Dira (Engr. Dira) which was given during the application for the issuance of the subject search warrants. In his affidavit and testimony, Engr. Dira averred that he personally conducted an ocular inspection in the premises of HPS Corporation and that the said inspection revealed that all PLDT lines subscribed by Philip Yap and/or HPS Corporation were illegally connected to various telecommunications and switching equipment which were used in illegal ISR activities conducted by HPS Corporation, *et al.*

d. The testimony[61] and investigation report[62] of Engr. Tolentino which details the test calls he made using *Mabuhay* card with PIN code number 349 4374802. This is a different *Mabuhay* card than what was used by PLDT in its application for the subject search warrants. According to his investigation report, the telephone lines subscribed by Philip Yap and/or HPS Corporation were indeed utilized for illegal ISR operations.

e. The testimony[63] of Police Officer Narciso Ouano, Jr. (Officer Ouano) of the Legal and Investigation Division

[58] *Id.* at 127.

[59] *Id.* at 170-182.

[60] *Id.* at 588-594.

[61] *Id.* at 595-802.

[62] *Id.* at 268-269.

[63] *Id.* at 565-574.

of the PAOCTF given during the hearing on the application for the issuance of the subject search warrants wherein Officer Ouano averred that, upon complaint of PLDT, the PAOCTF conducted surveillance operations which yielded positive results that HPS Corporation, *et al.* were engaged in illegal ISR activities.

f. The results of a traffic study[64] conducted by PLDT on the twenty (20) direct telephone lines subscribed by Philip Yap and/or HPS Corporation which detailed the extent of the losses suffered by PLDT as a result of the illegal ISR activities conducted by HPS Corporation, *et al.*

Taken together, the aforementioned pieces of evidence are more than sufficient to support a finding that test calls were indeed made by PLDT's witnesses using *Mabuhay* card with PIN code number 332 1479224 and, more importantly, that probable cause necessary to engender a belief that HPS Corporation, *et al.* had probably committed the crime of Theft through illegal ISR activities exists. To reiterate, evidence to show probable cause to issue a search warrant must be distinguished from proof beyond reasonable doubt which, at this juncture of the criminal case, is not required.

With regard to the issue of whether or not the subject search warrants are in the nature of general warrants, PLDT argues that, contrary to the ruling of the former Eighteenth Division of the Court of Appeals in its assailed Decision dated April 8, 2005 in CA-G.R. CV No. 75838, the subject search warrants cannot be considered as such because the contents of both stated, with sufficient particularity, the place to be searched and the objects to be seized, in conformity with the constitutional and jurisprudential requirements in the issuance of search warrants. On the other hand, HPS Corporation, *et al.* echoes the declaration of the Court of Appeals that the language used in the subject search warrants are so all-embracing as to include all conceivable records and equipment of HPS Corporation regardless of whether they are legal or illegal.

---

[64] *Id.* at 168-169.

We rule that PLDT's argument on this point is well taken.

A search warrant issued must particularly describe the place to be searched and persons or things to be seized in order for it to be valid,[65] otherwise, it is considered as a general warrant which is proscribed by both jurisprudence and the 1987 Constitution.

In *Uy Kheytin v. Villareal*,[66] we explained the purpose of the aforementioned requirement for a valid search warrant, to wit:

> [A] search warrant should *particularly describe* the place to be searched and the things to be seized. The evident purpose and intent of this requirement is to limit the things to be seized to those, and only those, particularly described in the search warrant — x x x what articles they shall seize, to the end that "unreasonable searches and seizures" may not be made, — that abuses may not be committed. x x x

In *Bache & Co. (Phil.), Inc. v. Ruiz*,[67] we held that, among other things, it is only required that a search warrant be specific as far as the circumstances will ordinarily allow, such that:

> A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow; or when the description expresses a conclusion of fact – not of law - by which the warrant officer may be guided in making the search and seizure; or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued. x x x. (Citations omitted.)

The disputed text of the subject search warrants reads as follows:

> a. LINES, CABLES AND ANTENNAS or equipment or device capable of transmitting air waves or frequency, such as an IPL and telephone lines and equipment;

---

[65] *Del Castillo v. People*, G.R. No. 185128, January 30, 2012, 664 SCRA 430, 439.

[66] 42 Phil. 886, 896-897 (1920).

[67] 147 Phil. 794, 811 (1971).

b. COMPUTERS or any equipment or device capable of accepting information applying the described process of the information and supplying the result of this processes;

c. MODEMS or any equipment or device that enables data terminal equipment such as computers to communicate with each other data-terminal equipment via a telephone line;

d. MULTIPLEXERS or any equipment or device that enables two or more signals from different sources to pass through a common cable or transmission line;

e. SWITCHING EQUIPMENT or equipment or device capable of connecting telephone lines;

f. SOFTWARE, DISKETTES, TAPES, OR EQUIPMENT, or device used for recording and storing information; and

g. Manuals, phone cards, access codes, billing statements, receipts, contracts, checks, orders, communications, and documents, lease and/or subscription agreements or contracts, communications and documents pertaining to securing and using telephone lines and or equipment in relation to Mr. Yap/HPS' ISR Operations.

Utilizing the benchmark that was previously discussed, this Court finds that the subject search warrants are not general warrants because the items to be seized were sufficiently identified physically and were also specifically identified by stating their relation to the offenses charged which are Theft and Violation of Presidential Decree No. 401 through the conduct of illegal ISR activities.

Lastly, on the issue of whether or not the release of the items seized by virtue of the subject search warrants was proper, this Court rules in the negative.

We quote with approval the disquisition of the Court of Appeals on this particular issue in its assailed Decision dated March 26, 2004 in CA-G.R. SP No. 65682, to wit:

Although there was no separate order from the respondent judge directing the immediate release of the seized items, such directive was already contained in the Joint Order dated May 23, 2001. The dispositive portion of the assailed Joint Order reads:

"WHEREFORE, premises considered, the motion to quash the search warrants and return the things seized is hereby granted. Search Warrant Nos. 2000-10-467 and 2000-10-468 are ordered quashed. The things seized under the said search warrants are hereby ordered to be immediately returned to the respondent HPS Software and Communication Corporation.

SO ORDERED."

As properly pointed out by the petitioner PLDT, the May 23, 2001 Joint Order of the respondent judge is not "immediately executory". It is a final order which disposes of the action or proceeding and which may be the subject of an appeal. *Section 1, Rule 39* of the 1997 *Rules of Civil Procedure* provides:

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

x x x x x x x x x

From the foregoing, it is clear that execution may issue only upon motion by a party and only upon the expiration of the period to appeal, if no appeal has been perfected. Otherwise, if an appeal has been duly perfected, the parties would have to wait for the final resolution of the appeal before it may execute the judgment or final order — except for instances where an execution pending appeal is granted by the proper court of law.

It would appear that despite the absence of any motion for execution, the respondent judge enforced his Joint Order by directing the release of the seized items from the physical custody of the PNP Special Task Force on June 5, 2001 — less than the fifteen-day prescribed period within which an aggrieved party may file an appeal or for such Joint Order to become final and executory in the absence of an appeal. Clearly the release of the seized items was enforced prematurely and without any previous motion for execution on record.

We cannot give weight to the argument that the seized items were voluntarily released by the PNP Special Task Force, and thus, with such voluntary implementation of the May 23, 2001 Joint Order, the latter is already final and executed.

We take note that the PNP Special Task Force only retained physical custody of the seized items. However, it was clearly the respondent judge who ordered and released said seized items with his directive in the May 23, 2001 Joint Order. The PNP Special Task Force could not release the said items without the directive and authority of the court *a quo*. Hence, such compliance cannot be deemed voluntary at all.

From the foregoing discussion, it is apparent that the respondent judge's directive in the May 23, 2001 Joint Order for the immediate return of the seized items to the respondent HPS was enforced prematurely and in grave abuse of discretion. Clearly, the Joint Order dated May 23, 2001 was not yet final and executory when it was implemented on June 5, 2001. Moreover, a motion for execution filed by the interested party is obviously lacking. Thus, this Court concludes that there is no legal basis for the implementation of the May 23, 2001 Joint Order when the seized items were released on June 5, 2001.[68]

In all, we agree with the former Fourth Division of the Court of Appeals that there was indeed grave abuse of discretion on the part of the trial court in the premature haste attending the release of the items seized.

WHEREFORE, premises considered, the petition of HPS Corporation, *et al.* in G.R. No. 170217 is **DENIED** for lack of merit. The petition of PLDT in G.R. No. 170694 is **GRANTED.** The assailed Decision dated April 8, 2005 as well as the Resolution dated December 7, 2005 of the Court of Appeals in CA-G.R. CV No. 75838 are hereby **REVERSED** and **SET ASIDE.** No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), del Castillo,[*] *Villarama, Jr.* and *Reyes, JJ.,* concur.

---

[68] *Rollo* (G.R. No. 170217), pp. 35-36.

[*] Per Raffle dated December 5, 2012.

THIRD DIVISION

[G.R. No. 170488. December 10, 2012]

CMTC INTERNATIONAL MARKETING CORPORATION, *petitioner, vs.* **BHAGIS INTERNATIONAL TRADING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; A RIGID APPLICATION OF THE RULES OF PROCEDURE WILL NOT BE ENTERTAINED IF IT WILL OBSTRUCT RATHER THAN SERVE THE BROADER INTERESTS OF JUSTICE IN THE LIGHT OF THE PREVAILING CIRCUMSTANCES IN THE CASE UNDER CONSIDERATION. — Time and again, this Court has emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice. In *Obut v. Court of Appeals,* this Court reiterated that it "cannot look with favor on a course of action which would place the administration of justice in a straightjacket, for then the result would be a poor kind of justice if there would be justice at all. Verily, judicial orders are issued to be obeyed, nonetheless a non-compliance is to be dealt with as the circumstances attending the case may warrant. What should guide judicial action is the principle that a party-litigant if to be given the fullest opportunity to establish the merits of his complaint of defense rather than for him to lose life, liberty, honor or property on technicalities." x x x. Ergo, where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction. Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the

broader interests of justice in the light of the prevailing circumstances in the case under consideration.

2. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; THE RULE THAT MISTAKES OF COUNSEL BINDS THE CLIENT, MAY NOT BE STRICTLY FOLLOWED WHERE OBSERVANCE OF IT COULD RESULT IN OUTRIGHT DEPRIVATION OF THE CLIENT'S LIBERTY OR PROPERTY, OR WHERE THE INTEREST OF JUSTICE SO REQUIRES. — In the instant case, it is apparent that there is a strong desire to file an appellant's brief on petitioner's part. When petitioner filed its motion attaching therewith its appellant's brief, there was a clear intention on the part of petitioner not to abandon his appeal. As a matter of fact, were it not for its counsel's act of inadvertently misplacing the Notice to File Brief in another file, petitioner could have seasonably filed its appellant's brief as its counsel had already prepared the same even way before the receipt of the Notice to File Brief. It bears stressing at this point then that the rule, which states that the mistakes of counsel binds the client, may not be strictly followed where observance of it would result in outright deprivation of the client's liberty or property, or where the interest of justice so requires. In rendering justice, procedural infirmities take a backseat against substantive rights of litigants. Corollarily, if the strict application of the rules would tend to frustrate rather than promote justice, this Court is not without power to exercise its judicial discretion in relaxing the rules of procedure.

3. ID.; ID.; WHERE RECKLESS OR GROSS NEGLIGENCE OF COUNSEL DEPRIVES THE CLIENT OF DUE PROCESS OF LAW, OR WHEN THE INTERESTS OF JUSTICE SO REQUIRE, RELIEF IS ACCORDED TO THE CLIENT WHO SUFFERED BY REASON OF THE LAWYER'S GROSS OR PALPABLE MISTAKE OR NEGLIGENCE. — [I]t must be stressed that petitioner had no participatory negligence in the dismissal of its appeal. Hence, the ensuing dismissal of its appeal was completely attributable to the gross negligence of its counsel. For said reason, the Court is not averse to suspending its own rules in the pursuit of justice. Where reckless or gross negligence of counsel deprives the client of due process of law, or when the interests of justice so require, relief is accorded to the client who suffered by

reason of the lawyer's gross or palpable mistake or negligence. All told, petitioner should be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.

4. REMEDIAL LAW; EVIDENCE; THE SUPREME COURT IS NOT A TRIER OF FACTS; CASE AT BAR REMANDED TO THE APPELLATE COURT. — [C]onsidering that this Court is not a trier of facts, the appropriate action to take is to remand the case to the appellate court for further proceedings, for it to thoroughly examine the factual and legal issues that still need to be threshed out.

APPEARANCES OF COUNSEL

Andres Marcelo Padernal Guerrero & Paras for petitioner.
Robert G. Indunan for respondent.

D E C I S I O N

PERALTA,[*] *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Resolutions dated August 19, 2005[1] and November 15, 2005[2] of the Former Special Twelfth Division of the Court of Appeals in CA-G.R. CV No. 84742.

The facts of the case follow.

Petitioner instituted a Complaint for Unfair Competition and/or Copyright Infringement and Claim for Damages with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction against respondent before the Regional Trial Court of Makati (*trial court*).[3]

---

[*] Per Special Order No. 1394 dated December 6, 2012.

[1] CA *rollo*, p. 20.

[2] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), with Associate Justices Martin S. Villarama, Jr. (also, now a member of this Court) and Lucenito N. Tagle, concurring; *rollo*, pp. 45-49.

[3] *Id.* at 83-94.

On February 14, 2005, the trial court rendered a Decision[4] dismissing the complaint filed by petitioner. The *fallo* of said Decision reads:

> WHEREFORE, premises considered, the Complaint for Unfair Competition and/or Copyright Infringement and Claim for Damages is hereby DISMISSED without pronouncement as to cost.
>
> SO ORDERED.[5]

After receiving a copy of the trial court's Decision, petitioner seasonably filed a Notice of Appeal before the Court of Appeals (*appellate court*) on March 4, 2005.[6]

Thereafter, the appellate court issued a Notice to File the Appellant's Brief on May 20, 2005, which was received by the law office representing petitioner on May 30, 2005, stating as follows:

> Pursuant to Rule 44, Sec. 7 of the 1997 Rules of Civil Procedure you are hereby required to file with this Court within forty-five (45) days from receipt of this notice, SEVEN (7) legibly typewritten, mimeographed or printed copies of the Appellant's Brief with legible copies of the assailed decision of the Trial Court and proof of service of two copies upon the appellee/s.[7]

However, despite said notice, petitioner failed to file its appellant's brief timely. Hence, on August 19, 2005, the appellate court issued a Resolution dismissing the appeal filed by petitioner. The full text of said Resolution reads:

> Considering the report of the Judicial Records Division dated 17 August 2005 stating that no appellant's brief has been filed as per docket book entry, the Court RESOLVES to consider the appeal as having been ABANDONED and consequently DISMISS the same

---

[4] *Id.* at 117-124.

[5] *Id.* at 124.

[6] *Id.* at 125-126.

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

pursuant to Sec. 1(e), Rule 50 of the 1997 Rules of Civil Procedure, as amended.[8]

Upon receipt of the order of dismissal, petitioner filed its Motion for Reconsideration with Motion to Admit Appellant's Brief,[9] which was filed forty-two (42) days late from the date of its expiration on July 15, 2005.

On November 15, 2005, the appellate court denied petitioner's Motion for Reconsideration with Motion to Admit Appellant's Brief. It ruled that one of the grounds by which the Court of Appeals may, on its own motion or that of the appellee, dismiss the appeal is the failure on the part of the appellant to serve and file the required number of copies of his brief within the time prescribed by the Rules of Court, *viz.*:

> For this Court to admit the appellant's brief after such wanton disregard of the Rules would put a strain on the orderly administration of justice.
>
> As held in the case of St. Louis University *vs*. Cordero, 434 SCRA 575, 587, citing Don Lino Gutierres & Sons, Inc. *v*. Court of Appeals, 61 SCRA 87:
>
> > "It is necessary to impress upon litigants and their lawyers the necessity of strict compliance with the periods for performing certain acts incident to the appeal and the transgressions thereof, as a rule, would not be tolerated; otherwise, those periods could be evaded by subterfuges and manufactured excuses and would ultimately become inutile.
>
> WHEREFORE, the foregoing premises considered, the Motion for Reconsideration with Motion to Admit Appellant's Brief is perforce DENIED.
>
> SO ORDERED.[10]

Accordingly, petitioner filed a petition for review on *certiorari* before this Court questioning the August 19, 2005 and November

---

[8] *Id.* at 20.

[9] *Id.* at 21-23.

[10] *Rollo,* pp. 48-49.

15, 2005 Resolutions of the appellate court. Thus, petitioner presents the following grounds to support its petition:

A.

THE COURT OF APPEALS GRIEVOUSLY COMMITTED A REVERSIBLE ERROR WHEN IT SACRIFICED SUBSTANTIVE JUSTICE IN FAVOR OF PROCEDURAL TECHNICALITIES WITH ITS DISMISSAL OF PETITIONER'S APPEAL FOR FAILURE TO FILE THE APPELLANT'S BRIEF ON TIME WITHOUT CONSIDERING AT ALL WHETHER OR NOT PETITIONER'S APPEAL DESERVED FULL CONSIDERATION ON THE MERITS.

B.

IN THE INTEREST OF SUBSTANTIVE JUSTICE, PETITIONER'S APPEAL SHOULD BE REINSTATED CONSIDERING THAT THE ERRORS OF THE TRIAL COURT IN RENDERING ITS APPEALED DECISION ARE EVIDENT ON THE FACE OF THE SAID DECISION AND MORE SO AFTER AN EXAMINATION OF THE EVIDENCE ON RECORD.

1. The trial court's ruling that petitioner should have established actual confusion in the minds of buyers is contrary to jurisprudence.
2. The trial court did not state the facts upon which it based its conclusion that petitioner's trademark is strikingly different and distinct from that of defendant's.
3. Respondent labeled its products in a manner confusingly similar to that of petitioner's.
4. The trial court erred in finding that respondent did not pass off its products as that of petitioner's.[11]

Simply, the issue to be resolved is the propriety of the dismissal of petitioner's appeal for its failure to file the appellant's brief within the reglementary period.

Petitioner asserts that the appellate court erred in dismissing its appeal, since dismissal of appeals on purely technical grounds is frowned upon and the rules of procedure ought not to be

[11] *Id.* at 20.

applied in a very technical sense, for they are adopted to help secure substantial justice.

For its part, respondent maintains that the appellate court did not err in dismissing petitioner's appeal for its failure to file the required appellant's brief within the reglementary period. It stresses that in the absence of persuasive reason to deviate therefrom, rules of procedure must be faithfully followed for the prevention of needless delays and for the orderly and expeditious dispatch of judicial business.

We find merit in the instant petition.

Time and again, this Court has emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.[12]

In *Obut v. Court of Appeals*,[13] this Court reiterated that it "cannot look with favor on a course of action which would place the administration of justice in a straightjacket, for then the result would be a poor kind of justice if there would be justice at all. Verily, judicial orders are issued to be obeyed, nonetheless a non-compliance is to be dealt with as the circumstances attending the case may warrant. What should guide judicial action is the principle that a party-litigant if to be given the fullest opportunity to establish the merits of his complaint of defense rather than for him to lose life, liberty, honor or property on technicalities."

The same principle was highlighted in *Philippine National Bank and Development Bank of the Philippines v. Philippine*

---

[12] *Osmeña v. Commission on Audit*, G.R. No. 188818, May 31, 2011, 649 SCRA 654, 660.

[13] G.R. No. L-40535, April 30, 1976, 70 SCRA 546, 554; 162 Phil. 731, 744 (1976).

Milling Company, Incorporated, et al.[14] where the Court ruled that even if an appellant failed to file a motion for extension of time to file his brief on or before the expiration of the reglementary period, the Court of Appeals does not necessarily lose jurisdiction to hear and decide the appealed case, and that the Court of Appeals has discretion to dismiss or not to dismiss appellant's appeal, which discretion must be a sound one to be exercised in accordance with the tenets of justice and fair play having in mind the circumstances obtaining in each case.

Ergo, where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction.[15] Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration.

In the instant case, it is apparent that there is a strong desire to file an appellant's brief on petitioner's part.

When petitioner filed its motion attaching therewith its appellant's brief, there was a clear intention on the part of petitioner not to abandon his appeal. As a matter of fact, were it not for its counsel's act of inadvertently misplacing the Notice to File Brief in another file, petitioner could have seasonably filed its appellant's brief as its counsel had already prepared the same even way before the receipt of the Notice to File Brief.

It bears stressing at this point then that the rule, which states that the mistakes of counsel binds the client, may not be strictly followed where observance of it would result in outright deprivation of the client's liberty or property, or where the interest of justice so requires. In rendering justice, procedural infirmities take a backseat against substantive rights of litigants. Corollarily,

---

[14] G.R. No. L-27005, January 31, 1969, 26 SCRA 712, 715; 136 Phil. 212, 215 (1969).

[15] *Al-Amanah Islamic Investment Bank of the Philippines v. Celebrity Travel and Tours, Incorporated*, G.R No. 155524, August 12, 2004, 436 SCRA 356, 366; 479 Phil. 1041, 1052 (2004).

if the strict application of the rules would tend to frustrate rather than promote justice, this Court is not without power to exercise its judicial discretion in relaxing the rules of procedure.[16]

Also, it must be stressed that petitioner had no participatory negligence in the dismissal of its appeal. Hence, the ensuing dismissal of its appeal was completely attributable to the gross negligence of its counsel. For said reason, the Court is not averse to suspending its own rules in the pursuit of justice. Where reckless or gross negligence of counsel deprives the client of due process of law, or when the interests of justice so require, relief is accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence.[17]

All told, petitioner should be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.

Nevertheless, considering that this Court is not a trier of facts, the appropriate action to take is to remand the case to the appellate court for further proceedings, for it to thoroughly examine the factual and legal issues that still need to be threshed out.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED,** insofar as this case is **REMANDED** to the Court of Appeals for further proceedings, subject to the payment of the corresponding docket fees within fifteen (15) days from notice of this Decision.

Let the records and the CA *rollo* of this case be transmitted accordingly.

SO ORDERED.

Brion,[**] *Abad, Mendoza,* and *Leonen, JJ.,* concur.

---

[16] *Villanueva v. People*, G.R. No. 188630, February 23, 2011, 644 SCRA 358, 368.

[17] *Id.* at 369.

[**] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1395 dated December 6, 2012.

FIRST DIVISION

[G.R. No. 172338. December 10, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **CONCEPCION LORENZO, ORLANDO FONTANILLA, SAMUEL FONTANILLA, JULIET FONTANILLA, ELIZABETH FONTANILLA, ROSELA FONTANILLA, RENATO FONTANILLA and EVELYN FONTANILLA,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; JUDICIAL RECONSTITUTION OF TITLE; REPUBLIC ACT NO. 26; VALID SOURCES FOR JUDICIAL RECONSTITUTION OF TITLE. — The relevant law that governs the reconstitution of a lost or destroyed Torrens certificate of title is Republic Act No. 26. Section 2 of said statute enumerates the following as valid sources for judicial reconstitution of title: SECTION 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: (a) The owner's duplicate of the certificate of title; (b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title; (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof; (d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued; (e) A document, on file in the Registry of Deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title. As borne out by the records of this case, respondents were unable to present any of the documents mentioned in paragraphs (a) to (e) above. Thus, the only documentary evidence the respondents were able to present as possible sources for the reconstitution of OCT No. 3980 are those that they believed

to fall under the class of "any other document" described in paragraph (f).

2. ID.; ID.; ID.; ID.; TERM "ANY OTHER DOCUMENT" IN PARAGRAPH 2(F) OF REPUBLIC ACT NO. 26, CONSTRUED; THE PARTY PRAYING FOR THE RECONSTITUTION OF A TITLE MUST SHOW THAT HE HAD, IN FACT, SOUGHT TO SECURE THE DOCUMENTS MENTIONED IN SECTION 2, PARAGRAPHS (A) TO (E) OF RA NO. 26 AND FAILED TO FIND THEM BEFORE PRESENTATION OF "OTHER DOCUMENTS" DESCRIBED IN PARAGRAPH (F) AS EVIDENCE IN SUBSTITUTION IS ALLOWED. — As correctly pointed out by petitioner, we had emphasized in *Republic v. Holazo* that the term "any other document" in paragraph (f) refers to reliable documents of the kind described in the preceding enumerations and that the documents referred to in Section 2 (f) may be resorted to only in the absence of the preceding documents in the list. Therefore, the party praying for the reconstitution of a title must show that he had, in fact, sought to secure such documents and failed to find them before presentation of "other documents" as evidence in substitution is allowed. Thus, we stated in *Holazo* that: When Rep. Act No. 26, Section 2(f), or 3(f) for that matter, speaks of "any other document," it must refer to similar documents previously enumerated therein or documents *ejusdem generis* as the documents earlier referred to. The documents alluded to in Section 3(f) must be resorted to in the absence of those preceding in order. If the petitioner for reconstitution fails to show that he had, in fact, sought to secure such prior documents (except with respect to the owner's duplicate copy of the title which it claims had been, likewise, destroyed) and failed to find them, the presentation of the succeeding documents as substitutionary evidence is proscribed.

3. ID.; ID.; ID.; ORDER FOR RECONSTITUTION, WHEN CAN BE VALIDLY ISSUED. — [I]n a more recent case, this Court enumerated what should be shown before an order for reconstitution can validly issue, namely: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had

an interest therein; (d) that the certificate of title was in force at the time it was lost or destroyed; and (e) that the description, area and boundaries of the property are substantially the same and those contained in the lost or destroyed certificate of title. In the case at bar, the respondents were unable to discharge the burden of proof prescribed by law and jurisprudence for the reconstitution of lost or destroyed Torrens certificate of title.

4. ID.; ID.; ID.; THE ABSENCE OF ANY DOCUMENT, PRIVATE OR OFFICIAL, MENTIONING THE NUMBER OF THE CERTIFICATE OF TITLE AND THE DATE WHEN THE CERTIFICATE OF TITLE WAS ISSUED, DOES NOT WARRANT THE GRANTING OF A PETITION FOR RECONSTITUTION. — [T]he deed of sale purportedly between Antonia Pascua, as seller, and Pedro Fontanilla, as buyer, which involves OCT No. 3980 cannot be relied upon as basis for reconstitution of Torrens certificate of title. An examination of the deed of sale would reveal that the number of the OCT allegedly covering the subject parcel of land is clearly indicated, however, the date when said OCT was issued does not appear in the document. This circumstance is fatal to respondents' cause as we have reiterated in *Republic v. El Gobierno de las Islas Filipinas* that the absence of any document, private or official, mentioning the number of the certificate of title and the date when the certificate of title was issued, does not warrant the granting of a petition for reconstitution. We held that: We also find insufficient the index of decree showing that Decree No. 365835 was issued for Lot No. 1499, as a basis for reconstitution. We noticed that the name of the applicant as well as the date of the issuance of such decree was illegible. While Decree No. 365835 existed in the Record Book of Cadastral Lots in the Land Registration Authority as stated in the Report submitted by it, however, the same report did not state the number of the original certificate of title, which is not sufficient evidence in support of the petition for reconstitution. The deed of extrajudicial declaration of heirs with sale executed by Aguinaldo and Restituto Tumulak Perez and respondent on February 12, 1979 did not also mention the number of the original certificate of title but only Tax Declaration No. 00393. As we held in *Tahanan Development Corp. v. Court of Appeals*, **the absence of any document, private or official, mentioning the number of the certificate**

of title and the date when the certificate of title was issued, does not warrant the granting of such petition.

5. ID.; ID.; ID.; THE REPUBLIC IS NOT BARRED FROM ASSAILING THE DECISION GRANTING THE PETITION FOR RECONSTITUTION IF, ON THE BASIS OF THE LAW AND THE EVIDENCE ON RECORD, SUCH PETITION HAS NO MERIT. — [O]n the peripheral issue of whether or not the OSG should be faulted for not filing an opposition to respondents' petition for reconstitution before the trial court, we rule that such an apparent oversight has no bearing on the validity of the appeal which the OSG filed before the Court of Appeals. This Court has reiterated time and again that the absence of opposition from government agencies is of no controlling significance because the State cannot be estopped by the omission, mistake or error of its officials or agents. Neither is the Republic barred from assailing the decision granting the petition for reconstitution if, on the basis of the law and the evidence on record, such petition has no merit.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Anastacio J. Pascua for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] dated April 17, 2006 of the Court of Appeals in CA-G.R. CV No. 80132, entitled "*Concepcion Lorenzo, Orlando Fontanilla, Samuel Fontanilla, Juliet Fontanilla, Elizabeth Fontanilla, Rosela Fontanilla, Renato Fontanilla and Evelyn Fontanilla v. Republic of the Philippines*." Said Court of Appeals Decision affirmed the Decision[2] dated August 26, 2003 in LRC Case

[1] *Rollo*, pp. 11-14; penned by Associate Justice Eliezer R. de los Santos with Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag, concurring.

[2] *Id.* at 42-44.

No. 24-2692 of Branch 24, Regional Trial Court (RTC), Echague, Isabela.

The genesis of the present case can be traced back to the filing before the trial court on February 11, 2002 of a Petition[3] for the reconstitution of Original Certificate of Title (OCT) No. 3980 covering a parcel of land measuring 811 square meters, situated in Echague, Isabela.

In seeking the reconstitution of OCT No. 3980, respondents averred before the trial court:

> 3. That during the lifetime of Pedro Fontanilla and herein petitioner Concepcion Lorenzo, husband and wife, respectively, they acquired a parcel of residential land, x x x;
>
> 4. That subject parcel of land is identical to Lot 18 of Echague Cadastre 210, covered by and embraced under ORIGINAL CERTIFICATE OF TITLE NO. 3980 of the Land Records of Isabela, in the name of Antonia Pascua as her paraphernal property and being the mother of Pedro Fontanilla;
>
> 5. That because of the death of Pedro Fontanilla the lot as covered by the aforesaid title was settled and adjudicated among the herein petitioners, x x x;
>
> 6. That the OWNER'S DUPLICATE COPY OF OCT NO. 3980 was handed and delivered unto the spouses Pedro Fontanilla and Concepcion Lorenzo which they have been keeping only to find out thereafter that it was eaten by white ants (*Anay*);
>
> 7. That the original and office file copy of said OCT NO. 3980 kept and to be on file in the Registry of Deeds of Isabela is not now available, utmost same was included burned and lost beyond recovery when the office was razed by fire sometime in 1976, a certification to this effect as issued by the office is hereto marked as ANNEX "D";
>
> 8. That for taxation purposes, the lot as covered by OCT NO. 3980, still in the name of Antonia Pascua for Lot 18, Cad. 210, with an assessed value of ₱16,920.00, x x x;
>
> 9. That no mortgagee's and/or lessee's co-owner's copy to the subject OCT NO. 3980 was ever issued, and likewise no related

---

[3] *Id.* at 45-47.

documents affecting the land covered thereby is presented and pending for registration in favor of any person whomsoever, and henceforth, it is free from lien and encumbrance;

x x x x x x x x x

11. That in support for the reconstitution of [OCT] No. 3980, the following documents which may constitute as source or basis for the purpose are herewith submitted:

(a) S[E]PIA PLAN with Blue Prints x x x;

(b) Certified technical description of Lot 18, Cad. 210 x x x;

(c) Certification by LRA as to the non-availability of a copy of DECREE NO. 650254 x x x[.][4]

During the trial, the testimony of co-respondent Evelyn Fontanilla-Gozum was offered in order to prove the above-mentioned allegations in the petition. In her testimony, she declared that she is the daughter of the late Pedro Fontanilla and co-respondent Concepcion Lorenzo who, during their marriage, acquired a parcel of land covered and embraced by OCT No. 3980 from her grandmother Antonia Pascua as evidenced by a Deed of Sale. She also averred that the owner's duplicate of the said Torrens certificate of title was later discovered to have been eaten by termites and that the original copy of the said Torrens certificate of title on file with the Register of Deeds of Isabela was certified to be burned and lost beyond recovery when the office was razed by fire of unknown origin on December 4, 1976 as certified to by the Register of Deeds. Since both the original copy on file and the owner's duplicate copy are non-existent, she and her co-heirs, who are also co-respondents in this case, instituted the petition for reconstitution of lost or destroyed Torrens certificate of title.[5]

In its Decision dated August 26, 2003, the trial court granted respondents' petition and directed the Register of Deeds of Isabela to reconstitute OCT No. 3980 in the name of Antonia Pascua

---

[4] Records, pp. 1-2.

[5] TSN, March 7, 2003, pp. 1-7.

on the basis of the deed of sale, the technical description and the sketch plans, and to issue another owner's duplicate copy of the said Torrens certificate of title. The dispositive portion of the said ruling states:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the Register of Deeds of Isabela to reconstitute the original copy of OCT No. 3980 in the name of Antonia Pascua, on the basis of the deed of sale, the technical description and the sketch plans, and to issue another Owner's Duplicate of the said title after payment of the necessary legal fees.
>
> Furnish copy of this Order to the Land Registration Authority, The Register of Deeds of Isabela and the Office of the Solicitor General.[6]

Petitioner Republic of the Philippines, through the Office of the Solicitor General, appealed the ruling to the Court of Appeals arguing that the trial court erred in granting respondents' petition for reconstitution of Torrens title since they failed to present substantial proof that the purported original certificate of title was valid and existing at the time of its alleged loss or destruction, and that they failed to present sufficient basis or source for reconstitution.

The Court of Appeals dismissed petitioners appeal in the assailed Decision dated April 17, 2006, the dispositive portion of which states:

> WHEREFORE, premises considered, the appeal is hereby **DISMISSED** for lack of merit.[7]

Hence, the petitioner sought relief before this Court and relied on the following grounds to support its petition:

I

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S ORDER GRANTING RECONSTITUTION OF ORIGINAL CERTIFICATE OF TITLE NO. 3980.

---

[6] *Rollo*, p. 44.

[7] *Id.* at 14.

II

THE COURT OF APPEALS ERRED IN ITS APPLICATION OF PARAGRAPH F, SECTION 2 OF REPUBLIC ACT NO. 26.[8]

On the other hand, respondents put forward the following issues for consideration:

(a) HAS THERE BEEN SUFFICIENT COMPLIANCE OF ACT 26, REQUIREMENTS RECONSTITUTING OCT NO. 3[98]0 AND ISSUANCE OF ANOTHER OWNER'S DUPLICATE COPY?

(b) DID THE HONORABLE COURT OF APPEALS CORRECTLY SUSTAIN THE RENDERED DECISION OF THE COURT OF ORIGIN?[9]

Petitioner argues that the alleged loss or destruction of the owner's duplicate copy of OCT No. 3980 has no evidentiary basis and that there is no sufficient basis for the reconstitution of OCT No. 3980. Petitioner likewise maintains that the findings of fact of the Court of Appeals are not supported by the evidence on record. Lastly, petitioner insists that, contrary to respondents' assertion, the government of the Republic of the Philippines is not estopped by the mistakes, negligence or omission of its agents.

For their part, respondents maintain that they have complied with Section 2 of Republic Act No. 26 considering that there was no opposition from the Office of the Solicitor General (OSG); that the OSG is guilty of estoppel; that there was a valid basis for reconstitution of OCT No. 3980; that there was compliance with jurisdictional requirements; that both the original file copy and the owner's copy of the subject OCT for reconstitution were lost or destroyed beyond discovery; and that questions of fact are not subject to review by this Court.

In essence, the focal issue of the present case is whether or not the reconstitution of OCT No. 3980 was in accordance with the pertinent law and jurisprudence on the matter.

---

[8] *Id.* at 22.

[9] *Id.* at 115.

The petition is impressed with merit.

The relevant law that governs the reconstitution of a lost or destroyed Torrens certificate of title is Republic Act No. 26. Section 2 of said statute enumerates the following as valid sources for judicial reconstitution of title:

> SECTION 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:
>
> (a) The owner's duplicate of the certificate of title;
>
> (b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;
>
> (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;
>
> (d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;
>
> (e) A document, on file in the Registry of Deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and
>
> (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

As borne out by the records of this case, respondents were unable to present any of the documents mentioned in paragraphs (a) to (e) above. Thus, the only documentary evidence the respondents were able to present as possible sources for the reconstitution of OCT No. 3980 are those that they believed to fall under the class of "any other document" described in paragraph (f).

In the assailed April 17, 2006 Decision of the Court of Appeals, the appellate court affirmed the trial court's ruling by granting respondents' petition for reconstitution of OCT No. 3980 merely

on the bases of a purported deed of sale,[10] sketch plan,[11] and technical description.[12] The relevant portion of said Decision reads:

> **The appeal is bereft of merit.**
>
> In granting the petition, the trial court ratiocinated:
>
> "As basis for the reconstitution of the lost title, the deed of sale, Exh "M", evidencing transaction over the property, in addition to the sketch plan, Exh. "E" and the technical description, Exh. "D", duly approved under (LRA) PR-02-00022-R pursuant to the provisions (of) Section 12 of Republic Act No. 26, as embodied in the report filed by the Land Registration Authoriy, Exh. "J", would be sufficient basis for the reconstitution of the lost title." (p. 3, *Rollo*, p. 38)
>
> Appellees presented the approved sketch plan with its blue print, the certified technical description of the subject lot, the Deed of Sale executed by Antonia Pascua, the Tax Declaration, and Tax Payment Receipts. To the mind of this Court, there was sufficient and preponderant evidence thus presented to warrant the reconstitution of the original of OCT No. 3980 and the issuance of another Owner's Duplicate Copy thereof. The enumeration of the preferential documents to be produced, as provided under Section 2 of Republic Act 26 had been substantially complied with. Certifications of loss of documents were attested to by the custodian thereof, the Land Registration Authority of Ilagan, Isabela and Quezon City (Exh. "F", *Supra* & Annex "H", Record, p. 13, respectively). It is on this premise that paragraph (f) of Section 2, RA 26 comes to the fore, *viz: "Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.*"[13]

As correctly pointed out by petitioner, we had emphasized in *Republic v. Holazo*[14] that the term "any other document" in

---

[10] Records, p. 6.

[11] *Id.* at 4.

[12] *Id.* at 11.

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

[14] 480 Phil. 828 (2004).

paragraph (f) refers to reliable documents of the kind described in the preceding enumerations and that the documents referred to in Section 2(f) may be resorted to only in the absence of the preceding documents in the list. Therefore, the party praying for the reconstitution of a title must show that he had, in fact, sought to secure such documents and failed to find them before presentation of "other documents" as evidence in substitution is allowed. Thus, we stated in *Holazo* that:

> When Rep. Act No. 26, Section 2(f), or 3(f) for that matter, speaks of "any other document," it must refer to similar documents previously enumerated therein or documents *ejusdem generis* as the documents earlier referred to. The documents alluded to in Section 3(f) must be resorted to in the absence of those preceding in order. If the petitioner for reconstitution fails to show that he had, in fact, sought to secure such prior documents (except with respect to the owner's duplicate copy of the title which it claims had been, likewise, destroyed) and failed to find them, the presentation of the succeeding documents as substitutionary evidence is proscribed.[15] (Citation omitted.)

Furthermore, in a more recent case, this Court enumerated what should be shown before an order for reconstitution can validly issue, namely: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost or destroyed; and (e) that the description, area and boundaries of the property are substantially the same and those contained in the lost or destroyed certificate of title.[16]

In the case at bar, the respondents were unable to discharge the burden of proof prescribed by law and jurisprudence for

---

[15] *Id.* at 840.

[16] *Republic v. Catarroja*, G.R. No. 171774, February 12, 2010, 612 SCRA 472, 478, citing *Republic v. Tuastumban*, G.R. No. 173210, April 24, 2009, 586 SCRA 600, 613-614.

the reconstitution of lost or destroyed Torrens certificate of title. First, respondents failed to prove that the owner's duplicate copy of OCT No. 3980 was indeed eaten by termites while in the custody of respondent Concepcion Lorenzo and her late husband Pedro Fontanilla who, inexplicably, did not execute an affidavit of loss as required by Section 109[17] of Presidential Decree No. 1529. Second, The Certification[18] dated April 23, 2001 issued by the Register of Deeds of Ilagan, Isabela did not categorically state that the original copy of OCT No. 3980, which respondents alleged to be on file with said office, was among those destroyed by the fire that gutted the premises of said office on December 4, 1976. The document only stated that said office "could not give any information/data involving the existence of Original/Transfer Certificate of Title No. Lot No. 18, area 770 sq. m., located at Taggapan, Echague, Isabela." Third, a comparison between the aforementioned certification and the technical description and sketch plan will reveal that there was a discrepancy in the land area of the lot allegedly covered by OCT No. 3980. What was reflected on the former was a land area of 770 sq. m. while the latter two documents pertained to a land area of 811 sq. m. Furthermore, respondents were not able to show adequate proof that a Torrens certificate of title was issued covering the subject parcel of land or that the same piece of land is what is covered by the allegedly lost or destroyed OCT No. 3980. The Certification[19] dated December 3, 2001 issued by the Land Registration Authority (LRA) which indicates that Decree No. 650254 issued on September 1, 1937

---

[17] SECTION 109. *Notice and replacement of lost duplicate certificate.* — In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

[18] Records, p. 9.

[19] *Id.* at 13.

is not among the salvaged decrees on file in the LRA and is presumed to have been lost or destroyed as a consequence of World War II does not support respondents' assertion that OCT No. 3980 did exist prior to its loss or destruction because said document failed to show a connection between Decree No. 650254 and OCT No. 3980. From the foregoing, it is apparent that the conclusion of the Court of Appeals that "(t)he enumeration of the preferential documents to be produced as provided under Section 2 of Republic Act 26 had been substantially complied with" had no foundation based on the evidence on record.

Likewise, the deed of sale purportedly between Antonia Pascua, as seller, and Pedro Fontanilla, as buyer, which involves OCT No. 3980 cannot be relied upon as basis for reconstitution of Torrens certificate of title. An examination of the deed of sale would reveal that the number of the OCT allegedly covering the subject parcel of land is clearly indicated, however, the date when said OCT was issued does not appear in the document. This circumstance is fatal to respondents' cause as we have reiterated in *Republic v. El Gobierno de las Islas Filipinas*[20] that the absence of any document, private or official, mentioning the number of the certificate of title and the date when the certificate of title was issued, does not warrant the granting of a petition for reconstitution. We held that:

> We also find insufficient the index of decree showing that Decree No. 365835 was issued for Lot No. 1499, as a basis for reconstitution. We noticed that the name of the applicant as well as the date of the issuance of such decree was illegible. While Decree No. 365835 existed in the Record Book of Cadastral Lots in the Land Registration Authority as stated in the Report submitted by it, however, the same report did not state the number of the original certificate of title, which is not sufficient evidence in support of the petition for reconstitution. The deed of extrajudicial declaration of heirs with sale executed by Aguinaldo and Restituto Tumulak Perez and respondent on February 12, 1979 did not also mention the number of the original certificate of title but only Tax Declaration No. 00393. As we held in *Tahanan Development Corp. v. Court of Appeals*,

[20] 498 Phil. 570 (2005).

the absence of any document, private or official, mentioning the number of the certificate of title and the date when the certificate of title was issued, does not warrant the granting of such petition.[21] (Citation omitted, emphasis supplied.)

Lastly, on the peripheral issue of whether or not the OSG should be faulted for not filing an opposition to respondents' petition for reconstitution before the trial court, we rule that such an apparent oversight has no bearing on the validity of the appeal which the OSG filed before the Court of Appeals. This Court has reiterated time and again that the absence of opposition from government agencies is of no controlling significance because the State cannot be estopped by the omission, mistake or error of its officials or agents.[22] Neither is the Republic barred from assailing the decision granting the petition for reconstitution if, on the basis of the law and the evidence on record, such petition has no merit.[23]

WHEREFORE, premises considered, the petition is **GRANTED.** The Decision dated April 17, 2006 of the Court of Appeals in CA-G.R. CV No. 80132 and the August 26, 2003 Decision of the Regional Trial Court, Branch 24 of Echague, Isabela are hereby **REVERSED** and **SET ASIDE.** The petition for reconstitution is **DENIED.**

SO ORDERED.

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

---

[21] *Id.* at 582.

[22] *Republic v. Manimtim*, G.R. No. 169599, March 16, 2011, 645 SCRA 520, 537.

[23] *Republic v. Castro*, G.R. No. 172848, December 10, 2008, 573 SCRA 465, 477.

THIRD DIVISION

[G.R. No. 175491. December 10, 2012]

CREW AND SHIP MANAGEMENT INTERNATIONAL, INC., and SALENA, INC., *petitioners, vs.* **JINA T. SORIA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE SUPREME COURT IS CONSTRAINED TO RESOLVE THE FACTUAL ISSUES TOGETHER WITH THE LEGAL ONES WHEN THE FINDINGS OF THE COURT OF APPEALS ARE CONFLICTING TO THE FINDINGS CULLED BY THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION (NLRC). — In petitions for review on *certiorari*, only questions of law may be raised, the only exception being when the factual findings of the appellate court are erroneous, absurd, speculative, conjectural, conflicting, or contrary to the findings culled by the court of origin. Considering the conflicting findings of the LA and the NLRC and those of the CA, the Court is constrained to resolve the factual issues together with the legal ones.

2. LABOR AND SOCIAL LEGISLATION; SEAFARERS; POEA STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS; MONEY CLAIM; THE EMPLOYMENT OF SEAFARERS, INCLUDING CLAIMS FOR DEATH BENEFITS, IS GOVERNED BY THE CONTRACTS THEY SIGN EVERY TIME THEY ARE HIRED OR REHIRED, AND AS LONG AS THE STIPULATIONS THEREIN ARE NOT CONTRARY TO LAW, MORALS, PUBLIC ORDER, OR PUBLIC POLICY, THEY HAVE THE FORCE OF LAW BETWEEN THE PARTIES. — The employment of seafarers, including claims for death benefits, is governed by the contracts they sign every time they are hired or rehired, as long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties. POEA Memorandum Circular No. 41, series of 1989, or the "Revised Standard Employment

Contract of All Filipino Seamen On Board Ocean Going Vessels," as amended by POEA Memorandum Circular No. 05, series of 1994, was the applicable contract then between Zosimo and petitioners. It provided for the minimum requirements prescribed by the government for the Filipino seafarer's overseas employment.

3. ID.; ID.; ID.; ID.; FOR A CLAIM FOR DISABILITY OR DEATH BENEFITS TO VALIDLY PROSPER, THE SEAFARER MUST COMPLY WITH THE MANDATORY 72-HOUR POST EMPLOYMENT MEDICAL EXAMINATION FROM HIS ARRIVAL/REPATRIATION TO THE PHILIPPINES, EXCEPT WHEN HE IS PHYSICALLY INCAPACITATED TO DO SO; PURPOSE THEREOF. — From the records, it appears that Zosimo failed to comply with the mandatory 72-hour post-employment medical examination deadline as provided for in said Section C (4) (c) of the 1989 POEA SEC. It was only on July 19, 1996, or nine days upon his arrival to the Philippines, that Zosimo sought medical attention from FMC, petitioners' designated physician. The mandate of the aforementioned provision is to make the post-employment examination within three (3) working days from the seafarer's arrival/repatriation to the Philippines compulsory, except when the seafarer is physically incapacitated to do so, before a claim for disability or death benefits can validly prosper. The purpose of the 3-day mandatory reporting requirement can easily be ascertained. Within 3 days from repatriation, it would be fairly manageable for the physician to identify whether the disease for which the seaman died was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment.

4. ID.; ID.; ID.; ID.; WHOEVER CLAIMS ENTITLEMENT TO THE BENEFITS PROVIDED BY LAW SHOULD ESTABLISH HIS RIGHT THERETO BY SUBSTANTIAL EVIDENCE. — In this case, the respondent did not adduce evidence to justify Zosimo's non-compliance with the mandatory rule. Considering, however, that he had a physical infirmity, the Court gives respondent the benefit of the doubt. Nonetheless, the Court is of the considered view that respondent likewise failed to adduce substantial evidence showing that the pneumonia, which her husband contracted, was caused by tetanus as a result of the burn injury. The rule is that, in labor cases,

substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. Substantial evidence is more than a mere scintilla. Any decision based on unsubstantiated allegations cannot stand as it will offend due process.

5. ID.; ID.; ID.; ID.; ID.; ID.; WHILE THE COURT ADHERES TO THE PRINCIPLE OF LIBERALITY IN FAVOR OF THE SEAFARER IN CONSTRUING THE POEA-SEC, IT CANNOT ALLOW CLAIMS FOR COMPENSATION BASED ON CONJECTURES AND PROBABILITIES. — Respondent attempted to impress upon the Court that Zosimo suffered tetanus, an acute poisoning from a neurotoxin produced by *Clostridium tetani,* which was a complication of his burn injury that eventually led to pneumonia. There is, however, absolutely no evidence in the records of this case to substantiate her position, except her bare allegation. Respondent could not present any medical report, medical opinion, or medical certificate that, at the very least, contained the word tetanus to support her claim. Even her husband's own physician did not indicate such probable connection. x x x. While the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for compensation based on conjectures and probabilities.

6. ID.; ID.; ID.; ID.; ABSENT EVIDENCE ON RECORD TO PERMIT COMPENSABILITY, THE COURT HAS NO CHOICE BUT TO DENY CLAIM, LEST INJUSTICE IS CAUSED TO THE EMPLOYER. — When there is no evidence on record to permit compensability, the Court has no choice but to deny the claim, lest injustice is caused to the employer. The Court emphasizes that Its commitment to the cause of labor does not prevent it from finding for the employer when it is right and just. The Court is always mindful that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.

APPEARANCES OF COUNSEL

Soo Gutierrez Leogardo & Lee for petitioners.
Bantog & Andaya Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the May 31, 2006 Decision[1] and the November 14, 2006 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 85350, which set aside the April 30, 2004 Resolution[3] of the National Labor Relations Commission *(NLRC)*, dismissing the complaint of Jina T. Soria[4] *(respondent)*, on behalf of her late husband Zosimo J. Soria *(Zosimo)*, for death compensation benefits.

The Factual and Procedural Antecedents

On August 7, 1995, Zosimo entered into a one-year contract of employment[5] with Salena Inc., through its local manning agent, Crew and Ship Management International Inc. *(petitioners)*. He was employed as an Assistant Cook on board *M.V. Sofia*, later renamed *M.V. Apollo*, with a basic monthly salary of US$200.00.

On June 5, 1996, Zosimo, during his routine duty inside *M.V. Apollo*'s engine room, suffered burns on his left knee when it accidentally brushed the hot engine. The vessel's medical officer

---

[1] *Rollo*, pp. 36-51. Penned by Associate Justice Regalado E. Maambong, with Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle, concurring.

[2] *Id.* at 53-54.

[3] *Id.* at 220-228. Penned by Commissioner Ernesto S. Dinopol, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring.

[4] Also referred to as Gina T. Soria in the petition for review.

[5] *Id.* at 170.

immediately attended and treated Zosimo's injury with the appropriate medication.

On June 9, 1996, *M.V. Apollo* arrived at New Orleans from Masinloc, Zambales, Philippines. On June 16, 1996, *M.V. Apollo* departed New Orleans and reached Guayaquil, Ecuador, on June 26, 1996. From June 9, 1996 to June 26, 1996, there were no reported complaints from Zosimo.

On June 28, 1996, per *M.V. Apollo's* Master's Report,[6] Zosimo requested for medical attention. Subsequently, Zosimo was confined in a hospital in Ecuador where the cleaning and dressing of the wound and skin grafting over the burn areas with skin taken from the left lateral aspect of the left thigh were performed. On July 10, 1996, Zosimo was discharged from the hospital and deemed fit for repatriation.

Upon his repatriation to the Philippines, Zosimo immediately went to Legaspi City. On July 13, 1996, Zosimo sought medical attention for his burn wounds in Ago General Hospital, Legaspi City. In the Medical Certificate,[7] Zosimo was diagnosed with a "Healed Wound With Viable Skin Graft, Non-Infected; Dried Wound At Harvest Site, Lateral Aspect Of Left Thigh."

On July 19, 1996, or nine days after repatriation to the Philippines, Zosimo reported to petitioner's office in San Juan, Metro Manila, for payment of his contractual receivables. He was referred to Fatima Medical Clinic *(FMC)*, the petitioners' designated hospital. FMC's Medical Report[8] disclosed that Zosimo's "wound is dry not infected with viable skin graft."[9] The same medical report also declared that Zosimo complained of "slight difficulty in flexing of left knee joint."[10] He was advised to return for another check-up after one week.

---

[6] *Id.* at 256.

[7] *Id.* at 171. Executed by Dr. Romulo Del Rosario of Ago General Hospital, Legazpi City.

[8] *Id.* at 172.

[9] *Id.*

[10] *Id.*

On July 31, 1996, Zosimo died at the *Ospital ng Makati*. As stated in the Medico-Legal Report[11] of the Philippine National Police *(PNP)* - Crime Laboratory, the cause of Zosimo's death was "*Pneumonia with Congestion of all visceral organs*."

On July 7, 1999, respondent filed a Complaint[12] for death compensation benefits, child allowance, burial expenses, moral and exemplary damages, and attorney's fees against petitioners before the Labor Arbiter *(LA)*. Respondent alleged, among others, that Zosimo died of tetanus from the burns he sustained on board *M.V. Apollo*.

In the Decision,[13] dated January 31, 2000, LA Fatima Jambaro-Franco *(LA Jambaro-Franco)* dismissed the complaint for lack of merit. LA Jambaro-Franco reasoned in this wise:

x x x x x x x x x.

A perusal of the death certificate of seaman Zosimo Soria shows that the cause of death was "Pneumonia with Congestion of All Visceral Organs." Even the Medico-Legal Report No. M-1197-96 dated August 5, 1996 also confirmed that the cause of Soria's death was "Pneumonia with Congestion of All Visceral Organs." Verily, the cause of seaman Soria's death was not the burn he suffered on his left knee but was due to pneumonia which he could have contracted locally while he was in his province. Under these circumstances, it would be unfair and unjust to hold respondent liable for his death benefits inasmuch as his illness was not work-related.

Moreover, the records show that when seaman Soria died, his employment contract had already lapsed/expired. Under Section 20 (A) of the terms and conditions of the POEA Standard Employment Contract, it provides that "in case of the death of his seafarer during the term of his contract, the employer shall pay his beneficiaries x x x." Verily, considering that seaman Soria died after his contract was already terminated, it follows that his employer is not liable to pay his beneficiaries.

---

[11] *Id.* at 174-175. Prepared by Police Senior Inspector Olga M. Bausa, M.D., Medico-Legal Officer.

[12] *Id.* at 230-233.

[13] *Id.* at 176-182. Penned by Labor Arbiter Fatima Jambaro-Franco.

In trying to justify her claims, complainant advanced the theory that her husband died of tetanus. However, except for her bare allegation that the death was due to tetanus, no evidence was adduced in support thereof. Mr. Soria's Medical Report, Death Certificate and Autopsy Report, do not state that he died of tetanus. On the other hand, said documents unequivoca[b]ly stated that the cause of his (Soria's) death was pneumonia. Thus, negating complainant's claim.

Pneumonia has been defined as a disease of the lungs characterized by inflammation and consolidation followed by resolution and caused by infection and irritants while tetanus is an acute infectious disease characterized by tonic spasms of voluntary muscles especially of the jaw and caused by the specific toxin of a tacillus. Evidently, pneumonia and tetanus are two different illnesses.

Furthermore, pneumonia is not in anyway related to the burn injury on his left knee [that] seaman Soria suffered. The latter could have acquired this illness while on vacation in his province after his disembarkation. Evidently, his death is not at all compensable.

x x x x x x x x x.[14]

Not satisfied with the ruling, respondent appealed to the NLRC. The NLRC, after referring the case to LA Thelma M. Concepcion *(LA Concepcion)*, reversed LA Jambaro-Franco's ruling in its October 20, 2003 Decision.[15]

The NLRC, based on the report and recommendation of LA Concepcion, ruled that Zosimo's death was compensable. It held that the infection of the skin burns that required skin grafting led to the inception of tetanus which ripened into pneumonia. Clearly, the infection of the skin burns which caused the onset of tetanus took place during the term of Zosimo's employment. It reasoned out that the petitioners failed to show that the pneumonia was not a late complication of tetanus from his skin burns.

Petitioners moved for reconsideration of the NLRC's October 20, 2003 Decision.

---

[14] Citations omitted.

[15] Penned by Commissioner Vicente S.E. Veloso, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring.

In its April 30, 2004 Resolution,[16] the NLRC granted petitioners' Motion for Reconsideration and reinstated the LA's January 31, 2000 Decision. In reversing itself, the NLRC explained:

> It cannot be gainsaid that the rights and obligations of the parties to this case are primarily governed by the terms and conditions of employment embodied in the POEA Standard Employment Contract Governing the Employment of Seafarers on board Ocean Going Vessels.
>
> More particularly, Section 18. (B) [1] of the Standard Contract provides that the employment of the seafarer is terminated when the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20 (B) [4], and arrives at his point of origin. Section 20 (B) [4] in turn provides for the liability of the employer for the full cost of reparation.
>
> When the seafarer was thus repatriated on July 10, 1996 after undergoing surgery and treatment and declared fit to be repatriated, the above-cited contractual provisions became operative. The contract, accordingly, was deemed terminated.
>
> That the seafarer subsequently died cannot be sufficient basis to hold respondents liable for benefits under the contract. The seafarer's admitted failure to report to the respondent agency for post-deployment medical examination within the mandatory 72-hours reportorial period militates against his right, or that of his beneficiary, to demand compliance with the so-called residual obligations of the employer. On the contrary the evidence adduced by complainant establishes that the deceased had proceeded to the province.
>
> x x x x x x x x x.
>
> Given all the attending circumstances as confirmed by the documentary evidence on record, we are convinced, as duly concluded by the Labor Arbiter that the cause of the seafarer's death cannot be traced to the burns or injuries sustained while he was on board the vessel.
>
> Indeed, the complainant has not established a causality between the injury sustained on board the vessel, and the cause of death.

---

[16] *Rollo*, pp. 220-228. Penned by Commissioner Ernesto S. Dinopol, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring.

We assiduously perused the records and conclude that the complainant has failed to prove that her husband, subsequent to his repatriation, had experienced and/or manifested the symptoms of tetanus the source of which could be ascribed to the 3rd degree burns he had suffered on board.

Moreover, the seafarer's act of proceeding to the province without reporting to the respondent agency must be deemed as a supervening event that adversely limits his right or that of his beneficiaries to claim benefits under the contract.

Where, as in this case, the cause of death has not been evidently shown to be due to the injury suffered on board and during the term of the contract, no liability can be adjudged against the employers for the subsequent death of the seafarer.

In so ruling, we simply defer to the basic rule in evidence that each party must prove his affirmative allegation. While technical rules are not followed in the NLRC, this does not mean that rules on proving allegations are entirely dispensed with. Bare allegations are not enough; these must be supported by substantial evidence at the very least.

Accordingly, complainant's unsubstantiated allegations that her husband had manifested and complained of symptoms of tetanus, being wanting in evidentiary support cannot outweigh and overcome the probative value of the medical certificates, autopsy findings and medical reports indubitably showing that the deceased had died of pneumonia.

And, while it may be conceded that pneumonia can be caused by or traced to tetanus, as what the complainant has attempted to establish, such conclusion may not be drawn in this case as to render the death compensable, considering the attendance of the supervening event, and the fact that no such reference to a possible infection has been made in any of the medical reports that would link the injuries resulting from the burns, to the actual cause of death.

x x x x x x x x x.[17]

[Underscoring supplied]

Aggrieved by the NLRC Resolution, respondent elevated the case to the CA *via* a petition for *certiorari* under Rule 65 of the

[17] *Id.* at 224-227. (Citations omitted).

Rules of Court alleging grave abuse of discretion on the part of the NLRC in dismissing her claim for death benefits.

In its Decision, dated 31 May 2006, the CA *set aside* the questioned NLRC Resolution and ordered petitioners to pay the claimed benefits of respondent, the dispositive portion of the Decision reads:

> **WHEREFORE,** the instant petition is **GRANTED.** The assailed NLRC Resolution dated April 30, 20204 (sic) is **SET ASIDE.** The NLRC decision promulgated on October 20, 2003 is **REINSTATED** with **MODIFICATION.** Thus, private respondents are hereby ordered to pay petitioner the claimed death benefits, child allowances, and burial expenses in the total amount of US$65,000.00 or its peso equivalent, to be computed at the time of payment, plus ten percent (10%) of the aforementioned total monetary award as attorney's fees.
>
> **SO ORDERED.**

The CA was of the view that petitioners failed to negate the causal confluence of the burn injury suffered by Zosimo while on board the vessel, the onset of tetanus and the complication of pneumonia which was indicated as Zosimo's cause of death. It stressed that "strict rules of evidence, x x x, are not applicable in claims for compensation and disability benefits."[18] The CA emphasized that it was enough that the hypothesis on which the employee's claim was based was probable. Zosimo's failure to report for post employment medical examination at petitioner's office within the mandatory period of seventy two (72) hours from his return to the Philippines, as required by the Philippine Overseas Employment Administration *(POEA)* Standard Employment Contract[19] *(SEC)*, should not be automatically taken

---

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

[19] Sec.20 (B)

> 2. x x x the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

against him. The CA cited *Wallem Maritime Services, Inc. v. National Labor Relations Commission*,[20] which justified the exception from the application of the 72-hour requirement, by showing that a seaman who was terminally ill and in need of medical attention could not be expected to immediately comply with the medical examination and thus given the right to claim benefits due him.

Petitioners moved for reconsideration, but their motion was denied by the CA in its November 14, 2006 Resolution.

Hence, this petition.

THE ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AWARDING DEATH BENEFITS TO THE RESPONDENT.

Petitioners' argument

In support of their position, petitioners assert that respondent's declaration that the death of Zosimo was compensable because the latter died due to tetanus had no factual basis. Tetanus was never established, much less existed, in the case. Based on the Autopsy Report[21] submitted by respondent, the cause of death was "Pneumonia with congestion of all visceral organs," not a burn injury or tetanus. Moreover, the death of Zosimo occurred outside, and not during the term, of the seaman's contract as the seafarer signed-off and was disembarked for medical reasons pursuant to Section 18 (B) 1 of the POEA SEC.[22] For said reason, it is not compensable.

---

[20] 376 Phil. 738 (1999).

[21] *Rollo*, pp. 174-175.

[22] SECTION 18. TERMINATION OF EMPLOYMENT

B. The employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons:

1. when the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20 (B)[5] of this Contract.

x x x x x x x x x.

Respondent's contention

Respondent counters that the entitlement to the benefits by Zosimo's family should not be defeated by the fault of the people who failed to indicate in the proper documents that Zosimo indeed died of tetanus. Zosimo's death, on July 31, 1996, was still within the contract period as he joined the *M.V. Apollo* on September 7, 1995, for a 12-month employment contract.

The Court's Ruling

The petition is meritorious.

In petitions for review on *certiorari*, only questions of law may be raised, the only exception being when the factual findings of the appellate court are erroneous, absurd, speculative, conjectural, conflicting, or contrary to the findings culled by the court of origin.[23] Considering the conflicting findings of the LA and the NLRC and those of the CA, the Court is constrained to resolve the factual issues together with the legal ones.

The employment of seafarers, including claims for death benefits, is governed by the contracts they sign every time they are hired or rehired, as long as the stipulations therein are not contrary to law, morals, public order, or public policy, they have the force of law between the parties.[24]

POEA Memorandum Circular No. 41, series of 1989, or the "Revised Standard Employment Contract of All Filipino Seamen On Board Ocean-Going Vessels," as amended by POEA Memorandum Circular No. 05, series of 1994,[25] was the applicable contract then between Zosimo and petitioners. It provided for the minimum requirements prescribed by the government for the Filipino seafarer's overseas employment.

---

[23] *Prudential Shipping and Management Corporation v. Sta. Rita*, G.R. No. 166580, February 8, 2007, 515 SCRA 157, 167.

[24] *Southeastern Shipping Group, Ltd. v. Navarra, Jr.*, G.R. No. 167678, June 22, 2010, 621 SCRA 361, 369.

[25] "Adjustment in Rates of Compensation and Other Benefits Provided Under the POEA Standard Employment Contract for Seafarers."

Significantly, Section C (4) (c) of the 1989 POEA SEC states:

SECTION C. COMPENSATION AND BENEFITS

x x x x x x x x x

4. The liabilities of the employer when the seaman suffers injury or illness during the term of his contract are as follows:

x x x x x x x x x

c. The employer shall pay the seaman his basic wages from the time he leaves the vessel for medical treatment. After discharge from the vessel the seaman is entitled to one hundred percent (100%) of his basic wages until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred-twenty (120) days. **For this purpose, the seaman shall submit himself to a post-employment medical examination by the company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. Failure of the seaman to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.** [Emphases and underscoring supplied]

From the records, it appears that Zosimo failed to comply with the mandatory 72-hour post-employment medical examination deadline as provided for in said Section C(4)(c) of the 1989 POEA SEC. It was only on July 19, 1996, or nine days upon his arrival to the Philippines, that Zosimo sought medical attention from FMC, petitioners' designated physician.

The mandate of the aforementioned provision is to make the post-employment examination within three (3) working days from the seafarer's arrival/repatriation to the Philippines compulsory, except when the seafarer is physically incapacitated to do so, before a claim for disability or death benefits can validly prosper. The purpose of the 3-day mandatory reporting requirement can easily be ascertained. Within 3 days from repatriation, it would be fairly manageable for the physician to

identify whether the disease for which the seaman died was contracted during the term of his employment or that his working conditions increased the risk of contracting the ailment.

In this case, the respondent did not adduce evidence to justify Zosimo's non-compliance with the mandatory rule. Considering, however, that he had a physical infirmity, the Court gives respondent the benefit of the doubt. Nonetheless, the Court is of the considered view that respondent likewise failed to adduce substantial evidence showing that the pneumonia, which her husband contracted, was caused by tetanus as a result of the burn injury.

The rule is that, in labor cases, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. The oft-repeated rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. Substantial evidence is more than a mere scintilla.[26] Any decision based on unsubstantiated allegations cannot stand as it will offend due process.[27]

In arguing for the compensability of Zosimo's death, respondent claims that the burn injury suffered by him on board *M.V. Apollo* brought about the tetanus infection which eventually led to pneumonia causing his death.

The Court, however, finds difficulty in accepting this.

The injury sustained by Zosimo on board the vessel was undeniably a burn injury defined as "injuries of skin or other tissue caused by thermal, radiation, chemical, or electrical contact."[28] On the other hand, the various pieces of documentary

---

[26] *Jebsens Maritime Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 678-679.

[27] *Aya-ay, Sr. v. Arpaphil Shipping Corporation*, 516 Phil. 628, 642, (2006), citing *De Paul/King Philip Customs Tailor v. NLRC*, 364 Phil. 91, 102 (1999).

[28] http://www.merckmanuals.com/professional/injuries_poisoning/burns/burns.html?qt=skin%20burn%20injury&alt=sh (visited December 3, 2012).

evidence[29] categorically and solely establish that Zosimo died of pneumonia, "a breathing (respiratory) condition in which there is an infection of the lungs."[30] Respondent, however, failed to adduce even a speck of evidence to establish any reasonable connection between the burn injury and pneumonia. Logically, the Court cannot and should not jump into the unwarranted conclusion that pneumonia was related to, or was brought about by his burn injury.

Respondent attempted to impress upon the Court that Zosimo suffered tetanus, an acute poisoning from a neurotoxin produced by *Clostridium tetani*,[31] which was a complication of his burn injury that eventually led to pneumonia. There is, however, absolutely no evidence in the records of this case to substantiate her position, except her bare allegation. Respondent could not present any medical report, medical opinion, or medical certificate that, at the very least, contained the word tetanus to support her claim. Even her husband's own physician did not indicate such probable connection. Thus, the Court agrees with the NLRC when it wrote:

> And, while the seafarer may have undergone medical consultation, the evidence on record unequivocal[b]ly shows that the injury that caused his repatriation **had healed**, and **there is no showing, nor can any reasonable inference be made, that the deceased had complained about any symptoms of tetanus.** Considering that the July 13, 1996 **medical certificate was issued by the deceased's physician,** and not by the respondents' designated physician, the same may not be impugned as coming from a polluted source, and accordingly, the declarations therein are binding upon the seafarer and his beneficiaries. Hence, the finding that the wound is "not infected" must be given full weight and credence.

---

[29] *Rollo*, pp. 171-175. Consisting of the Medical Certificate issued by Zosimo's physician, the Medical Report issued by the company-designated physician, the Medico-Legal Report, and the Death Certificate.

[30] http://www.nlm.nih.gov/medlineplus/ency/article/000145.htm (visited December 3, 2012).

[31] http://www.merckmanuals.com/professional/infectious_diseases/ anaerobic_bacteria/tetanus.html?qt=tetanus&alt=sh (visited December 4, 2012).

Additional evidence on record likewise establish the fact that when the seafarer reported to the respondent agency on July 19, 1996 and was referred to the **latter's designated physician**, **no proof of infection** was elicited from the medical examination. The medical report issued by the company-designated physician is **consistent** with that provided by the seafarer's physician. In like manner, there is no showing that the seafarer had complained or manifested symptoms of tetanus. The fact that said **medical report sustains the independent doctor's finding that there is no infection** on the wound bolsters the respondent's assertion that the injury did not cause, nor did it contribute to the cause of death.

Given all the attending circumstances as confirmed by the documentary evidence on record, we are convinced, as duly concluded by the Labor Arbiter that the cause of the seafarer's death cannot be traced to the burns or injuries sustained while he was on board the vessel.[32] [Emphases supplied]

While the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for compensation based on conjectures and probabilities. When there is no evidence on record to permit compensability, the Court has no choice but to deny the claim, lest injustice is caused to the employer.[33]

The Court emphasizes that Its commitment to the cause of labor does not prevent it from finding for the employer when it is right and just. The Court is always mindful that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[34]

WHEREFORE, the petition is **GRANTED.** The May 31, 2006 Decision and the November 14, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 85350, are hereby **REVERSED and SET ASIDE.** The January 31, 2000 Decision of the Labor Arbiter is **REINSTATED.**

---

[32] *Rollo*, pp. 224-227. (Citations omitted).

[33] *The Estate of Posedio Ortega v. Court of Appeals*, G.R. No. 175005, April 30, 2008, 553 SCRA 649, 660.

[34] *Magsaysay Maritime Corporation v. National Labor Relations Commission*, G.R. No. 186180, March 22, 2010, 616 SCRA 362, 380-381.

SO ORDERED.

Brion,[*] *Peralta*[**] *(Acting Chairperson), Abad,* and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 177042. December 10, 2012]

SPOUSES CRISANTO ALCAZAR and SUSANA VILLAMAYOR, *petitioners, vs.* **EVELYN ARANTE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN. — It is a time-honored principle that in a petition for review on *certiorari* under Rule 45, only questions of law may be raised. It is not this Court's function to analyze or weigh all over again evidence already considered in the proceedings below, as this Court's jurisdiction is limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect. A question of law which this Court may pass upon must not involve an examination of the probative value of the evidence presented by the litigants.

2. ID.; APPEALS; FINDINGS OF FACTS OF THE COURT OF APPEALS ARE CONCLUSIVE; EXCEPTIONS; NOT PRESENT. — [A]s a rule, findings of facts of the CA are

---

[*] Designated additional member, per Special Order No. 1395 dated December 6, 2012.

[**] Per Special Order No. 1394 dated December 6, 2012.

conclusive, subject to certain exceptions, to wit: (1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record. However, this Court finds that none of these exceptions are present in the instant case.

3. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; HE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT AND A MERE ALLEGATION IS NOT EVIDENCE. — [P]etitioners simply alleged, without any proof, that they did not mortgage the subject property and that respondent and her cohorts defrauded them in obtaining possession of the disputed TCT. However, the rule is well settled that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.

4. ID.; ID.; ID.; A NOTARIZED DOCUMENT CARRIES THE EVIDENTIARY WEIGHT CONFERRED UPON IT WITH RESPECT TO ITS DUE EXECUTION; AN ALLEGATION OF FORGERY MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE AND WHOEVER ALLEGES IT HAS THE BURDEN OF PROVING THE SAME. — [T]he real estate mortgage contract between the parties was notarized. A notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and it has in its favor the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all

controversy as to the falsity of the certificate. Absent such, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies on the one contesting the same. Furthermore, an allegation of forgery must be proved by clear and convincing evidence, and whoever alleges it has the burden of proving the same. As stated above, petitioners failed to prove their allegations. They merely denied that they did not execute the REM and that the same was a forgery. Certainly, the pieces of evidence presented by respondent weigh more than petitioners' bare claims and denials.

5. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; IN CONSTRUING WORDS AND PHRASES USED IN A STATUTE, THE WORDS SHOULD BE READ AND CONSIDERED IN THEIR NATURAL, ORDINARY, COMMONLY-ACCEPTED AND MOST OBVIOUS SIGNIFICATION, ACCORDING TO GOOD AND APPROVED USAGE AND WITHOUT RESORTING TO FORCED OR SUBTLE CONSTRUCTION. — In construing words and phrases used in a statute, the general rule is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning. The words should be read and considered in their natural, ordinary, commonly-accepted and most obvious signification, according to good and approved usage and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation. Thus, petitioner should not give a special or technical interpretation to a word which is otherwise construed in its ordinary sense by the law. In the instant case, respondent was able to prove that the subject owner's duplicate copy of the TCT is not lost and is in fact existing and in her possession. Moreover, petitioners admit that they entrusted the subject TCT to respondent. There is, thus, no dispute that the TCT in the possession of respondent is the genuine owner's duplicate copy of the TCT covering the subject property. The fact remains, then, that the owner's duplicate copy of the certificate of title has not been lost but is in fact in the possession of respondent, with the knowledge of petitioners.

6. CIVIL LAW; LAND REGISTRATION; RECONSTITUTION OF TITLE; WHEN THE OWNER'S DUPLICATE

CERTIFICATE OF TITLE HAS NOT BEEN LOST, BUT IS IN FACT IN THE POSSESSION OF ANOTHER PERSON, THEN THE RECONSTITUTED CERTIFICATE IS VOID, BECAUSE THE COURT THAT RENDERED THE DECISION HAD NO JURISDICTION. — [T]he Court agrees with the ruling of the CA that the RTC had no jurisdiction over the action for reconstitution filed by petitioners. In *Manila v. Gallardo-Manzo,* this Court held: Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. In a petition for annulment of judgment based on lack of jurisdiction, petitioner must show not merely an abuse of jurisdictional discretion but an absolute lack of jurisdiction. Lack of jurisdiction means absence of or no jurisdiction, that is, the court should not have taken cognizance of the petition because the law does not vest it with jurisdiction over the subject matter. Jurisdiction over the nature of the action or subject matter is conferred by law. As early as the case of *Strait Times, Inc. v. CA,* this Court has held that when the owner's duplicate certificate of title has not been lost, but is in fact in the possession of another person, then the reconstituted certificate is void, because the court that rendered the decision had no jurisdiction. Reconstitution can validly be made only in case of loss of the original certificate. x x x. Thus, with proof and with the admission of petitioners that the owner's duplicate copy of the TCT was actually in the possession of respondent, the RTC Decision was properly annulled for lack of jurisdiction.

7. ID.; ID.; ID.; A PETITION FOR RECONSTITUTION OF A LOST TITLE IS NOT THE PROPER REMEDY TO RECOVER THE TITLE IN THE POSSESSION OF ANOTHER PERSON WHO OBTAINED THE SAME THROUGH FRAUD OR DECEIT; AVAILABLE REMEDIES. — Whether or not respondent came into possession of the said TCT through fraudulent means is not an issue in determining the propriety of canceling the owner's duplicate copy of the subject TCT. Stated differently, granting that respondent obtained possession of the subject TCT through fraud or deceit, the same is not sufficient justification for the court to issue an order declaring the same to be null and void and directing the issuance of a new copy. If petitioners were indeed defrauded, then they could have filed a criminal

complaint for estafa against respondent for the alleged fraud and deceit employed upon them. Moreover, petitioners' remedy to recover the title in the possession of respondent should not have been a petition for reconstitution of a lost title but some other form of action such as a suit for specific performance to compel respondent to turn over the owner's duplicate copy of the subject TCT.

8. ID.; DAMAGES; MORAL DAMAGES; IN ORDER TO BE AWARDED, THERE MUST BE PLEADING AND PROOF OF MORAL SUFFERING, MENTAL ANGUISH, FRIGHT AND THE LIKE; AWARD OF MORAL DAMAGES, AFFIRMED. — The rule is that in order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like. In the instant case, respondent alleged that he suffered from wounded feelings, sleepless nights and mental anxiety and the CA found that respondent was able to substantiate these claims and allegations. Suffice it to reiterate that the findings of fact of the CA are final and conclusive and this Court will not review them on appeal subject to exceptions, which do not obtain in this case.

9. ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; WHEN MAY BE AWARDED; AWARD OF EXEMPLARY DAMAGES AND ATTORNEY'S FEES, AFFIRMED. — The Court also affirms the award of exemplary damages and attorney's fees. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. As correctly pointed out by the CA, respondent is entitled to moral damages. Moreover, since exemplary damages are awarded, attorney's fees may also be awarded in consonance with Article 2208 (1) of the Civil Code.

APPEARANCES OF COUNSEL

Redentor S. Viaje for petitioners.
Dy Tagra & Yam Law Firm for respondent.

D E C I S I O N

PERALTA,[*] *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] of the Court of Appeals (CA) dated November 29, 2006 in CA-G.R. SP No. 88475. The assailed Decision nullified the Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 268 in LRC Case No. R-6309. The petition also seeks to reverse and set aside the appellate court's March 14, 2007 Resolution[3] denying petitioner's Motion for Reconsideration.

On November 14, 2003, herein petitioner Crisanto Alcazar (hereinafter referred to as Alcazar) filed a Petition for Reconstitution of Lost Owner's Duplicate Copy of Transfer Certificate of Title with the RTC of Pasig City alleging and praying as follows:

x x x x x x x x x

2. That petitioner is the sole heir of his deceased parents, Emilio Alcazar and Caridad Alcazar, who both died on 12 December 1967 and 04 March 2002, respectively. x x x

3. That said petitioner's parents left a real estate property covered by TCT No. 169526, then registered at the Register of Deeds of the Province of Rizal but was transferred to the Register of Deeds of Pasig City. x x x

4. That the owner's duplicate of said owner's certificate of title was lost on or about April 2003 and have since, the petitioner exerted diligent efforts to recover the same but failed.

---

[*] Per Special Order No. 1394 dated December 6, 2012.

[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Mariflor P. Punzalan Castillo, concurring; Annex "A" to Petition, *rollo*, pp. 26-38.

[2] Annex "I" to petition, *rollo*, pp. 49-51.

[3] Annex "B" to Petition, *rollo*, pp. 39-40.

5. That the facts of its los[s] are as follows:

> Since the demise of the petitioner's mother[,] he has been in his desire to transfer in his name the title of the said property, he being the sole and compulsory heir.
>
> Being unknowledgeable about the procedures, petitioner, who was living in the province, went to the Land Registration Office in Quezon City to inquire about the requirements.
>
> Unfortunately, petitioner was approached by a group [of] individuals who identified themselves as connected with the LRA and they [offered to] help. An[d] to cut the story short, said individuals lured herein petitioner to have the said owner's duplicate of title entrusted to them for alleged transfer. Since then said group of individuals have never seen or contacted with the petitioner's copy of TCT.

6. That said certificate of title has never been pledged or otherwise delivered to any person or entity to guarantee any obligation or for any other purpose.

7. That the fact of its los[s] was reported to the Register of Deeds of Pasig on 28 April 2003 by wa[y] of Affidavit of Los[s].

WHEREFORE, the petitioner respectfully prays this Honorable Court to declare null and void the owner's duplicate of Transfer Certificate of Title No. 169526 which has been lost, and to order and direct the Registrar of Land Titles and Deeds of Pasig City, after payment to him of the fees prescribe by law, to issue in lieu thereof a new owner's duplicate certificate which shall in all respects be entitled to like faith and credit as the original duplicate, in accordance with Section 109 of Act No. 496, as amended by Presidential Decree No. 1529.

x x x x x x x x x[4]

Acting on the petition, the RTC issued an order which set the case for hearing and directed Alcazar to comply with the statutory requirements of posting. The RTC also ordered that copies of the above order and the petition be furnished the Office of the Solicitor General (OSG), the Office of the City Prosecutor of Pasig and the Register of Deeds of Pasig.

---

[4] Annex "H" to Petition, *rollo*, pp. 47-48.

When the case was called for initial hearing on December 9, 2003, there was no appearance from the OSG, Pasig City Registry of Deeds and the Pasig City Prosecutor's Office. Upon Alcazar's motion and there being no opposition, he was allowed to present evidence *ex parte*.

On January 6, 2004, the RTC issued a Decision[5] in favor of Alcazar, the dispositive portion of which reads thus:

> WHEREFORE, the owner's duplicate copy of TCT No. 169526 is hereby declared null and void and of no force and effect. The Registry of Deeds for the City of Pasig is hereby directed to issue a new Owner's Duplicate of Transfer Certificate of Title No. 169526 based on the original thereof on file in his office, which shall contain a memorandum of the fact that it was issued in lieu of the lost duplicate and which shall, in all respect[s], be entitled to like faith and credit as the original, for all legal intents and purposes.
>
> x x x x x x x x x[6]

On February 16, 2004, the RTC issued an Entry of Judgment[7] stating that the abovementioned Decision of the RTC became final and executory on February 5, 2004.

On February 8, 2005, herein respondent filed with the CA a Petition for Annulment of Final Decision contending that the RTC, sitting as a land registration court, had no jurisdiction to entertain Alcazar's petition because the subject owner's duplicate certificate of title which was allegedly lost was not, in fact, lost but actually exists, contrary to Alcazar's claim.[8]

Respondent alleged in her petition that on April 4, 2003, petitioners obtained a loan of ₱350,000.00 from her as evidenced by a promissory note; as security for the loan, petitioners executed in respondent's favor a real estate mortgage over a parcel of land located in Pasig City, covered by Transfer Certificate of

---

[5] Annex "I" to Petition, *rollo*, pp. 49-51.

[6] *Id.* at 50.

[7] Annex "J" to Petition, *rollo*, p. 52.

[8] CA *rollo*, pp. 2-14.

Title (TCT) No. 169526; simultaneous with the execution of the mortgage contract, Alcazar personally delivered and turned over to respondent the original owner's duplicate copy of TCT No. 169526; respondent did not then see the need to immediately annotate the mortgage with the concerned Register of Deeds; when petitioners subsequently failed to pay their loan, respondent decided to register the mortgage with the Pasig City Register of Deeds; to her surprise, respondent learned that Alcazar had caused to be annotated to the copy of TCT No. 169526 on file with the Pasig Register of Deeds, an affidavit stating the owner's duplicate copy thereof was lost; respondent also learned that Alcazar filed with the RTC of Pasig City a petition for the issuance of a new owner's duplicate copy of the subject TCT in lieu of the allegedly lost one; that the RTC decision granting Alcazar's petition became final on February 5, 2004; that, as a consequence, TCT No. 169526 was canceled and in lieu thereof TCT No. PT-125372 was issued.[9]

Petitioners filed their Answer claiming that they did not enter into a contract of real estate mortgage with respondent; that the deed evidencing such alleged contract is forged; that during the date that the alleged real estate mortgage contract was executed, they were not yet the absolute owners of the subject property and, thus, cannot mortgage the same.[10]

After the parties filed their Reply[11] and Rejoinder,[12] the CA set the petition for pre-trial conference.[13] Thereafter, the parties were directed to submit their respective memoranda.

On November 29, 2006, the CA promulgated its assailed Decision, disposing as follows:

In the light of the foregoing, the petition having merit in fact and in law is GIVEN DUE COURSE. Resultantly, and as prayed

---

[9] *Id.*

[10] *Id.* at 39-53.

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

[12] *Id.* at 102-107.

[13] See CA Resolution, *id.* at 109-110.

for, the decision of public respondent Regional Trial Court, Branch 268, Pasig City, LRC Case No. R-6309 is hereby ANNULLED and SET ASIDE. Consequently, the new owners[']duplicate copy of TCT No. 169526, in the name of Emilio Alcazar, married to Caridad Alcazar issued by virtue of the said decision of the Regional Trial Court as well as the replacement thereof namely, TCT No. PT-125372 in the name of Crisanto Alcazar married to Susana Villamayor, is hereby declared void and the original duplicate certificate of TCT No. 169526 in the custody and possession of the petitioner, hereby reinstated for all legal intents and purposes.

As regards the claim for damages, We find an award for moral damages justifiable in view of private respondents[‘] malicious concoctions and fraudulent machinations undoubtedly causing petitioner besmirched reputation, social humiliation and mental anguish. Exemplary damages should likewise be imposed by way of example for the public good and to deter others from following private respondents' wanton and irresponsible actuations against petitioner. And by reason of private respondents[']perjurious and malicious claim[,] petitioner was constrained to retain counsel not only to recover what is rightfully his but more so to protect his good name and reputation, thus payment of attorney's fees is also justified.

Private respondents therefore are further hereby directed to pay jointly and severally, petitioner, the following: (1) ₱30,000.00 as moral damages (2) exemplary damages in the amount of ₱20,000.00 and [(3)] ₱20,000.00 as attorney's fees and to pay the costs.

SO ORDERED.[14]

Herein petitioners-spouses filed a Motion for Reconsideration[15] but the CA denied it in its Resolution dated March 14, 2007.

Hence, the instant petition with the following Assignment of Errors:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING CREDENCE TO THE VERSION OF THE PRIVATE RESPONDENTS HEREIN.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT TCT NO. 169526 WAS NEVER LOST OR MISPLACED BY HEREIN PETITIONERS.

---

[14] Annex "A" to Petition, *rollo*, pp. 36-37.

[15] Annex "N" to Petition, *rollo*, pp. 70-76.

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT SECTION 109 OF PRESIDENTIAL DECREE (P.D.) NO. 1529 IS NOT APPLICABLE TO HEREIN PETITIONERS.

IV. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE HONORABLE RTC OF PASIG CITY, BRANCH 268 HAD NO JURISDICTION TO ORDER THE ISSUANCE OF TCT NO. PT-125372 IN LIEU OF THE ALLEGED LOST CERTIFICATE OF TITLE.

V. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AWARDING MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES TO THE HEREIN PRIVATE RESPONDENT.[16]

The petition lacks merit.

In their first and second assigned errors, petitioners assail the factual findings of the CA. It is a time-honored principle that in a petition for review on *certiorari* under Rule 45, only questions of law may be raised.[17] It is not this Court's function to analyze or weigh all over again evidence already considered in the proceedings below, as this Court's jurisdiction is limited to reviewing only errors of law that may have been committed by the lower court.[18] The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect.[19] A question of law which this Court may pass upon must not involve an examination of the probative value of the evidence presented by the litigants.[20]

Thus, as a rule, findings of facts of the CA are conclusive, subject to certain exceptions, to wit: (1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or

---

[16] *Rollo*, p. 11.

[17] *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, G.R. No. 198402, June 13, 2012.

[18] *Id.*

[19] *Id.*

[20] *Id.*

conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.[21] However, this Court finds that none of these exceptions are present in the instant case.

Moreover, the Court finds no cogent reason to depart from the assailed findings of the CA on the following grounds:

First, petitioners simply alleged, without any proof, that they did not mortgage the subject property and that respondent and her cohorts defrauded them in obtaining possession of the disputed TCT. However, the rule is well settled that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.[22]

Second, the real estate mortgage contract between the parties was notarized. A notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and it has in its favor the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate.[23] Absent

---

[21] *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 294.

[22] *Spouses Guidangen v. Wooden*, G.R. No. 174445, February 15, 2012, 666 SCRA 119.

[23] *Ros v. Philippine National Bank-Laoag Branch*, G.R. No. 170166, April 6, 2011, 647 SCRA 334, 343, citing *Pan Pacific Industrial Sales Co., Inc. v. CA*, G.R. No. 125283, February 10, 2006, 482 SCRA 164, 175; 517 Phil. 380, 388-389 (2006).

such, the presumption must be upheld.[24] The burden of proof to overcome the presumption of due execution of a notarial document lies on the one contesting the same.[25] Furthermore, an allegation of forgery must be proved by clear and convincing evidence, and whoever alleges it has the burden of proving the same.[26] As stated above, petitioners failed to prove their allegations. They merely denied that they did not execute the REM and that the same was a forgery. Certainly, the pieces of evidence presented by respondent weigh more than petitioners' bare claims and denials.

With respect to the third assignment of error, the Court does not agree with petitioners' contention that when respondent and her alleged cohorts supposedly took from them the subject owner's duplicate copy of the TCT through fraud and deceit, the said TCT was considered to have been "lost," in accordance with the provisions of Section 109[27] of Presidential Decree No. 1529.

In construing words and phrases used in a statute, the general rule is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage

---

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] Section 109. *Notice and replacement of lost duplicate certificate.* In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

meaning.[28] The words should be read and considered in their natural, ordinary, commonly-accepted and most obvious signification, according to good and approved usage and without resorting to forced or subtle construction.[29] Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation.[30] Thus, petitioners should not give a special or technical interpretation to a word which is otherwise construed in its ordinary sense by the law. In the instant case, respondent was able to prove that the subject owner's duplicate copy of the TCT is not lost and is in fact existing and in her possession. Moreover, petitioners admit that they entrusted the subject TCT to respondent. There is, thus, no dispute that the TCT in the possession of respondent is the genuine owner's duplicate copy of the TCT covering the subject property. The fact remains, then, that the owner's duplicate copy of the certificate of title has not been lost but is in fact in the possession of respondent, with the knowledge of petitioners.

As to the fourth assigned error, the Court agrees with the ruling of the CA that the RTC had no jurisdiction over the action for reconstitution filed by petitioners.

In *Manila v. Gallardo-Manzo*,[31] this Court held:

> Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. In a petition for annulment of judgment based on lack of jurisdiction, petitioner must show not merely an abuse of jurisdictional discretion but an absolute lack of jurisdiction. Lack of jurisdiction means absence of or no jurisdiction, that is, the court should not have taken cognizance of the petition

---

[28] *Secretary of Justice v. Koruga*, G.R. No. 166199, April 24, 2009, 586 SCRA 513, 523.

[29] *South African Airways v. Commissioner of Internal Revenue*, G.R. No. 180356, February 16, 2010, 612 SCRA 665, 676 citing *Espino v. Cleofe*, G.R. No. L-33410, July 13, 1973, 52 SCRA 92, 98; 152 Phil. 80, 87 (1973).

[30] Ruben E. Agpalo, *Statutory Construction*, p. 180 (2003).

[31] G.R. No. 163602, September 7, 2011, 657 SCRA 20.

because the law does not vest it with jurisdiction over the subject matter. Jurisdiction over the nature of the action or subject matter is conferred by law.[32]

As early as the case of *Strait Times, Inc. v. CA*,[33] this Court has held that when the owner's duplicate certificate of title has not been lost, but is in fact in the possession of another person, then the reconstituted certificate is void, because the court that rendered the decision had no jurisdiction.[34] Reconstitution can validly be made only in case of loss of the original certificate.[35] This rule was later reiterated in the cases of *Rexlon Realty Group, Inc. v. Court of Appeals*,[36] *Eastworld Motor Industries Corporation v. Skunac Corporation*,[37] *Rodriguez v. Lim*,[38] *Villanueva v. Viloria*[39] and *Camitan v. Fidelity Investment Corporation*.[40] Thus, with proof and with the admission of petitioners that the owner's duplicate copy of the TCT was actually in the possession of respondent, the RTC Decision was properly annulled for lack of jurisdiction.

Whether or not respondent came into possession of the said TCT through fraudulent means is not an issue in determining the propriety of canceling the owner's duplicate copy of the subject TCT. Stated differently, granting that respondent obtained possession of the subject TCT through fraud or deceit, the same is not sufficient justification for the court to issue

---

[32] *Id.* at 30.

[33] G.R. No. 126673, August 28, 1998, 294 SCRA 714; 356 Phil. 217 (1998).

[34] *Id.* at 724; at 227-228.

[35] *Feliciano v. Zaldivar*, G.R. No. 162593, September 26, 2006, 503 SCRA 182, 192; 534 Phil. 280, 293-294 (2006).

[36] G.R. No. 128412, March 15, 2002, 379 SCRA 306; 429 Phil. 31 (2002).

[37] G.R. No. 163994, December 16, 2005, 478 SCRA 420; 514 Phil. 605 (2005).

[38] G.R. No. 135817, November 30, 2006, 509 SCRA 113; 538 Phil. 609 (2006).

[39] G.R. No. 155804, March 14, 2008, 548 SCRA 401.

[40] G.R. No. 163684, April 16, 2008, 551 SCRA 540.

an order declaring the same to be null and void and directing the issuance of a new copy. If petitioners were indeed defrauded, then they could have filed a criminal complaint for estafa against respondent for the alleged fraud and deceit employed upon them. Moreover, petitioners' remedy to recover the title in the possession of respondent should not have been a petition for reconstitution of a lost title but some other form of action such as a suit for specific performance to compel respondent to turn over the owner's duplicate copy of the subject TCT.

Another issue is whether or not the subject lot was already owned by petitioners at the time that it was mortgaged to respondent on April 25, 2003. Petitioners admit in the instant petition that petitioner Alcazar's father died on December 12, 1967, while his mother died on March 4, 2002 and that he is their sole heir. On these bases, the Court agrees with respondent's contention that upon the death of Alcazar's mother in 2002, the latter became the absolute owner of the subject lot by operation of law, pursuant to the provisions of Articles 774[41] and 777[42] of the Civil Code.

As to the propriety of the award of damages by the CA, this Court again quotes with approval the disquisition of the CA on this matter, to wit:

x x x x x x x x x

As regards the claim for damages, We find an award for moral damages justifiable in view of private respondents[‘] [herein petitioners] malicious concoctions and fraudulent machinations undoubtedly causing petitioner [herein respondent] besmirched reputation, social humiliation and mental anguish. Exemplary damages should likewise be imposed by way of example for the public good and to deter others from following private respondents'

---

[41] Art. 774. Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance of a person are transmitted through his death to another or others either by his will or by operation of law.

[42] Art. 777. The rights to the succession are transmitted from the moment of the death of the decedent.

wanton and irresponsible actuations against petitioner. And by reason of private respondents[‘] perjurious and malicious claim petitioner was constrained to retain counsel not only to recover what is rightfully his but more so to protect his good name and reputation, thus payment of attorney’s fees is also justified.

x x x x x x x x x[43]

The rule is that in order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like.[44] In the instant case, respondent alleged that he suffered from wounded feelings, sleepless nights and mental anxiety and the CA found that respondent was able to substantiate these claims and allegations. Suffice it to reiterate that the findings of fact of the CA are final and conclusive and this Court will not review them on appeal[45] subject to exceptions,[46] which do not obtain in this case.

---

[43] Annex “A” to Petition, *rollo*, pp. 36-37.

[44] *Espino v. Bulut*, G.R. No. 183811, May 30, 2011, 649 SCRA 453, 460, 461.

[45] *Co v. Vargas*, G.R. No. 195167, November 16, 2011, 660 SCRA 451, 459.

[46] The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court’s function to analyze and weigh the evidence all over again. Nevertheless, in several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner’s main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly

The Court also affirms the award of exemplary damages and attorney's fees. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages.[47] While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.[48] As correctly pointed out by the CA, respondent is entitled to moral damages. Moreover, since exemplary damages are awarded, attorney's fees may also be awarded in consonance with Article 2208 (1)[49] of the Civil Code.

WHEREFORE, the Court **DENIES** the petition. The Court **AFFIRMS** the November 29, 2006 Decision and the March 14, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 88475.

SO ORDERED.

Brion,[**] *Abad, Mendoza,* and *Leonen, JJ.*, concur.

---

overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Development Bank of the Philippines v. Traders Royal Bank*, G.R. No. 171982, August 18, 2010, 628 SCRA 404, 413-414).

[47] Article 2229, Civil Code of the Philippines.

[48] *B.F. Metal (Corporation) v. Lomotan*, G.R. No. 170813, April 16, 2008, 551 SCRA 618, 631.

[49] Article 2208 (1). In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

x x x x x x x x x

[**] Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1395 dated December 6, 2012.

THIRD DIVISION

[G.R. No. 181021. December 10, 2012]

BURGUNDY REALTY CORPORATION, *petitioner, vs.* **JOSEFA "JING" C. REYES and SECRETARY RAUL GONZALEZ of the DEPARTMENT OF JUSTICE,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; ESTAFA; ARTICLE 315, PAR. 1 (B) OF THE REVISED PENAL CODE; THE ESSENCE THEREOF IS THE APPROPRIATION OR CONVERSION OF MONEY OR PROPERTY RECEIVED TO THE PREJUDICE OF THE OWNER; WORDS "CONVERT" AND "MISAPPROPRIATE," DEFINED. —** The essence of estafa under Article 315, par. 1 (b) is the appropriation or conversion of money or property received to the prejudice of the owner. The words "convert" and "misappropriate" connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; EXPLAINED; THE COMPLAINANT NEED NOT PRESENT AT THIS STAGE PROOF BEYOND REASONABLE DOUBT. —** It must be remembered that the finding of probable cause was made after conducting a preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case. Its purpose is to determine whether (a) a crime has been committed; and (b) whether there is a probable cause to believe that the accused is guilty thereof. This Court need not overemphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial. It does not call for the application of rules and standards of proof that a judgment

of conviction requires after trial on the merits. The complainant need not present at this stage proof beyond reasonable doubt. A preliminary investigation does not require a full and exhaustive presentation of the parties' evidence. Precisely, there is a trial to allow the reception of evidence for both parties to substantiate their respective claims.

3. CRIMINAL LAW; ESTAFA; MISAPPROPRIATION OR CONVERSION OF MONEY OR PROPERTY RECEIVED TO THE PREJUDICE OF THE OWNER; A LEGAL PRESUMPTION OF MISAPPROPRIATION ARISES WHEN THE ACCUSED FAILS TO DELIVER THE PROCEEDS OF THE SALE OR TO RETURN THE ITEMS TO BE SOLD AND FAILS TO GIVE AN ACCOUNT OF THEIR WHEREABOUTS; MERE PRESUMPTION OF MISAPPROPRIATION OR CONVERSION IS ENOUGH TO CONCLUDE THAT A PROBABLE CAUSE EXISTS FOR THE INDICTMENT FOR THE CRIME OF ESTAFA. — A review of the records would show that the investigating prosecutor was correct in finding the existence of all the elements of the crime of estafa. Reyes did not dispute that she received in trust the amount of ₱23,423,327.50 from petitioner as proven by the checks and vouchers to be used in purchasing the parcels of land. Petitioner wrote a demand letter for Reyes to return the same amount but was not heeded. Hence, the failure of Reyes to deliver the titles or to return the entrusted money, despite demand and the duty to do so, constituted *prima facie* evidence of misappropriation. The words convert and misappropriate connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts. Thus, the mere presumption of misappropriation or conversion is enough to conclude that a probable cause exists for the indictment of Reyes for Estafa. As to whether the presumption can be rebutted by Reyes is already a matter of defense that can be best presented or offered during a full-blown trial.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE, EXPLAINED. — [P]robable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. **The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.**

APPEARANCES OF COUNSEL

YF Lim & Associates Law Offices for petitioner.
Caballes Bravo Fandialan Guevarra & Associates for respondents.

D E C I S I O N

PERALTA,[*] *J.*:

For resolution of this Court is the Petition for Review on *Certiorari*, dated February 13, 2008, of petitioner Burgundy Realty Corporation, seeking to annul and set aside the Decision[1] and Resolution of the Court of Appeals (CA), dated September 14, 2007 and December 20, 2007, respectively.

---

[*] Per Special Order No. 1394 dated December 6, 2012.

[1] Penned by Associate Justice Bienvenido L. Reyes (now a member of the Supreme Court), with Associate Justices Aurora Santiago Lagman and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 72-81.

The facts follow.

Private respondent Josefa "Jing" C. Reyes (Reyes), sometime in 1996, offered her services to petitioner as the latter's real estate agent in buying parcels of land in Calamba, Laguna, which are to be developed into a golf course. She informed petitioner that more or less ten (10) lot owners are her clients who were willing to sell their properties. Convinced of her representations, petitioner released the amount of ₱23,423,327.50 in her favor to be used in buying those parcels of land. Reyes, instead of buying those parcels of land, converted and misappropriated the money given by petitioner to her personal use and benefit. Petitioner sent a formal demand for Reyes to return the amount of ₱23,423,327.50, to no avail despite her receipt of the said demand. As such, petitioner filed a complaint for the crime of Estafa against Reyes before the Assistant City Prosecutor's Office of Makati City.

Reyes, while admitting that she acted as a real estate agent for petitioner, denied having converted or misappropriated the involved amount of money. She claimed that the said amount was used solely for the intended purpose and that it was petitioner who requested her services in procuring the lots. According to her, it was upon the petitioner's prodding that she was constrained to contact her friends who were also into the real estate business, including one named Mateo Elejorde. She alleged that prior to the venture, Mateo Elejorde submitted to her copies of certificates of title, vicinity plans, cadastral maps and other identifying marks covering the properties being offered for sale and that after validating and confirming the prices as well as the terms and conditions attendant to the projected sale, petitioner instructed her to proceed with the release of the funds. Thus, she paid down payments to the landowners during the months of February, March, July, August, September and October of 1996. Reyes also insisted that petitioner knew that the initial or down payment for each lot represented only 50% of the purchase price such that the remaining balance had to be paid within a period of thirty (30) days from the date of receipt of the initial payment. She added that she reminded petitioner, after several months, about the matter of unpaid balances still owing to the lot owners,

but due to lack of funds and non-infusion of additional capital from other investors, petitioner failed to pay the landowners of their remaining unpaid balances. Meanwhile, Reyes received information that her sub-broker Mateo Elejorde had been depositing the involved money entrusted to him under his personal account. On March 28, 2000, through a board resolution, petitioner allegedly authorized Reyes to institute, proceed, pursue and continue with whatever criminal or civil action against Mateo Elejorde, or such person to whom she may have delivered or entrusted the money she had received in trust from the firm, for the purpose of recovering such money. Thus, Reyes filed a complaint for the crime of estafa against Mateo Elejorde before the City Prosecutor's Office of Makati City docketed as I.S. No. 98-B-5916-22, and on March 30, 2001, Mateo Elejorde was indicted for estafa.

After a preliminary investigation was conducted against Reyes, the Assistant Prosecutor of Makati City issued a Resolution[2] dated April 27, 2005, the dispositive portion of which reads:

> In view thereof, it is most respectfully recommended that respondent be indicted of the crime of Estafa defined and penalized under the Revised Penal Code. It could not be said that she has violated the provision of PD 1689 for it was not shown that the money allegedly given to her were funds solicited from the public. Let the attached information be approved for filing in court. Bail recommendation at Php40,000.00.[3]

Thereafter, an Information for the crime of Estafa under Article 315, par. 1 (b) of the Revised Penal Code (RPC) was filed against Reyes and raffled before the RTC, Branch 149, Makati City.

Undeterred, Reyes filed a petition for review before the Department of Justice (DOJ), but it was dismissed by the Secretary of Justice through State Prosecutor Jovencito Zuño on June 1, 2006.

---

[2] *Rollo*, pp. 58-59.

[3] *Id.* at 59.

Aggrieved, Reyes filed a motion for reconsideration, and in a Resolution[4] dated July 20, 2006, the said motion was granted. The decretal text of the resolution reads:

> Finding the grounds relied upon in the motion to be meritorious and in the interest of justice, our Resolution of June 1, 2006 is hereby RECONSIDERED and SET ASIDE. Accordingly, the petition for review filed by respondent-appellant Josefa Reyes is hereby given due course and will be reviewed on the merits and the corresponding resolution will be issued in due time.
>
> SO ORDERED.

On September 22, 2006, Secretary of Justice Raul Gonzalez issued a Resolution[5] granting the petition for review of Reyes, the *fallo* of which reads:

> WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Makati City is directed to cause the withdrawal of the information for estafa filed in court against respondent Josefa "Jing" C. Reyes and to report the action taken within five (5) days from receipt hereof.
>
> SO ORDERED.[6]

Petitioner filed a motion for reconsideration, but was denied by the Secretary of Justice in a Resolution dated December 14, 2006. Eventually, petitioner filed a petition for *certiorar*i under Rule 65 of the Rules of Court with the CA. The latter, however, affirmed the questioned Resolutions of the Secretary of Justice. The dispositive portion of the Decision dated September 14, 2007 reads:

> WHEREFORE, premises considered, the assailed Resolutions[,] dated 22 September 2006 and 14 December 2006[,] both rendered by public respondent Secretary of Justice[,] are hereby AFFIRMED *in toto*.
>
> SO ORDERED.[7]

---

[4] *Id.* at 63.

[5] *Id.* at 65-69.

[6] *Id.* at 69.

[7] *Id.* at 80.

Its motion for reconsideration having been denied by the CA in a Resolution dated December 20, 2007, petitioner filed the present petition and the following are the assigned errors:

I

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT THE DOJ SECRETARY, RAUL GONZALEZ, CAPRICIOUSLY, ARBITRARILY AND WHIMSICALLY DISREGARDED THE EVIDENCE ON RECORD SHOWING THE [EXISTENCE] OF PROBABLE CAUSE AGAINST PRIVATE RESPONDENT FOR ESTAFA UNDER ARTICLE 315 1(b) OF THE REVISED PENAL CODE.

II

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT FINDING BUT INSTEAD CONCURRED IN WITH THE DOJ SECRETARY, RAUL GONZALEZ, WHO BY GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION HELD THAT NOT ALL OF THE ELEMENTS OF ESTAFA UNDER ARTICLE 315 1 (b), PARTICULARLY THE ELEMENT OF MISAPPROPRIATION, WERE NOT SUFFICIENTLY ESTABLISHED IN THIS CASE.

III

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT THE DOJ SECRETARY, RAUL GONZALEZ, ACTED WITH GRAVE ABUSE OF DISCRETION IN ACCEPTING AS TRUTH WHAT WERE MATTERS OF DEFENSE BY PRIVATE RESPONDENT IN HER COUNTER-AFFIDAVIT WHICH SHOULD HAVE BEEN PROVEN AT THE TRIAL ON THE MERITS.[8]

The petition is meritorious.

It is not disputed that decisions or resolutions of prosecutors are subject to appeal to the Secretary of Justice who, under the Revised Administrative Code,[9] exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings. Review as

[8] *Id.* at 19-20.

[9] The 1987 Revised Administrative Code, Executive Order No. 292.

an act of supervision and control by the justice secretary over the fiscals and prosecutors finds basis in the doctrine of exhaustion of administrative remedies which holds that mistakes, abuses or negligence committed in the initial steps of an administrative activity or by an administrative agency should be corrected by higher administrative authorities, and not directly by courts.[10]

In the present case, after review and reconsideration, the Secretary of Justice reversed the investigating prosecutor's finding of probable cause that all the elements of the crime of estafa are present. Estafa, under Article 315 (1) (b) of the Revised Penal Code, is committed by —

ART. 315. *Swindling (estafa*). — Any person who shall defraud another by any of the means mentioned hereinbelow:

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

(a) x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property; x x x

The elements are:

1) that money, goods or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;

2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;

3) that such misappropriation or conversion or denial is to the prejudice of another; and

---

[10] *Solar Team Entertainment, Inc. v. Hon. Rolando How,* G.R. No. 140863, August 22, 2000, 338 SCRA 511, 517; 393 Phil. 172, 179-180 (2000). (Citation omitted)

4) that there is demand made by the offended party on the offender.[11]

The essence of estafa under Article 315, par. 1 (b) is the appropriation or conversion of money or property received to the prejudice of the owner. The words "convert" and "misappropriate" connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.[12]

In reversing the finding of probable cause that the crime of estafa has been committed, the Secretary of Justice reasoned out that, [the] theory of conversion or misappropriation is difficult to sustain and that under the crime of estafa with grave abuse of confidence, the presumption is that the thing has been devoted to a purpose or is different from that for which it was intended but did not take place in this case. The CA, in sustaining the questioned resolutions of the Secretary of Justice, ruled that the element of misappropriation or conversion is wanting. It further ratiocinated that the demand for the return of the thing delivered in trust and the failure of the accused to account for it, are circumstantial evidence of misappropriation, however, the said presumption is rebuttable and if the accused is able to satisfactorily explain his failure to produce the thing delivered in trust, he may not be held liable for estafa.

It must be remembered that the finding of probable cause was made after conducting a preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case.[13] Its purpose is to determine whether

---

[11] Reyes, *Revised Penal Code of the Philippines*, p. 716; *Manahan, Jr. v. Court of Appeals*, G.R. No. 111656, March 20, 1996, 255 SCRA 202, 213; 325 Phil. 484, 492-493 (1996).

[12] *Amorsolo v. People*, G.R. No. 76647, September 30, 1987, 154 SCRA 556, 563; 238 Phil. 557, 564 (1987); citing *U.S. v. Ramirez*, 9 Phil. 67 (1907) and *U.S. v. Panes*, 37 Phil. 118 (1917).

[13] *Villanueva v. Ople*, G.R. No. 165125, November 18, 2005, 475 SCRA 539, 553; 512 Phil. 187, 204 (2005).

(a) a crime has been committed; and (b) whether there is a probable cause to believe that the accused is guilty thereof.[14]

This Court need not overemphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial. It does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits.[15] The complainant need not present at this stage proof beyond reasonable doubt.[16] A preliminary investigation does not require a full and exhaustive presentation of the parties' evidence.[17] Precisely, there is a trial to allow the reception of evidence for both parties to substantiate their respective claims.[18]

A review of the records would show that the investigating prosecutor was correct in finding the existence of all the elements of the crime of estafa. Reyes did not dispute that she received in trust the amount of ₱23,423,327.50 from petitioner as proven by the checks and vouchers to be used in purchasing the parcels of land. Petitioner wrote a demand letter for Reyes to return the same amount but was not heeded. Hence, the failure of Reyes to deliver the titles or to return the entrusted money, despite demand and the duty to do so, constituted *prima facie* evidence of misappropriation. The words convert and misappropriate connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon.[19] To misappropriate for one's own use

---

[14] *Gonzalez v. Hongkong & Shanghai Banking Corporation*, G.R. No. 164904, October 19, 2007, 537 SCRA 255, 269.

[15] *Metropolitan Bank & Trust Company v. Gonzalez*, G.R. No. 180165, April 7, 2009, 584 SCRA 631, 642.

[16] *Id.*

[17] *Ang v. Lucero*, G.R. No. 143169, January 21, 2005, 449 SCRA 157, 169; 490 Phil. 60, 71 (2005).

[18] *Metropolitan Bank & Trust Company v. Gonzalez, supra* note 15.

[19] *Serona v. Court of Appeals*, 440 Phil. 508, 518 (2000).

includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.[20] In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.[21] Thus, the mere presumption of misappropriation or conversion is enough to conclude that a probable cause exists for the indictment of Reyes for Estafa. As to whether the presumption can be rebutted by Reyes is already a matter of defense that can be best presented or offered during a full-blown trial.

To reiterate, probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[22] Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.[23] **The term does not mean "actual or positive cause" nor does it import absolute certainty**.[24] **It is merely based on opinion and reasonable belief.**[25] **Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction**.[26] **It is enough that it is believed that the act or omission complained of constitutes the offense charged.**[27]

---

[20] *Id.*

[21] *U.S. v. Rosario de Guzman*, 1 Phil. 138, 139 (1902).

[22] *Metropolitan Bank & Trust Company v. Gonzales, supra* note 15, at 640.

[23] *Id.,* citing *Yu v. Sandiganbayan,* 410 Phil. 619, 627 (2001).

[24] *Id.* at 640-641.

[25] *Id.* at 641.

[26] *Id.*

[27] *Id.*

WHEREFORE, premises considered, the present Petition is hereby **GRANTED** and, accordingly, the Decision and Resolution of the Court of Appeals, dated September 14, 2007 and December 20, 2007, respectively, are hereby **REVERSED** and **SET ASIDE.** Consequently, the Regional Trial Court, Branch 149, Makati City, where the Information was filed against private respondent Josefa "Jing" C. Reyes, is hereby **DIRECTED** to proceed with her arraignment.

SO ORDERED.

Brion,[**] *Abad, Mendoza,* and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 185005. December 10, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANTE DEJILLO and GERVACIO "DONGKOY" HOYLE, JR.,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; THE MATTER OF ASSIGNING VALUES TO DECLARATIONS ON THE WITNESS STAND IS BEST AND MOST COMPETENTLY PERFORMED BY THE TRIAL JUDGE, WHO HAD THE UNMATCHED OPPORTUNITY TO OBSERVE THE WITNESSES AND TO ASSESS THEIR CREDIBILITY BY THE VARIOUS INDICIA AVAILABLE BUT NOT REFLECTED ON THE RECORD.— The Court gives great weight and respect to the x x x RTC findings and conclusions

---

[**] Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1395 dated December 6, 2012.

which were chiefly based on its evaluation of the credibility of the witnesses, and the veracity and probative value of said witnesses' testimonies. As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch — these can reveal if the witness is telling the truth or lying through his teeth.

2. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIES OF DEFENSE WITNESSES, WHO HAD NO PERSONAL KNOWLEDGE OF THE STABBING INCIDENT AND WHO ARE EASILY SUSPECT AND BIASED GIVEN THEIR CLOSE RELATIONS TO ACCUSED-APPELLANTS, GIVEN SCANT CONSIDERATION. — The Court also concurs with the appellate court in giving scant consideration to the testimonies of the other defense witnesses, such as the hospital security guard who saw accused-appellant Gervacio accompany Florenda and her husband in bringing Aurelio to the hospital, the police officers in-charge of the investigation and arrest of Romeo, and the friends and parents of accused-appellants. These witnesses had no personal knowledge of the stabbing incident, and some of them are easily suspect and biased given their close relations to accused-appellants.

3. CRIMINAL LAW; MURDER; CONVICTION OF ACCUSED-APPELLANTS FOR THE CRIME OF MURDER, QUALIFIED BY ABUSE OF SUPERIOR STRENGTH, SUSTAINED; PROPER PENALTY. — [T]he Court sustains the conviction of accused-appellants for the crime of murder, qualified by abuse of superior strength. Article 248 of the Revised Penal Code, as amended, provides that the penalty for murder is *reclusion perpetua* to death. In conjunction, Article 63 of the same Code provides that when the law prescribes two indivisible penalties, and there are neither mitigating nor aggravating circumstances, the lesser penalty shall be applied. Hence, accused-appellants were correctly imposed the penalty of *reclusion perpetua.* The Court, however, adds that accused-

appellants shall not be eligible for parole. Under Section 3 of Republic Act No. 9346, "[p]ersons convicted of offenses **punished with *reclusion perpetua***, or whose sentences will be reduced to *reclusion perpetua,* by reason of this Act, **shall not be eligible for parole** under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."

4. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANTS. — As to the damages awarded, the Court affirms the grant of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. The award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime, while moral damages are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. The Court likewise affirms the award of ₱25,000.00 as temperate damages, which are awarded when the Court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The Court further awards ₱30,000.00 as exemplary damages, because of the presence of the qualifying circumstance of abuse of superior strength in the commission of the crime, and to set an example for the public good.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Emmanuel G. Golo for accused-appellants.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated February 22, 2008 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00510, which affirmed with modification the Decision[2] dated September 20,

---

[1] *Rollo*, pp. 5-24; penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Pampio A. Abarintos and Francisco P. Acosta, concurring.

[2] Records, pp. 265-265O; penned by Presiding Judge Irma Zita V. Masamayor.

2000 of the Regional Trial Court (RTC), Branch 52 of Talibon, Bohol, in Criminal Case No. 96-267, finding accused-appellants Dante Dejillo (Dante) and Gervacio "Dongkoy" Hoyle, Jr. (Gervacio) guilty beyond reasonable doubt of the murder of Aurelio "Boy" Basalo (Aurelio).

Aurelio is a 22-year-old *Sangguniang Kabataan* (SK) *Kagawad* of Barangay Bugang, San Miguel, Bohol. On or about 3:00 a.m. of July 29, 1996, in Barangay Bugang, Aurelio was stabbed below his left rib. Aurelio was pronounced dead on arrival at the infirmary in San Miguel. The incident was entered in the police blotter of the Philippine National Police (PNP) of San Miguel on July 29, 1996 at about 4:10 a.m. According to said entry in the PNP police blotter, Aurelio was stabbed by one Romeo Puracan (Romeo), 30 years old and a resident of Ong Farm, Ubay, Bohol. Romeo was identified by accused-appellant Gervacio, who executed a Sworn Statement dated July 29, 1996 before the PNP of San Miguel. The police picked up Romeo by 6:00 a.m. of July 29, 1996. Thereafter, Romeo was charged with the crime of homicide.

In two letters dated September 3, 1996, Germana Basalo (Germana), Aurelio's mother, requested the PNP Chief of San Miguel to initiate the filing of a criminal complaint for murder against herein accused-appellants, plus one Jonathan Sodio (Jonathan) and Petronilo Dejillo, Sr. (Petronilo, Sr.), the father of accused-appellant Dante. In support of her request, Germana submitted the affidavits executed by several witnesses, including Germana herself and Romeo, mostly executed on August 31, 1996, with one executed on September 3, 1996. Germana and her family believed that Romeo was not the culprit and they had already referred the matter to the National Bureau of Investigation (NBI).

Acting favorably on the complaint for murder against accused-appellants, the Provincial Prosecution Office of Bohol eventually filed an Information charging accused-appellants, thus:

That on or about the 29th day of July, 1996, in the Municipality of San Miguel, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, with

intent to kill and without justifiable motive, conspiring, confederating and helping one another and with treachery and abuse of superior strength, the accused being then armed with a sharp pointed weapon while the victim was unarmed and was not given an opportunity to defend himself, and with evident premeditation, as accused Dante Dejillo had a grudge against the victim when the latter testified in a Robbery case filed against Dante Dejillo's younger brother, Petronillo Dejillo, Jr., did then and there willfully, unlawfully and feloniously attack, assault and stab one Aurelio Basalo, with the use of the said sharp pointed weapon, hitting the victim on the vital part of his body which resulted to his death; to the damage and prejudice of the heirs of the deceased.

Acts committed contrary to the Provision of Article 248 of the Revised Penal Code, as Amended by Republic Act 7659.[3]

Accused-appellants pleaded not guilty during their arraignment.[4] Thereafter, trial ensued.

The prosecution called to the witness stand Florenda Dolera (Florenda),[5] Elias Aurestila (Elias),[6] Amelita Basalo (Amelita),[7] Gemima Dolera (Gemima),[8] Romeo,[9] and Germana.[10] The prosecution dispensed with the testimony of Dr. Gil Macato (Gil),[11] NBI Medico-legal Officer, Region VII, after the defense admitted the genuineness and veracity of Dr. Gil's exhumation report on Aurelio's cadaver, which determined Aurelio's cause of death as a "stab wound of the chest." The prosecution also subsequently presented Senior Police Officer (SPO) 3 Victor

---

[3] *Id.* at 28-28A.

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

[5] TSN, January 30, 1997 and March 6, 1997.

[6] TSN, April 4, 1997 and April 18, 1997.

[7] TSN, April 18, 1997 and June 5, 1997.

[8] TSN, July 3, 1997 and August 14, 1997.

[9] TSN, October 22, 1997, October 30, 1997, December 10, 1997, and January 9, 1998.

[10] TSN, February 20, 1998 and March 6, 1998.

[11] TSN, July 3, 1997.

Gubat,[12] Saul Curiba (Saul),[13] and again Elias[14] as rebuttal witnesses.

The testimonies of the prosecution witnesses presented the following version of events:

In the evening of July 28, 1996, Aurelio and accused-appellants were engaged in a drinking spree at Germana's house in Barangay Bugang. About 40-50 meters away in the same Barangay, Celso Nuera (Celso) was celebrating his birthday at his house where Saul and his nephew Romeo were in attendance as guests. By midnight, Romeo fell asleep on a bamboo bed outside Celso's house. At around 3:30 a.m. of July 29, 1996, Romeo was awakened by the crowing of a rooster. While still lying down, Romeo saw clearly Aurelio and accused-appellants on the *barangay* road, just four meters away. Accused-appellant Gervacio, *alias* Dongkoy, had his left arm on Aurelio's right shoulder and with his right hand, held and raised Aurelio's left hand to shoulder level. Accused-appellant Dante then stabbed Aurelio with a knife at the left side of the latter's body. Accused-appellants ran away leaving Aurelio behind. Aurelio was still standing but already staggering. Romeo was about to help Aurelio but he was chased away by three men, one armed with a knife. Romeo went home to Ong Farm at Sitio Caong, San Francisco, Ubay, Bohol, where he was arrested later that morning.

In the meantime, Florenda, Aurelio's sister, was asleep at her residence when she was awakened at around 3:30 a.m. of July 29, 1996 by the sound of running feet. Remembering accused-appellant Dante's threat against Aurelio's life six days earlier, Florenda started looking for Aurelio. She met accused-appellant Gervacio along the way, who pretended to help in searching for Aurelio. Florenda subsequently heard Aurelio shouting for help. Florenda found her brother at a road canal, leaning against the canal wall. Thinking that her brother was only drunk, Florenda

---

[12] TSN, June 14, 1999 and July 15, 1999.

[13] *Id.*

[14] TSN, July 29, 1999 and February 18, 2000.

asked accused-appellant Gervacio to help her carry Aurelio home but accused-appellant Gervacio pulled up Aurelio's T-shirt and said, "So, he was hit because he was stabbed by Ramie Puracan." Yet, as Florenda was embracing Aurelio, Aurelio was able to whisper in Florenda's left ear that, "I was stabbed by Dante while Dongkoy held me." By this time, Saul, Petronilo, Sr., and Amelita (Florenda's niece) had arrived at the scene. As Florenda ran home to get her husband, Amelita heard Saul asking her uncle Aurelio who stabbed him and Aurelio answering that it was accused-appellants Dante and Dongkoy. Petronilo, Sr., father of accused-appellant Dante, went near Aurelio and covered Aurelio's mouth.

Florenda and her husband took Aurelio to the San Miguel Infirmary where Aurelio was pronounced dead on arrival. Aurelio's Death Certificate stated that his cause of death was cardiopulmonary arrest secondary to hypovolemia (internal hemorrhage) secondary to stab wound.

Accused-appellant Dante had already been threatening to kill Aurelio days prior to the stabbing. Accused-appellant's brother, Petronilo Dejillo, Jr. (Petronilo, Jr.) committed robbery against Gemima, Florenda's mother-in-law. Aurelio was the star witness in the robbery case against Petronilo, Jr. Petronilo, Jr. had since been in hiding and was unable to come home even for his grandmother's death and wake. Elias, related to both accused-appellants through his father-in-law, personally witnessed accused-appellant Dante making such threats against Aurelio, and Gemima was already warned of accused-appellant Dante's threats against her son-in-law, Aurelio, days before July 29, 1996.

Following Aurelio's death, his family had been requesting the police to file complaints against accused-appellants. When the police failed to act upon their request, Aurelio's family already sought the help of the NBI.

According to Germana, Aurelio was the one supporting her so his death was beyond compensation. Germana also claimed that she had already spent ₱67,000.00 for Aurelio's wake and burial, ₱5,000.00 for the exhumation of Aurelio's body, and

₱38,500.00 for court expenses, for a total of ₱110,500.00. Germana, however, did not present any receipt.

The defense countered with the testimonies of accused-appellants Gervacio/Dongkoy[15] and Dante,[16] SPO1 Dario Nuez,[17] Jonathan,[18] SPO1 Paulino Boñor,[19] Dr. Hamilcar Lauroy Saniel (Hamilcar),[20] Nerio Quisto,[21] Lorenzo Orevillo,[22] Petronilo, Sr.,[23] Letecia Torreon Dejillo (Letecia),[24] and Hospicia Eliadora Hoyle.[25] The defense also presented Police Officer (PO) 1 Desiderio Garcia[26] as a sur-rebuttal witness.

Taken together, the defense witnesses' testimonies give the following account of events of July 28-29, 1996:

On July 28, 1996, accused-appellants, with Jonathan and several other companions, were hopping from one *barangay* to another to play basketball, to visit accused-appellant Gervacio's girlfriend, and to eat supper at the house of accused-appellant Gervacio's uncle. Their group finally got back to Barangay Bugang past 11:30 p.m. and had a drinking spree at Aurelio's house. They were later joined by Saul and Romeo.

During the drinking spree, Saul pulled Aurelio's hair and Aurelio retaliated by boxing Saul. Accused-appellant Gervacio separated Saul from the group and brought Saul to the Bugang

---

[15] TSN, May 21, 1998 and June 5, 1998.

[16] TSN, October 2, 1998 and December 4, 1998.

[17] TSN, July 10, 1998 and July 24, 1998.

[18] TSN, July 24, 1998.

[19] TSN, August 21, 1998.

[20] TSN, September 4, 1998.

[21] *Id.*

[22] TSN, September 18, 1998.

[23] *Id.*

[24] TSN, December 28, 1998.

[25] TSN, May 7, 1999.

[26] TSN, March 30, 2000 and May 29, 2000.

public market, about 25 meters away. While accused-appellant Gervacio and Saul were at the market, Romeo was boxed by Aurelio and hit by Dante with a belt. Romeo ran away, past accused-appellant Gervacio and Saul at the public market. Accused-appellant Gervacio eventually returned to his group at Aurelio's house.

Thereafter, Celso invited the group to his house. Only Aurelio and accused-appellant Dante entered Celso's house, while the rest of the group remained outside to sleep on the bamboo bed outside said house. That was the last time accused-appellants saw each other.

Finding Saul also inside Celso's house, Aurelio confronted Saul about the hair-pulling incident. The two were pacified by Petronilo, Sr., who then advised his own son, accused-appellant Dante, to just go home. Following his father's advice, accused-appellant Dante left for home at around 2:00 a.m. of July 29, 1996. Accused-appellant went to sleep and woke up at around 6:00 a.m., whereupon he learned from his mother Letecia that Aurelio had been stabbed.

It was around 3:00 a.m. of July 29, 1996 when Aurelio woke up accused-appellant Gervacio, who was sleeping on the bamboo bed outside Celso's house. Aurelio and accused-appellant Gervacio began walking towards Aurelio's house only 25 meters away. But then, they heard a commotion and Romeo appeared from the left side of the road, carrying a hunting knife. Romeo stabbed Aurelio on the latter's left side. Aurelio and accused-appellant Gervacio both ran away with Romeo chasing after them. Accused-appellant Gervacio first hid himself before going home, where he got a scythe for protection. He then went back to check on Aurelio.

Along the way, accused-appellant Gervacio met Florenda who asked about the persons running. Accused-appellant Gervacio told Florenda that Romeo was chasing him and Aurelio and that Aurelio was stabbed. He helped in looking for Aurelio who was found lying face up at the right side of the road, breathing with difficulty, and unable to talk. When Florenda and her husband

brought Aurelio to the hospital, accused-appellant Gervacio accompanied them.

After Aurelio was received at the hospital at around 4:00 a.m. of July 29, 1996, accused-appellant Gervacio proceeded to the municipal hall to report the incident to the police. Thus, Romeo was arrested around two hours later.

Dr. Hamilcar, the municipal health officer of San Miguel, conducted a *post mortem* examination of Aurelio's body and found only one fatal wound and no other contusions or abrasions. Aurelio suffered from massive internal hemorrhage, causing his death. When Dr. Hamilcar examined Aurelio at 4:00 a.m. on July 29, 1996, rigor mortis had not yet set in. However, Dr. Hamilcar admitted that because of the lack of facilities, he was not able to perform a real autopsy on Aurelio. Dr. Hamilcar only conducted a surface anatomy, including poking Aurelio's wound with a blunt instrument. Hence, Dr. Hamilcar qualified that he could only testify on possibilities, *i.e.*, that it is possible to inflict such a wound as was found on Aurelio without having to intentionally lift Aurelio's left hand, provided, that the left arm is not obstructing the location, such as when the arms are swung or are raised; that it is possible that Aurelio's speech power was affected because of lack of blood supply to the brain; and that it is possible that Aurelio was still able to talk about who inflicted his injury.

On September 20, 2000, the RTC promulgated its Decision finding accused-appellants guilty beyond reasonable doubt of the crime of murder, with the qualifying circumstance of taking advantage of superior strength. Said verdict reads:

> WHEREFORE, the Court finds the accused Dante Dejillo and Gervacio Hoyle, Jr. guilty beyond reasonable doubt of the crime of murder defined and penalized under Art. 248 of the Revised Penal Code, as amended by RA No. 7659. There being no mitigating nor aggravating circumstances adduced and proven during the trial, the Court hereby sentences each of the accused to suffer the penalty of *Reclusion Perpetua*, with all the accessory penalties of the law and to pay the costs.

Further, each of the accused shall pay jointly and severally to the heirs of Aurelio Basalo civil indemnity for the death of the victim in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00.

As the heirs of the victim clearly incurred funeral expenses although no receipts were presented[,] the amount of ₱10,000.00 by way of temperate damages is hereby awarded. No actual damages representing unearned income of the victim can be awarded, the same not having been sufficiently proven.

The period during which the accused were detained shall be credited in their favor as service of sentence in conformity with Article 29 of the Revised Penal Code, as amended.[27]

Pursuant to the Commitment on Final Sentence[28] issued by the RTC on September 27, 2000, accused-appellants were committed to and received at the New Bilibid Prison, Muntinlupa City.[29]

Accused-appellants appealed their conviction by the RTC directly before this Court,[30] but conformably with its ruling in *People v. Mateo*,[31] the Court transferred the case to the Court of Appeals for appropriate action.

The Court of Appeals promulgated its Decision on February 22, 2008 dismissing accused-appellants' appeal and affirming the RTC judgment with the modification of increasing the award of temperate damages, thus:

WHEREFORE, the **APPEAL** is **DISMISSED**. The Decision dated September 20, 2000 of the Regional Trial Court (RTC), Talibon, Bohol, Branch 52, in Criminal Case No. 96-267, finding Dante Dejillo and Gervacio Hoyle, Jr. guilty beyond reasonable doubt of the crime of murder and sentencing them to *Reclusion Perpetua* is **AFFIRMED** with **MODIFICATION** awarding temperate damages

---

[27] Records, pp. 265N-265O.

[28] *Id.* at 266-267A.

[29] *Rollo*, pp. 36 and 39.

[30] Records, p. 268.

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

of ₱25,000.00 to the heirs of Aurelio "Boy" Basalo, in lieu of actual damages.[32]

Hence, the present appeal by accused-appellants.

In their original Brief, accused-appellants pleaded for their acquittal based on the following assignment of errors:

[I]

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE BELATED CLAIM OF PROSECUTION WITNESSES FLORENDA DOLERA, AMELITA BASALO AND SAUL CURRIBA THAT THE DECEASED UTTERED DYING DECLARATION POINTING TO THE ACCUSED AS THE ASSAILANTS.

[II]

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF ROMEO PURACAN DESPITE THE FACT THAT HE WAS THE ONE ORIGINALLY CHARGED FOR KILLING THE VICTIM, HENCE, POSSESSED WITH (SIC) PROPENSITY TO FABRICATE LIES IF ONLY TO EVADE CRIMINAL PROSECUTION.

[III]

THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF GERVACIO HOYLE POSITIVELY IDENTIFYING ROMEO PURACAN AS THE PERSON WHO STABBED AND KILLED BOY BASALO OR CONSIDERING THE SAME AS PART OF *RES GESTAE* WITH THE TESTIMONIES OF SPO III DARIO NUEZ, SPOI APOLONIO BONOR, BRGY. CAPTAIN NERIO QUISTO, JONATHAN SODIO AND DANTE DEJILLO.[33]

In their Supplemental Brief, accused-appellants present additional grounds in support of their acquittal:

[IV]

THE LOWER COURT GRAVELY ERRED IN NOT APPRECIATING THE PHYSICAL EVIDENCE WHICH COULD HAVE LEAD TO THE ACQUITTAL OF THE ACCUSED; *AND*

[32] *Rollo*, p. 24.

[33] CA *rollo*, p. 72.

[V]

THE LOWER COURT SERIOUSLY OVERLOOKED THE MATERIAL CIRCUMSTANCES THAT CAST GRAVE SHADOW OF DOUBT TO THE THEORY OF THE PROSECUTION.[34]

Accused-appellants assert that there was no dying declaration made by Aurelio and that the same was a mere afterthought of the prosecution witnesses which must not be given any evidentiary weight. Accused-appellants further point out that defense witness Petronilo, Sr. was likewise present when Aurelio was found wounded and he categorically testified that Aurelio was not able to answer when asked who stabbed him. Moreover, none of the prosecution witnesses mentioned anything to police about Aurelio's dying declaration during the initial investigation. It was only a month after Aurelio's stabbing and death that prosecution witnesses Florenda and Amelita executed affidavits relating Aurelio's dying declaration; while prosecution witness Saul executed no such affidavit; and he disclosed Aurelio's purported dying declaration only during the rebuttal stage of the trial.

Accused-appellants also highlight Dr. Hamilcar's testimony. Accused-appellants argue that Aurelio was stabbed in the area of his body where his spleen could have been hit. As explained by Dr. Hamilcar, this could cause so much bleeding that Aurelio's speech power would be affected for the first five minutes and his brain would be seriously damaged for the next five minutes. Considering that Aurelio was stabbed at around 3:00 a.m., that Florenda woke up only 30 minutes later, and that it still took Florenda some time before she was able to locate Aurelio, it would already be incredible for Aurelio to still be able to utter his alleged dying declaration.

Lastly, accused-appellants urge the Court not to believe Romeo's inconsistent testimony and instead, to give probative value to accused-appellant Gervacio's testimony, which was supported by other defense witnesses' testimonies, that it was Romeo who assaulted Aurelio.

---

[34] *Rollo*, p. 46.

Plaintiff-appellee, for its part, maintains that the guilt of accused-appellants for the crime charged was duly established beyond reasonable doubt.

The Court finds the appeal devoid of merit.

The RTC has aptly based its factual findings and conclusions from a judicious scrutiny and assessment of all the evidence presented.

The RTC admitted Aurelio's dying declaration to prove the identity of his assailants and the circumstances that led to his death because it qualifies as an exception to the hearsay rule with the concurrence of all four essential requisites, to wit:

> One of the most reliable pieces of evidence for convicting a person is the dying declaration of the victim. Courts accord credibility of the highest order to such declarations on the truism that no man conscious of his impending death will still resort to falsehood. (*People v. Garma*, 271 SCRA 517, 1997)
>
> The requisites for admitting such declaration as evidence — an exception to the hearsay rule — are four, which must concur, to wit: a.) the dying declaration must concern the crime and the surrounding circumstances of the declarant's death; b.) at the time it was made the declarant was under a consciousness of an impending death; c.) the declarant was competent as a witness; and d.) the declaration was offered in a criminal case for homicide, murder, or parricide in which the decedent was the victim. (*People v. Sacario*, 14 SCRA 468; *People v. Almeda*, 124 SCRA 487)
>
> The four requisites are undoubtedly present in this case.
>
> About thirty minutes or so before his death, the slain victim in this case, Aurelio "Boy" Basalo, uttered a statement identifying the two accused, Dante Dejillo and Gervacio "Dongkoy" Hoyle, as his assailants. The statement was testified to by three prosecution witnesses, namely: 1.) Florenda Basalo Dolera, the victim's sister; 2.) Amelita Basalo, the victim's niece[,] and 3.) rebuttal witness, Saul Curiba.
>
> Florenda Dolera clearly, positively, and convincingly testified that she was the first person to arrive at the spot where her wounded brother lay on the ground, after she heard his faint cries for help; that when she realized he was not just drunk but was wounded because

Hoyle, Jr. then pulled up her brother's shirt, telling her he was stabbed by Ramy Puracan, she embraced her brother, who, with his lips near her ear, whispered, "I was stabbed by Dante while Dongkoy held me."

Amelita Basalo, arriving at the scene when Saul Curiba and Petronilo Dejillo, Sr. were also there heard the victim say "Dante and Dongkoy" in answer to Saul Curiba's question on who stabbed him.

Saul Curiba, rebuttal witness, confirmed that he was present soon after the victim was found on the ground, wounded; that in answer to his third question, "who stabbed you?" the victim said in a low voice that could still be heard one meter away, "Dante Dejillo."

The dying statement of Aurelio Basalo is a statement of the surrounding circumstances of his death as the same refers to the identity of his assailants; thus, the first requisite is present.

The second requisite is also present. Aurelio Basalo gave such declaration under the consciousness of an impending death as shown by the serious nature of his wound which in fact resulted in his death thirty minutes or so after he was found with a stab wound on his left chest.

Further, the fact that Aurelio Basalo at the time he gave the dying declaration was competent as a witness is too obvious to require further discussion.

Finally, Basalo's dying declaration is offered as evidence in a criminal prosecution for murder in which he was himself, the victim.[35] (Italicization added.)

The RTC also appreciated that prosecution eyewitness Romeo positively identified accused-appellants as Aurelio's assailants, thus:

It was not only the dying declaration of Aurelio Basalo that positively identified his assailants. The prosecution also offered Romeo "Ramy" Puracan's testimony as an eyewitness account of the incident.

While lying on the bamboo bed outside the store of Hermogina Nilugao and having just awakened, the prosecution witness saw,

---

[35] Records, pp. 265I-265J.

only four meters away, on the *barangay* road, Gervacio Hoyle, Jr., placing his left arm on the shoulder of Aurelio Basalo and with his right hand, hold the left hand of Basalo raising it to shoulder level, while Dante Dejillo stabbed the left side of the chest of Basalo. Puracan's detailed description of how the crime was committed confirms that he was, in truth, an eyewitness.[36]

The RTC additionally observed that Romeo's account of the stabbing incident was consistent with the NBI Exhumation Report submitted by the prosecution, as well as the testimony of Dr. Hamilcar, a defense witness:

> The NBI exhumation report describes the stab wound as elliptical, edges clean cut, located at the chest, left side, infero lateral to the left nipple at the level of the 7th rib, 25.0 cm. from the anterior midline. x x x The aforesaid description of the nature (edges clean cut) and location (chest, left side, level of the 7th rib) of the wound is consistent with Dr. [Hamilcar]'s testimony that the assailant had inflicted the stab wound on the said location, while it was unobstructed by the victim's left arm. The description of the stab wound is likewise consistent with [Romeo]'s testimony.
>
> Moreover, Dr. Hamilcar also testified that he found no abrasions or contusions on other parts of the victim's body — this again, is consistent with [Romeo's] testimony. Had the left arm of the victim not been held abrasions or at least scratches on the nearby parts of the victim's body would have been more likely.[37]

The RTC even noted that through the testimony of prosecution witness Elias, it was established that revenge was the motive behind the crime, even though motive was no longer essential for a conviction as the identity of the culprits have already been established.

In contrast, the RTC found accused-appellant Gervacio's narration of events incredible while accused-appellant Dante's defense a mere alibi, both of which could not prevail over the prosecution witnesses' positive testimonies. The trial court ratiocinated that:

---

[36] *Id.* at 265K.

[37] *Id.*

Between the account of Romeo Puracan and the conflicting testimony of Gervacio Hoyle, Jr., both claimed to be eyewitness accounts, the Court finds [Romeo]'s narration to be the more credible one because it jibes with the testimony of Dr. [Hamilcar] as well as with the *post mortem* findings in the exhumation report of the NBI doctor (Exh. "B").

x x x x x x x x x

The testimony therefore of Gervacio Hoyle, Jr. that the aforedescribed stab wound on Aurelio Basalo was inflicted by Romeo Puracan who had suddenly materialized from behind and on the left side of the victim while the victim and [accused-appellant Gervacio] were walking is contrary to the physical evidence (See also Exh. "C", the picture of the slain victim showing the stab wound).

That [Romeo] saw no struggle coming from the victim as [accused-appellant Gervacio] put his arm around his shoulder and held and raised the left victim's arm finds an explanation in the fact that [accused-appellant Gervacio] was supposed to be a friend of the victim.

The Court also finds [accused-appellant Gervacio]'s statement — that after the stabbing, he ran away and hid, then went home to get a scythe to protect himself (not telling his parents or anybody else) before coming back to the scene of the crime to check on the victim – to be contrary to human experience. Why didn't he instead hide and protect not only himself but also the victim in the houses near the scene of the crime, namely, at the house of Aurelio Basalo, where just that night he had been drinking together with Aurelio himself or at the neighboring house of Basalo's sister, [Florenda] Dolera? (See Exh. "11", the sketch of Romeo Puracan.)

Stranger still is the fact that in going back to the scene of the crime and in meeting [Florenda] Dolera he did not at once tell her that her brother had been stabbed. This was the reason why [Florenda] Dolera upon finding her brother lying on the ground thought that he was drunk; it was only then that [accused-appellant Gervacio] told her that her brother had been stabbed by Ramy Puracan.

Accused Gervacio Hoyle, Jr.'s version of the incident is highly improbable. The cardinal rule in the law of evidence is that to be believed, the testimony must not only proceed from the mouth of a credible witness; it must be credible in itself such as the common

experience and observation of mankind can approve as probable under the circumstances. (*People v. Nabayra*, 203 SCRA 75 [1991]).

x x x x x x x x x

The other accused, Dante Dejillo, interposed the defense of alibi saying that at 2:00 o'clock dawn of July 29, 1996 he had gone home, upon the advice of his father, because of the altercation involving him, Saul Curiba, and Ramy Puracan. His testimony was corroborated by his mother who said that she opened the door for her son when he arrived at 2:00 o'clock that morning and that she woke him up at 6:00 o'clock to inform him that Boy Basalo had died.

Alibi is the weakest defense an accused can concoct. In order to prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of the commission. (*People v. Lacao, Sr.*, 201 SCRA 317) This circumstance is not obtaining in the instant case. As testified to by [accused-appellant Dante]'s father their house is only 200 meters from Celso Nuera's house and Celso Nuera's house is evidently only a few meters distant from the scene of the crime as indicated in the testimonies of both the prosecution and the defense witnesses. Moreover, an alibi cannot prevail over the positive identification of the accused made by a credible witness, besides the fact that the defense of alibi is inherently weak as it can easily be fabricated or contrived.[38] (Italicization added.)

As for the circumstances that qualify Aurelio's killing as murder, the RTC held that the prosecution failed to produce evidence of treachery and evident premeditation. Nonetheless, the prosecution was able to establish the qualifying circumstance of superior strength, evident in the two accused-appellants using their combined strength, as well as a bladed weapon, to ensure the execution and success of the crime.

The Court gives great weight and respect to the foregoing RTC findings and conclusions which were chiefly based on its evaluation of the credibility of the witnesses, and the veracity and probative value of said witnesses' testimonies. As consistently adhered to by this Court, the matter of assigning values to declarations on the witness stand is best and most competently

[38] *Id.* at 265K-265M.

performed by the trial judge, who had the unmatched opportunity to observe the witnesses and to assess their credibility by the various *indicia* available but not reflected on the record. The demeanor of the person on the stand can draw the line between fact and fancy. The forthright answer or the hesitant pause, the quivering voice or the angry tone, the flustered look or the sincere gaze, the modest blush or the guilty blanch — these can reveal if the witness is telling the truth or lying through his teeth.[39]

Accused-appellants make much of the alleged failure of the prosecution witnesses Florenda, Amelita, and Saul to immediately inform the police about Aurelio's dying declaration that it was accused-appellants who stabbed him. However, the Court of Appeals was not persuaded for the following reasons:

> To begin with, contrary to accused-appellants' claim, prosecution witnesses [Florenda] Dolera, Amelita Basalo and Saul Curiba did not delay in reporting to the police the killing of Aurelio "Boy" Basalo and the identities of the killers themselves. [Florenda] personally asked the PNP of San Miguel, Bohol, right on the following day, to arrest Dante Dejillo and Gervacio Hoyle, Jr. as her brother's murderer[s]. The police, however, declined allegedly because they did not have evidence against them [TSN, March 6, 1997, p.13]. The victim's mother wrote the Chief of Police of San Miguel, Bohol to indict accused-appellants, but again, the police refused her request. It took them more than a month to finally lodge their complaint against Dante Dejillo and Gervacio Hoyle, Jr. which happened only after they sought the aid of the NBI in Cebu and exhumed [Aurelio] Basalo's body. On top of these, they had to attend to the victim's wake and burial. Surely, the victim's family would not have gone through such tedious process just to convict the wrong persons and set the real killers free. Suffice it to state that accused-appellants did not mention any ulterior motive that could have impelled the victim's family and other witnesses to falsely testify against them.
>
> At any rate, well-settled is the rule that delay in reporting the crime, the assailants' identity or even the victim's *ante mortem* or *dying* declaration does not render the prosecution's testimony doubtful nor impair the credibility of the witnesses.[40]

---

[39] *People v. Ramirez*, 409 Phil. 238, 245 (2001).

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

The Court completely agrees with the aforequoted ruling of the Court of Appeals.

The Court also concurs with the appellate court in giving scant consideration to the testimonies of the other defense witnesses, such as the hospital security guard who saw accused-appellant Gervacio accompany Florenda and her husband in bringing Aurelio to the hospital, the police officers in-charge of the investigation and arrest of Romeo, and the friends and parents of accused-appellants. These witnesses had no personal knowledge of the stabbing incident, and some of them are easily suspect and biased given their close relations to accused-appellants.

Finally, the Court finds highly specious and speculative accused-appellants' contention that Aurelio would have already lost too much blood from his stab wound, rendering him unable to talk, and even unconscious, by the time Florenda found him. Defense witness Dr. Hamilcar repeatedly stated before the trial court that during his *post-mortem* examination of Aurelio's cadaver, he did not actually see whether Aurelio's spleen was hit or punctured. He even admitted that because of the lack of facilities at the infirmary, he merely conducted a "surface anatomy" of Aurelio's cadaver,[41] going only so far as probing Aurelio's wound with a blunt object.

In view of all the foregoing, the Court sustains the conviction of accused-appellants for the crime of murder, qualified by abuse of superior strength.

Article 248 of the Revised Penal Code, as amended, provides that the penalty for murder is *reclusion perpetua* to death. In conjunction, Article 63 of the same Code provides that when the law prescribes two indivisible penalties, and there are neither mitigating nor aggravating circumstances, the lesser penalty shall be applied. Hence, accused-appellants were correctly imposed the penalty of *reclusion perpetua*.

The Court, however, adds that accused-appellants shall not be eligible for parole. Under Section 3 of Republic Act No. 9346, "[p]ersons convicted of offenses **punished with *reclusion***

---

[41] TSN, September 4, 1998, pp. 9 and 16.

perpetua, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, **shall not be eligible for parole** under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."[42]

As to the damages awarded, the Court affirms the grant of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages. The award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime, while moral damages are mandatory in cases of murder, without need of allegation and proof other than the death of the victim. The Court likewise affirms the award of ₱25,000.00 as temperate damages, which are awarded when the Court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[43] The Court further awards ₱30,000.00 as exemplary damages, because of the presence of the qualifying circumstance of abuse of superior strength in the commission of the crime, and to set an example for the public good.[44]

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the Decision dated February 22, 2008 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00510. The Court finds accused-appellants Dante Dejillo and Gervacio "Dongkoy" Hoyle, Jr. guilty beyond reasonable doubt of the crime of murder, qualified by abuse of superior strength, and sentences them to suffer the penalty of *reclusion perpetua*, without the possibility of parole; and to pay the heirs of Aurelio "Boy" Basalo the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

---

[42] *People v. Tadah*, G.R. No. 186226, February 1, 2012, 664 SCRA 744, 747.

[43] *People v. Salcedo*, G.R. No. 178272, March 14, 2011, 645 SCRA 248, 267.

[44] *Id.*

FIRST DIVISION

[G.R. No. 188345. December 10, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CATALINO DULAY *Y* CADIENTE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION OF THE CREDIBILITY OF THE WITNESSES IS ENTITLED TO THE HIGHEST RESPECT ABSENT A SHOWING THAT IT OVERLOOKED, MISUNDERSTOOD OR MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND SUBSTANCE THAT WOULD AFFECT THE RESULT OF THE CASE. — It is significant to reiterate x x x that it is the trial court which is deemed to be in a better position to decide the question of credibility of PO1 Guadamor, as well as those of the other witnesses, since it had the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath. The trial court found PO1 Guadamor to be credible, and our examination of his testimony does not give us any reason to find otherwise. As we have often repeated, the trial court's evaluation of the credibility of the witnesses is entitled to the highest respect absent a showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would affect the result of the case.

2. ID.; ID.; ID.; THE IDENTITY OR TESTIMONY OF THE INFORMANT IS NOT INDISPENSABLE IN DRUGS CASES, SINCE HIS TESTIMONY WOULD ONLY CORROBORATE THAT OF THE POSEUR-BUYER; ELABORATED. — It is settled that the identity or testimony of the informant is not indispensable in drugs cases, since his testimony would only corroborate that of the poseur-buyer. Also, it is undeniably established in jurisprudence that: We have repeatedly held that it is up to the prosecution to determine who should be presented as witnesses on the basis of its own assessment of their necessity. After all, the testimony of a single

witness, if trustworthy and reliable, or if credible and positive, would be sufficient to support a conviction. Moreover, in determining values and credibility of evidence, witnesses are to be weighed, not numbered. Furthermore, informants are often not presented in court in order to preserve their cover and continue to be of service as such. Their lives may also be placed in danger if they testify in court. Thus, in *People v. Ho Chua*, we held: The presentation of an informant is not a requisite in the prosecution of drug cases. In *People v. Nicolas*, the Court ruled that "[p]olice authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret." In any event, the testimony of the informant would be merely corroborative.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); USE OF DANGEROUS DRUGS; PROPER PENALTY. — For the crime of use of dangerous drugs in Criminal Case No. 03-4000, the accused-appellant, who pleaded guilty to this offense, was sentenced to undergo rehabilitation for at least six months in a government rehabilitation center under the auspices of the Bureau of Correction. This is proper, pursuant to Section 15, Article II of Republic Act No. 9165.

4. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; PROPER PENALTY. — In Criminal Case No. 03-3799, for the crime of illegal sale of a dangerous drug, the trial court imposed the penalty of life imprisonment and a fine of ₱500,000.00. Accused-appellant respectfully pleads to this Court to reduce this penalty on account of the very small quantity involved in the case, which was only 0.04 gram of methylamphetamine hydrochloride. As much as this Court desires to temper justice with mercy whenever warranted by the circumstances of the case, we are restrained by the plain and unambiguous text of Section 5, Article II of Republic Act No. 9165 x x x. We are therefore constrained to affirm the penalty imposed by the trial court *in toto*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal of the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02342 dated April 18, 2008, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Makati finding accused-appellant Catalino Dulay *y* Cadiente guilty beyond reasonable doubt of violation of Sections 5 and 15, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Two Informations were filed against accused-appellant, charging him with violations of Section 5 (Criminal Case No. 03-3799) and Section 15 (Criminal Case No. 03-4000), respectively, of Article II of Republic Act No. 9165. The Information charging accused-appellant of violation of Section 5 states:

> That on or about the 23rd day of September, 2003, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away ₱100.00 worth of Methylamphetamine Hydrochloride (*Shabu*) weighing zero point zero two (0.02) gram and zero point zero two (0.02) gram, a dangerous drug.[3]

On arraignment, accused-appellant pleaded not guilty to the charge in Criminal Case No. 03-3799, but pleaded guilty to the charge of drug use in Criminal Case No. 03-4000.

---

[1] *Rollo*, pp. 2-30; penned by Associate Justice Edgardo F. Sundiam with Associate Justices Monina Arevalo-Zenarosa and Sixto C. Marella, Jr., concurring.

[2] CA *rollo*, pp. 43-49.

[3] Records, p. 1.

As stated in the Pre-Trial Order, the parties stipulated:

1. That these cases were investigated by PO3 Conrado Mapili;

2. That after the investigation by PO3 Conrado Mapili, he prepared the Final Investigation Report;

3. That the Drug Enforcement Unit [DEU] through SPO4 Arsenio Mangulabnan made a Request for Laboratory Examination;

4. That the PNP Crime Laboratory through Police Inspector Karen Palacios conducted an examination on the specimen submitted;

5. That [the] Physical Science Report was issued by the PNP Crime Laboratory Office detailing the findings of the Forensic Chemist; and

6. The qualification of the Forensic Chemist.[4]

The prosecution presented three witnesses: (1) Police Officer (PO) 1 Dominador Robles, who was the team leader of the buy-bust operation; (2) PO1 Jose Guadamor of the Makati Anti-Drug Abuse Council (MADAC), who was the poseur-buyer; and (3) PO1 Francisco Barbosa, also from the MADAC, who was a back-up. Culled from their testimonies, the trial court summarized the facts into the following narrative:

A buy-bust operation was conducted against accused Catalino Dulay on September 23, 2003 at around 5:45 pm due to a report given by an informant to Bgy. Capt. Del Prado at the office of MADAC Cluster 3. The report was about the illegal drug-selling activity of the accused Catalino Dulay at Mabini Street, Barangay Poblacion Makati City. After receiving said report, Brgy. Capt. Del Prado coordinated with the Makati Drug Enforcement Unit (DEU). The DEU sent PO1 Dominador Robles to the Barangay Hall of Barangay Sta. Cruz. PO1 Robles conducted a briefing of the buy-bust team. Jose Guadamor was designated as the poseur buyer. PO1 Robles as team leader, provided Guadamor with the two hundred pesos buy bust money. PO1 Robles coordinated the operation with the PDEA. After the briefing the buy-bust team accompanied by the informant proceeded to the place of operation after the briefing. The poseur buyer and the informant saw *alias* "Lino" standing along Mabini

[4] *Id.* at 31.

Street, Brgy. Poblacion, Makati City. The poseur buyer and the informant approached the accused. The informant introduced the poseur buyer to *alias* "Lino", "*Ito si Jojo, nangangailangan ng shabu*." (TSN dated 3/3/05, p. 4). The accused asked the poseur buyer how much is he going to buy. The poseur buyer replied, "*Tapatan mo itong dos ko*." (TSN dated 3/3/05, p. 14). The poseur buyer handed to the accused the two hundred pesos buy bust money and the accused drew from his right pocket, two plastic sachets and handed it to the poseur buyer. The poseur buyer took the two plastic sachets and gave the pre-arranged signal by lighting a cigarette. PO1 Robles and Barbosa rushed to the place of the transaction[.] [T]hey introduced themselves as narcotic operatives. They arrested alas "Lino" (TSN dated 3/3/05, pp. 16-17). It was PO1 Robles who informed the accused of his constitutional rights. Jose Guadamor, the poseur buyer marked the sachets of *shabu* with "CDC" the initials of the accused at the place of operation (TSN dated 3/3/05, p. 18). After the arrest, the accused was brought to [the] DEU where a complaint was filed against him. Thereafter, the accused was brought to Fort Bonifacio, Taguig for drug test of the accused and laboratory examination of the subject of sale."[5]

Physical Science Report No. D-1174-03S,[6] prepared and submitted by P/Insp. Karen Palacios, the Philippine National Police (PNP) forensic analyst who examined the specimens, showed that the seized specimens tested positive for methylamphetamine hydrochloride.

The defense presented the accused-appellant as its lone witness. The Court of Appeals condensed his testimony in this wise:

In defense, accused Catalino Dulay denied having sold *shabu* when he was arrested. He claimed that on September 23, 2003, at about 4:30 to 5:30 [p.m.], he was sleeping when his wife woke him up because someone was knocking at the door. He then went to the door and asked those knocking who they were and what was their purpose. Two of the three men asked the accused if he was Allan, but receiving a negative answer, the men immediately held his hands, dragged him out of the house and boarded him into a Toyota Revo. Accused was brought first to the *barangay* headquarters where he

---

[5] CA *rollo*, pp. 44-45.

[6] Records, p. 15.

was asked from whom he was getting *shabu*, and then to Drug Enforcement Unit where he was investigated and shown two (2) plastic sachets. Accused also claimed that his money amounting to ₱200.00 in two one-peso bills was taken from his wallet and these same two-peso bills were the ones marked as "C-3" at the *barangay* headquarters. He further claimed that he was framed-up by MADAC operatives Rogelio Milan and Kuntil Domingo, an asset of the MADAC, with whom he quarreled three days before his arrest.[7]

On June 16, 2006, the Regional Trial Court of Makati City rendered its Decision on the two charges as follows:

WHEREFORE, in view of the foregoing[,] judgment is rendered as follows:

1. In Criminal Case No. 03-3799 the accused CATALINO DULAY *y* CADIENTE *alias* "Lino" is found guilty beyond reasonable doubt of the crime of violation of Section 5, Art. II, RA 9165 and sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The period during which the accused was detained shall be considered in his favor pursuant to existing rules.

2. In Criminal Case No. 03-4000, the accused having pleaded guilty to the charge of violation of Section 15, Art. II, RA 9165, is sentenced to undergo rehabilitation for at least six (6) months in a government rehabilitation center under the auspices of the Bureau of Correction subject to the provisions of Article VIII of RA 9165.

The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the two pieces of plastic sachets of *shabu* with a combined weight of 0.04 gram subject matter of Criminal Case No. 03-3799 for said agency's appropriate disposition.[8]

Accused-appellant elevated the case to the Court of Appeals *via* a Notice of Appeal.[9] On April 18, 2008, the Court of Appeals rendered the assailed Decision affirming the convictions.

Accused-appellant instituted the present recourse through a Notice of Appeal.[10] Both plaintiff-appellee, through the Office

[7] *Rollo*, p. 6.

[8] CA *rollo*, pp. 48-49.

[9] Records, p. 134.

[10] *Rollo*, pp. 31-33.

of the Solicitor General,[11] and the accused-appellant[12] manifested that they were dispensing with the filing of a Supplemental Brief, as they had exhaustively argued the issues in their respective briefs before the Court of Appeals.

In the above-mentioned brief of the accused-appellant, he submitted a lone assignment of error:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[13]

Accused-appellant claims that the prosecution failed to prove his guilt beyond reasonable doubt on account of the failure of PO1 Barbosa to identify him at the trial, and the unreliability of the testimonies of PO1 Robles and PO1 Barbosa on account of their distance of ten to fifteen meters from the place where the alleged transaction took place. Accused-appellant likewise point out the failure of the prosecution to present the informant to corroborate the testimonies of the police officers.

Accused-appellant, however, did not have much to say about the testimony of the poseur-buyer himself, PO1 Guadamor, who was able to give a complete account of the transaction, from his introduction as a buyer to the accused-appellant by the informant, his handing to the accused-appellant of the payment for the two plastic sachets containing white crystalline substance, which the latter drew from his pocket and handed to him, and up to the eventual arrest of the accused-appellant and the marking of the confiscated items.[14]

It is significant to reiterate at this point that it is the trial court which is deemed to be in a better position to decide the question of credibility of PO1 Guadamor, as well as those of

---

[11] *Id.* at 45-48.

[12] *Id.* at 51-53.

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

[14] TSN, March 3, 2005, pp. 12-18.

the other witnesses, since it had the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath.[15] The trial court found PO1 Guadamor to be credible, and our examination of his testimony does not give us any reason to find otherwise. As we have often repeated, the trial court's evaluation of the credibility of the witnesses is entitled to the highest respect absent a showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would affect the result of the case.[16]

Whatever defect that may have been caused by the failure of PO1 Barbosa to identify the accused-appellant in court was cured by the testimony of accused-appellant himself that PO1 Barbosa was part of the arresting team:

ATTY. YU

Did you recognize any of the three arresting officer at that time?

WITNESS

Yes, ma'am.

ATTY. YU

Who are they?

WITNESS

One of them is a tricycle driver who is also a MADAC operative.

ATTY. YU

What about the other two?

WITNESS

Francisco Barbosa, Jose Guadamor, and Rogelio Milan.[17]

---

[15] *People v. Fernandez*, 426 Phil. 168, 173 (2002).

[16] *People v. Ibay*, 371 Phil. 81, 96 (1999).

[17] TSN, April 18, 2006, pp. 9-10.

The necessity of asking the witness to identify the accused in court is for the purpose of being able to pinpoint said accused to be the very same person referred to in the testimony. As regards the testimony of PO1 Barbosa, it has to be established that accused-appellant was the very same person that was arrested by the team which includes PO1 Barbosa at around 5:20 p.m. on September 23, 2003. Having himself affirmed his own arrest at the hands of the group of PO1 Barbosa on the same date and time, accused-appellant cannot now assert that he was not the person referred to in PO1 Barbosa's testimony.

Furthermore, accused-appellant was, in fact, positively identified in court by PO1 Robles and the poseur-buyer himself, PO1 Guadamor. Accused-appellant's persistent assertion that PO1 Robles and PO1 Barbosa were too far at ten to fifteen meters away from the scene of the alleged transaction does not disprove their ability to positively identify accused-appellant, as they have testified that they eventually went closer to the scene when PO1 Guadamor gave the signal. Neither was the proximity of PO1 Robles and PO1 Barbosa relevant to prove the details of the transaction since their account was merely to corroborate the already convincing testimony of PO1 Guadamor.

Accused-appellant further points out that the prosecution failed to present the informant in court, alleging that the same was necessary to corroborate the testimony of PO1 Guadamor, since it was only the informant and PO1 Guadamor who witnessed the actual transaction.

We disagree. It is settled that the identity or testimony of the informant is not indispensable in drugs cases, since his testimony would only corroborate that of the poseur-buyer.[18] Also, it is undeniably established in jurisprudence that:

> We have repeatedly held that it is up to the prosecution to determine who should be presented as witnesses on the basis of its own assessment of their necessity. After all, the testimony of a single witness, if trustworthy and reliable, or if credible and positive, would be sufficient to support a conviction. Moreover, in determining values and

[18] *People v. Ong Co*, 315 Phil. 829, 845 (1995).

credibility of evidence, witnesses are to be weighed, not numbered.[19] (Citations omitted.)

Furthermore, informants are often not presented in court in order to preserve their cover and continue to be of service as such. Their lives may also be placed in danger if they testify in court. Thus, in *People v. Ho Chua*,[20] we held:

> The presentation of an informant is not a requisite in the prosecution of drug cases. In *People v. Nicolas*, the Court ruled that "[p]olice authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret." In any event, the testimony of the informant would be merely corroborative. (Citations omitted.)

For the crime of use of dangerous drugs in Criminal Case No. 03-4000, the accused-appellant, who pleaded guilty to this offense, was sentenced to undergo rehabilitation for at least six months in a government rehabilitation center under the auspices of the Bureau of Correction. This is proper, pursuant to Section 15, Article II of Republic Act No. 9165, which provides:

> SEC. 15. *Use of Dangerous Drugs*. — A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): *Provided*, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

---

[19] *Id.*

[20] 364 Phil. 497, 513-514 (1999).

In Criminal Case No. 03-3799, for the crime of illegal sale of a dangerous drug, the trial court imposed the penalty of life imprisonment and a fine of ₱500,000.00. Accused-appellant respectfully pleads[21] to this Court to reduce this penalty on account of the very small quantity involved in the case, which was only 0.04 gram of methylamphetamine hydrochloride. As much as this Court desires to temper justice with mercy whenever warranted by the circumstances of the case, we are restrained by the plain and unambiguous text of Section 5, Article II of Republic Act No. 9165, which provides:

> SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy **regardless of the quantity and purity involved**, or shall act as a broker in any of such transactions. (Emphasis added.)

We are therefore constrained to affirm the penalty imposed by the trial court *in toto*.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02342 dated April 18, 2008, which affirmed the Decision of the Regional Trial Court of Makati finding accused-appellant Catalino Dulay *y* Cadiente guilty beyond reasonable doubt of violation of Sections 5 and 15, Article II of Republic Act No. 9165 is hereby **AFFIRMED.**

No pronouncement as to costs.

SO ORDERED.

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

---

[21] *Rollo,* p. 55.

THIRD DIVISION

[G.R. No. 188575. December 10, 2012]

GAUDENCIO PACETE, *petitioner*, *vs.* **INOCENCIO ASOTIGUE,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; A PARTY CANNOT RELY ON HIS ORIGINAL CERTIFICATE OF TITLE AS AN INCONTROVERTIBLE PROOF OF HIS OWNERSHIP OVER THE SUBJECT PROPERTY WHERE HE WAS NOT IN GOOD FAITH WHEN HE OBTAINED THE SAID TITLE. —** On the issue of whether Pacete's title, OCT No. V-16654, which had included the lot in dispute, can be considered unassailable evidence of his ownership over the disputed lot, the Court rules in the negative. It must be stressed that both the RTC and the CA have passed upon this factual issue. x x x. As correctly found by the CA, Pacete cannot rely on his OCT No. V-16654 as an incontrovertible proof of his ownership over the property in dispute because he was not in good faith when he obtained the said title as he was fully aware of the conveyance of the said lot between Pasague and Umpad.

2. **ID.; ID.; RECONVEYANCE; AVAILABLE NOT ONLY TO THE LEGAL OWNER OF A PROPERTY BUT ALSO TO THE PERSON WITH A BETTER RIGHT THAN THE PERSON UNDER WHOSE NAME SAID PROPERTY WAS ERRONEOUSLY REGISTERED; ACTION FOR RECONVEYANCE, ELABORATED. —** Reconveyance is proper under the circumstances. Reconveyance is available not only to the legal owner of a property but also to the person *with a better right* than the person under whose name said property was erroneously registered. Although Asotigue is not the titled owner of the disputed lot, he apparently has a better right than Pacete, the latter not being in good faith when he obtained his title to the said property. In *Munoz v. Yabut, Jr.*, the Court had the occasion to describe an action for reconveyance as follows: An action for reconveyance is an action *in personam* available to a person whose property has been wrongfully registered under the Torrens system in another's name. Although

the decree is recognized as incontrovertible and no longer open to review, the registered owner is not necessarily held free from liens. As a remedy, an action for reconveyance is filed as an ordinary action in the ordinary courts of justice and not with the land registration court. **Reconveyance is always available as long as the property has not passed to an innocent third person for value.** A notice of *lis pendens* may thus be annotated on the certificate of title immediately upon the institution of the action in court. The notice of *lis pendens* will avoid transfer to an innocent third person for value and preserve the claim of the real owner.

3. ID.; ID.; ID.; THE COURT MAY ORDER THE RECONVEYANCE OF PROPERTY TO THE TRUE OWNER OR TO THE ONE WITH A BETTER RIGHT, WHERE THE PROPERTY HAD BEEN ERRONEOUSLY OR FRAUDULENTLY TITLED IN ANOTHER PERSON'S NAME; THE TORRENS SYSTEM WAS NOT DESIGNED TO SHIELD AND PROTECT ONE WHO HAD COMMITTED FRAUD OR MISREPRESENTATION AND, THUS, HOLDS TITLE IN BAD FAITH. — In a number of cases, the Court has ordered reconveyance of property to the true owner or to the one with a better right, where the property had been erroneously or fraudulently titled in another person's name. In the present case, when Pacete procured OCT No. V-16654 in 1961, the disputed lot, being a portion covered by the said title, was already in possession of Asotigue. His predecessor-in-interest, Sumagad, had been occupying it since 1958. There was, therefore, an erroneous or wrongful registration of Asotigue's Lot 5-A of Lot 5, GSS-326, in favor of Pacete, who neither possessed nor occupied the same. Inasmuch as the latter had not passed the lot in question to an innocent purchaser for value, an action for reconveyance is proper. After all, the Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and, thus, holds title in bad faith.

4. ID.; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES, SUSTAINED. — The Court finds no reversible error on the part of the CA in sustaining the award of damages to Asotigue. The latter was able to substantiate his entitlement to moral damages due to Pacete's act of including his (Asotigue's) portion in the registration of his own land. As a

deterrent to others who would have the same thing in mind in coveting the property of others, the award for exemplary damages is justifiable.

APPEARANCES OF COUNSEL

Alocelja Law Office for petitioner.
Ismael M. Guro for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the October 27, 2008 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CV No. 00186-MIN, entitled *Inocencio Asotigue v. Gaudencio Pacete*, and its May 25, 2009 Resolution[2] denying the motion for the reconsideration thereof. The CA decision affirmed *in toto* the June 1, 2004 Decision of the Regional Trial Court, 12th Judicial Region, Branch 23, Kidapawan City *(RTC)*, in Civil Case No. 2000-22, a case for reconveyance and damages.

The Factual and Procedural Antecedents

The property in dispute is a parcel of agricultural land, known as Lot No. 5-A, consisting of 22,240 square meters, being a portion of a bigger agricultural land, known as Lot No. 5, GSS-326, with an area of 118,055 square meters, situated in Barangay Dolis, Municipality of Magpet, Province of Cotabato, and covered by Original Certificate of Title *(OCT)* No. V-16654, registered in the name of petitioner Gaudencio Pacete *(Pacete)*.[3]

On November 3, 2000, respondent Inocencio Asotigue *(Asotigue)* filed a complaint for reconveyance and damages

[1] *Rollo*, pp. 24-36. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justice Edgardo A. Camello and Associate Justice Edgardo T. Lloren, concurring.

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

[3] *Id.* at 25.

against Pacete before the RTC, which was docketed as Civil Case No. 2000-22.

In his complaint, Asotigue averred that on March 22, 1979, he acquired the disputed land, denominated as Lot No. 5-A, from Rizalino Umpad *(Umpad)* for ₱2,300.00 by virtue of a *Transfer of Rights and Improvements*, duly notarized by Notary Public Rodolfo T. Calud; that he had been in possession and occupation of the said lot openly, publicly, notoriously, and in the concept of an owner for more than 21 years; that he had declared the lot in his name for taxation purposes, paying faithfully the real taxes due thereon, as shown by his Tax Declaration No. 4369-A, dated May 19, 1980, Tax Declaration No. 11759, dated February 10, 1982, Tax Declaration No. 3790, dated November 1, 1991, and Tax Declaration No. 99-07275, dated September 12, 2000; that he introduced permanent improvements on the said lot by planting considerable number of rubber trees and other fruit-bearing trees; that the present dispute arose when he found out for the first time, upon filing his application for title over the said lot, that it was included in Pacete's OCT No. V-16654; that he then demanded from Pacete the reconveyance of the said lot, but his demand was unheeded; that he brought the matter before the Office of the Pangkat Tagapagkasundo of Barangay Dolis, Magpet, for amicable settlement, but to no avail; and that a Certificate to File Action was subsequently issued.[4]

In his Answer with Counterclaim and with Special and Affirmative Defenses, Pacete denied the material allegations of Asotigue and asserted that he was the owner of the disputed lot, presenting OCT No. V-16654 issued on July 13, 1961 as evidence of his ownership. He claimed that sometime in 1979, Asotigue, by stealth, strategy and prior knowledge, entered the disputed lot and started planting trees despite his demand to vacate the said lot.[5]

During the trial, to prove the allegations in his complaint, Asotigue offered his testimony and those of Umpad, Bienvenido

---

[4] *Id.* at 26.

[5] *Id.* at 27.

Pasague *(Pasague)*, Barangay Chairman Ricardo Abay *(Barangay Chairman Abay)*, and Engr. Teodoro Lamban.

Asotigue testified that the disputed lot was previously owned by Sambutuan Sumagad *(Sumagad)*, a native. The lot was mortgaged by Sumagad to Pasague who later on bought it. Pasague then sold the lot to Umpad by way of *Relinquishment of Rights and Improvements* executed on October 19, 1971. On March 22, 1979, Asotigue bought the lot from Umpad by way of *Transfer of Rights and Improvements*. Asotigue then entered the lot and planted, among others, rubber trees, fruit trees and coconut trees. According to him, he failed to apply for a title over the said lot due to financial constraint. Nonetheless, he declared the same for taxation purposes under his name and consistently paid the real taxes due thereon.

To strengthen his claim of ownership, Asotigue also submitted documentary evidence, among which were copies of the Transfer of Rights and Improvements, dated March 22, 1979; several Tax Declarations under his name; Survey Plan of Lot No. 5, GSS-326; and the Relinquishment of Rights and Improvements, dated October 19, 1971, executed by Pasague in favor of Umpad.

When Umpad was presented at the witness stand, he confirmed that Asotigue bought the disputed lot from him in 1979 by way of *Transfer of Rights and Improvements* for ₱2,300.00. He further testified that he bought the lot from Pasague in 1971 for ₱400.00 by way of *Relinquishment of Rights and Improvements*. In fact, Pacete signed as one of the witnesses in the said relinquishment, being the owner of the adjoining land of the disputed lot.

Pasague corroborated Umpad's story. He testified that in 1971, Umpad bought the said lot from him for ₱800.00 and that Pacete was one of the witnesses of the said transaction, together with Barangay Chairman Abay. Pasague added that he bought the disputed lot from Sumagad who had possessed and occupied the same since 1958. The lot was not yet titled at that time and the boundaries of the land sold to Umpad were determined by Eleong Oloy, Pacete and Barangay Chairman Abay.

In his defense, Pacete presented the testimonies of his son, Rolito Pacete *(Rolito);* his wife, Angelica Pacete *(Angelica);* and Elma Precion to disprove Asotigue's claim of ownership over the disputed lot. He also submitted documentary evidence, as proof of his ownership, such as OCT No. 16654, Tax Declaration Nos. 4369 and 11759, and Transfer of Rights of Occupation and Improvements on an Unregistered Land.

Rolito testified that sometime in 1979, Asotigue squatted on about 2.5 hectare portion of their land in Purok 1, Dolis, Magpet, Cotabato. He claimed that he and his father told Asotigue not to plant anything on the land, but despite their warning, the latter continued planting. His father was the one paying the real taxes on the disputed lot and that they had the land titled in 1961. He did not file any case against Asotigue because he was very young then and his parents were illiterate.

Angelica corroborated Rolito's testimony. She claimed that her husband Pacete was ignorant and that they were afraid of Asotigue, hence, they did not file any complaint before the police, municipal officers or the court.

The RTC Ruling

After evaluating the evidence adduced by both parties, the RTC rendered judgment in favor of Asotigue. It ruled that Pacete was not able to substantiate his claim that he had a better right of possession and ownership over the disputed lot. The *fallo* of the RTC Decision reads:

> WHEREFORE, this Court finds and so holds that plaintiff was able to prove his case by preponderance of evidence. Defendant is directed to convey to plaintiff a portion of Lot No. 5, GSS-326, located at Dolis, Magpet, Cotobato, Mindanao, containing an area of 22,240 Square Meters and described as follows:
>
> Lot 5-A of Lot 5, GSS-326:
>
> Line 1-2, N 17-47 E, 142.45 m.
> 2-3, S 78-17 E, 199.89 m.
> 3-4, S 41-38 E, 72.64 m.
> 4-1, S 84-32 W, 285.45 m.

Containing an area of 22,240 sq. m.

Defendant is likewise directed to pay plaintiff the following:

1. Loss of income from his rubber trees from September 10, 2002 at ₱20,000.00 a month until this claim is fully satisfied;
2. Moral damages of ₱30,000.00;
3. Exemplary damages of ₱10,000.00;
4. Attorney's fee of ₱30,000.00;
5. Appearance fee of ₱5,000.00; and
6. Refund of litigation expenses in the amount of ₱10,000.00.

Defendant is directed to pay costs.

SO ORDERED.[6]

On appeal, the CA affirmed *in toto* the RTC ruling in favor of Asotigue.[7]

In upholding the claim of Asotigue, the CA applied the doctrine of tacking of possession. It found that Asotigue was in material possession of the said lot for more than thirty (30) years, tacking the possession of his predecessor-in-interest, Sumagad, in 1958 up to the time he filed the case in 2000. Thus, when Pacete procured OCT No. V-16654 in 1961, the disputed lot being covered by the said OCT was already possessed and occupied in good faith by Asotigue through Sumagad. Asotigue's lot, according to the CA, was erroneously or wrongfully registered in favor of Pacete.

Moreover, the CA took into account the rule that the findings of fact of the trial court were accorded respect. The CA stated that the reason behind the rule was that trial courts had better opportunity to examine factual matters than appellate courts. Specifically, it wrote: "They are in better position to assess the credibility of witnesses, not only by the nature of their testimonies, but also by their demeanor on the stand."[8] In this case, the CA

---

[6] *Id.* at 24-25.

[7] *Id.* at 36.

[8] Citing *Borillo v. CA*, G.R. No. 55691, May 21, 1992, 209 SCRA 130, 147.

said that it found no strong or impelling reason to reverse the findings of the RTC.

Pacete filed a motion for reconsideration of the said decision. His motion, however, was denied for lack of merit by the CA in its Resolution, dated May 25, 2009.

Issues

Hence, Pacete interposes the present petition before this Court anchored on the following grounds: 1) that reconveyance is not proper under the availing set of facts; and 2) that the award of damages is not justified.

Pacete contends that OCT No. V-16654, issued in his name in 1961, is an unassailable evidence of his ownership over the disputed lot having been issued pursuant to the Torrens System of Registration. Citing jurisprudence, he argues that a Torrens title is generally a conclusive evidence of the ownership of the land referred to therein[9] and that the mere possession cannot defeat the title of a holder of a registered Torrens title to real property.[10] He asserts that he is the legal owner of the lot by virtue of the said title as against Asotigue's claim of ownership based on tax declarations which are not conclusive as evidence of ownership or proof of the area covered therein.[11]

Moreover, Pacete argues that the application of the doctrine of tacking of possession was misplaced and erroneous as there was no proof that the predecessors-in-interest of Asotigue were in actual or physical possession of the subject lot and that Asotigue's claim of previous ownership by Sumagad was not proven by any material and substantial evidence.

Finally, Pacete claims that reconveyance was not proper because he was already the owner of the said portion of land since 1961 and was the one dispossessed by Asotigue, the latter being a planter in bad faith and not entitled to an award of damages.

---

[9] *Ching v. Court of Appeals,* 260 Phil. 14, 23 (1990).

[10] *Spouses Eduarte v. CA,* 323 Phil. 462, 475 (1996).

[11] *Cureg v. Intermediate Appellate Court,* 258 Phil. 104, 110 (1989).

On the other hand, Asotigue points out that the petition failed to state specific errors committed by the CA in its assailed decision. He adds that the petition likewise failed to raise questions of law which must be distinctly set forth as required in Section 1, Rule 45 of the Rules of Court. He insists that the subject lot of 22,240 square meters was erroneously included in Pacete's title. Thus, he prays for the outright dismissal of the petition for lack of merit and for having been interposed for delay.

The Court's Ruling

The Court finds no merit in the petition.

On the issue of whether Pacete's title, OCT No. V-16654, which had included the lot in dispute, can be considered unassailable evidence of his ownership over the disputed lot, the Court rules in the negative. It must be stressed that both the RTC and the CA have passed upon this factual issue. In affirming the RTC, the CA made the following findings:

> Moreover, We agree with the findings of the court *a quo*, thus:
>
> > Plaintiff's evidence proves that all transactions involving the conveyance or transfer of rights and improvements of the land in litigation were with the knowledge and even consent of defendant. Defendant even accompanied Pasague, Sumagad, Datu Balimba, Datu Masagra and Brgy. Chairman Abay when this land was conveyed to Umpad by Pasague. Umpad later on conveyed this land to plaintiff. This land was conveyed from Sumagad to Pasague, then Pasague to Umpad and finally to plaintiff. From all these conveyances defendant did not make any claim on the land. He did not oppose any transfer from one person to another. It was the third transfer to plaintiff that defendant had laid claim. x x x.
>
> > The transfer from Pasague to Umpad was done on March 19, 1971. The sale by Sumagad to Pasague was obviously on a much earlier date. The land was granted to defendant in 1961. Original Certificate of Title No. V-16654 (Exh. "1") was issued in his favor. Defendant therefore was aware that the portion of this land was conveyed by Sumagad, then Pasague, then Umpad and ultimately to plaintiff. He did not protest their occupation until the year 2000.

> The possession of Sumagad in 1958 tacked to the possession of Pasague, Umpad and plaintiff was more than thirty (30) years. When Sumagad took possession on the land, it was still alienable and disposable. The title to defendant was only issued in 1961. x x x.
>
> Plaintiff had, therefore, acquired by operation of law a right to a grant, a government grant without the necessity of a certificate of title being issued on the land he is now in possession and cultivation.

Records also show that when the disputed lot was conveyed by Pasague to Umpad, Pacete never objected to it. Neither did he file a suit against Pasague over the said transfer to protect his supposed interest over the said lot. In fact, the testimony of Pasague taken on 12 November 2001 will bolster the fact that Pacete had full knowledge of the conveyance or transfer of the said lot made by Pasague to Umpad, as aptly found by the trial court:

> x x x. The boundaries of the land sold to Umpad were determined by Eleong Oloy, **Gaudencio Pacete** and Barangay Chairman Ricardo Abay. They were five of them who traced the boundaries. Among the boundaries are bamboo groves and camansi tree. The camansi tree was the boundary of this land and Pacete's. Pacete did not make any claim of this land.

Pacete was, therefore, not in good faith when he procured his OCT No. V-16654 in 1961.

Time and again, the High Court has ruled that, "it is a settled rule that the Land Registration Act protects only holders of title in good faith, and does not permit its provision to be used as a shield for the commission of fraud, or as a means to enrich oneself at the expense of others."

x x x x x x x x x

Thus, Pacete cannot therefore rely on his OCT No. V-16654 as an unassailable evidence of his ownership over the disputed property. The Land Registration Act and the Cadastral Act only protect holders of a title in good faith and do not permit their provisions to be used as a shield to enrich oneself at the expense of another.[12]

---

[12] *Rollo,* pp. 32-34.

As correctly found by the CA, Pacete cannot rely on his OCT No. V-16654 as an incontrovertible proof of his ownership over the property in dispute because he was not in good faith when he obtained the said title as he was fully aware of the conveyance of the said lot between Pasague and Umpad.

Reconveyance is proper under the circumstances. Reconveyance is available not only to the legal owner of a property but also to the person *with a better right* than the person under whose name said property was erroneously registered.[13] Although Asotigue is not the titled owner of the disputed lot, he apparently has a better right than Pacete, the latter not being in good faith when he obtained his title to the said property. In *Munoz v. Yabut, Jr.*,[14] the Court had the occasion to describe an action for reconveyance as follows:

> An action for reconveyance is an action *in personam* available to a person whose property has been wrongfully registered under the Torrens system in another's name. Although the decree is recognized as incontrovertible and no longer open to review, the registered owner is not necessarily held free from liens. As a remedy, an action for reconveyance is filed as an ordinary action in the ordinary courts of justice and not with the land registration court. **Reconveyance is always available as long as the property has not passed to an innocent third person for value.** A notice of *lis pendens* may thus be annotated on the certificate of title immediately upon the institution of the action in court. The notice of *lis pendens* will avoid transfer to an innocent third person for value and preserve the claim of the real owner.[15] (Emphasis supplied)

In a number of cases, the Court has ordered reconveyance of property to the true owner or to the one with a better right, where the property had been erroneously or fraudulently titled

---

[13] *Gasataya v. Mabasa*, G.R. No. 148147, February 16, 2007, 516 SCRA 105, 110, citing *De Guzman v. Court of Appeals*, 442 Phil. 534 (2002); *Aguila v. Court of Appeals*, No. L-48335, April 15, 1998, 160 SCRA 352.

[14] G.R. No. 142676, June 6, 2011, 650 SCRA 344.

[15] *Munoz v. Yabut, Jr.*, G.R. No. 142676, June 6, 2011, 650 SCRA 344, 366-367, citing *Heirs of Eugenio Lopez, Sr. v. Enriquez*, 490 Phil. 74 (2005).

in another person's name. In the present case, when Pacete procured OCT No. V-16654 in 1961, the disputed lot, being a portion covered by the said title, was already in possession of Asotigue. His predecessor-in-interest, Sumagad, had been occupying it since 1958. There was, therefore, an erroneous or wrongful registration of Asotigue's Lot 5-A of Lot 5, GSS-326, in favor of Pacete, who neither possessed nor occupied the same. Inasmuch as the latter had not passed the lot in question to an innocent purchaser for value, an action for reconveyance is proper. After all, the Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and, thus, holds title in bad faith.[16]

Equally devoid of merit is Pacete's contention that damages were unjustly awarded in favor of Asotigue. In this regard, it is well to quote the following findings of the RTC, *viz*:

> Plaintiff was constrained to litigate. Defendant did not agree to a conciliation when called by the Barangay Chairman and then the Lupon (Exh. "H"). Plaintiff even wanted to be paid of his improvements which he had obviously introduced in good faith, but defendant did not accept the offer. Plaintiff is entitled to all the damages he claimed against the defendant. Defendant should be sanctioned of his indifference or his inaction to stop his two (2) sons from ousting defendant tapper from the land. They threatened Hermoso harshly that the latter stopped tapping the rubber trees planted by plaintiff. Defendant admitted that plaintiff was the one who planted these rubber trees. He did not stop them. When it was already tappable his two (2) sons stopped their tapping. Defendant should pay for the loss of income of plaintiff of these rubber trees.
>
> Article 19 of the New Civil Code of the Philippines provides: every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. Article 20 of the same Code provides: every person, who contrary to law, willfully or negligently causes damages to another shall indemnify the latter for the same Article 21 of the same Code provides: Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or

---

[16] *Ney v. Quijano*, G.R. No. 178609, August 4, 2010, 626 SCRA 800, 810.

public policy shall compensate the latter for the damage. Defendant violated the foregoing laws on human relation. As example for others who will be similarly situated, defendant is directed to pay exemplary damages.[17]

The Court finds no reversible error on the part of the CA in sustaining the award of damages to Asotigue. The latter was able to substantiate his entitlement to moral damages due to Pacete's act of including his (Asotigue's) portion in the registration of his own land. As a deterrent to others who would have the same thing in mind in coveting the property of others, the award for exemplary damages is justifiable.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Brion,[*] *Peralta*[**] *(Acting Chairperson), Abad,* and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 196171. December 10, 2012]

RCBC CAPITAL CORPORATION, *petitioner, vs.* **BANCO DE ORO UNIBANK, INC.,** *respondent.*

[G.R. No. 199238. December 10, 2012]

BANCO DE ORO UNIBANK, INC., *petitioner, vs.* **COURT OF APPEALS and RCBC CAPITAL CORPORATION,** *respondents.*

---

[17] *Rollo,* p. 60.

[*] Designated additional member, per Special Order No. 1395 dated December 6, 2012.

[**] Per Special Order No. 1394 dated December 6, 2012.

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; ARBITRATIONS; ARBITRATION CASES ADMINISTERED AND CONDUCTED BY THE INTERNATIONAL CHAMBER OF COMMERCE-INTERNATIONAL COURT OF ARBITRATION (ICC-ICA) ARE NEVERTHELESS ARBITRATION UNDER PHILIPPINE LAW SINCE THE PARTIES ARE BOTH RESIDENTS OF THE COUNTRY; THE PROVISIONS OF REPUBLIC ACT NO. 876 (RA 876), AS AMENDED BY REPUBLIC ACT NO. 9285 (RA 9285) IS PRINCIPALLY APPLICABLE IN CASE AT BAR. —** As stated in the Partial Award dated September 27, 2007, although the parties provided in Section 10 of the SPA that the arbitration shall be conducted under the ICC Rules, it was nevertheless arbitration under Philippine law since the parties are both residents of this country. The provisions of Republic Act No. 876 (RA 876), as amended by Republic Act No. 9285 (RA 9285) principally applied in the arbitration between the herein parties.

2. **ID.; ID.; ID.; ID.; A REVIEW BROUGHT TO THE COURT UNDER SPECIAL ALTERNATIVE DISPUTE RESOLUTION (ADR) RULES IS NOT A MATTER OF RIGHT; RULE 19.36 OF THE ADR RULES SPECIFIED THE CONDITIONS FOR THE EXERCISE OF THE COURT'S DISCRETIONARY REVIEW OF THE COURT OF APPEALS' DECISION. —** It must be stated that a review brought to this Court under the Special ADR Rules is not a matter of right. Rule 19.36 of said Rules specified the conditions for the exercise of this Court's discretionary review of the CA's decision. **Rule 19.36.** *Review discretionary*. — A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for **serious and compelling reasons resulting in grave prejudice to the aggrieved party**. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, **when the Court of Appeals**: **Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules** in arriving at its decision resulting in substantial prejudice to the aggrieved party; x x x The applicable standard for judicial review of

arbitral awards in this jurisdiction is set forth in Rule 19.10 which states: **Rule 19.10**. *Rule on judicial review on arbitration in the Philippines*. — As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a **clear showing** that the award suffers from **any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law** in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules. x x x Accordingly, we examine the merits of the petition before us solely on the statutory ground raised for vacating the Second Partial Award: evident partiality, pursuant to Section 24 (b) of the Arbitration Law (RA 876) and Rule 11.4 (b) of the Special ADR Rules.

3. ID.; ID.; ID.; ID.; GROUNDS FOR VACATING AN ARBITRAL AWARD; EVIDENT PARTIALITY; NOT DEFINED IN OUR ARBITRATION LAWS; DEFINITIONS LAID DOWN IN OTHER JURISDICTIONS, CONSIDERED. — Evident partiality is not defined in our arbitration laws. As one of the grounds for vacating an arbitral award under the Federal Arbitration Act (FAA) in the United States (US), the term "encompasses both an arbitrator's explicit bias toward one party and an arbitrator's inferred bias when an arbitrator fails to disclose relevant information to the parties." From a recent decision of the Court of Appeals of Oregon, we quote a brief discussion of the common meaning of evident partiality: To determine the meaning of "evident partiality," we begin with the terms themselves. The common meaning of "partiality" is "the **inclination to favor one side**." *Webster's Third New Int'l Dictionary* 1646 (unabridged ed 2002); *see also id*. (defining "partial" as "inclined to favor one party in a cause or one side of a question more than the other: biased, predisposed" (formatting in original)). "Inclination," in turn, means "a particular disposition of mind or character: propensity, bent" or "a tendency to a particular aspect, state, character, or action." *Id*. at 1143 (formatting in original); *see also id*. (defining "inclined" as "having inclination, disposition, or tendency"). The common meaning of "evident" is "capable of being perceived esp[ecially] by sight: distinctly visible: being in evidence: discernable[;] *** clear to the understanding: obvious, manifest, apparent." *Id.* at 789 (formatting in original);

see also id. (stating that synonyms of "evident" include "apparent, patent, manifest, plain, clear, distinct, obvious, [and] palpable" and that, **"[s]ince evident rather naturally suggests *evidence,* it may imply the existence of signs and indications that must lead to an identification or inference"** (formatting in original)). Evident partiality in its common definition thus implies "the existence of *signs and indications* that must lead to an identification or inference" of partiality. Despite the increasing adoption of arbitration in many jurisdictions, there seems to be no established standard for determining the existence of evident partiality. In the US, evident partiality "continues to be the subject of somewhat conflicting and inconsistent judicial interpretation when an arbitrator's failure to disclose prior dealings is at issue."

4. ID.; ID.; ID.; ID.; THE COURT ADOPTS THE *REASONABLE IMPRESSION OF PARTIALITY* STANDARD, WHICH REQUIRES A SHOWING THAT A REASONABLE PERSON WOULD HAVE TO CONCLUDE THAN AN ARBITRATOR WAS PARTIAL TO THE OTHER PARTY TO THE ARBITRATION. — We affirm the foregoing findings and conclusion of the appellate court save for its reference to the *obiter* in *Commonwealth Coatings* that arbitrators are held to the same standard of conduct imposed on judges. Instead, the Court adopts the *reasonable impression of partiality* standard, which requires a showing that a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration. Such interest or bias, moreover, "must be direct, definite and capable of demonstration rather than remote, uncertain, or speculative." When a claim of arbitrator's evident partiality is made, "the court must ascertain from such record as is available whether the arbitrators' conduct was so biased and prejudiced as to destroy fundamental fairness."

5. ID.; ID.; ID.; ID.; APPLYING THE *REASONABLE IMPRESSION OF PARTIALITY* STANDARD IN CASE AT BAR, THE COURT UPHELD THE COURT OF APPEALS' FINDING THAT CHAIRMAN BAKER'S ACT OF FURNISHING THE PARTIES WITH COPIES OF MATTHEW SECOMB'S ARTICLE, CONSIDERING THE ATTENDANT CIRCUMSTANCES, IS INDICATIVE OF PARTIALITY SUCH THAT A REASONABLE MAN

WOULD HAVE TO CONCLUDE THAT HE WAS FAVORING THE CLAIMANT RCBC. — We agree with the CA in finding that Chairman Barker's act of furnishing the parties with copies of Matthew Secomb's article, considering the attendant circumstances, is indicative of partiality such that a reasonable man would have to conclude that he was favoring the Claimant, RCBC. Even before the issuance of the Second Partial Award for the reimbursement of advance costs paid by RCBC, Chairman Barker exhibited strong inclination to grant such relief to RCBC, notwithstanding his categorical ruling that the Arbitration Tribunal "has no power *under the ICC Rules* to order the Respondents to pay the advance on costs sought by the ICC or to give the Claimant any relief against the Respondents' refusal to pay." That Chairman Barker was predisposed to grant relief to RCBC was shown by his act of interpreting RCBC's letter, which merely reiterated its plea to declare the Respondents in default and consider all counterclaims withdrawn – as what the ICC Rules provide — as an application to the Arbitration Tribunal to issue a partial award in respect of BDO's failure to share in the advance costs. It must be noted that RCBC in said letter did not contemplate the issuance of a partial order, despite Chairman Barker's previous letter which mentioned the possibility of granting relief upon the parties making submissions to the Arbitration Tribunal. Expectedly, in compliance with Chairman Barker's December 18, 2007 letter, RCBC formally applied for the issuance of a partial award ordering BDO to pay its share in the advance costs.

6. ID.; ID.; ID.; ID.; BY FURNISHING THE PARTIES WITH A COPY OF MATTHEW SECOMB'S ARTICLE, CHAIRMAN BAKER PRACTICALLY ARMED PETITIONER RIZAL COMMERCIAL BANKING CORPORATION (RCBC) WITH SUPPORTING LEGAL ARGUMENTS WHICH PETITIONER UTILIZED IN ITS APPLICATION FOR REIMBURSEMENT OF ADVANCE COSTS. — Mr. Secomb's article, *"Awards and Orders Dealing With the Advance on Costs in ICC Arbitration: Theoretical Questions and Practical Problems"* specifically dealt with the situation when one of the parties to international commercial arbitration refuses to pay its share on the advance on costs. After a brief discussion of the provisions of ICC Rules dealing with advance on costs, which did not provide for issuance of

a partial award to compel payment by the defaulting party, the author stated: 4. As we can see, the Rules have certain mechanisms to deal with defaulting parties. Occasionally, however, parties have sought to use other methods to tackle the problem of a party refusing to pay its part of the advance on costs. These have included seeking an order or award from the arbitral tribunal condemning the defaulting party to pay its share of the advance on costs. Such applications are the subject of this article. By furnishing the parties with a copy of this article, Chairman Barker practically armed RCBC with supporting legal arguments under the "contractual approach" discussed by Secomb. True enough, RCBC in its Application for Reimbursement of Advance Costs Paid utilized approach as it singularly focused on Article 30(3) of the ICC Rules and fiercely argued that BDO was contractually bound to share in the advance costs fixed by the ICC. But whether under the "contractual approach" or "provisional approach" (an application must be treated as an interim measure of protection under Article 23 [1] rather than enforcement of a contractual obligation), both treated in the Secomb article, RCBC succeeded in availing of a remedy which was not expressly allowed by the Rules but in practice has been resorted to by parties in international commercial arbitration proceedings. It may also be mentioned that the author, Matthew Secomb, is a member of the ICC Secretariat and the "Counsel in charge of the file", as in fact he signed some early communications on behalf of the ICC Secretariat pertaining to the advance costs fixed by the ICC. This bolstered the impression that Chairman Barker was predisposed to grant relief to RCBC by issuing a partial award.

7. ID.; ID.; ID.; ID.; FAIRNESS DICTATES THAT CHAIRMAN BAKER REFRAIN FROM SUGGESTING TO OR DIRECTING RCBC TOWARDS A COURSE OF ACTION TO ADVANCE THE LATTER'S CAUSE, BY PROVIDING IT WITH LEGAL ARGUMENTS CONTAINED IN AN ARTICLE WRITTEN BY A LAWYER WHO SERVES AT THE ICC SECRETARIAT AND WAS INVOLVED OR HAD PARTICIPATION INSOFAR AS THE ACTIONS OR RECOMMENDATIONS OF THE ICC IN THE CASE. — Indeed, fairness dictates that Chairman Barker refrain from suggesting to or directing RCBC towards a course of action to advance the latter's cause, by providing it with legal

arguments contained in an article written by a lawyer who serves at the ICC Secretariat and was involved or had participation — insofar as the actions or recommendations of the ICC — in the case. Though done purportedly to assist both parties, Chairman Barker's act clearly violated Article 15 of the ICC Rules declaring that "[i]n all cases, the Arbitral Tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case." Having pre-judged the matter in dispute, Chairman Barker had lost his objectivity in the issuance of the Second Partial Award. In fine, we hold that the CA did not err in concluding that the article ultimately favored RCBC as it reflected in advance the disposition of the Arbitral Tribunal, as well as "signalled a preconceived course of action that the relief prayed for by RCBC will be granted." This conclusion is further confirmed by the Arbitral Tribunal's pronouncements in its Second Partial Award which not only adopted the "contractual approach" but even cited Secomb's article along with other references.

8. ID.; ID.; ID.; ID.; THE MERITS OF THE PARTIES' ARGUMENTS AS TO THE PROPRIETY OF THE ISSUANCE OF THE SECOND PARTIAL AWARD ARE NOT IN ISSUE IN CASE AT BAR; COURTS ARE GENERALLY WITHOUT POWER TO AMEND OR OVERRULE MERELY BECAUSE OF DISAGREEMENT WITH MATTERS OF LAW OR FACTS DETERMINED BY THE ARBITRATORS. — The Court, however, must clarify that the merits of the parties' arguments as to the propriety of the issuance of the Second Partial Award are not in issue here. Courts are generally without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators. They will not review the findings of law and fact contained in an award, and will not undertake to substitute their judgment for that of the arbitrators. A contrary rule would make an arbitration award the commencement, not the end, of litigation. It is the finding of evident partiality which constitutes legal ground for vacating the Second Partial Award and not the Arbitration Tribunal's application of the ICC Rules adopting the "contractual approach" tackled in Secomb's article.

9. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; REQUISITES BEFORE AN INJUNCTIVE WRIT CAN BE

ISSUED. — Before an injunctive writ can be issued, it is essential that the following requisites are present: (1) there must be a right *in esse* or the existence of a right to be protected; and (2) the act against which injunction to be directed is a violation of such right. The *onus probandi* is on movant to show that there exists a right to be protected, which is directly threatened by the act sought to be enjoined. Further, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent a serious damage.

10. ID.; ID.; ID.; RESPONDENT FAILED TO ESTABLISH THE EXISTENCE OF A CLEAR LEGAL RIGHT TO ENJOIN THE EXECUTION OF THE FINAL AWARD CONFIRMED BY THE MAKATI REGIONAL TRIAL COURT, BRANCH 148, PENDING RESOLUTION OF ITS APPEAL. — We find no reversible error or grave abuse of discretion in the CA's denial of the application for stay order or TRO upon its finding that BDO failed to establish the existence of a clear legal right to enjoin execution of the Final Award confirmed by the Makati City RTC, Branch 148, pending resolution of its appeal. It would be premature to address on the merits the issues raised by BDO in the present petition considering that the CA still has to decide on the validity of said court's orders confirming the Final Award.

11. ID.; ID.; ID.; A WRIT OF INJCUNTION BECOMES MOOT AND ACADEMIC AFTER THE ACT SOUGHT TO BE ENJOINED HAS ALREADY BEEN CONSUMMATED. — But more important, since BOO had already paid ₱637,941,185.55 m manager's check, albeit under protest, and which payment was accepted by RCBC as full and complete satisfaction of the writ of execution, there is no more act to be enjoined. Settled is the rule that injunctive reliefs are preservative remedies for the protection of substantive rights and interests. Injunction is not a cause of action in itself, but merely a provisional remedy, an adjunct to a main suit. When the act sought to be enjoined has become *fait accompli*, the prayer for provisional remedy should be denied. Thus, the Court ruled in *Go v. Looyuko* that when the events sought to be prevented by injunction or prohibition have already happened, nothing more could be enjoined or prohibited. Indeed, it is a universal principle of law that an injunction will not issue to

restrain the performance of an act already done. This is so for the simple reason that nothing more can be done in reference thereto. A writ of injunction becomes moot and academic after the act sought to be enjoined has already been consummated.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for RCBC.
Belo Gozon Parel Asuncion & Lucila for BDO Unibank.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court are two consolidated petitions separately filed by the parties in an arbitration case administered by the International Chamber of Commerce-International Court of Arbitration (ICC-ICA) pursuant to the arbitration clause in their contract.

The Case

In **G.R. No. 196171**, a petition for review under Rule 45 of the 1997 Rules of Civil Procedure, as amended, RCBC Capital Corporation (RCBC) seeks to reverse the Court of Appeals (CA) Decision[1] dated December 23, 2010 in CA-G.R. SP No. 113525 which reversed and set aside the June 24, 2009 Order[2] of the Regional Trial Court (RTC) of Makati City, Branch 148 in SP Proc. Case No. M-6046.

In **G.R. No. 199238,** a petition for *certiorari* under Rule 65, Banco De Oro Unibank, Inc. (BDO) assails the Resolution[3]

---

[1] *Rollo* (G.R. No. 196171), Vol. I, pp. 48-65. Penned by Associate Justice Florito S. Macalino with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. concurring.

[2] *Id.* at 974-988. Penned by Judge Oscar B.Pimentel.

[3] *Rollo* (G.R. No. 199238), Vol. I, pp. 66-68. Penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of this Court) with Associate Justices Sesinando E. Villon and Elihu A. Ybañez concurring.

dated September 13, 2011 in CA-G.R. SP No. 120888 which denied BDO's application for the issuance of a stay order and/or temporary restraining order (TRO)/preliminary injunction against the implementation of the Writ of Execution[4] dated August 22, 2011 issued by the Makati City RTC, Branch 148 in SP Proc. Case No. M-6046.

Factual Antecedents

On May 24, 2000, RCBC entered into a Share Purchase Agreement[5] (SPA) with Equitable-PCI Bank, Inc. (EPCIB), George L. Go and the individual shareholders[6] of Bankard, Inc. (Bankard) for the sale to RCBC of 226,460,000 shares (Subject Shares) of Bankard, constituting 67% of the latter's capital stock. After completing payment of the contract price (₱1,786,769,400), the corresponding deeds of sale over the subject shares were executed in January 2001.

The dispute between the parties arose sometime in May 2003 when RCBC informed EPCIB and the other selling shareholders of an overpayment of the subject shares, claiming there was an overstatement of valuation of accounts amounting to ₱478 million and that the sellers violated their warranty under Section 5(g) of the SPA.[7]

As no settlement was reached, RCBC commenced arbitration proceedings with the ICC-ICA in accordance with Section 10 of the SPA which states:

---

[4] *Rollo* (G.R. No. 199238), Vol. II, pp. 1203-1206.

[5] *Rollo* (G.R. No. 196171), Vol. I, pp. 71-106.

[6] *Id.* at 174-175. The Listed Individual Shareholders at the time of the claim were: PCI Bank, Rogelio S. Chua, Ferdinand Martin G. Romualdez, Federico C. Pascual, Leopoldo S. Veroy, Wilfrido V. Vergara, Edilberto V. Javier, Anthony F. Conway, Rene J. Buenaventura, Patrick D. Go, Genevieve W.J. Go, Oscar P. Lopez-Dee, Romulad U. Dy Tang, Gloria L. Tan Climaco, Walter C. Wessmer, Antonio N. Cotoco, and various numbered EPCIB Trust Accounts.

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

Section 10. **Arbitration**

Should there be any dispute arising between the parties relating to this Agreement including the interpretation or performance hereof which cannot be resolved by agreement of the parties within fifteen (15) days after written notice by a party to another, such matter shall then be finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in force as of the time of arbitration, by three arbitrators appointed in accordance with such rules. The venue of arbitration shall be in Makati City, Philippines and the arbitration proceedings shall be conducted in the English language. Substantive aspects of the dispute shall be settled by applying the laws of the Philippines. The decision of the arbitrators shall be final and binding upon the parties hereto and the expenses of arbitration (including without limitation the award of attorney's fees to the prevailing party) shall be paid as the arbitrators shall determine.[8]

In its Request for Arbitration[9] dated May 12, 2004, Claimant RCBC charged Bankard with deviating from and contravening generally accepted accounting principles and practices, due to which the financial statements of Bankard prior to the stock purchase were far from fair and accurate, and resulted in the overpayment of ₱556 million. For this violation of sellers' representations and warranties under the SPA, RCBC sought its rescission, as well as payment of actual damages in the amount of ₱573,132,110, legal interest on the purchase price until actual restitution, moral damages and litigation and attorney's fees, with alternative prayer for award of damages in the amount of at least ₱809,796,082 plus legal interest.

In their Answer,[10] EPCIB, Go and the other selling individual shareholders (Respondents) denied RCBC's allegations contending that RCBC's claim is one for overpayment or price reduction under Section 5(h) of the SPA which is already time-barred, the remedy of rescission is unavailable, and even assuming

---

[8] *Id.* at 89.

[9] *Id.* at 118-134.

[10] *Id.* at 248-267.

that rescission is permitted by the SPA, RCBC failed to file its claim within a reasonable time. They further asserted that RCBC is not entitled to its alternative prayer for damages, being guilty of laches and failing to set out the details of the breach as required under Section 7 of the SPA. A counterclaim for litigation expenses and costs of arbitration in the amount of US$300,000, as well as moral and exemplary damages, was likewise raised by the Respondents.

RCBC submitted a Reply[11] to the aforesaid Answer.

Subsequently, the Arbitration Tribunal was constituted. Mr. Neil Kaplan was nominated by RCBC; Justice Santiago M. Kapunan (a retired Member of this Court) was nominated by the Respondents; and Sir Ian Barker was appointed by the ICC-ICA as Chairman.

On August 13, 2004, the ICC-ICA informed the parties that they are required to pay US$350,000 as advance on costs pursuant to Article 30 (3) of the ICC Rules of Arbitration (ICC Rules). RCBC paid its share of US$107,000, the balance remaining after deducting payments of US$2,500 and US$65,000 it made earlier. Respondents' share of the advance on costs was thus fixed at US$175,000.

Respondents filed an Application for Separate Advances on Costs[12] dated September 17, 2004 under Article 30(2) of the ICC Rules, praying that the ICC fix separate advances on the cost of the parties' respective claims and counterclaims, instead of directing them to share equally on the advance cost of Claimant's (RCBC) claim. Respondents deemed this advance cost allocation to be proper, pointing out that the total amount of RCBC's claim is substantially higher — more than 40 times — the total amount of their counterclaims, and that it would be unfair to require them to share in the costs of arbitrating what is essentially a price issue that is now time-barred under the SPA.

---

[11] *Id.* at 284-305.

[12] *Id.* at 163-167.

On September 20, 2004, the ICC-ICA informed Respondents that their application for separate advances on costs was premature pending the execution of the Terms of Reference (TOR).[13] The TOR was settled by the parties and signed by the Chairman and Members of the Arbitral Tribunal by October 11, 2004. On December 3, 2004,[14] the ICC-ICA denied the application for separate advances on costs and invited anew the Respondents to pay its share in the advance on costs. However, despite reminders from the ICC-ICA, Respondents refused to pay their share in the advance cost fixed by the ICC-ICA. On December 16, 2004, the ICC-ICA informed the parties that if Respondents still failed to pay its share in the advance cost, it would apply Article 30(4) of the ICC Rules and request the Arbitration Tribunal to suspend its work and set a new time limit, and if such requested deposit remains unpaid at the expiry thereof, the counterclaims would be considered withdrawn.[15]

In a fax-letter dated January 4, 2005, the ICC-ICA invited RCBC to pay the said amount in substitution of Respondents. It also granted an extension until January 17, 2005 within which to pay the balance of the advance cost (US$175,000). RCBC replied that it was not willing to shoulder the share of Respondents in the advance on costs but nevertheless requested for a clarification as to the effect of such refusal to substitute for Respondents' share.[16]

On March 10, 2005, the ICC-ICA instructed the Arbitration Tribunal to suspend its work and granted the parties a final time-limit of 15 days to pay the balance of the advance on costs, failing which the claims shall be considered withdrawn, without prejudice to their reintroduction at a later date in another proceeding. The parties were advised that if any of them objects to the measure, it should make a request in writing within such period.[17] For

---

[13] *Id.* at 170-171.

[14] CA *rollo* (CA-G.R. SP No. 113525), Vol. I, pp. 258-259.

[15] *Id.* at 260-261.

[16] *Rollo* (G.R. No. 196171), Vol. I, pp. 404-405.

[17] *Id.* at 411-412.

the same reason of non-receipt of the balance of the advance cost, the ICC-ICA issued Procedural Order No. 3 for the adjournment of the substantive hearings and granting the Respondents a two-month extension within which to submit their brief of evidence and witnesses.

RCBC objected to the cancellation of hearings, pointing out that Respondents have been given ample time and opportunity to submit their brief of evidence and prepare for the hearings and that their request for postponement serves no other purpose but to delay the proceedings. It alleged that Respondents' unjustified refusal to pay their share in the advance on costs warrants a ruling that they have lost standing to participate in the proceedings. It thus prayed that Respondents be declared as in default, the substantive hearings be conducted as originally scheduled, and RCBC be allowed to submit rebuttal evidence and additional witness statements.[18]

On December 15, 2005, the ICC-ICA notified the parties of its decision to increase the advances on costs from US$350,000 to US$450,000 subject to later readjustments, and again invited the Respondents to pay the US$100,000 increment within 30 days from notice. Respondents, however, refused to pay the increment, insisting that RCBC should bear the cost of prosecuting its own claim and that compelling the Respondents to fund such prosecution is inequitable. Respondents reiterated that it was willing to pay the advance on costs for their counterclaim.[19]

On December 27, 2005, the ICC-ICA advised that it was not possible to fix separate advances on costs as explained in its December 3, 2004 letter, and again invited Respondents to pay their share in the advance on costs. Respondents' response contained in the letter dated January 6, 2006 was still the same: it was willing to pay only the separate advance on costs of their counterclaim.[20] In view of Respondents' continuing refusal to pay its equal share in the advance on costs and increment,

---

[18] *Id.* at 414-417.

[19] *Id.* at 423-424, 433-434.

[20] *Id.* at 429-434.

RCBC wrote the ICC-ICA stating that the latter should compel the Respondents to pay as otherwise RCBC will be prejudiced and the inaction of the ICC-ICA and the Arbitration Tribunal will detract from the effectiveness of arbitration as a means of settling disputes. In accordance with Article 30(4) of the ICC Rules, RCBC reiterated its request to declare the Respondents as in default without any personality to participate in the proceedings not only with respect to their counterclaims but also to the claim of RCBC.[21]

Chairman Ian Barker, in a letter dated January 25, 2006, stated in part:

x x x x x x x x x

2. **The Tribunal has no power under the ICC Rules to order the Respondents to pay the advance on costs sought by the ICC or to give the Claimant any relief against the Respondents' refusal to pay.** The ICC Rules differ from, for example, the Rules of the LCIA (Article 24.3) which enables a party paying the share of costs which the other party has refused to pay, to recover "*that amount as a debt immediately due from the defaulting party*."

3. The only sanction under the ICC Rules is contained within Article 30 (4). Where a request for an advance on costs has not been complied with, after consultation with the Tribunal, the Secretary-General may direct the Tribunal to suspend its work. After expiry of a time limit, all claims and counterclaims are then considered as withdrawn. This provision cannot assist a Claimant who is anxious to litigate its claim. Such a Claimant has to pay the sums requested (including the Respondents' share) if it wishes the arbitration to proceed.

4. **It may be possible for a Claimant in the course of the arbitral hearing (or whenever costs are being considered by the Tribunal) to make submissions based on the failure of the Respondents to pay their share of the costs advance. What relief, if any, would have to be then determined by the Tribunal after having heard submissions from the Respondents.**

5. I should be pleased if the Claimant will advise the Tribunal of its intention in relation to the costs advance. If the costs are not

[21] *Id.* at 436-439.

paid, the arbitration cannot proceed.[22] (Italics in the original; emphasis supplied)

RCBC paid the additional US$100,000 under the second assessment to avert suspension of the Arbitration Tribunal's proceedings.

Upon the commencement of the hearings, the Arbitration Tribunal decided that hearings will be initially confined to issues of liability (*liability phase*) while the substantial issues will be heard on a later date (*quantum phase*).

Meanwhile, EPCIB's corporate name was officially changed to Banco De Oro (BDO)-EPCIB after its merger with BDO was duly approved by the Securities and Exchange Commission. As such, BDO assumed all the obligations and liabilities of EPCIB under the SPA.

On September 27, 2007, the Arbitration Tribunal rendered a Partial Award[23] (First Partial Award) in ICC-ICA Case No. 13290/MS/JB/JEM, as follows:

15 AWARD AND DIRECTIONS

15.1 The Tribunal makes the following declarations by way of Partial Award:

(a) The Claimant's claim is not time-barred under the provisions of this SPA.

(b) The Claimant is not estopped by its conduct or the equitable doctrine of laches from pursuing its claim.

(c) As detailed in the Partial Award, the Claimant has established the following breaches by the Respondents of clause 5(g) of the SPA:

i) the assets, revenue and net worth of Bankard were overstated by reason of its policy on and recognition of Late Payment Fees;

---

[22] CA *rollo* (CA-G.R. SP No. 113525), Vol. I, p. 276.

[23] *Id.* at 282-411.

ii) reported receivables were higher than their realisable values by reason of the 'bucketing' method, thus overstating Bankard's assets; and

iii) the relevant Bankard statements were inadequate and misleading in that their disclosures caused readers to be misinformed about Bankard's accounting policies on revenue and receivables.

(d) Subject to proof of loss the Claimant is entitled to damages for the foregoing breaches.

(e) The Claimant is not entitled to rescission of the SPA.

(f) **All other issues, including any issue relating to costs, will be dealt with in a further or final award.**

15.2 A further Procedural Order will be necessary subsequent to the delivery of this Partial Award to deal with the determination of quantum and in particular, whether there should be an Expert appointed by the Tribunal under Article 20(4) of the ICC Rules to assist the Tribunal in this regard.

15.3 This Award is delivered by a majority of the Tribunal (Sir Ian Barker and Mr. Kaplan). Justice Kapunan is unable to agree with the majority's conclusion on the claim of estoppel brought by the Respondents.[24] (Emphasis supplied)

On October 26, 2007, RCBC filed with the Makati City RTC, Branch 148 (SP Proc. Case No. M-6046) a motion to confirm the First Partial Award, while Respondents filed a motion to vacate the same.

ICC-ICA by letter[25] dated October 12, 2007 increased the advance on costs from US$450,000 to US$580,000. Under this third assessment, RCBC paid US$130,000 as its share on the increment. Respondents declined to pay its adjudged total share of US$290,000 on account of its filing in the RTC of a motion to vacate the First Partial Award.[26] The ICC-ICA then invited

---

[24] *Id.* at 409-410.

[25] *Rollo* (G.R. No. 196171), Vol. I, pp. 563-566.

[26] *Id.* at 572-573.

RCBC to substitute for Respondents in paying the balance of US$130,000 by December 21, 2007.[27] RCBC complied with the request, making its total payments in the amount of US$580,000.[28]

While RCBC paid Respondents' share in the increment (US$130,000), it reiterated its plea that Respondents be declared as in default and the counterclaims deemed as withdrawn.[29]

Chairman Barker's letter dated December 18, 2007 states in part:

x x x x x x x x x

8. Contrary to the Complainant's view, the Tribunal has no jurisdiction to declare that the Respondents have no right to participate in the proceedings concerning the claim. Article 30(4) of the ICC Rules applies only to any counterclaim of the Respondents.

9. **The Tribunal interprets the Claimant's latest letter as an application by the Claimant to the Tribunal for the issue of a partial award against the Respondents in respect of their failure to pay their share of the ICC's requests for advance on costs**.

10. I should be grateful if the Claimant would confirm that this is the situation. If so, the Claimant should propose a timetable for which written submissions should be made by both parties. This is an application which can be considered by the Tribunal on written submissions.[30] (Emphasis supplied)

RCBC, in a letter dated December 26, 2007, confirmed the Arbitration Tribunal's interpretation that it was applying for a partial award against Respondents' failure to pay their share in the advance on costs.[31]

---

[27] *Id.* at 577-578.

[28] *Id.* at 590.

[29] *Id.* at 586.

[30] CA *rollo* (CA-G.R. SP No. 113525), Vol. I, p. 452.

[31] *Id.*, Vol. III, p. 1610.

Meanwhile, on January 8, 2008, the Makati City RTC, Branch 148 issued an order in SP Proc. Case No. M-6046 confirming the First Partial Award and denying Respondents' separate motions to vacate and to suspend and inhibit Barker and Kaplan. Respondents' motion for reconsideration was likewise denied. Respondents directly filed with this Court a petition for review on *certiorari* under Rule 45, docketed as **G.R. No. 182248** and entitled *Equitable PCI Banking Corporation v. RCBC Capital Corporation*.[32] In our Decision dated December 18, 2008, we denied the petition and affirmed the RTC's ruling confirming the First Partial Award.

On January 18, 2008, the Arbitration Tribunal set a timetable for the filing of submission by the parties on whether it should issue a Second Partial Award in respect of the Respondents' refusal to pay an advance on costs to the ICC-ICA.

In compliance, RCBC filed on February 7, 2008 an Application for Reimbursement of Advance on Costs Paid, praying for the issuance of a partial award directing the Respondents to reimburse its payment in the amount of US$290,000 representing Respondents' share in the Advance on Costs and to consider Respondents' counterclaim for actual damages in the amount of US$300,000, and moral and exemplary damages as withdrawn for their failure to pay their equal share in the advance on costs. RCBC invoked the plain terms of Article 30 (2) and (3) to stress the liability of Respondents to share equally in paying the advance on costs where the Arbitration Tribunal has fixed the same.[33]

Respondents, on the other hand, filed their Opposition[34] to the said application alleging that the Arbitration Tribunal has lost its objectivity in an unnecessary litigation over the payment of Respondents' share in the advance costs. They pointed out that RCBC's letter merely asked that Respondents be declared as in default for their failure to pay advance costs but the

---

[32] G.R. No. 182248, December 18, 2008, 574 SCRA 858.

[33] *Rollo* (G.R. No. 196171), Vol. I, pp. 606-612.

[34] *Id.* at 614-624.

Arbitration Tribunal, while denying the request offered an alternative to RCBC: a Partial Award for Respondents' share in the advance costs even if it was clear from the language of RCBC's December 11, 2007 letter that it had no intention of litigating for the advance costs. Chairman Barker, after ruling earlier that it cannot grant RCBC's request to declare the Respondents as having no right to participate in the proceedings concerning the claim, interpreted RCBC's letter as an application for the Arbitration Tribunal to issue a partial award in respect of such refusal of Respondents to pay their share in the advance on costs, and subsequently directed the parties to make submissions on the matter. Aside from violating their right to due process and to be heard by an impartial tribunal, Respondents also argued that in issuing the award for advance cost, the Arbitration Tribunal decided an issue beyond the terms of the TOR.

Respondents also emphasized that the parties agreed on a two-part arbitration: the first part of the Tribunal's proceedings would determine Respondents' liability, if any, for alleged violation of Section 5(g) and (h) of the SPA; and the second part of the proceedings would determine the amounts owed by one party to another as a consequence of a finding of liability or lack thereof. An award for "reimbursement of advances for costs" clearly falls outside the scope of either proceedings. Neither can the Tribunal justify such proceedings under Article 23 of the ICC Rules (Conservatory and Interim Measures) because that provision does not contemplate an award for the reimbursement of advance on costs in arbitration cases. Respondents further asserted that since the advances on costs have been paid by the Claimant (RCBC), the main claim and counterclaim may both be heard by the Arbitration Tribunal.

In his letter dated March 13, 2008, Chairman Barker advised the parties, as follows:

> 1. The Tribunal acknowledges the Respondents' response to the Claimant's application for a Partial Award, based on the Respondents' failure to pay their share of the costs, as requested by the ICC.

2. **The Tribunal notes that neither party has referred to an article by Mat[t]hew Secomb on this very subject which appears in the ICC Bulletin Vol. 14 No.1 (Spring 2003)**. To assist both sides and to ensure that the Tribunal does not consider material on which the parties have not been given an opportunity to address, I **attach** a copy of this article, which also contains reference to other scholarly works on the subject.

3. The Tribunal will give each party seven days within which to submit further written comments as a consequence of being alerted to the above authorities.[35] (Additional emphasis supplied)

The parties complied by submitting their respective comments.

RCBC refuted Respondents' allegation of partiality on the part of Chairman Barker and reiterated the prayer in its application for reimbursement of advance on costs paid to the ICC-ICA. RCBC contended *that based on Mr. Secomb's article,* whether the "contractual" or "provisional measures" approach is applied, the Arbitration Tribunal is vested with jurisdiction and authority to render an award with respect to said reimbursement of advance cost paid by the non-defaulting party.[36]

Respondents, on the other hand, maintained that RCBC's application for reimbursement of advance cost has no basis under the ICC Rules. They contended that no manifest injustice can be inferred from an act of a party paying for the share of the defaulting party as this scenario is allowed by the ICC Rules. Neither can a partial award for advance cost be justified under the "contractual approach" since the matter of costs for arbitration is between the ICC and the parties, not the Arbitration Tribunal and the parties. An arbitration tribunal can issue decisions on costs only for those costs not fixed by the ICC.[37]

Respondents reiterated their position that Article 30(3) envisions a situation whereby a party would refuse to pay its

[35] *Id.* at 626.

[36] *Id.* at 641-651.

[37] *Id.* at 661-664.

share on the advance on costs and provides a remedy therefor — the other party "shall be free to pay the whole of the advance on costs." Such party's reimbursement for payments of the defaulting party's share depends on the final arbitral award where the party liable for costs would be determined. This is the only remedy provided by the ICC Rules.[38]

On May 28, 2008, the Arbitration Tribunal rendered the Second Partial Award,[39] as follows:

> 7 **AWARD**
>
> 7.1 Having read and considered the submissions of both parties, the Tribunal AWARDS, DECLARES AND ORDERS as follows:
>
> (a) The Respondents are forthwith to pay to the Claimant the sum of US$290,000.
>
> (b) The Respondents' counterclaim is to be considered as withdrawn.
>
> (c) All other questions, including interest and costs, will be dealt with in a subsequent award.[40]

The above partial award was received by RCBC and Respondents on June 12, 2008.

On July 11, 2008, EPCIB filed a Motion to Vacate Second Partial Award[41] in the Makati City RTC, Branch 148 (SP Proc. Case No. M-6046). On July 10, 2008, RCBC filed in the same court a Motion to Confirm Second Partial Award.[42]

EPCIB raised the following grounds for vacating the Second Partial Award: (a) the award is void *ab initio* having been rendered

---

[38] *Id.* at 665.

[39] *Id.* at 672-687.

[40] *Id.* at 686. Justice Santiago M. Kapunan signed the Second Partial Award with notation "subject to my previous opinion."

[41] *Id.* at 700-723.

[42] *Id.* at 692-698.

by the arbitrators who exceeded their power or acted without it; and (b) the award was procured by undue means or issued with evident partiality or attended by misbehavior on the part of the Tribunal which resulted in a material prejudice to the rights of the Respondents. EPCIB argued that there is no express agreement either in the SPA or the ICC Rules for such right of reimbursement. There is likewise no implied agreement because from the ICC Rules, the only inference is that the parties agreed to await the dispositions on costs liability in the Final Award, not before.

On the ruling of the Arbitration Tribunal that Respondents' application for costs are not counterclaims, EPCIB asserted that this is contrary to Philippine law as it is basic in our jurisdiction that counterclaims for litigation expenses, moral and exemplary damages are proper counterclaims, which rule should be recognized in view of Section 10 of the SPA which provides that "substantive aspects of the dispute shall be settled by applying the laws of the Philippines." Finally, EPCIB takes issue with Chairman Barker's interpretation of RCBC's December 11, 2007 letter as an application for a partial award for reimbursement of the substituted payments. Such conduct of Chairman Barker is prejudicial and proves his evident partiality in favor of RCBC.

RCBC filed its Opposition,[43] asserting that the Arbitration Tribunal had jurisdiction to consider Respondents' counterclaim as withdrawn, the same having been abandoned by not presenting any computation or substantiation by evidence, their only computation relates only to attorney's fees which are simply cost of litigation properly brought at the conclusion of the arbitration. It also pointed out that the Arbitration Tribunal was empowered by the parties' arbitral clause to determine the manner of payment of expenses of arbitration, and that the Second Partial Award was based on authorities and treatises on the mandatory and contractual nature of the obligation to pay advances on costs.

---

[43] *Id.* at 725-742.

In its Reply,[44] EPCIB contended that RCBC had the option to agree to its proposal for separate advances on costs but decided against it; RCBC's act of paying the balance of the advance cost in substitution of EPCIB was for the purpose of having EPCIB defaulted and the latter's counterclaim withdrawn. Having agreed to finance the arbitration until its completion, RCBC is not entitled to immediate reimbursement of the amount it paid in substitution of EPCIB under an interim award, as its right to a partial or total reimbursement will have to be determined under the final award. EPCIB asserted that the matter of reimbursement of advance cost paid cannot be said to have properly arisen during arbitration. EPCIB reiterated that Chairman Barker's interpretation of RCBC's December 11, 2007 letter as an application for interim award for reimbursement is tantamount to a promise that the award will be issued in due course.

After a further exchange of pleadings, and other motions seeking relief from the court in connection with the arbitration proceedings (quantum phase), the Makati City RTC, Branch 148 issued the Order[45] dated June 24, 2009 confirming the Second Partial Award and denying EPCIB's motion to vacate the same. Said court held that since the parties agreed to submit any dispute under the SPA to arbitration and to be bound by the ICC Rules, they are also bound to pay in equal shares the advance on costs as provided in Article 30 (2) and (3). It noted that RCBC was forced to pay the share of EPCIB in substitution of the latter to prevent a suspension of the arbitration proceedings, while EPCIB's non-payment seems more like a scheme to delay such proceedings. On the Arbitration Tribunal's ruling on EPCIB's counterclaim, no error was committed in considering it withdrawn for failure of EPCIB to quantify and substantiate it with supporting evidence. As to EPCIB's claim for attorney's fees, the RTC agreed that these should be brought only at the close of arbitration.

---

[44] *Id.* at 744-760.

[45] *Id.* at 974-988.

EPCIB moved to reconsider the June 24, 2009 Order and for the voluntary inhibition of the Presiding Judge (Judge Oscar B. Pimentel) on the ground that EPCIB's new counsel represented another client in another case before him in which said counsel assailed his conduct and had likewise sought his inhibition. Both motions were denied in the Joint Order[46] dated March 23, 2010.

On April 14, 2010, EPCIB filed in the CA a petition for review[47] with application for TRO and/or writ of preliminary injunction (CA-G.R. SP No. 113525) in accordance with Rule 19, Section 4 of the Special Rules of Court on Alternative Dispute Resolution[48] (Special ADR Rules). EPCIB assailed the Makati City RTC, Branch 148 in denying its motion to vacate the Second Partial Award despite (a) said award having been rendered in excess of jurisdiction or power, and contrary to public policy; (b) the fact that it was issued with evident partiality and serious misconduct; (c) the award deals with a dispute not contemplated within the terms of submission to arbitration or beyond the scope of such submission, which therefore ought to be vacated pursuant to Article 34 of the UNCITRAL Model Law; and (d) the Presiding Judge having exhibited bias and prejudice against BDO and its counsel as confirmed by his pronouncements in the Joint Order dated March 23, 2010 in which, instead of recusing himself, he imputed malice and unethical conduct in the entry of appearance of Belo Gozon Elma Asuncion and Lucila Law Offices in SP Proc. Case No. M-6046, which warrants his voluntary inhibition.

Meanwhile, on June 16, 2010, the Arbitration Tribunal issued the Final Award,[49] as follows:

15 AWARD

15.1 The Tribunal by a majority (Sir Ian Barker & Mr. Kaplan) awards, declares and adjudges as follows:

---

[46] *Id.* at 1097-1102.

[47] *Id.* at 1104-1171.

[48] A.M. No. 07-11-08-SC which took effect on October 30, 2009 following its publication in three (3) newspapers of general circulation.

[49] *Rollo* (G.R. No. 199238), Vol. I, pp. 70-161.

(a) the Respondents are to pay damages to the Claimant for breach of the sale and purchase agreement for Bankard shares in the sum of ₱348,736,920.29.

(b) The Respondents are to pay to the Claimant the sum of US$880,000 in respect of the costs of the arbitration as fixed by the ICC Court.

(c) The Respondents are to pay to the Claimant the sum of US$582,936.56 for the fees and expenses of Mr. Best.

(d) The Respondents are to pay to the Claimant their expenses of the arbitration as follows:

(i)	Experts' fees	₱7,082,788.55
(ii)	Costs of without prejudice meeting	₱22,571.45
(iii)	Costs of arbitration hearings	₱553,420.66
(iv)	Costs of transcription service	₱483,597.26
	Total	₱8,144,377.62

(e) The Respondents are to pay to the Claimant the sum of ₱7,000,000 for party-and-party legal costs.

(f) The Counterclaims of the Respondents are all dismissed.

(g) All claims of the Claimant are dismissed, other than those referred to above.

15.2 Justice Kapunan does not agree with the majority of the members of the Tribunal and has issued a dissenting opinion. He has refused to sign this Award.[50]

On July 1, 2010 BDO filed in the Makati City RTC a Petition to Vacate Final Award *Ad Cautelam*,[51] docketed as SP Proc. Case No. M-6995, which was raffled to Branch 65.

On July 28, 2010, RCBC filed with the Makati City RTC, Branch 148 (SP Proc. Case No. M-6046) a Motion to Confirm Final Award.[52] BDO filed its Opposition With Motion to

---

[50] *Id.* at 160.

[51] *Id.* at 217-390.

[52] *Rollo* (G.R. No. 199238), Vol. II, pp. 932-948.

Dismiss[53] on grounds that a Petition to Vacate Final Award *Ad Cautelam* had already been filed in SP Proc. Case No. M-6995. BDO also pointed out that RCBC did not file the required petition but instead filed a mere motion which did not go through the process of raffling to a proper branch of the RTC of Makati City and the payment of the required docket/filing fees. Even assuming that Branch 148 has jurisdiction over RCBC's motion to confirm final award, BDO asserted that RCBC had filed before the Arbitration Tribunal an Application for Correction and Interpretation of Award under Article 29 of the ICC Rules, which is irreconcilable with its Motion to Confirm Final Award before said court. Hence, the Motion to Confirm Award was filed precipitately.

On August 18, 2010, RCBC filed an Omnibus Motion in SP Proc. Case No. M-6995 (Branch 65) praying for the dismissal of BDO's Petition to Vacate Final Award or the transfer of the same to Branch 148 for consolidation with SP Proc. Case No. M-6046. RCBC contended that BDO's filing of its petition with another court is a blatant violation of the Special ADR Rules and is merely a subterfuge to commit forum-shopping. BDO filed its Opposition to the Omnibus Motion.[54]

On October 28, 2010, Branch 65 issued a Resolution[55] denying RCBC's omnibus motion and directing the service of the petition to RCBC for the latter's filing of a comment thereon. RCBC's motion for reconsideration was likewise denied in the said court's Order dated December 15, 2010. RCBC then filed its Opposition to the Petition to Vacate Final Award *Ad Cautelam.*

Meanwhile, on November 10, 2010, Branch 148 (SP Proc. Case No. M-6046) issued an Order[56] confirming the Final Award "subject to the correction/interpretation thereof by the Arbitral

---

[53] *Id.* at 949-974.

[54] CA *rollo* (CA-G.R. SP No. 117451), Vol. IV, pp. 1985, 1988.

[55] *Id.* at 1985-1996.

[56] *Rollo* (G.R. No. 199238), Vol. II, pp. 1075-1083.

Tribunal pursuant to the ICC Rules and the UNCITRAL Model Law," and denying BDO's Opposition with Motion to Dismiss.

On December 30, 2010, George L. Go, in his personal capacity and as attorney-in-fact of the other listed shareholders of Bankard, Inc. in the SPA (Individual Shareholders), filed a petition in the CA, CA-G.R. SP No. 117451, seeking to set aside the above-cited November 10, 2010 Order and to enjoin Branch 148 from further proceeding in SP Proc. Case No. M-6046. By Decision[57] dated June 15, 2011, the CA dismissed the said petition. Their motion for reconsideration of the said decision was likewise denied by the CA in its Resolution[58] dated December 14, 2011.

On December 23, 2010, the CA rendered its Decision in CA-G.R. SP No. 113525, the dispositive portion of which states:

WHEREFORE, premises considered, the following are hereby **REVERSED and SET ASIDE**:

1. the Order dated June 24, 2009 issued in SP Proc. Case No. M-6046 by the Regional Trial Court of Makati City, Branch 148, insofar as it denied the Motion to Vacate Second Partial Award dated July 8, 2008 and granted the Motion to Confirm Second Partial Award dated July 10, 2008;

2. the Joint Order dated March 23, 2010 issued in SP Proc. Case No. M-6046 by the Regional Trial Court of Makati City, Branch 148, insofar as it denied the Motion For Reconsideration dated July 28, 2009 relative to the motions concerning the Second Partial Award immediately mentioned above; and

3. the Second Partial Award dated May 28, 2008 issued in International Chamber of Commerce Court of Arbitration Reference No. 13290/MS/JB/JEM.

SO ORDERED.[59]

---

[57] CA *rollo* (CA-G.R. SP No. 117451), Vol. V, pp. 2455-2476. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Mario V. Lopez and Socorro B. Inting.

[58] *Id.* (no pagination).

[59] *Rollo* (G.R. No. 196171), Vol. I, pp. 64-65.

RCBC filed a motion for reconsideration but the CA denied the same in its Resolution[60] dated March 16, 2011. On April 6, 2011, it filed a petition for review on *certiorari* in this Court (**G.R. No. 196171**).

On February 25, 2011, Branch 65 rendered a Decision[61] in SP Proc. Case No. M-6995, as follows:

> WHEREFORE, premises considered, the Final Award dated June 16, 2010 in ICC Ref. No. 13290/MS/JB/JEM is hereby VACATED with cost against the respondent.
>
> SO ORDERED.[62]

In SP Proc. Case No. M-6046, Branch 148 issued an Order[63] dated August 8, 2011 resolving the following motions: (1) Motion for Reconsideration filed by BDO, Go and Individual Shareholders of the November 10, 2010 Order confirming the Final Award; (2) RCBC's Omnibus Motion to expunge the motion for reconsideration filed by Go and Individual Shareholders, and for execution of the Final Award; (3) Motion for Execution filed by RCBC against BDO; (4) BDO's Motion for Leave to File Supplement to the Motion for Reconsideration; and (5) Motion for Inhibition filed by Go and Individual Shareholders. Said Order decreed:

> **WHEREFORE,** premises considered, it is hereby ORDERED, to wit:
>
> 1. Banco De Oro's Motion for Reconsideration, Motion for Leave to File Supplement to Motion for Reconsideration, and Motion to Inhibit are ***DENIED*** for lack of merit.
>
> 2. RCBC Capital's Motion to Expunge, Motion to Execute against Mr. George L. Go and the Bankard Shareholders, and the Motion to Execute against Banco De Oro are hereby ***GRANTED***.

---

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

[61] *Rollo* (G.R. No. 199238), Vol. II, pp. 908-931.

[62] *Id.* at 931.

[63] *Id.* at 1174-1191.

3. The damages awarded to RCBC Capital Corporation in the amount of PhP348,736,920.29 is subject to an interest of 6% per annum reckoned from the date of RCBC Capital's extra-judicial demand or from May 5, 2003 until the confirmation of the Final Award. Likewise, this compounded amount is subject to 12% interest per annum from the date of the confirmation of the Final Award until its satisfaction. The costs of the arbitration amounting to US$880,000.00, the fees and expenses of Mr. Best amounting to US$582,936.56, the Claimant's expenses of the arbitration amounting to PhP8,144,377.62, and the party-and-party legal costs amounting to PhP7,000,000.00 all ruled in favor of RCBC Capital Corporation in the Final Award of the Arbitral Tribunal dated June 16, 2010 are subject to 12% legal interest per annum, also reckoned from the date of the confirmation of the Final Award until its satisfaction.

4. Pursuant to Section 40 of R.A. No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004 in relation to Rule 39 of the Rules of Court, since the Final Award have been confirmed, the same shall be enforced in the same manner as final and executory decisions of the Regional Trial Court, let a writ of execution be issued commanding the Sheriff to enforce this instant Order confirming this Court's Order dated November 10, 2010 that judicially confirmed the June 16, 2010 Final Award.

SO ORDERED.[64]

Immediately thereafter, RCBC filed an Urgent Motion for Issuance of a Writ of Execution.[65] On August 22, 2011, after approving the execution bond, Branch 148 issued a Writ of Execution for the implementation of the said court's "Order dated August 8, 2011 confirming the November 10, 2010 Order that judicially confirmed the June 16, 2010 Final Award x x x."[66]

BDO then filed in the CA, a "Petition for Review (With Application for a Stay Order or Temporary Restraining Order and/or Writ of Preliminary Injunction," docketed as CA-G.R. SP No. 120888. BDO sought to reverse and set aside the Orders

---

[64] *Id.* at 1191.

[65] *Id.* at 1194-1201.

[66] *Id.* at 1203-1206.

dated November 10, 2010 and August 8, 2011, and any writ of execution issued pursuant thereto, as well as the Final Award dated June 16, 2010 issued by the Arbitration Tribunal.

In its Urgent Omnibus Motion[67] to resolve the application for a stay order and/or TRO/writ of preliminary injunction, and to quash the Writ of Execution dated August 22, 2011 and lift the Notices of Garnishment dated August 22, 2011, BDO argued that the assailed orders of execution (Writ of Execution and Notice of Garnishment) were issued with indecent haste and despite the non-compliance with the procedures in Special ADR Rules of the November 10, 2010 Order confirming the Final Award. BDO was not given sufficient time to respond to the demand for payment or to elect the method of satisfaction of the judgment debt or the property to be levied upon. In any case, with the posting of a bond by BDO, Branch 148 has no jurisdiction to implement the appealed orders as it would pre-empt the CA from exercising its review under Rule 19 of the Special ADR Rules after BDO had perfected its appeal. BDO stressed that the bond posted by RCBC was for a measly sum of ₱3,000,000.00 to cause execution pending appeal of a monetary award that may reach ₱631,429,345.29. RCBC also failed to adduce evidence of "good cause" or "good reason" to justify discretionary execution under Section 2(a), Rule 39 of the Rules of Court.

BDO further contended that the writ of execution should be quashed for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction as Branch 148 modified the Final Award at the time of execution by imposing the payment of interests though none was provided therein nor in the Order confirming the same.

During the pendency of CA-G.R. SP No. 120888, Branch 148 continued with execution proceedings and on motion by RCBC designated/deputized additional sheriffs to replace Sheriff Flora who was supposedly physically indisposed.[68] These court

---

[67] *Id.* at 1507-1540.

[68] *Id.* at 1586.

personnel went to the offices/branches of BDO attempting to serve notices of garnishment and to levy the furniture, fixtures and equipment.

On September 12, 2011, BDO filed a Very Urgent Motion to Lift Levy and For Leave to Post Counter-Bond[69] before Branch 148 praying for the lifting of the levy of BDO Private Bank, Inc. (BPBI) shares and the cancellation of the execution sale thereof scheduled on September 15, 2011, which was set for hearing on September 14, 2011. BDO claimed that the levy was invalid because it was served by the RTC Sheriffs not to the authorized representatives of BPBI, as provided under Section 9(b), Rule 39 in relation to Section 7, Rule 57 of the Rules of Court stating that a notice of levy on shares of stock must be served to the president or managing agent of the company which issued the shares. However, BDO was advised by court staff that Judge Sarabia was on leave and the case could not be set for hearing.

In its Opposition to BDO's application for injunctive relief, RCBC prayed for its outright denial as BDO's petition raises questions of fact and/or law which call for the CA to substitute its judgment with that of the Arbitration Tribunal, in patent violation of applicable rules of procedure governing domestic arbitration and beyond the appellate court's jurisdiction. RCBC asserted that BDO's application has become moot and academic as the writ of execution was already implemented and/or enforced. It also contended that BDO has no clear and unmistakable right to warrant injunctive relief because the issue of jurisdiction was already ruled upon in CA-G.R. SP No. 117451 which dismissed the petition filed by Go and the Individual Shareholders of Bankard questioning the authority of Branch 148 over RCBC's motion to confirm the Final Award despite the earlier filing by BDO in another branch of the RTC (Branch 65) of a petition to vacate the said award.

On September 13, 2011, BDO, to avert the sale of the BPBI shares scheduled on September 15, 2011 and prevent further

---

[69] *Id.* at 1602-1618.

disruption in the operations of BDO and BPBI, paid under protest by tendering a Manager's Check in the amount of ₱637,941,185.55, which was accepted by RCBC as full and complete satisfaction of the writ of execution. BDO manifested before Branch 148 that such payment was made without prejudice to its appeal before the CA.[70]

On even date, the CA denied BDO's application for a stay order and/or TRO/preliminary injunction for non-compliance with Rule 19.25 of the Special ADR Rules. The CA ruled that BDO failed to show the existence of a clear right to be protected and that the acts sought to be enjoined violated any right. Neither was BDO able to demonstrate that the injury to be suffered by it is irreparable or not susceptible to mathematical computation.

BDO did not file a motion for reconsideration and directly filed with this Court a petition for *certiorari* with urgent application for writ of preliminary mandatory injunction (**G.R. No. 199238**).

The Petitions

In G.R. No. 196171, RCBC set forth the following grounds for the reversal of the CA Decision dated December 23, 2010:

I.

THE COURT OF APPEALS ACTED CONTRARY TO LAW AND PRIOR RULINGS OF THIS HONORABLE COURT AND COMMITTED REVERSIBLE ERROR IN VACATING THE SECOND PARTIAL AWARD ON THE BASIS OF CHAIRMAN BARKER'S ALLEGED PARTIALITY, WHICH IT CLAIMS IS INDICATIVE OF BIAS CONSIDERING THAT THE ALLEGATIONS CONTAINED IN BDO/EPCIB'S PETITION FALL SHORT OF THE JURISPRUDENTIAL REQUIREMENT THAT THE SAME BE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

II.

THE COURT OF APPEALS ACTED CONTRARY TO LAW AND PRIOR RULINGS OF THIS HONORABLE COURT AND

[70] *Id.* at 1641-1649.

COMMITTED REVERSIBLE ERROR WHEN IT REVERSED THE ARBITRAL TRIBUNAL'S FINDINGS OF FACT AND LAW IN THE SECOND PARTIAL AWARD IN PATENT CONTRAVENTION OF THE SPECIAL ADR RULES WHICH EXPRESSLY PROHIBITS THE COURTS, IN AN APPLICATION TO VACATE AN ARBITRAL AWARD, FROM DISTURBING THE FINDINGS OF FACT AND/OR INTERPRE[TA]TION OF LAW OF THE ARBITRAL TRIBUNAL.[71]

BDO raises the following arguments in G.R. No. 199238:

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN PERFUNCTORILY DENYING PETITIONER BDO'S APPLICATION FOR STAY ORDER, AND/OR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION DESPITE THE EXISTENCE AND CONCURRENCE OF ALL THE ELEMENTS FOR THE ISSUANCE OF SAID PROVISIONAL RELIEFS

A. PETITIONER BDO HAS CLEAR AND UNMISTAKABLE RIGHTS TO BE PROTECTED BY THE ISSUANCE OF THE INJUNCTIVE RELIEF PRAYED FOR, WHICH, HOWEVER, WERE DISREGARDED BY PUBLIC RESPONDENT WHEN IT DENIED PETITIONER BDO'S PRAYER FOR ISSUANCE OF A STAY ORDER AND/OR TRO

B. PETITIONER BDO'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW WAS GROSSLY VIOLATED BY THE RTC-MAKATI CITY BRANCH 148, THE DEPUTIZED SHERIFFS AND RESPONDENT RCBC CAPITAL, WHICH VIOLATION WAS AIDED BY PUBLIC RESPONDENT'S INACTION ON AND EVENTUAL DENIAL OF THE PRAYER FOR STAY ORDER AND/OR TRO

C. DUE TO THE ACTS AND ORDERS OF RTC BRANCH 148, PETITIONER BDO SUFFERED IRREPARABLE DAMAGE AND INJURY, AND THERE WAS DIRE AND URGENT NECESSITY FOR THE ISSUANCE OF THE INJUNCTIVE RELIEF PRAYED FOR WHICH PUBLIC

---

[71] *Rollo* (G.R. No. 196171), Vol. I, p. 25.

RESPONDENT DENIED IN GRAVE ABUSE OF DISCRETION[72]

Essentially, the issues to be resolved are: (1) whether there is legal ground to vacate the Second Partial Award; and (2) whether BDO is entitled to injunctive relief in connection with the execution proceedings in SP Proc. Case No. M-6046.

In their TOR, the parties agreed on the governing law and rules as follows:

Laws to be Applied

13 The Tribunal shall determine the issues to be resolved in accordance with the laws of the Republic of the Philippines.

Procedure to be Applied

14 The proceedings before the Tribunal shall be governed by the ICC Rules of Arbitration (1 January 1998) and the law currently applicable to arbitration in the Republic of the Philippines.[73]

As stated in the Partial Award dated September 27, 2007, although the parties provided in Section 10 of the SPA that the arbitration shall be conducted under the ICC Rules, it was nevertheless arbitration under Philippine law since the parties are both residents of this country. The provisions of Republic Act No. 876[74] (RA 876), as amended by Republic Act No. 9285[75] (RA 9285) principally applied in the arbitration between the herein parties.[76]

---

[72] *Rollo* (G.R. No. 199238), Vol. I, pp. 29-30.

[73] CA *rollo* (CA-G.R. SP No. 113525), Vol. I, pp. 246-247.

[74] AN ACT TO AUTHORIZE THE MAKING OF ARBITRATION AND SUBMISSION AGREEMENTS, TO PROVIDE FOR THE APPOINTMENT OF ARBITRATORS AND THE PROCEDURE FOR ARBITRATION IN CIVIL CONTROVERSIES, AND FOR OTHER PURPOSES, otherwise known as "The Arbitration Law."

[75] "Alternative Dispute Resolution Act of 2004," approved on April 2, 2004.

[76] Sec. 32 of RA 9285 provides that "[d]omestic arbitration shall continue to be governed by Republic Act No. 876, x x x."

The pertinent provisions of R.A. 9285 provide:

SEC. 40. ***Confirmation of Award***. — The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. 876.

A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.

The confirmation of a domestic award shall be made by the regional trial court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.

x x x x x x x x x

SEC. 41. ***Vacation Award***. — A party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court.

Rule 11.4 of the Special ADR Rules sets forth the grounds for vacating an arbitral award:

Rule 11.4. *Grounds*.—(A) *To vacate an arbitral award.* - The arbitral award may be vacated on the following grounds:

a. The arbitral award was procured through corruption, fraud or other undue means;

b. **There was evident partiality or corruption in the arbitral tribunal or any of its members;**

c. The arbitral tribunal was guilty of misconduct or any form of misbehavior that has materially prejudiced the rights of any party such as refusing to postpone a hearing upon sufficient cause shown or to hear evidence pertinent and material to the controversy;

d. One or more of the arbitrators was disqualified to act as such under the law and willfully refrained from disclosing such disqualification; or

e. **The arbitral tribunal exceeded its powers**, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter submitted to them was not made.

The award may also be vacated on any or all of the following grounds:

a. The arbitration agreement did not exist, or is invalid for any ground for the revocation of a contract or is otherwise unenforceable; or

b. A party to arbitration is a minor or a person judicially declared to be incompetent.

x x x x x x x x x

In deciding the petition to vacate the arbitral award, the court shall disregard any other ground than those enumerated above. (Emphasis supplied)

Judicial Review

At the outset, it must be stated that a review brought to this Court under the Special ADR Rules is not a matter of right. Rule 19.36 of said Rules specified the conditions for the exercise of this Court's discretionary review of the CA's decision.

Rule 19.36. *Review discretionary*. — A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for **serious and compelling reasons resulting in grave prejudice to the aggrieved party**. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, **when the Court of Appeals**:

a. **Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules** in arriving at its decision resulting in substantial prejudice to the aggrieved party;

b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;

c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and

d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.

The mere fact that the petitioner disagrees with the Court of Appeals' determination of questions of fact, of law or both questions of fact and law, shall not warrant the exercise of the Supreme Court's discretionary power. **The error imputed to the Court of Appeals must be grounded upon any of the above prescribed grounds for review or be closely analogous thereto.**

A mere general allegation that the Court of Appeals has committed serious and substantial error or that it has acted with grave abuse of discretion resulting in substantial prejudice to the petitioner without indicating with specificity the nature of such error or abuse of discretion and the serious prejudice suffered by the petitioner on account thereof, shall constitute sufficient ground for the Supreme Court to dismiss outright the petition. (Emphasis supplied)

The applicable standard for judicial review of arbitral awards in this jurisdiction is set forth in Rule 19.10 which states:

Rule 19.10. *Rule on judicial review on arbitration in the Philippines*. — As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a **clear showing** that the award suffers from **any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law** in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.

x x x x x x x x x

The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal. (Emphasis supplied)

The above rule embodied the stricter standard in deciding appeals from arbitral awards established by jurisprudence. In the case of *Asset Privatization Trust v. Court of Appeals*,[77] this Court held:

---

[77] G.R. No. 121171, December 29, 1998, 300 SCRA 579.

As a rule, the award of an arbitrator cannot be set aside for mere errors of judgment either as to the law or as to the facts. Courts are without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators. They will not review the findings of law and fact contained in an award, and will not undertake to substitute their judgment for that of the arbitrators, since any other rule would make an award the commencement, not the end, of litigation. Errors of law and fact, or an erroneous decision of matters submitted to the judgment of the arbitrators, are insufficient to invalidate an award fairly and honestly made. Judicial review of an arbitration is, thus, more limited than judicial review of a trial.[78]

Accordingly, we examine the merits of the petition before us solely on the statutory ground raised for vacating the Second Partial Award: evident partiality, pursuant to Section 24 (b) of the Arbitration Law (RA 876) and Rule 11.4 (b) of the Special ADR Rules.

Evident Partiality

Evident partiality is not defined in our arbitration laws. As one of the grounds for vacating an arbitral award under the Federal Arbitration Act (FAA) in the United States (US), the term "encompasses both an arbitrator's explicit bias toward one party and an arbitrator's inferred bias when an arbitrator fails to disclose relevant information to the parties."[79]

From a recent decision[80] of the Court of Appeals of Oregon, we quote a brief discussion of the common meaning of evident partiality:

To determine the meaning of "evident partiality," we begin with the terms themselves. The common meaning of "partiality" is "the

---

[78] *Id.* at 601-602.

[79] Windsor, Kathryn A. (2012) "Defining Arbitrator Evident Partiality: The Catch-22 of Commercial Litigation Disputes," *Seton Hall Circuit Review*: Vol. 6: Iss. 1, Article 7. Available at http://erepository.law.shu.edu/circuit_review/vol6/iss1/7.

[80] *Prime Properties, Inc. v. Leonard James Leahy*, 234 Ore. App. 439, 445. Argued and submitted on August 25, 2009.

inclination to favor one side." *Webster's Third New Int'l Dictionary* 1646 (unabridged ed 2002); *see also id.* (defining "partial" as "inclined to favor one party in a cause or one side of a question more than the other: biased, predisposed" (formatting in original)). "Inclination," in turn, means "a particular disposition of mind or character : propensity, bent" or "a tendency to a particular aspect, state, character, or action." *Id.* at 1143 (formatting in original); *see also id.* (defining "inclined" as "having inclination, disposition, or tendency").

The common meaning of "evident" is "capable of being perceived esp[ecially] by sight : distinctly visible : being in evidence: discernable[;] * * * clear to the understanding : obvious, manifest, apparent." *Id.* at 789 (formatting in original); *see also id.* (stating that synonyms of "evident" include "apparent, patent, manifest, plain, clear, distinct, obvious, [and] palpable" and that, **"[s]ince evident rather naturally suggests *evidence*, it may imply the existence of signs and indications that must lead to an identification or inference**" (formatting in original)). (Emphasis supplied)

Evident partiality in its common definition thus implies "the existence of *signs and indications* that must lead to an identification or inference" of partiality.[81] Despite the increasing adoption of arbitration in many jurisdictions, there seems to be no established standard for determining the existence of evident partiality. In the US, evident partiality "continues to be the subject of somewhat conflicting and inconsistent judicial interpretation when an arbitrator's failure to disclose prior dealings is at issue."[82]

The first case to delineate the standard of evident partiality in arbitration proceedings was *Commonwealth Coatings Corp. v. Continental Casualty Co., et al.*[83] decided by the US Supreme Court in 1968. The Court therein addressed the issue of whether the requirement of impartiality applies to an arbitration

---

[81] *Id.*

[82] New Developments on the Standard for Finding "Evident Partiality" by Howard S. Suskin and Suzanne J. Prysak, Jenner & Block LLP, *Bloomberg Law Reports*, Vol. 2, No. 7, August 2006. Accessed at http://www.jenner.com/library/publications/7677.

[83] 393 U.S. 145. Decided on November 18, 1968.

proceeding. The plurality opinion written by Justice Black laid down the rule that the arbitrators must disclose to the parties "any dealings that might create an impression of possible bias,"[84] and that underlying such standard is "the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias."[85] In a separate concurring opinion, Justice White joined by Justice Marshall, remarked that "[t]he Court does not decide today that arbitrators are to be held to the standards of judicial decorum of Article III judges, or indeed of any judges."[86] He opined that arbitrators should not automatically be disqualified from an arbitration proceeding because of a business relationship where both parties are aware of the relationship in advance, or where the parties are unaware of the circumstances but the relationship is trivial. However, in the event that the arbitrator has a "substantial interest" in the transaction at hand, such information must be disclosed.

Subsequent cases decided by the US Court of Appeals Circuit Courts adopted different approaches, given the imprecise standard of evident partiality in *Commonwealth Coatings*.

In *Morelite Construction Corp. v. New York District Council Carpenters Benefit Funds*,[87] the Second Circuit reversed the judgment of the district court and remanded with instructions to vacate the arbitrator's award, holding that the existence of a father-son relationship between the arbitrator and the president of appellee union provided strong evidence of partiality and was unfair to appellant construction contractor. After examining prior decisions in the Circuit, the court concluded that —

> x x x we cannot countenance the promulgation of a standard for partiality as insurmountable as "proof of actual bias" — as the literal words of *Section 10* might suggest. Bias is always difficult, and

---

[84] *Id.* at 149.

[85] *Id.* at 150.

[86] *Id.*

[87] 748 F.2d 79. Decided on November 5, 1984.

indeed often impossible, to "prove." Unless an arbitrator publicly announces his partiality, or is overheard in a moment of private admission, it is difficult to imagine how "proof" would be obtained. Such a standard, we fear, occasionally would require that we enforce awards in situations that are clearly repugnant to our sense of fairness, yet do not yield "proof" of anything.

If **the standard of "appearance of bias" is too low for the invocation of *Section 10,* and "proof of actual bias" too high**, with what are we left? Profoundly aware of the competing forces that have already been discussed, we hold that **"evident partiality" within the meaning of *9 U.S.C. § 10* will be found where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration.** x x x[88] (Emphasis supplied)

In *Apperson v. Fleet Carrier Corporation*,[89] the Sixth Circuit agreed with the *Morelite* court's analysis, and accordingly held that to invalidate an arbitration award on the grounds of bias, the challenging party must show that "a reasonable person would have to conclude that an arbitrator was partial" to the other party to the arbitration.

This "myriad of judicial interpretations and approaches to evident partiality" resulted in a lack of a uniform standard, leaving the courts "to examine evident partiality on a case-by-case basis."[90] The case at bar does not present a non-disclosure issue but conduct allegedly showing an arbitrator's partiality to one of the parties.

EPCIB/BDO, in moving to vacate the Second Partial Award claimed that the Arbitration Tribunal exceeded its powers in deciding the issue of advance cost not contemplated in the TOR, and that Chairman Barker acted with evident partiality in making such award. The RTC held that BDO failed to substantiate these allegations. On appeal, the CA likewise found that the Arbitration Tribunal did not go beyond the submission of the parties because

---

[88] *Id.* at 84.

[89] 879 F.2d 1344, 1358. Decided on July 13, 1989.

[90] Windsor, Kathryn A., *supra* note 79 at 216.

the phrasing of the scope of the agreed issues in the TOR ("[t]he issues to be determined by the Tribunal are those issues arising from the said Request for Arbitration, Answer and Reply and such other issues as may properly arise during the arbitration") is broad enough to accommodate a finding on the liability and the repercussions of BDO's failure to share in the advances on costs. Section 10 of the SPA also gave the Arbitration Tribunal authority to decide how the costs should be apportioned between them.

However, the CA found factual support in BDO's charge of partiality, thus:

> On the issue on evident partiality, the rationale in the American case of *Commonwealth Coatings Corp. v. Continental Cas. Co.* appears to be very prudent. In *Commonwealth*, the United States Supreme Court reasoned that courts "should . . . be even more scrupulous to safeguard the impartiality of arbitrators than judges, since the former have completely free rein to decide the law as well as the facts, and are not subject to appellate review" in general. This taken into account**, the Court applies the standard demanded of the conduct of magistrates by analogy**. After all, the ICC Rules require that an arbitral tribunal should act fairly and impartially. Hence, **an arbitrator's conduct should be beyond reproach and suspicion. His acts should be free from the appearances of impropriety.**
>
> An examination of the circumstances claimed to be illustrative of Chairman Barker's partiality is indicative of bias. Although RCBC had repeatedly asked for reimbursement and the withdrawal of BDO's counterclaims prior to Chairman Barker's December 18, 2007 letter, it is baffling why **it is only in the said letter that RCBC's prayer was given a complexion of being an application for a partial award. To the Court, the said letter signaled a preconceived course of action that the relief prayed for by RCBC will be granted.**
>
> That there was an action to be taken beforehand is confirmed by Chairman Barker's furnishing the parties with a copy of the Secomb article. **This article ultimately favored RCBC by advancing its cause**. **Chairman Barker makes it appear that he intended good to be done in doing so but due process dictates the cold neutrality of impartiality.** This means that "it is not enough . . . [that] cases [be decided] without bias and favoritism. Nor is it sufficient that . . . prepossessions [be rid of]. [A]ctuations should moreover inspire

that belief." These put into the equation, the furnishing of the Secomb article further marred the trust reposed in Chairman Barker. The suspicion of his partiality on the subject matter deepened. Specifically, his act established that he had pre-formed opinions.

Chairman Barker's providing of copies of the said text is easily interpretable that he had prejudged the matter before him. In any case, the Secomb article tackled bases upon which the Second Partial Award was founded. **The subject article reflected in advance the disposition of the ICC arbitral tribunal.** The award can definitely be viewed as an affirmation that the bases in the Secomb article were adopted earlier on. To the Court, actuations of arbitrators, like the language of judges, "must be guarded and measured lest the best of intentions be misconstrued."

x x x x x x x x x[91]

(Emphasis supplied)

We affirm the foregoing findings and conclusion of the appellate court save for its reference to the *obiter* in *Commonwealth Coatings* that arbitrators are held to the same standard of conduct imposed on judges. Instead, the Court adopts the *reasonable impression of partiality* standard, which requires a showing that a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration. Such interest or bias, moreover, "must be direct, definite and capable of demonstration rather than remote, uncertain, or speculative."[92] When a claim of arbitrator's evident partiality is made, "the court must ascertain from such record as is available whether the arbitrators' conduct was so biased and prejudiced as to destroy fundamental fairness."[93]

Applying the foregoing standard, we agree with the CA in finding that Chairman Barker's act of furnishing the parties with copies of Matthew Secomb's article, considering the

---

[91] *Rollo* (G.R. No. 196171), Vol. I, pp. 61-62.

[92] *Tamari v. Bache Halsey Stuart, Inc.*, 619 F.2d 1196, 1200 (7th Cir. 1980).

[93] *Catz American Co., Inc. v. Pearl Grange Fruit Exchange Inc.*, 292 F.Supp. 549, 551-552 (S.D.N.Y. 1968).

attendant circumstances, is indicative of partiality such that a reasonable man would have to conclude that he was favoring the Claimant, RCBC. Even before the issuance of the Second Partial Award for the reimbursement of advance costs paid by RCBC, Chairman Barker exhibited strong inclination to grant such relief to RCBC, notwithstanding his categorical ruling that the Arbitration Tribunal "has no power *under the ICC Rules* to order the Respondents to pay the advance on costs sought by the ICC or to give the Claimant any relief against the Respondents' refusal to pay."[94] That Chairman Barker was predisposed to grant relief to RCBC was shown by his act of interpreting RCBC's letter, which merely reiterated its plea to declare the Respondents in default and consider all counterclaims withdrawn — as what the ICC Rules provide — as an application to the Arbitration Tribunal to issue a partial award in respect of BDO's failure to share in the advance costs. It must be noted that RCBC in said letter did not contemplate the issuance of a partial order, despite Chairman Barker's previous letter which mentioned the possibility of granting relief upon the parties making submissions to the Arbitration Tribunal. Expectedly, in compliance with Chairman Barker's December 18, 2007 letter, RCBC formally applied for the issuance of a partial award ordering BDO to pay its share in the advance costs.

Mr. Secomb's article, *"Awards and Orders Dealing With the Advance on Costs in ICC Arbitration: Theoretical Questions and Practical Problems*"[95] specifically dealt with the situation when one of the parties to international commercial arbitration refuses to pay its share on the advance on costs. After a brief discussion of the provisions of ICC Rules dealing with advance on costs, which did not provide for issuance of a partial award to compel payment by the defaulting party, the author stated:

> 4. As we can see, the Rules have certain mechanisms to deal with defaulting parties. Occasionally, however, parties have sought to

---

[94] *Rollo* (G.R. No. 196171), Vol. I, p. 442. Italics supplied.

[95] *Id.* at 628-639. Published in the International Court of Arbitration Bulletin, Vol. 14/No. 1- Spring 2003.

use other methods to tackle the problem of a party refusing to pay its part of the advance on costs. These have included seeking an order or award from the arbitral tribunal condemning the defaulting party to pay its share of the advance on costs. Such applications are the subject of this article.[96]

By furnishing the parties with a copy of this article, Chairman Barker practically armed RCBC with supporting legal arguments under the "contractual approach" discussed by Secomb. True enough, RCBC in its Application for Reimbursement of Advance Costs Paid utilized said approach as it singularly focused on Article 30(3)[97] of the ICC Rules and fiercely argued that BDO was contractually bound to share in the advance costs fixed by the ICC.[98] But whether under the "contractual approach" or "provisional approach" (an application must be treated as an interim measure of protection under Article 23 [1] rather than enforcement of a contractual obligation), both treated in the Secomb article, RCBC succeeded in availing of a remedy which was not expressly allowed by the Rules but in practice has been resorted to by parties in international commercial arbitration proceedings. It may also be mentioned that the author, Matthew Secomb, is a member of the ICC Secretariat and the "Counsel in charge of the file", as in fact he signed some early communications on behalf of the ICC Secretariat pertaining to the advance costs fixed by the ICC.[99] This bolstered the impression that Chairman Barker was predisposed to grant relief to RCBC by issuing a partial award.

---

[96] *Id.* at 629.

[97] (3) The advance on costs fixed by the Court shall be payable in equal shares by the Claimant and the Respondent. Any provisional advance paid on the basis of Article 30(1) will be considered as a partial payment thereof. However, any party shall be free to pay the whole of the advance on costs in respect of the principal claim or the counterclaim should the other party fail to pay its share. When the Court has set separate advances on costs in accordance with Article 30(2), each of the parties shall pay the advance on costs corresponding to its claims.

[98] *Rollo* (G.R. No. 196171), Vol. I, pp. 632-633.

[99] *Id.* at 136-137, 145-146.

Indeed, fairness dictates that Chairman Barker refrain from suggesting to or directing RCBC towards a course of action to advance the latter's cause, by providing it with legal arguments contained in an article written by a lawyer who serves at the ICC Secretariat and was involved or had participation — insofar as the actions or recommendations of the ICC — in the case. Though done purportedly to assist both parties, Chairman Barker's act clearly violated Article 15 of the ICC Rules declaring that "[i]n all cases, the Arbitral Tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case." Having pre-judged the matter in dispute, Chairman Barker had lost his objectivity in the issuance of the Second Partial Award.

In fine, we hold that the CA did not err in concluding that the article ultimately favored RCBC as it reflected in advance the disposition of the Arbitral Tribunal, as well as "signalled a preconceived course of action that the relief prayed for by RCBC will be granted." This conclusion is further confirmed by the Arbitral Tribunal's pronouncements in its Second Partial Award which not only adopted the "contractual approach" but even cited Secomb's article along with other references, thus:

> 6.1 It appears to the Tribunal that the issue posed by this application is essentially a contractual one. x x x
>
> x x x x x x x x x
>
> 6.5 Matthew Secomb, considered these points in the article in 14 ICC Bulletin No. 1 (2003) which was sent to the parties. At Para. 19, the learned author quoted from an ICC Tribunal (Case No. 11330) as follows:
>
> *"The Arbitral Tribunal concludes that the parties in arbitrations conducted under the ICC Rules have a mutually binding obligation to pay the advance on costs as determined by the ICC Court, based on Article 30-3 ICC Rules which — by reference — forms part of the parties' agreement to arbitration under such Rules."*[100]

---

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

The Court, however, must clarify that the merits of the parties' arguments as to the propriety of the issuance of the Second Partial Award are not in issue here. Courts are generally without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators. They will not review the findings of law and fact contained in an award, and will not undertake to substitute their judgment for that of the arbitrators. A contrary rule would make an arbitration award the commencement, not the end, of litigation.[101] It is the finding of evident partiality which constitutes legal ground for vacating the Second Partial Award and not the Arbitration Tribunal's application of the ICC Rules adopting the "contractual approach" tackled in Secomb's article.

Alternative dispute resolution methods or ADRs — like arbitration, mediation, negotiation and conciliation — are encouraged by this Court. By enabling parties to resolve their disputes amicably, they provide solutions that are less time-consuming, less tedious, less confrontational, and more productive of goodwill and lasting relationship.[102] Institutionalization of ADR was envisioned as "an important means to achieve speedy and *impartial* justice and declog court dockets."[103] The most important feature of arbitration, and indeed, the key to its success, is the public's confidence and trust in the integrity of the process.[104] For this reason, the law authorizes vacating an arbitral award when there is evident partiality in the arbitrators.

Injunction Against Execution Of Arbitral Award

Before an injunctive writ can be issued, it is essential that the following requisites are present: (1) there must be a right

---

[101] *National Power Corporation v. Alonzo-Legasto,* G.R. No. 148318, November 22, 2004, 443 SCRA 342, 359.

[102] *Insular Savings Bank v. Far East Bank and Trust Company,* G.R. No. 141818, June 22, 2006, 492 SCRA 145, 158, citing *LM Power Engineering Corp. v. Capitol Industrial Construction Groups, Inc.*, 447 Phil. 705, 707 (2003).

[103] Sec. 2, R.A. 9285.

[104] Windsor, *supra* note 79 at 192.

in esse or the existence of a right to be protected; and (2) the act against which injunction to be directed is a violation of such right. The *onus probandi* is on movant to show that there exists a right to be protected, which is directly threatened by the act sought to be enjoined. Further, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent a serious damage.[105]

Rule 19.22 of the Special ADR Rules states:

Rule 19.22. *Effect of appeal*. — The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals directs otherwise upon such terms as it may deem just.

We find no reversible error or grave abuse of discretion in the CA's denial of the application for stay order or TRO upon its finding that BDO failed to establish the existence of a clear legal right to enjoin execution of the Final Award confirmed by the Makati City RTC, Branch 148, pending resolution of its appeal. It would be premature to address on the merits the issues raised by BDO in the present petition considering that the CA still has to decide on the validity of said court's orders confirming the Final Award. But more important, since BDO had already paid ₱637,941,185.55 in manager's check, albeit under protest, and which payment was accepted by RCBC as full and complete satisfaction of the writ of execution, there is no more act to be enjoined.

Settled is the rule that injunctive reliefs are preservative remedies for the protection of substantive rights and interests. Injunction is not a cause of action in itself, but merely a provisional remedy, an adjunct to a main suit. When the act sought to be

---

[105] *European Resources and Technologies, Inc. v. Ingenieuburo Birkhahn + Nolte, Ingeniurgesellschaft mbh,* G.R. No. 159586, July 26, 2004, 435 SCRA 246, 259, citing *Philippine Sinter Corporation v. Cagayan Electric Power and Light Co., Inc.,* G.R. No. 127371, April 25, 2002, 381 SCRA 582, 591 and *Gustilo v. Real, Sr.,* A.M. No. MTJ-00-1250, February 28, 2001, 353 SCRA 1, 9.

enjoined has become *fait accompli*, the prayer for provisional remedy should be denied.[106]

Thus, the Court ruled in *Go v. Looyuko*[107] that when the events sought to be prevented by injunction or prohibition have already happened, nothing more could be enjoined or prohibited. Indeed, it is a universal principle of law that an injunction will not issue to restrain the performance of an act already done. This is so for the simple reason that nothing more can be done in reference thereto. A writ of injunction becomes moot and academic after the act sought to be enjoined has already been consummated.

WHEREFORE, premises considered, the petition in G.R. No. 199238 is **DENIED.** The Resolution dated September 13, 2011 of the Court of Appeals in CA-G.R. SP No. 120888 is **AFFIRMED.**

The petition in G.R. No. 196171 is **DENIED.** The Decision dated December 23, 2010 of the Court of Appeals in CA-G.R. SP No. 113525 is hereby **AFFIRMED.**

SO ORDERED.

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

---

[106] *Bernardez v. Commission on Elections*, G.R. No. 190382, March 9, 2010, 614 SCRA 810, 820, citing *Caneland Sugar Corporation v. Alon*, G.R. No. 142896, September 12, 2007, 533 SCRA 28, 37.

[107] G.R. Nos. 147923, 147962, 154035, October 26, 2007, 537 SCRA 445, 479, as cited in *Bernardez v. Commission on Elections, id.*

FIRST DIVISION

[G.R. No. 198051. December 10, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLIAM DUMAPLIN *Y* CAHOY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); CHAIN OF CUSTODY RULE; THE PROSECUTION FAILED TO SHOW THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE SEIZED HAD BEEN PRESERVED. — We agree with appellant and acquit him on the ground of reasonable doubt. The prosecution has not proved beyond reasonable doubt appellant's violation of Sec. 5, Art. II of R.A. No. 9165. x x x Section 21 of R.A. No. 9165 was envisioned by the legislature to serve as a protection for the accused from malicious imputations of guilt by abusive police officers. The illegal drugs being the *corpus delicti*, it is essential for the prosecution to prove and show to the court beyond reasonable doubt that the illegal drugs presented to the trial court as evidence of the crime are indeed the illegal drugs seized from the accused. In this case, the prosecution failed to show that the integrity and evidentiary value of the evidence seized had been preserved.

2. ID.; ID.; ID.; MARKING OF THE SEIZED DRUGS IS CRUCIAL IN PROVING CHAIN OF CUSTODY. — The arresting officer's testimony failed to show where the markings of the two sachets of *shabu* recovered from appellant were made and whether these was marked immediately after its confiscation in the presence of appellant or his representative as required under Section 21 of R.A. No. 9165. PO2 Tolo merely testified that the confiscated drugs were marked by PO2 Pajo in his presence. However, the law requires that the markings be done in the presence of the appellant or the person from whom such items were confiscated or his representative or counsel, and not to anyone else. Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused.

Marking after seizure is the starting point in the custodial link. Thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.

3. ID.; ID.; ID.; THE RECORDS BELIE THE CONCLUSION OF THE TRIAL COURT THAT THE CHAIN OF CUSTODY OF THE CONFISCATED *SHABU* WAS UNBROKEN; IT WAS NOT SATISFACTORILY EXPLAINED HOW THE DRUGS WERE HANDLED FROM THE TIME THE POLICE OFFICERS ALLEGEDLY SEIZED THEM FROM APPELLANT TO THE TIME THEY WERE PRESENTED IN COURT AS EVIDENCE. — The prosecution must prove the requisite chain of custody of the seized specimen. "Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The prosecution must offer the testimony of key witnesses to establish a sufficiently complete chain of custody. In this case, the trial court and the RTC concluded that the chain of custody of the confiscated *shabu* specimen was unbroken. However, the records belie such conclusion as it was not satisfactorily explained how the drugs were handled from the time the police officers allegedly seized them from appellant to the time they were presented in court as evidence. According to the testimony of PO1 Tolo, after the police officers confiscated the drugs from appellant, they proceeded to the house of Ruel to implement the search warrant. Thereafter, appellant and the confiscated items were turned over to Police Inspector Ferdinand B. Dacillo. PO1 Tolo further testified that the seized specimens were marked by PO2 Pajo, who allegedly also delivered the items to the PNP Crime Laboratory. The prosecution, however, failed to explain how the confiscated items passed from P/Insp. Dacillo to PO2 Pajo, who was not even presented as witness. Moreover, no evidence was adduced to show how the drugs were handled when it was brought to Ruel's house or how these were handled while the search warrant

was being implemented. Likewise, the witnesses did not testify on how the drugs were handled while it was being transported to the police station. It was also not clear who had custody of the confiscated drugs from the police station until it was submitted to the PNP Crime Laboratory for examination. Neither was PO1 Monton, who supposedly received the specimens at the PNP Crime Laboratory, presented as witness.

4. ID.; ID.; ID.; IT IS ESSENTIAL THAT THE PROHIBITED DRUG CONFISCATED OR RECOVERED FROM THE SUSPECTS IS THE VERY SAME SUBSTANCE OFFERED IN COURT AS EXHIBIT AND THE IDENTITY OF THE SAID DRUG BE ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUISITE TO MAKE A FINDING OF GUILT. — Notably, PO1 Tolo testified that during the alleged sale, appellant opened a big plastic sachet containing suspected *shabu*. He placed the *shabu* in his palm and asked the confidential assets to choose which has more. Appellant then divided the *shabu* into two small sachets and handed one sachet each to the confidential assets. Thereafter, the police officers immediately arrested appellant. There was nothing to show that appellant sealed the small plastic sachets and nothing to show that the seized items were safeguarded from alteration or substitution. It is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit and that the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt. In the present case, the prosecution failed to show that the integrity of the confiscated drugs has been preserved, and therefore, appellant should be acquitted.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal is the February 25, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00777-MIN, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Butuan City, Branch 4, in Criminal Case No. 9690, finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In an Information dated November 27, 2002, appellant William Dumaplin *y* Cahoy was charged as follows:

> That on or about 10:00 o'clock in the morning of November 12, 2002 at Brgy. 17, Fort Poyohon, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously, sell, and deliver two (2) sachets of methamphetamine hydrochloride, otherwise known as *shabu*, weighing zero point four six zero two (0.4602) grams, which is a dangerous drug.
>
> CONTRARY TO LAW: (Violation of Sec. 5, Art. II of R.A. No. 9165)[3]

When arraigned, appellant pleaded not guilty to the charge.[4] Trial on the merits ensued thereafter.

The prosecution tried to establish that Judge Augustus L. Calo of the RTC of Butuan City issued a search warrant on November 4, 2002 to search the residence of appellant and his brother, Ruel Dumaplin, at Purok 7, Fort Poyohan, New Asia,

---

[1] *Rollo*, pp. 3-16; penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Edgardo A. Camello and Leoncia R. Dimagiba concurring.

[2] CA *rollo*, pp. 22-57; penned by Judge Godofredo B. Abul, Jr.

[3] Records, p. 1.

[4] *Id.* at 22.

Butuan City.[5] On November 12, 2002, the members of the Task Force-Regional Anti-Crime Emergency Response (RACER) decided to conduct a buy-bust operation against appellant before implementing the warrant after receiving information that he was not at home. A buy-bust team was formed composed of SPO4 Delin, PO1 Renante Tolo and PO3 Advincula. PO1 Tolo gave two confidential assets, who were designated as poseur-buyers, six pieces of ₱100 bills to be used as marked money.[6]

The buy-bust team proceeded to the target area and hid in a house about five meters away from appellant, who was spotted standing near an artesian well. The confidential assets approached appellant and after a brief conversation, handed him the marked money. Appellant produced a big plastic sachet containing suspected *shabu*, divided its contents into two sachets, and gave one each to the assets. PO1 Tolo rushed to the scene and arrested appellant. When Barangay Captain Rogelio P. Dublois and Purok Chairman Alberto Bulabog arrived, the police officers searched appellant and recovered the marked money, ₱663 in cash, a disposable lighter, a small envelope with a small sachet of suspected *shabu*, and a rectangular sachet of suspected *shabu*. PO1 Tolo prepared a confiscation receipt, which was signed by appellant and the *barangay* officials.[7] Then, they proceeded to Ruel's house to implement the search warrant.[8]

Later, PO1 Tolo turned the seized items over to Police Inspector Ferdinand Dacillo. It was PO2 Randy Pajo who marked the specimens as "A-1" for the big sachet and "A-2" for the small sachet.[9] The confiscated items were submitted to the PNP Crime Laboratory Office-13, Camp Rodriguez, Libertad, Butuan City for laboratory examination. Forensic chemist, P/Insp. Cramwell T. Banogon, prepared Chemistry Report No. D-159-2002,

---

[5] *Id.* at 151-152.

[6] TSN, September 4, 2003, pp. 4-13; TSN, November 12, 2003, pp. 3-4; TSN, January 29, 2004, pp. 5-8.

[7] Records, p. 158.

[8] TSN, January 29, 2004, pp. 4-13. TSN, July 5, 2004, pp. 5-12.

[9] *Id.* at 14-15; TSN, April 17, 2008, pp. 6-7.

indicating therein that specimens A-1 and A-2 contain methamphetamine hydrochloride or *shabu*.[10]

After the prosecution witnesses testified, appellant filed a Motion for Leave of Court to Amend Information and to Admit the Amended Information with Manifestation.[11] The RTC granted appellant's motion. The Amended Information reads:

> That on or about 10:00 o'clock in the morning of November 12, 2002 at Brgy. 17, Fort Poyohon, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously, sell, and deliver one (1) sachet of methamphetamine hydrochloride, otherwise known as *shabu*, weighing zero point zero five seven four (0.0574) gram, to a poseur-buyer for a consideration of six hundred pesos (₱600.00) mark monies.
>
> CONTRARY TO LAW: (Violation of Section 5, Article II of R.A. No. 9165)[12]

Appellant was re-arraigned and pleaded not guilty to the charge.[13] After PO1 Tolo was recalled to the witness stand, appellant filed another Motion for Leave of Court to Amend the Amended Information Dated September 7, 2007 and to Admit the Second Amended Information.[14] The RTC granted the motion and a Second Amended Information was filed. It reads:

> That on or about 10:00 o'clock in the morning of November 12, 2002 at Brgy. 17, Fort Poyohon, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously, sell and deliver one (1) sachet of methamphetamine hydrochloride, otherwise known as *shabu*, weighing zero point zero one six four (0.0164) grams, to a poseur-buyer for a consideration of six hundred pesos (₱600.00) mark monies.

---

[10] TSN, September 26, 2005, pp. 11-13; Records, p. 161.

[11] Records, pp. 122-123.

[12] *Id.* at 124.

[13] *Id.* at 129.

[14] *Id.* at 140.

CONTRARY TO LAW: (Violation of Section 5, Article II of R.A. No. 9165)[15]

Upon re-arraignment, appellant pleaded not guilty to the crime as charged in the Second Amended Information.[16]

In his defense, appellant vehemently denied the charges against him. He testified that on November 12, 2002 at around 10:00 in the morning, while he was lining up to draw water from an artesian well at Purok 7, New Asia, Barangay 17, Butuan City, SPO4 Delin and PO1 Tolo arrived. The police officers held him by the hair, dragged him and pointed a gun at him. They checked his pockets and PO1 Tolo got ₱663 in cash. He was handcuffed and was ordered to sit. When Barangay Captain Dublois arrived, SPO4 Delin started to frisk him. SPO4 Delin made it appear that he found two sachets of *shabu* in his pocket, and cash totaling ₱1,200. Appellant told Barangay Captain Dublois that the *shabu* was not his, and only the ₱663 belonged to him, but they did not heed him. After the search, they brought him to Ruel's house.[17]

After trial on the merits, the RTC rendered an Omnibus Decision, the dispositive portion of which states:

WHEREFORE, premises considered, the Court:

In Criminal Case No.9690, accused WILLIAM DUMAPLIN *y* CAHOY is found guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act 9165 and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) without subsidiary imprisonment in case of insolvency.

The sachet of *shabu* (Exh. "M") is hereby declared forfeited in favor of the government to be dealt with in accordance with law.

Accused shall serve his sentence at the Davao Prison and Penal Farm at Braullo E. Dujali, Davao del Norte and shall be credited in

---

[15] *Id.* at 141.

[16] *Id.* at 146.

[17] TSN, August 14, 2008, pp. 3-9.

the service thereof with his preventive imprisonment in accordance with Art. 29 of the Revised Penal Code, as amended.

x x x x x x x x x

SO ORDERED.[18]

Appellant appealed the RTC decision to the CA interposing the following arguments:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION'S WITNESS TO ESTABLISH THE CHAIN OF CUSTODY OVER THE SEIZED SACHET OF *SHABU* THEY BEING THE FRUIT OF POISONOUS TREE.

II

THE FINDINGS OF THE COURT *A QUO* ARE CONTRARY TO EXISTING JURISPRUDENCE.

III

WITH DUE RESPECT, THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE HEREIN APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[19]

The CA, as aforesaid, promulgated a decision affirming the RTC decision and disposing as follows:

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision is **AFFIRMED *IN TOTO***.

SO ORDERED.

Thus, appellant filed the instant appeal.

In his supplemental brief,[20] appellant contends that the arresting officers did not comply with the requirements of the law for the

---

[18] Records, p. 217.

[19] CA *rollo*, pp. 7-8.

[20] *Rollo*, pp. 29-43.

handling of seized dangerous drugs as provided for under Section 21, Article II of R.A. No. 9165 because the marking of the confiscated drugs was not made in his presence or his representative. He also insists that the arresting officer and the laboratory technician failed to mark and properly seal the confiscated drugs. Hence, appellant argues that the integrity and evidentiary value of the seized items had not been preserved.

We agree with appellant and acquit him on the ground of reasonable doubt. The prosecution has not proved beyond reasonable doubt appellant's violation of Sec. 5, Art. II of R.A. No. 9165. Section 21, paragraph 1, Article II 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:

(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; (Emphasis supplied.)

x x x x x x x x x

Section 21 of R.A. No. 9165 was envisioned by the legislature to serve as a protection for the accused from malicious imputations of guilt by abusive police officers. The illegal drugs being the *corpus delicti*, it is essential for the prosecution to prove and show to the court beyond reasonable doubt that the illegal drugs presented to the trial court as evidence of the crime are indeed

the illegal drugs seized from the accused.[21] In this case, the prosecution failed to show that the integrity and evidentiary value of the evidence seized had been preserved. Prosecution witness PO1 Tolo testified as follows:

> Prosecutor Guiritan:
>
> x x x x x x x x x
>
> Q Who actually submitted those specimen sachets of *shabu*, that one (1) big sachet recovered from the person of William Dumaplin and one (1) small sachet taken during the buy-bust?
>
> A It was actually the RACER Unit. I think it was PO2 Randy Pajo who actually delivered those sachets of *shabu*.
>
> Q And, was (sic) there markings made on the sachets before it was delivered to the crime laboratory?
>
> A It was marked as A1 and A2.
>
> Q Who did the markings?
>
> A It was PO2 Randy Pajo, Sir.
>
> Q How did you know that, that it was Randy Pajo?
>
> A Because I was there when it was marked.
>
> Q And, what were the markings being made by PO2 Pajo in those sachets?
>
> A The recovered *shabu* from the possession of William Dumaplin, the big sachet, was marked as A1, while the buy-bust *shabu*, the one (1) small sachet which was given to me by my asset, was marked as A2.[22]

The foregoing testimony failed to show where the markings of the two sachets of *shabu* recovered from appellant were made and whether these was marked immediately after its confiscation in the presence of appellant or his representative as required under Section 21 of R.A. No. 9165. PO2 Tolo merely testified that the confiscated drugs were marked by PO2 Pajo in his

---

[21] *People v. Sultan*, G.R. No. 187737, July 5, 2010, 623 SCRA 542, 551.

[22] TSN, April 17, 2008, pp. 6-7.

presence. However, the law requires that the markings be done in the presence of the appellant or the person from whom such items were confiscated or his representative or counsel, and not to anyone else.

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link. Thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.[23]

The prosecution must prove the requisite chain of custody of the seized specimen. "Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[24] The prosecution must offer the testimony of key witnesses to establish a sufficiently complete chain of custody.[25] In this case, the trial court and the RTC concluded that the chain of custody of the confiscated *shabu* specimen was unbroken. However, the records belie such conclusion as it was not satisfactorily explained how the drugs were handled from the time the police officers allegedly seized them from appellant to the time they were presented in court as evidence.

According to the testimony of PO1 Tolo, after the police officers confiscated the drugs from appellant, they proceeded

---

[23] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350,357.

[24] *People v. Gutierrez*, G.R. No. 179213, September 3, 2009, 598 SCRA 92, 101-102; *People v. Cervantes*, G.R. No. 181494, March 17, 2009, 581 SCRA 762, 777.

[25] *Catuiran v. People*, G.R. No. 175647, May 8, 2009, 587 SCRA 567, 580.

to the house of Ruel to implement the search warrant. Thereafter, appellant and the confiscated items were turned over to Police Inspector Ferdinand B. Dacillo. PO1 Tolo further testified that the seized specimens were marked by PO2 Pajo, who allegedly also delivered the items to the PNP Crime Laboratory. The prosecution, however, failed to explain how the confiscated items passed from P/Insp. Dacillo to PO2 Pajo, who was not even presented as witness.

Moreover, no evidence was adduced to show how the drugs were handled when it was brought to Ruel's house or how these were handled while the search warrant was being implemented. Likewise, the witnesses did not testify on how the drugs were handled while it was being transported to the police station. It was also not clear who had custody of the confiscated drugs from the police station until it was submitted to the PNP Crime Laboratory for examination. Neither was PO1 Monton, who supposedly received the specimens at the PNP Crime Laboratory, presented as witness.

Notably, PO1 Tolo testified that during the alleged sale, appellant opened a big plastic sachet containing suspected *shabu.* He placed the *shabu* in his palm and asked the confidential assets to choose which has more. Appellant then divided the *shabu* into two small sachets and handed one sachet each to the confidential assets. Thereafter, the police officers immediately arrested appellant. There was nothing to show that appellant sealed the small plastic sachets and nothing to show that the seized items were safeguarded from alteration or substitution.

It is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit and that the identity of said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt.[26] In the present case, the prosecution failed to show that the integrity of the confiscated drugs has been preserved, and therefore, appellant should be acquitted.

---

[26] *Sales v. People*, G.R. No. 182296, April 7, 2009, 584 SCRA 680, 688-689.

WHEREFORE, the February 25, 2011 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00777-MIN is **REVERSED.** Appellant William Dumaplin *y* Cahoy is **ACQUITTED** of the charges in Criminal Case No. 9690 on the ground of reasonable doubt.

The Director of the Bureau of Corrections is **ORDERED** to immediately **RELEASE** appellant from custody, unless he is detained for some other lawful cause/s, and to report to this Court compliance within five (5) days from receipt of this Decision.

With costs *de oficio*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 198357. December 10, 2012]

BUILDING CARE CORPORATION/LEOPARD SECURITY & INVESTIGATION AGENCY and/or RUPERTO PROTACIO, *petitioners, vs.* **MYRNA MACARAEG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; LIBERAL APPLICATION OF THE RULES; THE RESORT TO A LIBERAL APPLICATION, OR SUSPENSION OF THE APPLICATION OF PROCEDURAL RULES, MUST REMAIN AS THE EXCEPTION TO THE WELL-SETTLED PRINCIPLE THAT RULES BE COMPLIED

WITH FOR THE ORDERLY ADMINISTRATION OF JUSTICE. — It should be emphasized that the resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice. In *Marohomsalic v. Cole*, the Court stated: While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. **The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity.** Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, **every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.**

2. ID.; ID.; ID.; RULE THAT NEGLIGENCE AND MISTAKES OF COUNSEL BINDS THE CLIENT IS APPLICABLE IN CASE AT BAR; THE BELATED FILING OF RESPONDENT'S APPEAL BEFORE THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) WAS THE FAULT OF RESPONDENT'S FORMER COUNSEL. — In this case, the justifications given by the CA for its liberality by choosing to overlook the belated filing of the appeal are, the importance of the issue raised, *i.e.*, whether respondent was illegally dismissed; and the belief that respondent should be "afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities," considering that the belated filing of respondent's appeal before the NLRC was the fault of respondent's former counsel. Note, however, that neither respondent nor her former counsel gave any explanation or reason citing extraordinary circumstances for her lawyer's failure to abide by the rules for filing an appeal. Respondent merely insisted that she had not been remiss in following up her case with said lawyer. It is, however, an oft-repeated ruling that the negligence and mistakes of counsel bind the client. A departure from this rule would bring about never-ending suits, so long as lawyers could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law. The only exception would be, where the lawyer's gross

negligence would result in the grave injustice of depriving his client of the due process of law. In this case, there was no such deprivation of due process. Respondent was able to fully present and argue her case before the Labor Arbiter. She was accorded the opportunity to be heard. Her failure to appeal the Labor Arbiter's Decision cannot, therefore, be deemed as a deprivation of her right to due process.

3. ID.; ID.; ID.; IMPORTANCE OF THE CONCEPT OF FINALITY OF JUDGMENT. — Allowing an appeal, even if belatedly filed, should never be taken lightly. The judgment attains finality by the lapse of the period for taking an appeal without such appeal or motion for reconsideration being filed. In *Ocampo v. Court of Appeals* (Former Second Division), the Court reiterated the basic rule that "when a party to an original action fails to question an adverse judgment or decision by not filing the proper remedy within the period prescribed by law, he loses the right to do so, and the judgment or decision, as to him, becomes final and binding." The Decision of the Labor Arbiter, therefore, became final and executory as to respondent when she failed to file a timely appeal therefrom. The importance of the concept of finality of judgment cannot be gainsaid. As elucidated in *Pasiona, Jr. v. Court of Appeals*, x x x **It should also be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public policy and the orderly administration of justice. Hence, such right is just as weighty or equally important as the right of the losing party to appeal or seek reconsideration within the prescribed period.**

4. ID.; ID.; ID.; THE COURT CANNOT COUNTENANCE RELAXATION OF THE RULES ABSENT THE SHOWING OF EXTRAORDINARY CIRCUMSTANCES TO JUSTIFY THE SAME; WHEN THE LABOR ARBITER'S DECISION BECAME FINAL, PETITIONERS ATTAINED A VESTED RIGHT TO SAID JUDGMENT AND HAD EVERY RIGHT TO FULLY RELY ON THE IMMUTABILITY OF SAID DECISION. — When the Labor Arbiter's Decision became final, petitioners attained a vested right to said judgment. They had the right to fully rely on the immutability of said Decision. In *Sofio v. Valenzuela*, it was amply stressed that: The Court will not override the finality and immutability of a judgment based only on the negligence of a party's counsel in timely

taking all the proper recourses from the judgment. To justify an override, the counsel's negligence must not only be gross but must also be shown to have deprived the party the right to due process. In sum, the Court cannot countenance relaxation of the rules absent the showing of extraordinary circumstances to justify the same. In this case, no compelling reasons can be found to convince this Court that the CA acted correctly by according respondent such liberality.

APPEARANCES OF COUNSEL

Rhoscel N. Abella for petitioners.

D E C I S I O N

PERALTA,[*] *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) promulgated on March 24, 2011, and its Resolution[2] dated August 19, 2011, denying petitioner's Motion for Reconsideration be reversed and set aside.

Petitioners are in the business of providing security services to their clients. They hired respondent as a security guard beginning August 25, 1996, assigning her at Genato Building in Caloocan City. However, on March 9, 2008, respondent was relieved of her post. She was re-assigned to Bayview Park Hotel from March 9-13, 2008, but after said period, she was allegedly no longer given any assignment. Thus, on September 9, 2008, respondent filed a complaint against petitioners for illegal dismissal, underpayment of salaries, non-payment of separation

[*] Per Special Order No. 1394 December 6, 2012.

[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Danton Q. Bueser, concurring; *rollo*, pp. 11-20.

[2] Penned by CA Associate Justice Hakim S. Abdulwahid, with CA Associate Justices Ricardo R. Rosario and Ramon A. Cruz, concurring, *rollo*, pp. 21-22.

pay and refund of cash bond. Conciliation and mediation proceedings failed, so the parties were ordered to submit their respective position papers.[3]

Respondent claimed that petitioners failed to give her an assignment for more than nine months, amounting to constructive dismissal, and this compelled her to file the complaint for illegal dismissal.[4]

On the other hand, petitioners alleged in their position paper that respondent was relieved from her post as requested by the client because of her habitual tardiness, persistent borrowing of money from employees and tenants of the client, and sleeping on the job. Petitioners allegedly directed respondent to explain why she committed such infractions, but respondent failed to heed such order. Respondent was nevertheless temporarily assigned to Bayview Park Hotel from March 9-13, 2008, but she also failed to meet said client's standards and her posting thereat was not extended.[5]

Respondent then filed an administrative complaint for illegal dismissal with the PNP-Security Agencies and Guard Supervision Division on June 18, 2008, but she did not attend the conference hearings for said case. Petitioners brought to the conference hearings a new assignment order detailing respondent at the Ateneo de Manila University but, due to her absence, petitioners failed to personally serve respondent said assignment order. Petitioners then sent respondent a letter ordering her to report to headquarters for work assignment, but respondent did not comply with said order. Instead, respondent filed a complaint for illegal dismissal with the Labor Arbiter.[6]

On May 13, 2009, the Labor Arbiter rendered a Decision, the dispositive portion of which reads as follows:

---

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

[4] *Id.* at 12.

[5] *Id.* at 12-13 (Respondent's [herein petitioner] Position Paper filed with the NLRC).

[6] *Id.* at 79 (Respondent's Petition for *Certiorari* filed with the CA).

WHEREFORE, judgment is hereby made dismissing the charge of illegal dismissal as wanting in merit but, as explained above, ordering the Respondents Leopard Security and Investigation Agency and Rupert Protacio to pay complainant a financial assistance in the amount of ₱5,000.00.

Other claims are **DISMISSED** for lack of merit.

SO ORDERED.[7]

Respondent then filed a Notice of Appeal with the National Labor Relations Commission (NLRC), but in a Decision dated October 23, 2009, the NLRC dismissed the appeal for having been filed out of time, thereby declaring that the Labor Arbiter's Decision had become final and executory on June 16, 2009.[8]

Respondent elevated the case to the CA *via* a petition for *certiorari*, and on March 24, 2011, the CA promulgated its Decision, the dispositive portion of which reads as follows:

WHEREFORE, the petition for *certiorari* is **GRANTED**. The Decision dated October 23, 2009 and Resolution dated March 2, 2010 rendered by public respondent in NLRC LAC No. 07-001892-09 (NLRC Case No. NCR-09-12628-08) are **REVERSED** and **SET ASIDE**, and in lieu thereof, a new judgment is ENTERED declaring petitioner to have been illegally dismissed and DIRECTING private respondents to reinstate petitioner without loss of seniority rights, benefits and privileges; and to pay her backwages and other monetary benefits during the period of her illegal dismissal up to actual reinstatement.

Public respondent NLRC is DIRECTED to conduct further proceedings, for the sole purpose of determining the amount of private respondent's monetary liabilities in accordance with this decision.

SO ORDERED.[9]

Petitioners' motion for reconsideration of the aforequoted Decision was denied *per* Resolution dated August 19, 2011.

---

[7] *Id.* at 116. (Emphasis in the original.)

[8] *Id.* at 128-130.

[9] *Id.* at 62. (Emphasis in the original)

Hence, the present petition, where the main issue for resolution is whether the CA erred in liberally applying the rules of procedure and ruling that respondent's appeal should be allowed and resolved on the merits despite having been filed out of time.

The Court cannot sustain the CA's Decision.

It should be emphasized that the resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice. In *Marohomsalic v. Cole*,[10] the Court stated:

> While procedural rules may be relaxed in the interest of justice, it is well-settled that these are tools designed to facilitate the adjudication of cases. **The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity.** Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, **every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.**[11]

The later case of *Daikoku Electronics Phils., Inc. v. Raza*,[12] further explained that:

> **To be sure, the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantial justice.** x x x The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse. x x x
>
> We must stress that the bare invocation of "the interest of substantial justice" line is not some magic want that will automatically compel

---

[10] G.R. No. 169918, February 27, 2008, 547 SCRA 98.

[11] *Id.* at 109. (Emphasis supplied.)

[12] G.R. No. 181688, June 5, 2009, 588 SCRA 788.

this Court to suspend procedural rules. **Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction**.[13]

In this case, the justifications given by the CA for its liberality by choosing to overlook the belated filing of the appeal are, the importance of the issue raised, *i.e.*, whether respondent was illegally dismissed; and the belief that respondent should be "afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities,"[14] considering that the belated filing of respondent's appeal before the NLRC was the fault of respondent's former counsel. Note, however, that neither respondent nor her former counsel gave any explanation or reason citing extraordinary circumstances for her lawyer's failure to abide by the rules for filing an appeal. Respondent merely insisted that she had not been remiss in following up her case with said lawyer.

It is, however, an oft-repeated ruling that the negligence and mistakes of counsel bind the client. A departure from this rule would bring about never-ending suits, so long as lawyers could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law.[15] The only exception would be, where the lawyer's gross negligence would result in the grave injustice of depriving his client of the due process of law.[16] In this case, there was no such deprivation of due process. Respondent was able to fully present and argue her case before the Labor Arbiter. She was accorded the opportunity to be heard. Her failure to appeal the

---

[13] *Id.* at 795. (Emphasis supplied.)

[14] CA Decision, *rollo*, p. 58.

[15] *Melchor L. Lagua v. Court of Appeals, et al.*, G.R. No. 173390, June 27, 2012; *Panay Railways, Inc. v. Heva Management and Development Corp., et al.*, G.R. No. 154061, January 25, 2012; 664 SCRA 1, 9.

[16] *Pasiona, Jr. v. Court of Appeals*, G.R. No. 165471, July 21, 2008, 559 SCRA 137, 147.

Labor Arbiter's Decision cannot, therefore, be deemed as a deprivation of her right to due process. In *Heirs of Teofilo Gaudiano v. Benemerito*,[17] the Court ruled, thus:

> The perfection of an appeal within the period and in the manner prescribed by law is jurisdictional and non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory. The limitation on the period of appeal is not without reason. They must be strictly followed as they are considered indispensable to forestall or avoid unreasonable delays in the administration of justice, to ensure an orderly discharge of judicial business, and to put an end to controversies. x x x
>
> x x x x x x x x x
>
> **The right to appeal is not a natural right or part of due process; it is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal**."[18]

In *Ocampo v. Court of Appeals (Former Second Division)*,[19] the Court declared that:

> x x x **we cannot condone the practice of parties who, either by their own or their counsel's inadvertence, have allowed a judgment to become final and executory and, after the same has become immutable, seek iniquitous ways to assail it**. The finality of a decision is a jurisdictional event which cannot be made to depend on the convenience of the parties.[20]

Clearly, allowing an appeal, even if belatedly filed, should never be taken lightly. The judgment attains finality by the lapse of the period for taking an appeal without such appeal or motion for reconsideration being filed.[21] In *Ocampo v. Court of Appeals*

---

[17] G.R. No. 174247, February 21, 2007, 516 SCRA 416.

[18] *Id.* at 420, 424. (Emphasis supplied.)

[19] G.R. No. 150334, March 20, 2009, 582 SCRA 43.

[20] *Id.* at 52. (Emphasis supplied.)

[21] Rules of Court, Rule 36, Sec. 2.

(Former Second Division),[22] the Court reiterated the basic rule that "when a party to an original action fails to question an adverse judgment or decision by not filing the proper remedy within the period prescribed by law, he loses the right to do so, and the judgment or decision, as to him, becomes final and binding."[23] The Decision of the Labor Arbiter, therefore, became final and executory as to respondent when she failed to file a timely appeal therefrom. The importance of the concept of finality of judgment cannot be gainsaid. As elucidated in *Pasiona, Jr. v. Court of Appeals*,[24] to wit:

> The Court re-emphasizes the doctrine of finality of judgment. In *Alcantara v. Ponce*, the Court, citing its much earlier ruling in *Arnedo v. Llorente*, stressed the importance of said doctrine, to wit:
>
> > x x x controlling and irresistible reasons of public policy and of sound practice in the courts demand that **at the risk of occasional error,** judgments of courts determining controversies submitted to them should become final at some definite time fixed by law, or by a rule of practice recognized by law, so as to be **thereafter beyond the control even of the court which rendered them** for the purpose of correcting errors of fact or of law, into which, in the opinion of the court it may have fallen. The very purpose for which the courts are organized is to put an end to controversy, to decide the questions submitted to the litigants, and to determine the respective rights of the parties. With the full knowledge that courts are not infallible, **the litigants submit their respective claims for judgment, and they have a right at some time or other to have final judgment on which they can rely as a final disposition of the issue submitted, and to know that there is an end to the litigation.**
>
> x x x x x x x x x
>
> **It should also be borne in mind that the right of the winning party to enjoy the finality of the resolution of the case is also an essential part of public policy and the orderly administration of**

[22] *Supra* note 17.

[23] *Id.* at 49.

[24] *Supra* note 14.

justice. Hence, such right is just as weighty or equally important as the right of the losing party to appeal or seek reconsideration within the prescribed period.[25]

When the Labor Arbiter's Decision became final, petitioners attained a vested right to said judgment. They had the right to fully rely on the immutability of said Decision. In *Sofio v. Valenzuela*,[26] it was amply stressed that:

> The Court will not override the finality and immutability of a judgment based only on the negligence of a party's counsel in timely taking all the proper recourses from the judgment. To justify an override, the counsel's negligence must not only be gross but must also be shown to have deprived the party the right to due process.

In sum, the Court cannot countenance relaxation of the rules absent the showing of extraordinary circumstances to justify the same. In this case, no compelling reasons can be found to convince this Court that the CA acted correctly by according respondent such liberality.

IN VIEW OF THE FOREGOING, the Petition is **GRANTED.** The Decision of the Court of Appeals dated March 24, 2011, and its Resolution dated August 19, 2011 in CA-G.R. SP No. 114822 are hereby **SET ASIDE,** and the Decision of the National Labor Relations Commission in NLRC-LAC No. 07-001892-09 (NLRC Case No. NCR-09-12628-08), ruling that the Decision of the Labor Arbiter has become final and executory, is **REINSTATED.**

SO ORDERED.

Brion,[**] *Abad, Mendoza,* and *Leonen, JJ.*, concur.

---

[25] *Id.* at 145-147. (Emphasis in the original)

[26] G.R. No. 157810, February 15, 2012; 666 SCRA 55, 58.

[**] Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1395 dated December 6, 2012.

FIRST DIVISION

[G.R. No. 198701. December 10, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAYSON CURILLAN HAMBORA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS ACT OF 2002 (R.A. ACT NO. 9165); ILLEGAL SALE OF *SHABU*; ESSENTIAL ELEMENTS; ESTABLISHED IN CASE AT BAR. — The prosecution competently and convincingly established the essential elements for illegal sale of *shabu*, to wit: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. A thorough examination of the records herein confirms the presence of all these elements, *viz*: (1) PO2 Lasco acted as poseur-buyer to entrap persons suspected of selling *shabu* during a legitimate buy-bust operation; (2) Hambora approached PO2 Lasco and asked if the latter wanted to buy *shabu* from him; (3) PO2 Lasco, as poseur-buyer, tendered four (4) marked ₱100.00 bills to Hambora; and (3) Hambora, in return, handed one (1) sachet of *shabu* to PO2 Lasco. The chemistry report conducted on the specimen resulted in *shabu* with a total weight of 0.0743 gram. Thus, no cogent reason exists to disturb the factual findings of the RTC, as affirmed by the CA.

2. ID.; ID.; CHAIN OF CUSTODY RULE; SUBSTANTIAL COMPLIANCE WITH THE PROCEDURAL ASPECT OF THE RULE DOES NOT RENDER THE SEIZED DRUG ITEMS INADMISSIBLE AS LONG AS IT DID NOT AFFECT THE EVIDENTIARY WEIGHT OF THE DRUGS SEIZED FROM THE ACCUSED. — Hambora likewise questions the chain of custody of the *shabu* confiscated in view of police officers' failure to comply with the statutory guidelines laid down in Section 21 of R.A. 9165. We reject Hambora's claim and agree with the CA's pronouncement on the matter.

Time and again, jurisprudence is consistent in stating that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible. In the instant case, although the police officers did not strictly comply with the requirements of Section 21, A rticle II of R.A. 9165, their noncompliance did not affect the evidentiary weight of the drugs seized from Hambora as the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE COURT ACCORDS FULL CREDIT TO THE POSITIVE AND CREDIBLE TESTIMONIES OF THE APPREHENDING POLICE OFFICERS POINTING TO APPELLANT AS THE SELLER OF THE CONFISCATED *SHABU*. — The Court further accords full credit to the positive and credible testimonies of the police officers pointing to Hambora as the seller of the confiscated *shabu*, and rejects the latter's version of the events which eventually led to his apprehension in line with the "objective test" which presumes the regularity in the performance of duty of the apprehending police officers during the conduct of buy-bust operations. x x x In the instant case, the apprehending police officers positively identified Hambora who was caught *inflagrante delicto* selling 0.0743 gram of *shabu* to PO2 Lasco who stood at his assigned post. PO2 Lasco testified in court about their surveillance operations along Montilla St., Butuan City where several exchanges of *shabu* were apparently prevalent. In *People v. Amarillo,* it was held that: As to the credibility of the witnesses and their testimonies, we hold, as we have done time and again, that "the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect" and that "findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings.

4. ID.; ID.; DEFENSE OF FRAME-UP; APPELLANT'S ASSEVERATION THAT HE WAS MERELY FRAME-UP IS SELF SERVING AND UNCORROBORATED AND CANNOT PREVAIL OVER THE STRAIGHTFORWARD

AND POSITIVE TESTIMONIES OF THE APPREHENDING POLICE OFFICERS. — Hambora's asseveration that he was merely framed up is self-serving and uncorroborated, and must fail in light of the straightforward and positive testimonies of PO2 Lasco and his team of police officers identifying him as the seller of the *shabu*. Since he was caught *in flagrante delicto* of illegally selling *shabu*, Hambora is liable for violating Section 5, Article II of R.A. 9165. As aptly discussed by the CA, "the alleged inconsistencies emphasized by (Hambora) are very trivial and does not in any way affect core of the testimonies of the prosecution witnesses" that an illegal sale of *shabu* transpired between him and PO2 Lasco. Well-settled is the rule that "discrepancies referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair [the witnesses'] credibility nor do they overcome the presumption that the arresting officers have regularly performed their official duties."

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

REYES, *J.*:

This is an appeal filed by Jayson C. Hambora (Hambora) from the Decision[1] dated July 29, 2011 of the Court of Appeals (CA) in CA-G.R. CR- HC No. 00756-MIN. The CA affirmed the Decision[2] dated October 1, 2009 of the Regional Trial Court (RTC) of Butuan City, Branch 4, finding him guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165.[3]

---

[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles, concurring; *rollo,* pp. 3-33.

[2] CA *rollo,* pp. 30-40.

[3] Otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The accusatory portion of the Information reads as follows:

That on or about 12:05 o'clock in the afternoon of February 13, 2004 at Montilla Street, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, deliver to a poseur-buyer for a consideration of FOUR HUNDRED ([₱]400.00) PESOS, Philippine Currency, one (1) sachet of methamphetamine hydrochloride, otherwise known as *shabu*, weighing a total of zero point zero seven four three (0.0743) grams (sic), which is a dangerous drug.

CONTRARY TO LAW: (Violation of Sec. 5, Art. II of R.A. No. 9165)[4]

When arraigned, he entered a plea of "not guilty." After pre-trial, trial on the merits ensued.

The facts, according to the prosecution are, as follows:

That on February 13, 2004, at about 12:05 noon, a group of police officers of the Criminal Investigation and Detection Group (CIDG) of the PNP were at Montilla St., Butuan City, to conduct [a] buy-bust operation.

The designated place of operation was reportedly a lair of persons engaged in illegal drug trade. This information was gathered by a discreet surveillance conducted by the (CIDG) PNP.

Prior to the buy-bust, a police surveillance was conducted to determine and verify whether rampant illegal drug trade was conducted in the area. When (sic) the police were convinced that [the] information was accurate, hence, the buy-bust operation.

The police team was divided into two (2) groups, Team A was composed of Police Officers Palabrica, Yaoyao and a confidential asset, while Team B, composed by (sic) PO1 Jessie Rama, Lasco and Salubre.

In the buy-bust operation, to act as poseur-buyer was Policeman Andrew Lasco who will use a buy-bust money of four hundred pesos ([₱]400.00) in one hundred peso denomination[s]. (Exh. "A" to "A-4")

---

[4] *Rollo,* p. 4.

That, when both teams arrived at the designated place at Montilla Blvd., in front of a store identified as Francing Store, members of each team positioned themselves at their assigned places, while poseur-buyer (Lasco) posted himself at the side of the store, pretending to be a customer of illegal drugs.

After a while, somebody approached Lasco which turns (sic) out to be the accused, who asked (Lasco) whether he wants (sic) to buy a *shabu*.

With an affirmative answer and after a meeting of the minds, accused gave a sachet of *shabu* to Lasco in exchange of Four Hundred Pesos ([₱]400.00).

Upon consummation of the sale Lasco identified himself as a police officer, [then] arrested accused. His two (2) other companions, Police Officers Rama and Salubre, upon hearing the utterance of Lasco, saying he was a police officer, assisted Lasco.

After informing accused why he was arrested, accused was brought to the CIDG Office for further investigation. Furthermore, accused was physically searched and found were the marked monies.

The seized sachet of *shabu* was marked with the initials JAR, which stands for Jessie, Andrew and Raul.

Eventually, the sachet of *shabu* was submitted for laboratory examination at the PNP Crime Laboratory and was examined by PSI Cramwell Banogon, the Forensic Chemical Officer, who submitted a Laboratory Report No. D-026-04 (Exh. "F") confirming that the submitted specimen is a prohibited drug.[5]

On the other hand, the version of the defense states, as follows:

[O]n February 13, 2004, at 12:00 o'clock noon, he was at his residence at Purok 9, Langihan Road, Butuan City.

That after eating, he went to Montilla St., to run an errand of a Merlinda to collect a debt.

That this Merlinda is engaged in a small-time lending business.

That he was to see a certain Gigi. He was unable to collect at that time and was told [to] come back sometime. While going home,

---

[5] CA *rollo*, pp. 32-33.

he was arrested by a certain Police Officer Lasco, and was told that he was selling prohibited drug. After the arrest, he was subjected to a physical search and nothing was found on him.

That he requested of (sic) the presence of *barangay* officials during the search but his pleas went unheeded.

That the police proceeded with the search and after he was boarded on a motorcycle and brought to the CIDG office.

That he was interrogated of the matter of selling prohibited drugs in the area, and was specifically asked if he knows anybody selling illegal drugs. He answered that he has NO information about the matter.

Eventually, he was charged of this case. That he vehemently denied selling prohibited drugs.

Upon cross-examination, he admitted it was the first time that Merlinda asked him to collect a debt and he does not know the full name of the person [to] whom the debt is due.[6]

On October 1, 2009, the RTC rendered a Decision[7] convicting Hambora for illegal sale of *shabu* pursuant to Section 5, Article II of R.A. 9165 as it gave full credence to the testimonies of the police officers who conducted the buy-bust operation *vis-á-vis* Hambora's denial of the charge against him. The RTC decreed in this wise:

WHEREFORE, premises considered, accused **JAYSON CURILLAN HAMBORA** is hereby found guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act 9165, Otherwise Known as the Comprehensive Dangerous Drugs Act of 2002 and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand Pesos ([₱]500,000.00), without subsidiary imprisonment in case of insolvency.

Accused shall serve his sentence at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte and shall be credited in the service thereof with his preventive imprisonment conformably with Art. 29 of the Revised Penal Code, as amended.

---

[6] *Id.* at 33-34.

[7] *Id.* at 30-40.

The one (1) sachet of *shabu* marked JAR-1 (Exh. "G" and "G-1") is hereby ordered confiscated in favor of the government to be dealt with in accordance with law.

SO ORDERED.[8]

On appeal, the CA upheld the findings of the RTC. It brushed aside Hambora's vain assertion that he was framed up by the police operatives. The CA explained that the minor irregularities in the testimonies of the police officers who apprehended the appellant were not fatal, as these even added premium to their credibility as prosecution witnesses. The CA further stressed that non-compliance with Section 21 of R.A. 9165 will not render the arrest illegal or the items confiscated from Hambora inadmissible as long as the integrity of the *corpus delicti* has been preserved. Thus, the CA disposed the appeal:

WHEREFORE, premises foregoing, the appeal is **DISMISSED** for lack of merit and the assailed Decision dated October 1, 2009 in Criminal Case No. 10444 is **AFFIRMED *in toto***.[9]

Our Ruling

The CA decision is affirmed.

The prosecution competently and convincingly established the essential elements for illegal sale of *shabu*, to wit: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[10]

A thorough examination of the records herein confirms the presence of all these elements, *viz*: (1) PO2 Lasco acted as poseur-

---

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

[9] *Rollo*, p. 33.

[10] *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 529-530; citation omitted.

buyer to entrap persons suspected of selling *shabu* during a legitimate buy-bust operation; (2) Hambora approached PO2 Lasco and asked if the latter wanted to buy *shabu* from him; (3) PO2 Lasco, as poseur-buyer, tendered four (4) marked ₱100.00 bills to Hambora; and (3) Hambora, in return, handed one (1) sachet of *shabu* to PO2 Lasco. The chemistry report conducted on the specimen resulted in *shabu* with a total weight of 0.0743 gram. Thus, no cogent reason exists to disturb the factual findings of the RTC, as affirmed by the CA.

The Court further accords full credit to the positive and credible testimonies of the police officers pointing to Hambora as the seller of the confiscated *shabu*, and rejects the latter's version of the events which eventually led to his apprehension in line with the "objective test"[11] which presumes the regularity in the performance of duty of the apprehending police officers during the conduct of buy-bust operations. As held in *People v. De la Cruz*:[12]

> It is the duty of the prosecution to present a complete picture detailing the buy-bust operation—"from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of sale." We said that "[t]he manner by which the initial contact was made, x x x the offer to purchase the drug, the payment of the 'buy-bust money', and the delivery of the illegal drug x x x must be the subject of strict scrutiny by the courts to insure that law-abiding citizens are not unlawfully induced to commit an offense."[13] (Citations omitted)

In the instant case, the apprehending police officers positively identified Hambora who was caught *inflagrante delicto* selling 0.0743 gram of *shabu* to PO2 Lasco who stood at his assigned post. PO2 Lasco testified in court about their surveillance operations along Montilla St., Butuan City where several

---

[11] *Rollo*, p. 28.

[12] G.R. No. 185717, June 8, 2011, 651 SCRA 597.

[13] *Id.* at 609.

exchanges of *shabu* were apparently prevalent. In *People v. Amarillo*, it was held that:

> As to the credibility of the witnesses and their testimonies, we hold, as we have done time and again, that "the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect" and that "findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings.[14]

Hambora's asseveration that he was merely framed up is self-serving and uncorroborated, and must fail in light of the straightforward and positive testimonies of PO2 Lasco and his team of police officers identifying him as the seller of the *shabu*. Since he was caught *in flagrante delicto* of illegally selling *shabu*, Hambora is liable for violating Section 5, Article II of R.A. 9165. As aptly discussed by the CA, "the alleged inconsistencies emphasized by (Hambora) are very trivial and does not in any way affect the core of the testimonies of the prosecution witnesses"[15] that an illegal sale of *shabu* transpired between him and PO2 Lasco. Well-settled is the rule that "discrepancies referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair [the witnesses'] credibility nor do they overcome the presumption that the arresting officers have regularly performed their official duties."[16]

Hambora likewise questions the chain of custody of the *shabu* confiscated in view of police officers' failure to comply with the statutory guidelines laid down in Section 21 of R.A. 9165.[17]

---

[14] G.R. No. 194721, August 15, 2012; citations omitted.

[15] *Rollo*, p. 16.

[16] *People v. Figueroa*, G.R. No. 186141, April 11, 2012, 669 SCRA 391, 403-404; citations omitted.

[17] 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

We reject Hambora's claim and agree with the CA's pronouncement on the matter.

Time and again, jurisprudence is consistent in stating that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible.[18] In the instant case, although the police officers did not strictly comply with the requirements of Section 21, Article II of R.A. 9165, their noncompliance did not affect the evidentiary weight of the drugs seized from Hambora as the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.

The CA aptly discussed as follows:

> [W]hile admittedly Section 21 of R.A. 9165 was not complied [with] insofar as the inventory and the presence of key persons were concerned, the prosecution has sufficiently established that a buy-bust operation was in fact conducted, and that the one (1) sachet subject of the sale which, after examination was found to be "*shabu*," was positively identified as the one also presented in court. Hence, the integrity of the subject illegal drug was properly preserved.[19]

Lastly, this Court affirms the penalties imposed as they are well within the ranges provided by law. Section 5, Article II of R.A. No. 9165 prescribes a penalty of life imprisonment to death[20] and a fine ranging from ₱500,000.00 to ₱10,000,000.00

Laboratory Equipment. — x x x (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.

[18] *People v. Cardenas*, G.R. No. 190342, March 21, 2012, 668 SCRA 827, 836-837.

[19] *Rollo*, p. 30.

[20] The imposition of the death penalty has been proscribed with the effectivity of R.A. No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

for the sale of any dangerous drug, regardless of the quantity or purity involved.

WHEREFORE, in consideration of the foregoing premises, the Decision dated July 29, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 00756-MIN is **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 198820. December 10, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENATO LAPASARAN *Y* MEDINILLA** *a.k.a.* **"MAO,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); CHAIN OF CUSTODY RULE; COMPLIED WITH IN CASE AT BAR. — [I]t may be gleaned that to establish the chain of custody in a buy-bust operation is as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. We agree with the finding of the Court of Appeals. A perusal of the records of the case revealed that after the dangerous drugs were seized from appellant, the same were marked "RML"

and "RML-1" by the buy-bust team. PO1 Saez and PO2 Maglana then turned over "RML" and "RML-1" to investigating officer P/SInsp. Obong, who in turn, delivered the same to the PNP Crime Laboratory for examination at 10:50 p.m. of September 12, 2006. Based on the Physical Science Report No. D-623-06S, timed, dated and signed at 12:50 a.m., September 13, 2006 by Forensic Chemist P/SInsp. Bonifacio, "RML" and "RML-1" tested positive for the presence of *shabu*. Lastly, both sachets were then presented and turned over by P/SInsp. Bonifacio to the court. The Certificate of Inventory, request for laboratory examination and the consequent testimonies in Court leaves no doubt in the Court's mind that the chain of custody rule was duly followed.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT IS IN A BETTER POSITION TO DECIDE THE CREDIBILITY OF WITNESSES, HAVING HEARD THEIR TESTIMONIES AND OBSERVED THEIR DEPORTMENT AND MANNER OF TESTIFYING DURING THE TRIAL. — [T]his Court has often said that the prosecution of cases involving illegal drugs depends largely on the credibility of the police officers who conducted the buy-bust operation. It is fundamental that the factual findings of the trial courts and those involving credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.

3. ID.; ID.; ID.; IN CASES INVOLVING VIOLATIONS OF THE DANGEROUS DRUGS ACT, CREDENCE IS GIVEN TO PROSECUTION WITNESSES WHO ARE POLICE OFFICERS FOR THEY ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES IN A REGULAR MANNER, UNLESS THERE IS EVIDENCE TO THE CONTRARY. — It is equally settled that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is

evidence to the contrary. Appellant in this case failed to present evidence of ill motive on the part of the police officers who conducted the buy-bust operation to have implicated 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

LEONARDO-DE CASTRO, *J.*:

Before this Court is an appeal of the March 28, 2011 **Decision**[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 03919[2] affirming the February 3, 2009 **Joint Decision**[3] of the Regional Trial Court (RTC), Branch 267, Pasig City (Taguig City Station) in Criminal Cases No. 15081-D-TG and 15082-D-TG, both entitled *People of the Philippines v. Renato Lapasaran y Medilla a.k.a "Mao*," and finding appellant Renato Lapasaran guilty beyond reasonable doubt of illegal possession and sale of methamphetamine hydrochloride, in violation of Section 11(3) and Section 5(1), Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On September 14, 2006, two separate informations[4] were filed against appellant, charging him of illegal possession and illegal sale of a dangerous drug, which read:

Criminal Case No. 15081-D-TG

That, on or about the 12th day of September 2006, in the [City] of Taguig, Philippines, and within the jurisdiction of this Honorable

---

[1] *Rollo*, pp. 2-23; penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias, concurring.

[2] Entitled *People of the Philippines v. Renato Lapasaran y Medinilla a.k.a. "Mao."*

[3] CA *rollo*, pp. 13-28; penned by Judge Raul Bautista Villanueva.

[4] Records, pp. 1-2 and 16-17.

Court, the [appellant], without being authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully, feloniously and knowingly possess one (1) heat-sealed transparent plastic sachet with markings B("RML-1") containing 0.07 gram of white crystalline substance, which substance was found positive to the test for Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in violation of the above-cited law.

Criminal Case No. 15082-D-TG

That, on or about the 12th day of September 2006, in the [City] of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the [appellant], without being authorized by law, to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully, feloniously and knowingly sell, deliver, distribute and give away to PO1 Alexander A. Saez, who acted as poseur[-]buyer, 0.08 gram of white crystalline substance contained in one (1) small heat-sealed transparent plastic sachet with markings A("RML"), for and in consideration of the amount of Php200.00, which substance was found positive to the test for Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in violation of the above-cited law.

On arraignment, appellant pleaded not guilty for the crimes charged.[5] After pre-trial was conducted, joint trial on the merits ensued.

The prosecution presented Police Officer (PO) 1 Alexander Saez, PO2 Emmanuel Maglana, and PO2 Victor Flores as witnesses.

The defense, on the other hand, presented Mr. Rexal Merida, Ms. Maria Ferrer, Perfecto Lapasaran, and appellant as witnesses.

After the testimonies of the respective witnesses, the RTC summarized its finding of facts as follows:

[Appellant] was arrested after a buy bust operation was conducted against him at around 5:30 in the afternoon of 12 September 2006 in front of his residence at Block 51, Lot 25 Purok 2, San Felipe Street, Upper Bicutan, Taguig City, Metro Manila after receiving reports from an informant on his supposed illegal drug activities.

[5] *Id.* at 22 and 23.

During the said operation, PO1 Saez acted as the poseur buyer who pretended to be a drug user wherein he used 2 marked ₱100.00 bills, or the total sum of ₱200.00. After being introduced by their informant to their "target person" PO1 Saez handed the said bills to the accused and the latter, in turn, purportedly gave a plastic sachet containing suspected *shabu* which he chose out of the 2 sachets supposedly shown to him. When PO1 Saez gave the pre-arranged signal PO2 Maglana then rushed to the scene to assist him. The accused was then arrested by PO2 Maglana and recovered by PO1 Saez from him were the marked bills as well as another plastic sachet containing suspected *shabu*. As such [appellant] Lapasaran was then brought to the police headquarters for investigation wherein the arresting officers executed a joint affidavit regarding the incident. Likewise, the accused was duly booked per the Booking and Information Sheet dated 12 September 2006 wherein x x x it was indicated that the [appellant] was arrested at around "5:30 PM, 12 September 2006 infront of Blk 51 lot 25, Purok 2, San Felipe [S]treet, Upper [B]icutan, Taguig [C]ity."

Incidentally, and prior to the above operation, the police operatives under the Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF) of the Taguig City Police Station prepared a Pre-[O]peration Report/Coordination Sheet dated 11 September 2006. On account thereof, the Philippine Drug Enforcement Agency (PDEA) issued a Certificate of Coordination also dated 11 September 2006 certifying that indeed a coordination was made by the personnel of the above unit with their office.

On the same day of the arrest of the [appellant,] an inventory was prepared by PO1 Saez regarding the items confiscated from him as shown by the Certificate of Inventory dated 12 September 2006. In connection therewith, a request for laboratory examination was made by P/SInsp. Eufronio Obong, Jr. regarding the above evidence allegedly recovered from the accused, particularly, "(t)wo (2) small heat sealed (t)ransparent plastic sachet[s] containing white crystalline substance suspected to be *shabu* and marked as follows: "RML" (Item subject of sale) and "RML-1" (item being confiscated from the possession of Renato M. Lapasaran)." Aside therefrom, another request for the conduct of a drug test examination on the accused was submitted by the prosecution.

A Physical Science Report No. D-623-U6S dated 13 September 2007 was then received from P/Insp. Bonifacio wherein her findings

were that "(q)ualitative examination conducted on the above-stated specimen (2) heat-sealed transparent plastic sachets) gave POSITIVE result to the tests for the presence of Methylamphetamine hydrochloride, a dangerous drug."[6] (Citations omitted.)

The RTC found that the prosecution established the essential requisites of the crimes charged. It found appellant guilty beyond reasonable doubt of the crimes charged, sentencing him as follows:

WHEREFORE, and the foregoing considered, the Court finds that:

1. [Appellant] Renato Lapasaran *y* Medinilla is GUILTY beyond reasonable doubt of possessing 0.07 gram of methylamphetamine hydrochloride, or *shabu*, a dangerous drug, without authority in violation of Section 11, 3rd paragraph, Article II of RA No. 9165, as alleged in the Information in Criminal Case No. 15081-D-TG and he is hereby sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS AND ONE (1) DAY of *reclusion temporal*, as minimum, up to TWENTY (20) YEARS of *reclusion temporal*, as maximum, to pay a fine of ₱300,000.00 and to suffer the accessory penalties provided for by law; and,

2. [Appellant] Renato Lapasaran *y* Medinilla is also GUILTY beyond reasonable doubt of selling 0.08 gram of methylamphetamine hydrochloride, or *shabu*, a dangerous drug, without authority in violation of Section 5, 1st paragraph, Article II of RA No. 9165, as alleged in the Information in Criminal Case No. 15082-D-TG and he is hereby sentenced to suffer the penalty of life imprisonment, to pay a fine of ₱500,000.00 and to suffer the accessory penalties provided for by law.

With costs *de oficio*.[7]

On February 25, 2009, appellant, thru his counsel, filed his notice of appeal.[8]

On August 19, 2009, the Court of Appeals required appellant's counsel to submit his Brief.[9] However, counsel failed to file

---

[6] CA *rollo*, pp. 19-20.

[7] *Id.* at 28.

[8] Records, pp. 167-168.

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

the appellant's Brief. The Court of Appeals thus resolved to direct the Public Attorney's Office to appoint a counsel *de oficio* to represent appellant.[10]

Appellant asserts that the prosecution failed to prove beyond reasonable doubt his commission of the crimes charged. He argues that no testimony was presented by the prosecution to attest to the police officer's compliance with Section 21, Article II of Republic Act No. 9165 and to establish that the chain of custody rule had been complied with.[11]

The Court of Appeals affirmed *in toto* the RTC decision stating:

WHEREFORE, premises considered, the appeal is **DISMISSED** and the assailed Joint Decision dated February 3, 2009 of the RTC, Branch 267, Pasig City (Taguig City Station) in Criminal Case Nos. 15081-D-TG and 15082-D-TG is hereby **AFFIRMED**.[12]

Hence, this appeal.

Appellant reiterates that there was non-compliance with Section 21, Article II of Republic Act No. 9165. Hence, his lone assignment of error is stated in the following manner:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE BEYOND REASONABLE DOUBT THE *CORPUS DELICTI* OF THE OFFENSES CHARGED.[13]

The appeal must be dismissed for lack of merit.

Sections 5(1) and 11 of Republic Act No. 9165, also known as the Comprehensive Dangerous Drugs Act of 2002, provides:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of

---

[10] *Id.* at 38.

[11] *Id.* at 46-65.

[12] *Rollo*, p. 23.

[13] CA *rollo*, p. 48.

life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

SEC. 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

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

For prosecution for both illegal sale and illegal possession of a dangerous drug, the *corpus delicti* of the offenses is the

dangerous drug itself, in this case *shabu*. In *People v. Alcuizar*,[14] this Court stated that:

> The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.[15] (Citation omitted.)

Thus, Section 21(1), Article II of Republic Act No. 9165 provides for the custody and disposition of the confiscated illegal 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[.]

---

[14] G.R. No. 189980, April 6, 2011, 647 SCRA 431.

[15] *Id.* at 437.

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 further 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 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[.]

From the foregoing, it may be gleaned that to establish the chain of custody in a buy-bust operation is as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[16]

---

[16] *Ampatuan v. People*, G.R. No. 183676, June 22, 2011, 652 SCRA 615, 629-630.

We agree with the finding of the Court of Appeals. A perusal of the records of the case revealed that after the dangerous drugs were seized from appellant, the same were marked "RML" and "RML-1" by the buy-bust team. PO1 Saez and PO2 Maglana then turned over "RML" and "RML-1" to investigating officer P/SInsp. Obong, who in turn, delivered the same to the PNP Crime Laboratory for examination at 10:50 p.m. of September 12, 2006. Based on the Physical Science Report No. D-623-06S, timed, dated and signed at 12:50 a.m., September 13, 2006 by Forensic Chemist P/SInsp. Bonifacio, "RML" and "RML-1" tested positive for the presence of *shabu*.[17] Lastly, both sachets were then presented and turned over by P/SInsp. Bonifacio to the court. The Certificate of Inventory,[18] request for laboratory examination[19] and the consequent testimonies in Court leaves no doubt in the Court's mind that the chain of custody rule was duly followed.

Moreover, this Court has often said that the prosecution of cases involving illegal drugs depends largely on the credibility of the police officers who conducted the buy-bust operation. It is fundamental that the factual findings of the trial courts and those involving credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[20]

It is equally settled that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the

---

[17] Records, p. 9.

[18] *Id.* at 13.

[19] *Id.* at 8.

[20] *Ampatuan v. People*, *supra* note 16 at 627-628.

contrary.[21] Appellant in this case failed to present evidence of ill motive on the part of the police officers who conducted the buy-bust operation to have implicated appellant.

With respect to the penalties imposed by the courts *a quo*, the Court finds these proper.

Section 11, Article II of Republic Act No. 9165, penalizes the crime of illegal possession of less than five grams of *shabu* with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00).

Thus, the RTC and the Court of Appeals properly penalized appellant with imprisonment of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, as well as a fine of ₱300,000.00, since the said penalties are within the range of penalties prescribed by the above provision.

Section 5, Article II of Republic Act No. 9165 penalizes the crime of unauthorized sale of *shabu*, regardless of the quantity and purity thereof, with life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00).

Hence, the penalty of life imprisonment and a fine of ₱500,000.00 was correctly imposed by the RTC and the Court of Appeals for illegal sale of *shabu*.

WHEREFORE, the appeal is **DENIED.** The March 28, 2011 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03919 is **AFFIRMED.**

SO ORDERED.

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

---

[21] *People v. Dela Cruz*, G.R. No. 177324, March 30, 2011, 646 SCRA 707, 726.

FIRST DIVISION

[G.R. No. 199579. December 10, 2012]

RAMON JOSUE *Y* GONZALES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW SHALL BE ADDRESSED BY THE COURT AND ANY QUESTION THAT PERTAINS TO THE FACTUAL ISSUES ON THE CRIME'S COMMISSION IS BARRED. — At the outset, we emphasize that since the petitioner seeks this Court's review of his case through a petition for review under Rule 45 of the Rules of Court, only questions of law shall be addressed by the Court, barring any question that pertains to factual issues on the crime's commission. The general rule is that questions of fact are not reviewable in petitions for review under Rule 45, subject only to certain exceptions as when the trial court's judgment is not supported by sufficient evidence or is premised on a misapprehension of facts. Upon review, the Court has determined that the present case does not fall under any of the exceptions. In resolving the present petition, we then defer to the factual findings made by the trial court, as affirmed by the CA when the case was brought before it on appeal.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; BEST RESOLVED BY TRIAL COURTS. — The Court has, after all, consistently ruled that the task of assigning values to the testimonies of witnesses and weighing their credibility is best left to the trial court which forms first-hand impressions as witnesses testify before it. Factual 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.

3. CRIMINAL LAW; FRUSTRATED HOMICIDE; COMMITTED IN CASE AT BAR. — The Court finds, and so holds, that

both the trial and appellate courts have correctly ruled on the petitioner's culpability for the crime of frustrated homicide, which has the following for its elements: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code is present. These elements were duly established during the trial. The trial court's factual findings, when taken collectively, clearly prove the existence of the crime's first and second elements, pertaining to the petitioner's intent to kill and his infliction of fatal wound upon the victim. Evidence to prove intent to kill in crimes against persons may consist, among other things, of the means used by the malefactors; the conduct of the malefactors before, at the time of, or immediately after the killing of the victim; and the nature, location and number of wounds sustained by the victim. Significantly, among the witnesses presented by the prosecution was Villanueva, who, while being a friend of the petitioner, had testified against the petitioner as an eyewitness and specifically identified the petitioner as the assailant that caused the wounds sustained by the victim Macario. Even the petitioner cites in the petition he filed with this Court the prosecution's claim that at the time he fired the first gunshot, he was shouting, "*Papatayin kita! (I will kill you!)*" The doctors who attended to the victim's injuries also affirmed before the trial court that Macario had sustained gunshot wounds, and that the injuries caused thereby were fatal if not given medical attention.

4. ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; IF NO UNLAWFUL AGGRESSION IS PROVED, THEN NO SELF-DEFENSE MAY BE SUCCESSFULLY PLEADED. — What is also noteworthy is that the petitioner invoked self-defense, after he had admitted that he caused the victim's wounds when he shot the latter several times using a deadly weapon, *i.e.*, the .45 caliber pistol that he carried with him to the *situs* of the crime. In *People v. Mondigo*, we explained: **By invoking self-defense, appellant admitted committing the felonies for which he was charged albeit under circumstances which, if proven, would justify his commission of the crimes.** Thus, **the burden of proof is shifted to appellant who must show**, beyond reasonable doubt, that the killing of Damaso and

wounding of Anthony were attended by the following circumstances: **(1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself**. In order to be exonerated from the charge, the petitioner then assumed the burden of proving, beyond reasonable doubt, that he merely acted in self- defense. Upon review, we agree with the RTC and the CA that the petitioner failed in this regard. While the three elements quoted above must concur, self-defense relies, first and foremost, on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, then no self-defense may be successfully pleaded. "Unlawful aggression" here presupposes an actual, sudden, and unexpected attack, or imminent danger of the attack, from the victim.

5. ID.; ID.; UNLAWFUL AGGRESSION; FACT THAT THE VICTIM WAS UNARMED AT THE TIME OF THE SHOOTING WHILE PETITIONER THEN CARRIED A .45 CALIBER PISTOL SHOWS THE ABSENCE OF UNLAWFUL AGGRESSION. — In the present case, particularly significant to this element of "unlawful aggression" is the trial court's finding that Macario was unarmed at the time of the shooting, while the petitioner then carried with him a .45 caliber pistol. According to prosecution witness Villanueva, it was even the petitioner who confronted the victim, who was then only buying medicine from a *sari-sari* store. Granting that the victim tried to steal the petitioner's car battery, such did not equate to a danger in his life or personal safety. At one point during the fight, Macario even tried to run away from his assailant, yet the petitioner continued to chase the victim and, using his .45 caliber pistol, fired at him and caused the mortal wound on his chest. Contrary to the petitioner's defense, there then appeared to be no "real danger to his life or personal safety," for no unlawful aggression, which would have otherwise justified him in inflicting the gunshot wounds for his defense, emanated from Macario's end.

6. ID.; ID.; ID.; THE WEAPON USED AND THE NUMBER OF GUNSHOTS FIRED BY PETITIONER, IN RELATION TO THE NATURE AND LOCATION OF THE VICTIM'S WOUNDS, FURTHER NEGATE THE CLAIM OF SELF-

DEFENSE. — The weapon used and the number of gunshots fired by the petitioner, in relation to the nature and location of the victim's wounds, further negate the claim of self-defense. For a claim of self-defense to prosper, the means employed by the person claiming the defense must be commensurate to the nature and extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression. Considering the petitioner's use of a deadly weapon when his victim was unarmed, and his clear intention to cause a fatal wound by still firing his gun at the victim who had attempted to flee after already sustaining two gunshot wounds, it is evident that the petitioner did not act merely in self-defense, but was an aggressor who actually intended to kill his victim.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

Before the Court is a Petition for Review on *Certiorari* filed by petitioner Ramon Josue *y* Gonzales (Josue) to assail the Decision[1] dated June 30, 2011 and Resolution[2] dated December 1, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 33180.

The petitioner was charged with the crime of frustrated homicide before the Regional Trial Court (RTC) of Manila, *via* an information that reads:

That on or about May 1, 2004, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously, attack, assault and use personal violence

---

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Francisco P. Acosta and Angelita A. Gacutan, concurring; *rollo*, pp. 24-43.

[2] *Id.* at 50.

upon the person of ARMANDO MACARIO *y* PINEDA a.k.a. BOYET ORA, by then and there shooting the said Armando Macario *y* Pineda a.k.a. Boyet Ora several times with a cal. 45 pistol hitting him on the different parts of his body, thus performing all the acts of execution which should have produced the crime of Homicide, as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical attendance rendered to the said ARMANDO MACARIO *y* PINEDA a.k.a. BOYET ORA which prevented his death thereafter.

Contrary to law.[3]

The case was docketed as Crim. Case No. 05-236299 and raffled to Branch 40 of the RTC. Upon arraignment, the petitioner entered a plea of "not guilty". After pre-trial, trial on the merits ensued.

The witnesses for the prosecution were: (1) victim Armando Macario *y* Pineda (Macario); (2) Dr. Casimiro Tiongson, Jr. (Dr. Tiongson), Chief Surgical Resident of Chinese General Hospital; (3) Dr. Edith Calalang (Dr. Calalang), a radiologist; (4) Ariel Villanueva, an eyewitness to the crime; and (5) Josielyn Macario, wife of the victim. The prosecution presented the following account:

On May 1, 2004, at around 11:15 in the evening, Macario, a *barangay tanod*, was buying medicine from a store near the petitioner's residence in Barrio Obrero, Tondo, Manila when he saw the petitioner going towards him, while shouting to ask him why he had painted the petitioner's vehicle. Macario denied the petitioner's accusation, but petitioner still pointed and shot his gun at Macario. The gunshots fired by the petitioner hit Macario's elbow and fingers. As the unarmed Macario tried to flee from his assailant, the petitioner still fired his gun at him, causing him to sustain a gunshot wound at his back. Macario was then rushed to the Chinese General Hospital for medical treatment.

Dr. Tiongson confirmed that Macario sustained three (3) gunshot wounds: (1) one on his right hand, (2) one on his left

[3] *Id.* at 63.

elbow, and (3) one indicating a bullet's entry point at the posterior of the chest, exiting at the anterior line. Dr. Calalang took note of the tiny metallic foreign bodies found in Macario's x-ray results, which confirmed that the wounds were caused by gunshots. Further, she said that the victim's injuries were fatal, if not medically attended to. Macario incurred medical expenses for his treatments.

For his defense, the petitioner declared to have merely acted in self-defense. He claimed that on the evening of May 1, 2004, he, together with his son Rafael, was watching a television program when they heard a sound indicating that the hood of his jeepney was being opened. He then went to the place where his jeepney was parked, armed with a .45 caliber pistol tucked to his waist. There he saw Macario, together with Eduardo Matias and Richard Akong, in the act of removing the locks of his vehicle's battery. When the petitioner sought the attention of Macario's group, Macario pointed his .38 caliber gun at the petitioner and pulled its trigger, but the gun jammed and failed to fire. The petitioner then got his gun and used it to fire at Macario, who was hit in the upper arm. Macario again tried to use his gun, but it still jammed then fell on the ground. As Macario reached down for the gun, the petitioner fired at him once more, hitting him at the back. When Macario still tried to fire his gun, the petitioner fired at him for the third time, hitting his hand and causing Macario to drop his gun. The petitioner got Macario's gun and kept it in his residence.

The petitioner's son, Rafael Josue, testified in court to corroborate his father's testimony.

SPO4 Axelito Palmero (SPO4 Palmero) also testified for the defense, declaring that on May 26, 2004, he received from Josue a .38 caliber revolver that allegedly belonged to Macario.

On October 22, 2009, the RTC rendered its Decision[4] finding the petitioner guilty beyond reasonable doubt of the crime of frustrated homicide. It gave full credit to the testimony of the

---

[4] *Id.* at 63-70.

prosecution witnesses, further noting that the defense had failed to prove that the .38 caliber revolver that was turned over to SPO4 Palmero actually belonged to Macario. The dispositive portion of the RTC Decision reads:

> **WHEREFORE,** accused **RAMON JOSUE *y* GONZALES** is found guilty beyond reasonable doubt of Frustrated Homicide without any aggravating or mitigating circumstances to vary the penalty imposable. Applying the Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate penalty of six (6) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum.
>
> Accused Ramon Josue *y* Gonzales is hereby ordered to indemnify the victim, Armando Macario *y* Pineda, the sum of [₱]32,214.25 for hospitalization and medicine expenses as actual damages.
>
> The accused's bail is deemed cancelled. Bondsman is ordered to surrender the accused to this Court for execution of the final judgment.
>
> SO ORDERED.[5]

Unsatisfied, the petitioner appealed from the RTC's decision to the CA, which affirmed the rulings of the RTC and thus, dismissed the appeal.

Hence, the present petition. The petitioner assails the CA's dismissal of the appeal, arguing that the prosecution had failed to overthrow the constitutional presumption of innocence in his favor.

We deny the petition.

At the outset, we emphasize that since the petitioner seeks this Court's review of his case through a petition for review under Rule 45 of the Rules of Court, only questions of law shall be addressed by the Court, barring any question that pertains to factual issues on the crime's commission. The general rule is that questions of fact are not reviewable in petitions for review under Rule 45, subject only to certain exceptions as when the

---

[5] *Id.* at 69-70.

trial court's judgment is not supported by sufficient evidence or is premised on a misapprehension of facts.[6]

Upon review, the Court has determined that the present case does not fall under any of the exceptions. In resolving the present petition, we then defer to the factual findings made by the trial court, as affirmed by the CA when the case was brought before it on appeal. The Court has, after all, consistently ruled that the task of assigning values to the testimonies of witnesses and weighing their credibility is best left to the trial court which forms first-hand impressions as witnesses testify before it. Factual 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.[7]

As against the foregoing parameters, the Court finds, and so holds, that both the trial and appellate courts have correctly ruled on the petitioner's culpability for the crime of frustrated homicide, which has the following for its elements:

(1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault;

(2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and

(3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code is present.

These elements were duly established during the trial.

The trial court's factual findings, when taken collectively, clearly prove the existence of the crime's first and second elements, pertaining to the petitioner's intent to kill and his infliction of

---

[6] See *Gotis v. People,* G.R. No. 157201, September 14, 2007, 533 SCRA 441, 447; citation omitted.

[7] *People v. Del Rosario,* G.R. No. 189580, February 9, 2011, 642 SCRA 625, 633; citation omitted.

fatal wound upon the victim. Evidence to prove intent to kill in crimes against persons may consist, among other things, of the means used by the malefactors; the conduct of the malefactors before, at the time of, or immediately after the killing of the victim; and the nature, location and number of wounds sustained by the victim.[8] Significantly, among the witnesses presented by the prosecution was Villanueva, who, while being a friend of the petitioner, had testified against the petitioner as an eyewitness and specifically identified the petitioner as the assailant that caused the wounds sustained by the victim Macario. Even the petitioner cites in the petition he filed with this Court the prosecution's claim that at the time he fired the first gunshot, he was shouting, "*Papatayin kita! (I will kill you!)*"[9] The doctors who attended to the victim's injuries also affirmed before the trial court that Macario had sustained gunshot wounds, and that the injuries caused thereby were fatal if not given medical attention. The trial court then held:

> Weighing the evidence thus proffered, this Court believes the prosecution's version.
>
> x x x x x x x x x
>
> The Court gives credence to the testimonies of the witnesses presented by the prosecution as it did not find any fact or circumstance in the shooting incident to show that said witnesses had falsely testified or that they were actuated by ill-motive.
>
> x x x x x x x x x
>
> x x x (A)s a result of being shot three (3) times with a .45 caliber gun, complainant sustained mortal wounds which without medical assistance, complainant could have died therefrom. Dr. Casimiro Tiongson, Jr., the chief surgical resident who attended the complainant and prescribed his medicines, testified that the victim, Armando Macario, sustained three (3) gunshot wounds located in the left elbow, right hand and another bullet entering his posterior chest exiting in front of complainant's chest.

---

[8] *People v. Lanuza*, G.R. No. 188562, August 24, 2011, 656 SCRA 293, 300.

[9] *Rollo*, p. 11.

These findings were also contained in the x-ray consultation reports testified to by Dr. Edith Calalang as corroborating witness.[10] (Citations omitted)

What is also noteworthy is that the petitioner invoked self-defense, after he had admitted that he caused the victim's wounds when he shot the latter several times using a deadly weapon, *i.e.*, the .45 caliber pistol that he carried with him to the *situs* of the crime. In *People v. Mondigo*,[11] we explained:

> **By invoking self-defense, appellant admitted committing the felonies for which he was charged albeit under circumstances which, if proven, would justify his commission of the crimes.** Thus, **the burden of proof is shifted to appellant who must show**, beyond reasonable doubt, that the killing of Damaso and wounding of Anthony were attended by the following circumstances: **(1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself**.[12] (Citations omitted and emphasis ours)

In order to be exonerated from the charge, the petitioner then assumed the burden of proving, beyond reasonable doubt, that he merely acted in self-defense. Upon review, we agree with the RTC and the CA that the petitioner failed in this regard.

While the three elements quoted above must concur, self-defense relies, first and foremost, on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, then no self-defense may be successfully pleaded.[13] "Unlawful aggression" here presupposes an actual, sudden, and unexpected attack, or imminent danger of the attack, from the victim.[14]

---

[10] *Id.* at 67-68.

[11] G.R. No. 167954, January 31, 2008, 543 SCRA 384.

[12] *Id.* at 389-390.

[13] *People v. Abesamis*, G.R. No. 140985, August 28, 2007, 531 SCRA 300, 310-311; citations omitted.

[14] *Supra* note 6, at 449.

In the present case, particularly significant to this element of "unlawful aggression" is the trial court's finding that Macario was unarmed at the time of the shooting, while the petitioner then carried with him a .45 caliber pistol. According to prosecution witness Villanueva, it was even the petitioner who confronted the victim, who was then only buying medicine from a *sari-sari* store. Granting that the victim tried to steal the petitioner's car battery, such did not equate to a danger in his life or personal safety. At one point during the fight, Macario even tried to run away from his assailant, yet the petitioner continued to chase the victim and, using his .45 caliber pistol, fired at him and caused the mortal wound on his chest. Contrary to the petitioner's defense, there then appeared to be no "real danger to his life or personal safety,"[15] for no unlawful aggression, which would have otherwise justified him in inflicting the gunshot wounds for his defense, emanated from Macario's end.

The weapon used and the number of gunshots fired by the petitioner, in relation to the nature and location of the victim's wounds, further negate the claim of self-defense. For a claim of self-defense to prosper, the means employed by the person claiming the defense must be commensurate to the nature and extent of the attack sought to be averted, and must be rationally necessary to prevent or repel an unlawful aggression.[16] Considering the petitioner's use of a deadly weapon when his victim was unarmed, and his clear intention to cause a fatal wound by still firing his gun at the victim who had attempted to flee after already sustaining two gunshot wounds, it is evident that the petitioner did not act merely in self-defense, but was an aggressor who actually intended to kill his victim.

Given the foregoing, and in the absence of any circumstance that would have qualified the crime to murder, we hold that the trial court committed no error in declaring the petitioner guilty

---

[15] See *Nacnac v. People*, G.R. No. 191913, March 21, 2012, 668 SCRA 846, 856.

[16] *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 301; citation omitted.

beyond reasonable doubt of the crime of frustrated homicide. Applying the rules provided by the Indeterminate Sentence Law, the trial court correctly imposed for such offense an indeterminate penalty of six (6) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum. The award of actual damages is also sustained. However, we hold that in line with prevailing jurisprudence,[17] the victim is entitled to an award of moral damages in the amount of ₱10,000.00.

WHEREFORE, the petition is **DENIED.** The Decision dated June 30, 2011 and Resolution dated December 1, 2011 of the Court of Appeals in CA-G.R. CR No. 33180 are **AFFIRMED** with **MODIFICATION** in that the petitioner Ramon Josue *y* Gonzales is also ordered to pay the offended party the amount of ₱10,000.00 as moral damages.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 199892. December 10, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARTURO PUNZALAN, JR.,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; AVOIDANCE OF A GRAVER EVIL; REQUISITES. —

---

[17] *Serrano v. People*, G.R. No. 175023, July 5, 2010, 623 SCRA 322, 341.

This Court has combed through the records of this case and found no reason to deviate from the findings of the trial and appellate courts. There is nothing that would indicate that the RTC and the Court of Appeals "ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case." Under paragraph 4, Article 11 of the Revised Penal Code, to successfully invoke avoidance of greater evil as a justifying circumstance, the following requisites should be complied with: (1) the evil sought to be avoided actually exists; (2) the injury feared be greater than that done to avoid it; and (3) there be no other practical and less harmful means of preventing it.

2. ID.; ID.; ID.; ID.; THE TRIAL COURT AND THE APPELLATE COURT REJECTED APPELLANT'S SELF-SERVING AND UNCORROBORATED CLAIM OF AVOIDANCE OF A GREATER EVIL; APPELLANT FAILED TO SATISFY THE THIRD REQUISITE THAT THERE IS NO OTHER AND LESS HARMFUL MEANS OF PREVENTING IT. — The RTC and the Court of Appeals rejected appellant's self-serving and uncorroborated claim of avoidance of greater evil. The trial and appellate courts noted that even appellant's own witness who was in the van with appellant at the time of the incident contradicted appellant's claim. Thus, the RTC and the Court of Appeals concluded that the evil appellant claimed to avoid did not actually exist. This Court agrees. Moreover, appellant failed to satisfy the third requisite that there be no other practical and less harmful means of preventing it. Under paragraph 4, Article 11 of the Revised Penal Code, infliction of damage or injury to another so that a greater evil or injury may not befall one's self may be justified only if it is taken as a last resort and with the least possible prejudice to another. If there is another way to avoid the injury without causing damage or injury to another or, if there is no such other way but the damage to another may be minimized while avoiding an evil or injury to one's self, then such course should be taken. In this case, the road where the incident happened was wide, some 6 to 7 meters in width, and the place was well-lighted. Both sides of the road were unobstructed by trees, plants or structures. Appellant was a driver by occupation. However, appellant himself testified that when he shifted to the second gear and immediately stepped

on the accelerator upon seeing the four navy personnel approaching from in front of him, he did not make any attempt to avoid hitting the approaching navy personnel even though he had enough space to do so. He simply sped away straight ahead, meeting the approaching navy personnel head on, totally unmindful if he might run them over. He therefore miserably failed to resort to other practical and less harmful available means of preventing the evil or injury he claimed to be avoiding.

3. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; SHOWN BY THE VICTIM'S DEFENSELESS POSITION WHEN APPELLANT MOWED THEM DOWN WITH HIS VAN, KILLING TWO OF THEM, INJURING THREE OTHERS AND ONE NARROWLY ESCAPING INJURY OR DEATH. — The appreciation of treachery as a circumstance that qualified the killing of SN1 Duclayna and SN1 Andal and the attempted killing of the others is also correct. x x x The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims. The six navy personnel were walking by the roadside, on their way back to their camp. They felt secure as they have just passed a sentry and were nearing their barracks. They were totally unaware of the threat to their life as their backs were turned against the direction where appellant's speeding van came. They were therefore defenseless and posed no threat to appellant when appellant mowed them down with his van, killing two of them, injuring three others and one narrowly escaping injury or death. Beyond reasonable doubt, there was treachery in appellant's act. This was sufficiently alleged in the Information which not only expressly mentioned treachery as one of the circumstances attending the crime but also described it in understandable language.

4. ID.; AGGRAVATING CIRCUMSTANCES; USE OF MOTOR VEHICLE; APPELLANT USED THE VAN BOTH AS MEANS TO COMMIT A CRIME AND TO FLEE THE SCENE OF THE CRIME AFTER HE COMMITTED THE FELONIOUS ACT. — Use of motor vehicle was also properly considered as an aggravating circumstance. Appellant deliberately used the van he was driving to pursue the victims.

Upon catching up with them, appellant ran over them and mowed them down with the van, resulting to the death of SN1 Andal and SN1 Duclayna and injuries to the others. Thereafter, he continued to speed away from the scene of the incident. Without doubt, appellant used the van both as a means to commit a crime and to flee the scene of the crime after he committed the felonious act.

5. ID.; COMPLEX CRIME OF DOUBLE MURDER WITH MULTIPLE ATTEMPTED MURDER; COMMITTED IN CASE AT BAR. — The felony committed by appellant as correctly found by the RTC and the Court of Appeals, double murder with multiple attempted murder, is a complex crime contemplated under Article 48 of the Revised Penal Code: Art. 48. *Penalty for complex crimes*. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. Appellant was animated by a single purpose, to kill the navy personnel, and committed a single act of stepping on the accelerator, swerving to the right side of the road ramming through the navy personnel, causing the death of SN1 Andal and SN1 Duclayna and, at the same time, constituting an attempt to kill SN1 Cuya, SN1 Bacosa, SN1 Bundang and SN1 Domingo. The crimes of murder and attempted murder are both grave felonies as the law attaches an afflictive penalty to capital punishment (*reclusion perpetua* to death) for murder while attempted murder is punished by *prision mayor*, an afflictive penalty.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This an appeal from the Decision[1] dated April 29, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02816 denying the appeal of appellant Arturo Punzalan, Jr. of the Decision[2] dated March 21, 2007 of the Regional Trial Court (RTC) of Iba, Zambales and affirming his conviction for the complex crime of double murder with multiple attempted murder, with certain modifications on the civil liability imposed on appellant.[3]

In August 2002, Seaman 1st Class (SN1) Arnulfo Andal, SN1 Antonio Duclayna, SN1 Evelio Bacosa, SN1 Cesar Domingo, SN1 Danilo Cuya, and SN1 Erlinger Bundang were among the members of the Philippine Navy sent for schooling at the Naval Education and Training Command (NETC) at San Miguel, San Antonio, Zambales. On August 10, 2002, at around 5:00 or 6:00 in the afternoon, they went to the "All-in-One" Canteen to have some drink. Later, at around 10:00 in the evening, they transferred to a nearby videoke bar, "Aquarius," where they continued their drinking session. Shortly thereafter, a heated argument between SN1 Bacosa and appellant ensued regarding a flickering light bulb inside "Aquarius."[4] When SN1 Bacosa

---

[1] *Rollo*, pp. 2-28; penned by Associate Justice Noel G. Tijam with Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba, concurring.

[2] CA *rollo*, pp. 16-50.

[3] *Rollo*, pp. 27-28. In particular, the Court of Appeals ordered appellant to pay the respective heirs of his victims SN1 Antonio Duclayna and SN1 Arnulfo Andal ₱75,000 civil indemnity, ₱75,000 moral damages, ₱30,000 exemplary damages and ₱25,000 temperate damages, plus ₱2,172,270.21 to the heirs of SN1 Andal representing SN1 Andal's loss of earning capacity. The Court of Appeals made the further modifications of ordering appellant to pay each of his surviving victims, SN1 Evelio Bacosa, SN1 Cesar Domingo, SN1 Danilo Cuya and SN1 Erlinger Bundang, ₱40,000 moral damages and ₱30,000 exemplary damages, plus ₱25,000 temperate damages in favor of SN1 Bacosa, SN1 Cuya and SN1 Bundang for the pecuniary losses they suffered on account of the injuries sustained.

[4] *Id.* at 5.

suggested that the light be turned off ("*Patayin ang ilaw*"), appellant who must have misunderstood and misinterpreted SN1 Bacosa's statement belligerently reacted asking, "*Sinong papatayin*?," thinking that SN1 Bacosa's statement was directed at him.[5] SN1 Cuya tried to pacify SN1 Bacosa and appellant, while SN1 Bundang apologized to appellant in behalf of SN1 Bacosa. However, appellant was still visibly angry, mumbling unintelligible words and pounding his fist on the table.[6]

To avoid further trouble, the navy personnel decided to leave "Aquarius" and return to the NETC camp. They walked in two's, namely, SN1 Bundang and SN1 Domingo in the first group, followed by the group of SN1 Bacosa and SN1 Cuya, and SN1 Andal and SN1 Duclayna in the last group, with each group at one arm's length distance from the other.[7] Along the way, they passed by the NETC sentry gate which was being manned by SN1 Noel de Guzman and F1EN Alejandro Dimaala at that time.[8] SN1 Andal and SN1 Duclayna even stopped by to give the sentries some barbecue before proceeding to follow their companions.[9]

Soon after the navy personnel passed by the sentry gate, SN1 De Guzman and F1EN Dimaala flagged down a rushing and zigzagging maroon Nissan van with plate number DRW 706. The sentries approached the van and recognized appellant, who was reeking of liquor, as the driver. Appellant angrily uttered, "*kasi chief, gago ang mga 'yan!*," while pointing toward the direction of the navy personnel's group. Even before he was given the go signal to proceed, appellant shifted gears and sped

---

[5] Records, Vol. I, p. 199; testimony of SN1 Cesar Domingo, TSN, July 28, 2003, p. 7.

[6] *Rollo*, p. 6.

[7] Records, Vol. I, pp. 144-145; testimony of SN1 Evelio Bacosa, TSN, March 24, 2003, pp. 12-13.

[8] *Rollo*, p. 6.

[9] Records, Vol. I, pp. 290-291 and 370; testimonies of F1EN Alejandro Dimaala and SN1 Noel De Guzman , TSNs, May 26, 2004, pp. 3-4 and of January 19, 2005, p. 6, respectively.

away while uttering, "*papatayin ko ang mga 'yan!*"[10] While F1EN Dimaala was writing the van's plate number and details in the logbook, he suddenly heard a loud thud. Meanwhile, SN1 De Guzman saw how the van sped away towards the camp and suddenly swerved to the right hitting the group of the walking navy personnel prompting him to exclaim to F1EN Dimaala, "*chief, binangga ang tropa!*" SN1 De Guzman then asked permission to go to the scene of the incident and check on the navy personnel.[11]

When they were hit by the vehicle from behind, SN1 Cuya and SN1 Bacosa were thrown away towards a grassy spot on the roadside. They momentarily lost consciousness.[12] When they came to, they saw SN1 Duclayna lying motionless on the ground.[13] SN1 Cuya tried to resuscitate SN1 Duclayna, while SN1 Bacosa tried to chase the van.[14]

SN1 Domingo was not hit by the van as he was in the first group and was pushed away from the path of the speeding van. He was able to see the vehicle's plate number. He also tried to chase the van with SN1 Bacosa but they turned around when the vehicle made a U-turn as they thought that it would come back for them. The vehicle, however, sped away again when other people started to arrive at the scene of the incident.[15]

SN1 De Guzman found SN1 Cuya administering cardiopulmonary resuscitation (CPR) on SN1 Duclayna. He also saw the misshapen body of SN1 Andal lying some 50 meters away, apparently dragged there when the speeding van hit SN1 Andal. SN1 Cuya

---

[10] *Id.* at 290-297, 370-375.

[11] *Rollo*, p. 7.

[12] *Id.* at 6.

[13] Records, Vol. I, pp. 83-84; testimony of SN1 Danilo Cuya, TSN, December 11, 2002, pp. 9-10.

[14] *Id.* at 147; See also testimony of SN1 Evelio Bacosa, TSN, March 24, 2003, p. 15.

[15] *Id.* at 202-203; testimony of SN1 Cesar Domingo, TSN, July 28, 2003, pp. 10-11.

instructed SN1 De Guzman to get an ambulance but the car of the officer on duty at that time arrived and they boarded SN1 Duclayna's body to the vehicle to be brought to the hospital.[16] The other injured navy personnel, namely, SN1 Cuya, SN1 Bacosa, and SN1 Bundang, were brought to the infirmary for treatment.[17]

Members of the local police soon arrived at the scene of the crime. Senior Police Officer (SPO) 1 Roberto Llorico, the police investigator, found the bloodied lifeless body of SN1 Andal lying on the side of the road. SPO1 Llorico was informed that appellant was the suspect. Fortunately, one of the responding officers was appellant's neighbor and led SPO1 Llorico to appellant's place where they found appellant standing near his gate. Appellant appeared drunk and was reeking of alcohol. They also saw the van parked inside the premises of appellant's place. Its front bumper was damaged. When they asked appellant why he ran over the navy personnel, he simply answered that he was drunk. The police officers then invited appellant to the police station and brought the van with them.[18]

A *post mortem* examination was conducted on the bodies of SN1 Andal and SN1 Duclayna by Dr. Jericho Cordero of Camp Crame Medical Division. Dr. Cordero's findings were that the injuries sustained by SN1 Andal were fatal and caused by a hard blunt object that hit his body. The force of the impact was such that the internal organs like the kidneys, mesentery and spleen were also fatally injured. SN1 Andal died of cardio-respiratory arrest as a result of massive blunt traumatic injuries to the head, thorax and abdomen. On the other hand, SN1 Duclayna sustained fatal injuries to the head and liver. The head and neck injuries were such that a lot of blood vessels

---

[16] *Id.* at 383-384; testimony of SN1 Noel De Guzman, TSN, February 23, 2005, pp. 4-5.

[17] *Id.* at 86, 148 and 204; testimonies of SN1 Danilo Cuya, SN1 Evelio Bacosa and SN1 Cesar Domingo, TSNs, December 11, 2002, p. 12, March 24, 2003, p. 16 and July 28, 2003, p. 12, respectively.

[18] *Rollo*, p. 8.

were ruptured and the fractures were embedded in the brain. The laceration on the liver, also a mortal injury, was a blunt traumatic injury.[19]

As regards the other navy personnel, SN1 Cuya suffered lacerated wounds on the head and different parts of the body for which he was confined at the infirmary for about eighteen (18) days;[20] SN1 Bacosa sustained injuries on his knee and left hand and stayed in the infirmary for a day;[21] and SN1 Bundang suffered injuries to his right foot.[22]

Appellant was thereafter charged under an Information[23] which reads as follows:

That on or about the 10th day of August 2002, at about 11:00 o'clock in the evening, in Brgy. West Dirita, Municipality of San Antonio, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, while driving and in control of a Nissan Van with plate no. DRW 706, did there and then wil[l]fully, unlawfully and feloniously, bump, overrun, smash and hit from behind with the use of the said van, the following persons: Antonio Duclayna, Arnulfo Andal, Evelio Bacosa, Danilo Cuya, Erlinger Bundang and Cesar Domingo, all members of the Philippine [N]avy then assigned at the Naval Education and Training Command in San Antonio, Zambales, thereby inflicting upon them the following physical injuries, to wit:

DANILO CUYA:

"Head Injury, grade 1 (Lacerated wound 5.0 cm, accipito-parietal area, (L) and lacerated wound, Lower lip) 2 to VA"

EVELIO BACOSA:

"Multiple abrasion, wrist, volar surface (L), 2nd digit, abrasion, dorsun, (L) foot"

---

[19] *Id.* at 8-9.

[20] *Id.* at 6.

[21] *Id.* at 7.

[22] Records, Vol. I, p. 149; testimony of SN1 Evelio Bacosa, TSN, March 24, 2003, p. 17.

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

ERLINGER BUNDANG:

"Abrasion, medial maleolus, (R)"

ARNULFO ANDAL:

"Head Injury, Grade IV; (Depressed Fracture, Frontal: Lacerated wounds, 8.0 cm 3.0 cm. forehead, and 5.0 cm parietal, (R);

Avulsion, medial aspect, upper arm to elbow, hip and enguinal area, (L);

Multiple abrasion, anterior and posterior chest, knees and (R) foot-secondary to VA"

ANTONIO DUCLAYNA:

"Head Injury, Grade IV (Lacerated wound, Contusion, Hematoma (R) Parietal) secondary to VA"

which act of said accused directly caused the death of Arnulfo Andal and Antonio Duclayna, and in so far as Danilo Cuya, Evelio Bacosa and Erlinger Bundang were concerned, said accused performed all the acts of execution which would produce the crime of Murder as a consequence, but nevertheless, did not produce said crime by reason of cause/s independent of his will, that is, by the timely and able medical assistance rendered to said Danilo Cuya, Evelio Bacosa and Erlinger Bundang, which prevented their death, and finally as to Cesar Domingo, said accused commenced the commission of the acts constituting Murder directly by overt acts, but was not able to perform all the acts of execution by reason of some cause other than accused's own desistance, that is due to the timely avoidance of the van driven by accused, and that the commission of the crimes was attended with treachery, evident premeditation, cruelty and use of a motor vehicle, and by deliberately and inhuman[ely] augmenting the suffering of the victim Arnulfo Andal, to the damage and prejudice of Danilo Cuya, Evelio Bacosa, Erlinger Bundang and Cesar Domingo and the family and heirs of the deceased Arnulfo Andang and Antonio Duclayna.

When arraigned, appellant maintained his innocence.[24]

After pre-trial, trial ensued and the prosecution presented evidence to establish the facts stated above.

---

[24] *Rollo*, p. 5.

In his defense, appellant testified that in the evening of August 10, 2002, he was drinking with Marvin Acebeda and Romeo Eusantos at the "Aquarius" videoke bar. When he sang, the navy personnel who were also inside the bar laughed at him as he was out of tune. He then stood up, paid his bills and went out. After a while, Acebeda followed him and informed him that the navy personnel would like to make peace with him. He went back inside the bar with Acebedo and approached the navy personnel. When SN1 Bacosa appeared to reach out for appellant's hand, appellant offered his hand but SN1 Bacosa suddenly punched appellant's right ear. To avoid further altercation, appellant left the bar with Acebeda in tow. Appellant went home driving his van, with the spouses Romeo and Alicia Eusantos who hitched a ride as passengers. When they passed by the sentry, somebody threw stones at the van. When he alighted and inspected the vehicle, he saw that one of the headlights was broken. Thereafter, he saw SN1 Bacosa and another man approaching him so he went back inside the van but the duo boxed him repeatedly on his shoulder through the van's open window. When he saw the four other navy personnel coming towards him, he accelerated the van. During the whole incident, Romeo was asleep as he was very drunk while Alicia was seated at the back of the van. Upon reaching appellant's home, the spouses alighted from the van and proceeded to their place. After 20 minutes, police officers arrived at appellant's house and told him that he bumped some people. Appellant went with the police officers to the police station where he was investigated and detained.[25]

Appellant's only other witness was Alicia Eusantos. She testified that she and her husband hitched a ride with appellant in the evening of August 10, 2002. She did not notice any unusual incident from the time they rode the vehicle until they alighted from it. She learned about the incident on the following day only when her statement was taken by the police.[26]

---

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

[26] *Id.* at 10.

After the parties have rested their respective cases, the RTC of Iba, Zambales found appellant guilty and rendered a Decision dated March 21, 2007 with the following dispositive portion:

> IN VIEW THEREOF, accused ARTURO PUNZALAN, JR. is found GUILTY beyond reasonable doubt of the complex crime of Double Murder qualified by treachery with Attempted Murder attended by the aggravating circumstance of use of motor vehicle and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.
>
> For the death of SN1 Antonio Duclayna and SN1 Arnulfo Andal, civil indemnity of ₱50,000.00 each is awarded to their heirs. This is in addition to the amount of moral damages at ₱50,000.00 each for the emotional and mental sufferings, plus ₱12,095.00 to the heirs of Duclayna representing actual damages.
>
> Accused is likewise ordered to pay SN1 Evelio Bacosa, SN1 Cesar Domingo, SN1 Danilo Cuya and SN1 Erlinger Bundang ₱30,000.00 each or an aggregate amount of ₱120,000.00 as indemnity for their attempted murder.[27]

Appellant filed an appeal with the Court of Appeals. In his brief,[28] appellant claimed that the trial court erred in not finding that he may not be held criminally liable as he merely acted in avoidance of greater evil or injury, a justifying circumstance under paragraph 4, Article 11 of the Revised Penal Code. His act of increasing his vehicle's speed was reasonable and justified as he was being attacked by two men whose four companions were also approaching. He asserted that the attack against him by the two navy personnel constituted actual and imminent danger to his life and limb. The sight of the four approaching companions of his attackers "created in his mind a fear of greater evil," prompting him to speed up his vehicle to avoid a greater evil or injury to himself. According to appellant, if he accidentally hit the approaching navy men in the process, he could not be held criminally liable therefor. The instinct of self-preservation would make one feel that his own safety is of greater importance than that of another.[29]

---

[27] CA *rollo*, p. 50.

[28] *Id.* at 70-88.

[29] *Id.* at 83-85.

Appellant further faulted the trial court in appreciating the qualifying circumstance of treachery. He asserted that nothing in the records would show that he consciously or deliberately adopted the means of execution. More importantly, treachery was not properly alleged in the Information.[30]

The Office of the Solicitor General (OSG), on behalf of the People of the Philippines, refuted the arguments of appellant and defended the correctness of the RTC Decision. In its brief,[31] the OSG claimed that the trial court rightly rejected appellant's defense of avoidance of greater evil or injury. Appellant's version of the events did not conform to the physical evidence and it was not consistent with the testimony of his own witness.

The OSG also argued that treachery was appropriately appreciated by the trial court. The Information was written in a way that sufficiently described treachery where "the unsuspecting victims were walking towards their barracks and totally unprepared for the unexpected attack from behind."[32]

After considering the respective arguments of the parties, the Court of Appeals rendered the assailed Decision dated April 29, 2011 with the following decretal portion:

WHEREFORE, the instant Appeal is **Denied**. The assailed Decision, dated March 21, 2007, of the Regional Trial Court of Iba, Zambales, Branch 69, in Criminal Case No. RTC-3492-I, is **AFFIRMED** with **MODIFICATION,** in that Accused-Appellant is hereby ordered to pay the heirs of SN1 Antonio Duclayna and SN1 Arnulfo Andal civil indemnity of Php75,000, moral damages of Php75,000, temperate damages of Php25,000 and exemplary damages of Php30,000. In addition to the foregoing damages, Accused-Appellant is as well held liable to pay the heirs of SN1 Andal the amount of Php2,172,270.21 to represent the amount of loss of earning capacity of SN1 Andal.

Accused-Appellant is likewise ordered to pay the surviving victims, SN1 Evelio Bacosa, SN1 Cesar Domingo, SN1 Danilo Cuya and

---

[30] *Id.* at 85-87.

[31] *Id.* at 131-172.

[32] *Id.* at 169.

SN1 Erlinger Bundang, moral and exemplary damages in the amount of Php40,000 and Php30,000, respectively. Award of temperate damages in the amount of Php25,000 is proper in favor of SN1 Bacosa, SN1 Cuya and SN1 Bundang for the unsubstantiated amount of pecuniary losses they suffered on account of the injuries they sustained. SN1 Cesar Domingo, however, is not entitled to temperate damages.[33]

Hence, this appeal.

Both appellant and the OSG adopted the respective briefs they filed in the Court of Appeals.[34]

Is appellant guilty of the complex crime of murder with frustrated murder?

After a thorough review of the records of this case and the arguments of the parties, this Court affirms appellant's conviction.

Both the RTC and the Court of Appeals found the evidence presented and offered by the prosecution credible and that the "prosecution witnesses had overwhelmingly proved beyond reasonable doubt the culpability of the Accused-Appellant."[35] The Court of Appeals correctly observed that prosecution witnesses F1EN Dimaala and SN1 De Guzman "positively identified accused-appellant as the one who hit and ran over the victims."[36] The Court of Appeals further found:

> The testimonies of the prosecution witnesses, taken together, inevitably showed the criminal intent of the Accused-Appellant to inflict harm on the victims. They testified on the incident in a clear, concise, corroborative, and straightforward manner. Thus, their testimonies must prevail over the testimony given by the Accused-Appellant which, on the other hand, was neither substantiated nor supported by any evidence.

---

[33] *Rollo*, pp. 27-28.

[34] *Id.* at 36-40; Manifestations of the OSG and appellant dated April 25, 2012 and May 21, 2012, respectively.

[35] *Id.* at 13.

[36] *Id.*

The prosecution witnesses testified that they actually saw how Accused-Appellant ran over the victims who were walking inside the NETC camp on the night of August 10, 2002. Accused-Appellant, who was driving his van from behind, suddenly bumped and ran over the victims. The victims were thrown away, resulting in the instantaneous death of SN1 Duclayna and SN1 Andal and causing injuries to the other victims.

x x x x x x x x x

Accused-Appellant's version of the crime, upon which the justifying circumstance of avoidance of greater evil or injury is invoked, is baseless. This is because his assertions anent the existence of the evil which he sought to be avoided [did] not actually exist as [they] neither conformed to the evidence at hand nor [were] [they] consistent with the testimony of his own witness, Alicia Eusantos x x x.

x x x x x x x x x

Accused-Appellant's own witness, Alicia Eusantos, not only failed to corroborate his claim but also belied Accused-Appellant's claim that he was attacked by the Philippine Navy personnel. Alicia Eusantos categorically stated that she did not witness any unusual incident in the evening of August 10, 2002 while on board the Nissan Urvan Van driven by Accused-Appellant while they were cruising the access road going to the NETC compound. Accused-Appellant's claim, therefore, is more imaginary than real. The justifying circumstance of Avoidance of Greater Evil or Injury cannot be invoked by the Accused-Appellant as the alleged evil sought to be avoided does not actually exist.[37]

Moreover, whether or not petitioner acted in avoidance of greater evil or injury is a question of fact. It is an issue which concerns doubt or difference arising as to the truth or the falsehood of alleged facts.[38] In this connection, this Court declared in *Martinez v. Court of Appeals*:[39]

---

[37] *Id.* at 16-20.

[38] *Republic v. Malabanan*, G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345. In this case, the Court stated: "There is a question of fact when the doubt [or difference] arises as to the truth or [the falsehood] of the alleged facts."

[39] G.R. No. 168827, April 13, 2007, 521 SCRA 176, 193.

[T]he well-entrenched rule is that findings of fact of the trial court in the ascertainment of the credibility of witnesses and the probative weight of the evidence on record affirmed, on appeal, by the CA are accorded high respect, if not conclusive effect, by the Court and in the absence of any justifiable reason to deviate from the said findings.

This Court has combed through the records of this case and found no reason to deviate from the findings of the trial and appellate courts. There is nothing that would indicate that the RTC and the Court of Appeals "ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case."[40]

Under paragraph 4, Article 11 of the Revised Penal Code, to successfully invoke avoidance of greater evil as a justifying circumstance,[41] the following requisites should be complied with:

(1) the evil sought to be avoided actually exists;

(2) the injury feared be greater than that done to avoid it; and

(3) there be no other practical and less harmful means of preventing it.

The RTC and the Court of Appeals rejected appellant's self-serving and uncorroborated claim of avoidance of greater evil. The trial and appellate courts noted that even appellant's own

---

[40] *People v. Belo*, G.R. No. 187075, July 5, 2010, 623 SCRA 527, 536.

[41] Art. 11. *Justifying circumstances*. — The following do not incur any criminal liability:

x x x x x x x x x

4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

witness who was in the van with appellant at the time of the incident contradicted appellant's claim. Thus, the RTC and the Court of Appeals concluded that the evil appellant claimed to avoid did not actually exist. This Court agrees.

Moreover, appellant failed to satisfy the third requisite that there be no other practical and less harmful means of preventing it. Under paragraph 4, Article 11 of the Revised Penal Code, infliction of damage or injury to another so that a greater evil or injury may not befall one's self may be justified only if it is taken as a last resort and with the least possible prejudice to another. If there is another way to avoid the injury without causing damage or injury to another or, if there is no such other way but the damage to another may be minimized while avoiding an evil or injury to one's self, then such course should be taken.

In this case, the road where the incident happened was wide, some 6 to 7 meters in width,[42] and the place was well-lighted.[43] Both sides of the road were unobstructed by trees, plants or structures.[44] Appellant was a driver by occupation.[45] However, appellant himself testified that when he shifted to the second gear and immediately stepped on the accelerator upon seeing the four navy personnel approaching from in front of him,[46] he did not make any attempt to avoid hitting the approaching navy personnel even though he had enough space to do so. He simply sped away straight ahead, meeting the approaching navy personnel head on, totally unmindful if he might run them over.[47] He therefore miserably failed to resort to other practical and less

---

[42] Records, Vol. I, p. 317; testimony of F1EN Alejandro Dimaala, TSN of July 14, 2004, p. 6.

[43] *Id.* at 386-387; testimony of SN1 Noel de Guzman, TSN, February 23, 2005, pp. 7-8.

[44] Records, Vol. II, p. 736; TSN, May 15, 2006, p. 7; Exhibits "C-3" and "C-4".

[45] *Id.* at 710; testimony of appellant, TSN, February 15, 2006, p. 2.

[46] *Id.* at 717; TSN, February 15, 2006, p. 9.

[47] *Id.* at 738; TSN, May 15, 2006, p. 9.

harmful available means of preventing the evil or injury he claimed to be avoiding.

The appreciation of treachery as a circumstance that qualified the killing of SN1 Duclayna and SN1 Andal and the attempted killing of the others is also correct. This Court agrees with the following disquisition of the Court of Appeals:

> We find that the RTC correctly appreciated the existence of treachery in the commission of the offense. Treachery qualifies the killing to murder. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make. The elements of treachery are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted.
>
> Accused-Appellant's act of running over the victims with his van from behind while the victims were walking inside the NETC camp was a clear act of treachery. The victims were not given any warning at all regarding the assault of the Accused-Appellant. The victims were surprised and were not able to prepare and repel the treacherous assault of Accused-Appellant. The prosecution witnesses testified that after they had flagged down Accused-Appellant's van, the latter accelerated and upon reaching the middle of the road, it suddenly swerved to the right hitting the victims who were startled by the attack.
>
> x x x x x x x x x
>
> A close review of the information would disclose that the qualifying circumstance of treachery was stated in ordinary and concise language and the said act was described in terms sufficient to enable a layman to know what offense is intended to be charged, and enables the court to pronounce proper judgment.
>
> We quote pertinent portion of the information, which reads:
>
> > "x x x the said accused, with intent to kill, while driving and in control of a Nissan Van with plate No. DRW 706, did then and there willfully and feloniously, **bump, overrun, smash and hit from behind** with the use of said van, x x x."

Applying the Supreme Court's discussion in *People vs. Batin*, citing the case of *Balitaan v. Court of First Instance of Batangas*, to wit:

> "The main purpose of requiring the various elements of a crime to be set forth in an Information is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense. x x x.
>
> It is often difficult to say what is a matter of evidence, as distinguished from facts necessary to be stated in order to render the information sufficiently certain to identify the offense. As a general rule, matters of evidence, as distinguished from facts essential to the description of the offense, need not be averred. For instance, it is not necessary to show on the face of an information for forgery in what manner a person is to be defrauded, as that is a matter of evidence at the trial.
>
> **We hold that the allegation of treachery in the Information is sufficient. Jurisprudence is replete with cases wherein we found the allegation of treachery sufficient without any further explanation as to the circumstances surrounding it.**"

Clearly, We find that the information is sufficient as it not merely indicated the term treachery therein but also described the act itself constituting treachery. Such statement, without a doubt, provided the supporting facts that constituted the offense, sufficiently alleging the qualifying circumstance of treachery when it pointed out the statement, "smash and hit from behind."[48] (Emphases supplied; citations omitted.)

The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims.[49] The six navy personnel were walking by the roadside, on their way back to their camp.

---

[48] *Rollo*, pp. 16-17, 22-23.

[49] *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, 611 SCRA 633, 644.

They felt secure as they have just passed a sentry and were nearing their barracks. They were totally unaware of the threat to their life as their backs were turned against the direction where appellant's speeding van came. They were therefore defenseless and posed no threat to appellant when appellant mowed them down with his van, killing two of them, injuring three others and one narrowly escaping injury or death. Beyond reasonable doubt, there was treachery in appellant's act. This was sufficiently alleged in the Information which not only expressly mentioned treachery as one of the circumstances attending the crime but also described it in understandable language:

> [T]he said accused, with intent to kill, while driving and in control of a Nissan Van with plate no. DRW 706, did then and there willfully, unlawfully and feloniously, **bump, overrun, smash and hit from behind** with the use of said van, the following persons: Antonio Duclayna, Arnulfo Andal, Evelio Bacosa, Danilo Cuya, Erlinger Bundang and Cesar Domingo, x x x.[50] (Emphasis supplied.)

Use of motor vehicle was also properly considered as an aggravating circumstance. Appellant deliberately used the van he was driving to pursue the victims. Upon catching up with them, appellant ran over them and mowed them down with the van, resulting to the death of SN1 Andal and SN1 Duclayna and injuries to the others.[51] Thereafter, he continued to speed away from the scene of the incident. Without doubt, appellant used the van both as a means to commit a crime and to flee the scene of the crime after he committed the felonious act.

The felony committed by appellant as correctly found by the RTC and the Court of Appeals, double murder with multiple attempted murder, is a complex crime contemplated under Article 48 of the Revised Penal Code:

---

[50] Records, p. 2.

[51] See *People v. Mallari*, 452 Phil. 210, 222 (2003). This case has similarity to the case of appellant herein: Mallari deliberately used his truck in pursuing the victim and, upon catching up with the victim, Mallari hit him with the truck, as a result of which the victim died instantly. The Court found that the truck was the means used by Mallari to perpetrate the killing of his victim.

Art. 48. *Penalty for complex crimes*. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

Appellant was animated by a single purpose, to kill the navy personnel, and committed a single act of stepping on the accelerator, swerving to the right side of the road ramming through the navy personnel, causing the death of SN1 Andal and SN1 Duclayna and, at the same time, constituting an attempt to kill SN1 Cuya, SN1 Bacosa, SN1 Bundang and SN1 Domingo.[52] The crimes of murder and attempted murder are both grave felonies[53] as the law attaches an afflictive penalty to capital punishment (*reclusion perpetua* to death) for murder while attempted murder is punished by *prision mayor*,[54] an afflictive penalty.[55]

---

[52] The crime committed against SN1 Cuya, SN1 Bacosa, SN1 Bundang and SN1 Domingo, is a case of multiple attempted murder because none of them was proven to have suffered a mortal wound from the incident. This Court stated in *Palaganas v. People* (G.R. No. 165483, September 12, 2006, 533 Phil. 169, 193 [2006]): "when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wound /s but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present. However, if the wound/s sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide. If there was no intent to kill on the part of the accused and the wound/s sustained by the victim were not fatal, the crime committed may be serious, less serious or slight physical injury."

[53] Art. 9. *Grave felonies, less grave felonies, and light felonies*. — Grave felonies are those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, in accordance with Article 25 of this Code.

[54] See Art. 248, Revised Penal Code defining and punishing the crime of murder, in relation to Art. 250 of the same Code.

[55] In fact, in this case, the murders of SN1 Andal and SN1 Duclayna are sufficient to constitute a complex crime as they are two grave felonies resulting from a single act.

Under Article 248 of the Revised Penal Code, as amended, murder is punishable by *reclusion perpetua* to death. Article 63[56] of the same Code provides that if the penalty prescribed is composed of two indivisible penalties, as in the instant case, and there is an aggravating circumstance the higher penalty should be imposed. Since use of vehicle can be considered as an ordinary aggravating circumstance, treachery, by itself, being sufficient to qualify the killing, the proper imposable penalty — the higher sanction — is death. However, in view of the enactment of Republic Act No. 9346,[57] prohibiting the imposition of the death penalty, the penalty for the killing of each of the two victims is reduced to *reclusion perpetua* without eligibility for parole.[58] The penalty of *reclusion perpetua* thus imposed by the Court of Appeals on appellant for the complex crime that he committed is correct.

The awards of ₱75,000.00 civil indemnity and ₱75,000.00 moral damages to the respective heirs of SN1 Andal and SN1 Duclayna are also proper. These awards, civil indemnity and moral damages, are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder.[59]

Moreover, in view of the presence of aggravating circumstances, namely the qualifying circumstance of treachery and the generic aggravating circumstance of use of motor vehicle, the award of ₱30,000.00 exemplary damages to the respective

---

[56] Art. 63. *Rules for the application of indivisible penalties.* — 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. x x x.

[57] An Act Prohibiting the Imposition of the Death Penalty, signed into law on June 24, 2006.

[58] Sec. 3 of Republic Act No. 9346 provides that "persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole x x x."

[59] *People v. Camat*, G.R. No. 188612, July 30, 2012.

heirs of the deceased victims is also correct.[60] In addition, it cannot be denied that the heirs of the deceased victims suffered pecuniary loss although the exact amount was not proved with certainty. Thus, the award of ₱25,000.00 temperate damages to the heirs of each deceased victim is appropriate.[61]

As it was proven that, at the time of his death, SN1 Andal had a monthly income of ₱13,245.55,[62] the grant of ₱2,172,270.21 for loss of earning capacity is in order.[63]

As to the surviving victims, SN1 Cuya, SN1 Bacosa, SN1 Bundang and SN1 Domingo, the Court of Appeals correctly granted each of them ₱40,000 moral damages for the physical suffering, fright, serious anxiety, moral shock, and similar injuries caused to them by the incident.[64] And as the crime was attended by aggravating circumstances, each of them was properly given ₱30,000 exemplary damages.[65]

Finally, those who suffered injuries, namely, SN1 Cuya, SN1 Bacosa and SN1 Bundang, were correctly awarded ₱25,000 temperate damages each for the pecuniary loss they suffered

---

[60] *People v. Barde*, G.R. No. 183094, September 22, 2010, 631 SCRA 187, 220.

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

[62] Philippine Navy pay slip of SN1 Andal for the period July 1-31, 2002; RTC records, Vol. II, p. 683.

[63] This amount has been computed using the following formula established in jurisprudence: Life Expectancy x (Gross Annual Income [GAI] less Living Expenses [50% GAI]) Where Life Expectancy = 2/3 x (80 – age of the deceased).

Thus: Unearned income = (2/3 [80-39]) ([₱13,245.55 x 12] – [1/2 [₱13,245.55 x 12]]

= (2/3 [41]) (₱158,946.60 - ₱79,473.30)

= (2/3 [41]) (₱79,473.30)

= (27.3333335) (₱79,473.30)

= ₱2,172,270.21.

[64] *People v. Nelmida*, G.R. No. 184500, September 11, 2012.

[65] *Id.*

for hospitalization and/or medication, although no receipts were shown to support said loss.[66]

WHEREFORE, the appeal is hereby **DENIED.** The Decision dated April 29, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02816 affirming the conviction of appellant Arturo Punzalan, Jr. for the complex crime of double murder with multiple attempted murder, imposing upon him the penalty of *reclusion perpetua* and ordering him to pay the following:

(a) To the respective heirs of SN1 Arnulfo Andal and SN1 Antonio Duclayna:

(i) ₱75,000.00 civil indemnity;

(ii) ₱75,000.00 moral damages;

(iii) ₱30,000.00 exemplary damages; and

(iv) ₱25,000.00 temperate damages;

(b) To the heirs of SN1 Andal, ₱2,172,270.21 for loss of earning capacity;

(c) To each of the surviving victims, SN1 Danilo Cuya, SN1 Evelio Bacosa, SN1 Erlinger Bundang and SN1 Cesar Domingo:

(i) ₱40,000.00 moral damages; and

(ii) ₱30,000.00 exemplary damages; and

(d) To SN1 Cuya, SN1 Bacosa and SN1 Bundang, ₱25,000.00 temperate damages each

is **AFFIRMED.**

SO ORDERED.

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

---

[66] *Id.*

EN BANC

[Adm. Case No. 8383. December 11, 2012]

AMPARO BUENO, *complainant, vs.* **ATTY. RAMON A. RAÑESES,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; A LAWYER SHALL NOT NEGLECT A LEGAL MATTER ENTRUSTED TO HIM, AND HIS NEGLIGENCE IN CONNECTION THEREWITH SHALL RENDER HIM LIABLE. —** According to Canon 18 of the Code of Professional Responsibility, lawyers should serve their clients with competence and diligence. Specifically, Rule 18.02 provides that "[a] lawyer shall not handle any legal matter without adequate preparation." Rule 18.03, on the other hand, states that "[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection [therewith] shall render him liable." "Once lawyers agree to take up the cause of a client, they owe fidelity to the cause and must always be mindful of the trust and confidence reposed in them." A client is entitled to the benefit of all remedies and defenses authorized by law, and is expected to rely on his lawyer to avail of these remedies or defenses.

2. **ID.; ID.; THE ALLEGED FAILURE TO FILE A COMMENT ON THE ADVERSE PARTY'S OFFER OF EVIDENCE AND TO SUBMIT THE REQUIRED MEMORANDUM WOULD HAVE PROVEN RESPONDENT'S NEGLIGENCE IF THE ALLEGATIONS ARE SUPPORTED WITH COURT DOCUMENTS WHICH COMPLAINANT COULD HAVE EASILY PROCURED. —** In several cases, the Court has consistently held that a counsel's failure to file an appellant's brief amounts to inexcusable negligence. In *Garcia v. Bala,* the Court even found the respondent lawyer guilty of negligence after availing of an erroneous mode of appeal. To appeal a decision of the Department of Agrarian Reform Adjudication Board (*DARAB*), the respondent therein filed a notice of appeal with the DARAB, instead of filing a verified petition for review with the Court of Appeals. Because of his error, the prescribed period for filing the petition lapsed, prejudicing his clients.

In this case, Atty. Rañeses' alleged failure to file a comment on the adverse party's offer of evidence and to submit the required memorandum would have amounted to negligence. However, as noted by Commissioner Limpingco, Bueno did not support her allegations with court documents that she could have easily procured. This omission leaves only Bueno's bare allegations which are insufficient to prove Atty. Rañeses' negligence. We support the Board of Governors' ruling on this point.

3. ID.; ID.; RESPONDENT COMMITTED FRAUDULENT EXACTION WHICH MALIGNED A JUDGE AND THE JUDICIARY EXACERBATED BY HIS CAVALIER ATTITUDE TOWARDS THE INTEGRATED BAR OF THE PHILIPPINES (IBP) DURING THE INVESTIGATION OF THE CASE WHEN HE PRACTICALLY DISREGARDED ITS PROCESSES AND EVEN LIED REGARDING THE NOTICES GIVEN TO HIM ABOUT THE CASE. — In *Bildner v. Ilusorio*, the respondent lawyer therein attempted to bribe a judge to get a favorable decision for his client. He visited the judge's office several times and persistently called his residence to convince him to inhibit from his client's case. The Court found that the respondent lawyer therein violated Canon 13 of the Code of Professional Responsibility — the rule that instructs lawyers to refrain from any impropriety tending to influence, or from any act giving the appearance of influencing, the court. The respondent lawyer therein was suspended from the practice of law for one year. In this case, Atty. Rañeses committed an even graver offense. As explained below, he committed a fraudulent exaction, and at the same time maligned both the judge and the Judiciary. These are exacerbated by his cavalier attitude towards the IBP during the investigation of his case; he practically disregarded its processes and even lied to one of the Investigating Commissioners regarding the notices given him about the case. While the only evidence to support Bueno's allegations is her own word, the Investigating Commissioner found her testimony to be credible. x x x Further, the false claim made by Atty. Rañeses to the investigating commissioners reveals his propensity for lying. It confirms, to some extent, the kind of lawyer that Bueno's affidavits depict him to be.

4. ID.; ID.; RESPONDENT MERITS THE ULTIMATE ADMINISTRATIVE PENALTY OF DISBARMENT BECAUSE OF THE MULTI-LAYERED IMPACT AND IMPLICATIONS OF WHAT HE DID; RESPONDENT BY HIS ACTS PROVES HIMSELF TO BE WHAT A LAWYER SHOULD NOT BE, IN RELATION TO THE CLIENT, TO THE COURT AND TO THE INTEGRATED BAR. — Rather than merely suspend Atty. Rañeses as had been done in Bildner, the Court believes that Atty. Rañeses merits the *ultimate administrative penalty of disbarment* because of the multi-layered impact and implications of what he did; by his acts he proved himself to be what a lawyer should not be, in a lawyer's relations to the client, to the court and to the Integrated Bar. First, he extracted money from his client for a purpose that is both false and fraudulent. It is false because no bribery apparently took place as Atty. Rañeses in fact lost the case. It is fraudulent because the professed purpose of the exaction was the crime of bribery. Beyond these, he maligned the judge and the Judiciary by giving the impression that court cases are won, not on the merits, but through deceitful means — a decidedly black mark against the Judiciary. Last but not the least, Atty. Rañeses grossly disrespected the IBP by his cavalier attitude towards its disciplinary proceedings. From these perspectives, Atty. Rañeses wronged his client, the judge allegedly on the "take," the Judiciary as an institution, and the IBP of which he is a member. The Court cannot and should not allow offenses such as these to pass unredressed. Let this be a signal to one and all — to all lawyers, their clients and the general public — that the Court will not hesitate to act decisively and with no quarters given to defend the interest of the public, of our judicial system and the institutions composing it, and to ensure that these are not compromised by unscrupulous or misguided members of the Bar.

APPEARANCES OF COUNSEL

Manuel D. Ballelos for complainant.

D E C I S I O N

***PER CURIAM*:**

Before the Court is the Complaint for Disbarment[1] against Atty. Ramon Rañeses filed on March 3, 1993 by Amparo Bueno with the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*). Commissioner Agustinus V. Gonzaga, and subsequently Commissioner Victoria Gonzalez-de los Reyes, conducted the fact-finding investigation on the complaint.

Commissioner Rico A. Limpingco submitted a Report and Recommendation[2] dated September 29, 2008 to the IBP Board of Governors which approved it in a resolution dated December 11, 2008.

In a letter[3] dated August 12, 2009, IBP Director for Bar Discipline Alicia A. Risos-Vidal transmitted to the Office of Chief Justice Reynato Puno (retired) a Notice of Resolution[4] and the records of the case.

Factual Antecedents

In her complaint,[5] Bueno related that she hired Atty. Rañeses to represent her in Civil Case No. 777. In consideration for his services, Bueno paid Atty. Rañeses a retainer fee of ₱3,000.00. She also agreed to pay him ₱300.00 for every hearing he attended. No receipt was issued for the retainer fee paid.

Atty. Rañeses prepared and filed an answer in her behalf. He also attended hearings. On several occasions, Atty. Rañeses would either be absent or late.

Bueno alleged that on November 14, 1988, Atty. Rañeses asked for ₱10,000.00. This amount would allegedly be divided

---

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

[2] *Id.* at 76-81.

[3] *Id.* at 74.

[4] *Id.* at 75.

[5] *Supra* note 1.

between him and Judge Nidea, the judge hearing Civil Case No. 777, so that they would not lose the case. Atty. Rañeses told Bueno not to tell anyone about the matter. She immediately sold a pig and a refrigerator to raise the demanded amount, and gave it to Atty. Rañeses.

According to Bueno, Atty. Rañeses asked for another ₱5,000.00 sometime in December 1988, because the amount she had previously given was inadequate. Bueno then sold her sala set and colored television to raise the demanded amount, which she again delivered to Atty. Rañeses.

Bueno later discovered that the trial court had required Atty. Rañeses to comment on the adverse party's offer of evidence and to submit their memorandum on the case, but Atty. Rañeses failed to comply with the court's directive. According to Bueno, Atty. Rañeses concealed this development from her. In fact, she was shocked when a court sheriff arrived sometime in May 1991 to execute the decision against them.

Bueno went to Atty. Rañeses' office to ask him about what happened to the case. Atty. Rañeses told her that he had not received any decision. Bueno later discovered from court records that Atty. Rañeses actually received a copy of the decision on December 3, 1990. When she confronted Atty. Rañeses about her discovery and showed him a court-issued certification, Atty. Rañeses simply denied any knowledge of the decision.

In a separate affidavit,[6] Bueno related another instance where Atty. Rañeses asked his client for money to win a case. Sometime in June 1991, Atty. Rañeses allegedly asked her to deliver a telegram from Justice Buena of the Court of Appeals to her aunt, Socorro Bello. He told her to tell Bello to prepare ₱5,000.00, an amount that Justice Buena purportedly asked for in relation to Criminal Case No. T-1909 that was then on appeal with the Court of Appeals.

According to Bueno, Atty. Rañeses went to Bello's residence two weeks later. In her (Bueno's) presence, Bello paid Atty.

---

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

Rañeses ₱5,000.00. Bello demanded a receipt but Atty. Rañeses refused to issue one, telling her that none of his clients ever dared to demand a receipt for sums received from them.

Atty. Rañeses never filed an answer against Bueno's complaint. He repeatedly failed to attend the hearings scheduled by Commissioner Gonzaga on March 20, 2000,[7] *on May 11, 2000*[8] *and on October 2, 2000*.[9] During the hearing on October 2, 2000, Commissioner Gonzaga issued an Order[10] declaring Atty. Rañeses in default. Bueno presented her evidence and was directed to file a formal offer.

On October 10, 2000, the IBP-CBD received a "Time Motion and Request for Copies of the Complaint and Supporting Papers"[11] (dated September 30, 2000) filed by Atty. Rañeses. Atty. Rañeses asked in his motion that the hearing on October 2, 2000 be reset to sometime in December 2000, as he had prior commitments on the scheduled day. He also asked for copies of the complaint and of the supporting papers, claiming that he had not been furnished with these. In the interest of substantial justice, Commissioner Gonzaga scheduled a clarificatory hearing on November 16, 2000.[12]

Atty. Rañeses failed to attend the hearing on November 16, 2000. In the same hearing, Commissioner Gonzaga noted that the registry return card refuted Atty. Rañeses' claim that he did not receive a copy of the complaint. Commissioner Gonzaga scheduled another clarificatory hearing on January 17, 2001. He stated that if Atty. Rañeses failed to appear, the case would be deemed submitted for resolution after the complainant submits her memorandum.[13]

---

[7] Order dated March 20, 2000; *id.* at 10.

[8] Order dated May 11, 2000; *id.* at 12.

[9] Order dated October 2, 2000; *id.* at 31.

[10] *Ibid.*

[11] *Id.* at 32.

[12] Order dated October 12, 2000; *id.* at 34.

[13] Order dated November 16, 2000; *id.* at 36-37.

Atty. Rañeses did not attend the January 17, 2001 hearing. On the same day, Commissioner Gonzaga declared the case deemed submitted for resolution after the complainant's submission of her memorandum.[14]

At some point, the case was reassigned to Commissioner De los Reyes who scheduled another hearing on March 14, 2003.[15] During the hearing, only Bueno and her counsel were present. The Commissioner noted that the IBP-CBD received a telegram from Atty. Rañeses asking for the hearing's resetting because he had prior commitments. The records, however, showed that Atty. Rañeses never filed an answer and the case had already been submitted for resolution. Thus, Commissioner De los Reyes issued an Order[16] directing Bueno to submit her formal offer of evidence and her documentary evidence, together with her memorandum.

The IBP-CBD received Bueno's Memorandum[17] on May 27, 2003, but she did not file any formal offer, nor did she submit any of the documentary evidence indicated as attachments to her complaint.

The Investigating Commissioner's Findings

In his report[18] to the IBP Board of Governors, Commissioner Limpingco recommended that Atty. Rañeses be absolved of the charge of negligence, but found him guilty of soliciting money to bribe a judge.

Commissioner Limpingco noted that Bueno failed to provide the court records and certifications that she indicated as attachments to her complaint. These would have proven that Atty. Rañeses had indeed been negligent in pursuing her case. Without these documents, which are not difficult to procure

---

[14] Order dated January 17, 2001; *id.* at 38.

[15] Order dated March 14, 2003; *id.* at 42-43.

[16] *Ibid.*

[17] Memorandum for Complainant; *id.* at 44-45.

[18] *Id.* at 76-81.

from the courts, Commissioner Limpingco concluded that he would only be left with Bueno's bare allegations which could not support a finding of negligence.

Commissioner Limpingco, however, found Bueno's allegation that Atty. Rañeses solicited money to bribe judges to be credible. According to Commissioner Limpingco, the act of soliciting money to bribe a judge is, by its nature, done in secret. He observed that Bueno had consistently affirmed her statements in her affidavit, while *Atty. Rañeses did nothing to refute them.*

Commissioner Limpingco also noted that *Atty. Rañeses even made a false claim before the investigating commissioners*, as he alleged in his "Time Motion and Request for Copies of the Complaint and Supporting Papers" that he did not receive the complaint against him, a fact belied by the registry receipt card evidencing his receipt.

Thus, Commissioner Limpingco recommended that Atty. Rañeses be disbarred for failure to maintain his personal integrity and for failure to maintain public trust.

The IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation, but reduced the penalty to indefinite suspension from the practice of law.[19]

The Court's Ruling

The Court approves the IBP's findings but resolves to disbar Atty. Rañeses from the practice of law in accordance with Commissioner Limpingco's recommendation and based on our own observations and findings in the case.

The charge of negligence

According to Canon 18 of the Code of Professional Responsibility, lawyers should serve their clients with competence and diligence. Specifically, Rule 18.02 provides that "[a] lawyer shall not handle any legal matter without adequate preparation."

---

[19] Notice of Resolution; *id.* at 75.

Rule 18.03, on the other hand, states that "[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection [therewith] shall render him liable."

"Once lawyers agree to take up the cause of a client, they owe fidelity to the cause and must always be mindful of the trust and confidence reposed in them."[20] A client is entitled to the benefit of all remedies and defenses authorized by law, and is expected to rely on his lawyer to avail of these remedies or defenses.[21]

In several cases, the Court has consistently held that a counsel's failure to file an appellant's brief amounts to inexcusable negligence.[22] In *Garcia v. Bala*,[23] the Court even found the respondent lawyer guilty of negligence after availing of an erroneous mode of appeal. To appeal a decision of the Department of Agrarian Reform Adjudication Board (*DARAB*), the respondent therein filed a notice of appeal with the DARAB, instead of filing a verified petition for review with the Court of Appeals. Because of his error, the prescribed period for filing the petition lapsed, prejudicing his clients.

In this case, Atty. Rañeses' alleged failure to file a comment on the adverse party's offer of evidence and to submit the required memorandum would have amounted to negligence. However, as noted by Commissioner Limpingco, Bueno did not support her allegations with court documents that she could have easily procured. This omission leaves only Bueno's bare allegations

---

[20] *Garcia v. Bala*, A.C. No. 5039, November 25, 2005, 476 SCRA 85, 92, citing *Anderson, Jr. v. Cardeño*, A.C. No. 3523, January 17, 2005, 448 SCRA 261, 270; *Pariñas v. Paguinto*, A.C. No. 6297, July 13, 2004, 434 SCRA 179, 184; *Ong v. Grijaldo*, A.C. No. 4724, April 30, 2003, 402 SCRA 1, 8; *Ramos v. Atty. Jacoba*, 418 Phil. 346, 351 (2001); and *Atty. Navarro v. Atty. Meneses III*, 349 Phil. 520, 528 (1998).

[21] *Garcia v. Bala*, *supra*, at 92, citing *Sarenas-Ochagabia v. Ocampos*, A.C. No. 4401, January 29, 2004, 421 SCRA 286, 290.

[22] *Sarenas-Ochagabia v. Ocampos*, *supra*; *In Re: Atty. Santiago F. Marcos*, Adm. Case No. 922, December 29, 1987, 156 SCRA 844; and *People v. Villar, Jr.*, No. L-34092, July 29, 1972, 46 SCRA 107.

[23] *Supra* note 20.

which are insufficient to prove Atty. Rañeses' negligence. We support the Board of Governors' ruling on this point.

The charge of soliciting money

In *Bildner v. Ilusorio*,[24] the respondent lawyer therein attempted to bribe a judge to get a favorable decision for his client. He visited the judge's office several times and persistently called his residence to convince him to inhibit from his client's case. The Court found that the respondent lawyer therein violated Canon 13 of the Code of Professional Responsibility – the rule that instructs lawyers to refrain from any impropriety tending to influence, or from any act giving the appearance of influencing, the court. The respondent lawyer therein was suspended from the practice of law for one year.

In this case, Atty. Rañeses committed an even graver offense. As explained below, he committed a fraudulent exaction, and at the same time maligned both the judge and the Judiciary. These are exacerbated by his cavalier attitude towards the IBP during the investigation of his case; he practically disregarded its processes and even lied to one of the Investigating Commissioners regarding the notices given him about the case.

While the only evidence to support Bueno's allegations is her own word, the Investigating Commissioner found her testimony to be credible. The Court supports the Investigating Commissioner in his conclusion. As Commissioner Limpingco succinctly observed:

> By its very nature, the act [of] soliciting money for bribery purposes would necessarily take place in secrecy with only respondent Atty. Rañeses and complainant Bueno privy to it. Complainant Amparo Bueno has executed sworn statements and had readily affirmed her allegations in this regard in hearings held before the IBP Investigating Commissioners. Respondent Atty. Rañeses, for his part, has not even seen it fit to file any answer to the complaint against him, much less appear in any hearings scheduled in this investigation.[25]

---

[24] G.R. No. 157384, June 5, 2009, 588 SCRA 378.

[25] Report and Recommendation of the IBP Commissioner; *rollo*, p. 80.

Further, the false claim made by Atty. Rañeses to the investigating commissioners reveals his propensity for lying. It confirms, to some extent, the kind of lawyer that Bueno's affidavits depict him to be.

Rather than merely suspend Atty. Rañeses as had been done in *Bildner*, the Court believes that Atty. Rañeses merits the *ultimate administrative penalty of disbarment* because of the multi-layered impact and implications of what he did; by his acts he proved himself to be what a lawyer should not be, in a lawyer's relations to the client, to the court and to the Integrated Bar.

First, he extracted money from his client for a purpose that is both false and fraudulent. It is false because no bribery apparently took place as Atty. Rañeses in fact lost the case. It is fraudulent because the professed purpose of the exaction was the crime of bribery. Beyond these, he maligned the judge and the Judiciary by giving the impression that court cases are won, not on the merits, but through deceitful means — a decidedly black mark against the Judiciary. Last but not the least, Atty. Rañeses grossly disrespected the IBP by his cavalier attitude towards its disciplinary proceedings.

From these perspectives, Atty. Rañeses wronged his client, the judge allegedly on the "take," the Judiciary as an institution, and the IBP of which he is a member. The Court cannot and should not allow offenses such as these to pass unredressed. Let this be a signal to one and all – to all lawyers, their clients and the general public – that the Court will not hesitate to act decisively and with no quarters given to defend the interest of the public, of our judicial system and the institutions composing it, and to ensure that these are not compromised by unscrupulous or misguided members of the Bar.

WHEREFORE, premises considered, respondent Atty. Ramon A. Rañeses is hereby **DISBARRED** from the practice of law, effective upon his receipt of this Decision. The Office of the Bar Confidant is **DIRECTED** to delete his name from the Roll of Attorneys. Costs against the respondent.

Let all courts, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines, be notified of this Decision.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Leonen, JJ.,* concur.

Del Castillo and *Perlas-Bernabe, JJ.,* on official leave.

INDEX

INDEX

WITNESSES

Credibility of — Alleged inconsistencies are minor or trivial which serve to strengthen, rather than destroy, the credibility of the said witnesses as they erase doubts that the said testimonies had been coached or rehearsed. (People of the Phils. *vs*. Estoya y Mateo, G.R. No. 200531, Dec. 05, 2012) p. 490

— 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. (Josue *y* Gonzales *vs*. People of the Phils. G.R. No. 199579, Dec. 10, 2012) p. 782

(People of the Phils. *vs*. Curillan Hambora, G.R. No. 198701, Dec. 10, 2012) p. 760

(People of the Phils. *vs*. Dejillo, G.R. No. 185005, Dec. 10, 2012) p. 643

— 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*. Lapasaran *y* Medinilla, G.R. No. 198820, Dec. 10, 2012) p. 770

(People of the Philis. *vs*. Dulay *y* Cadiente, G.R. No. 188345, Dec. 10, 2012) p. 664

(People of the Phils. *vs*. Estoya *y* Mateo, G.R. No. 200531, Dec. 05, 2012) p. 490

(Marquez *vs*. People of the Phils., G.R. No. 181138, Dec. 03, 2012) p. 47

— When the credibility of the victim is at issue, the Court gives great weight to the trial court's assessment. (People of the Phils. *vs*. Padigos, G.R. No. 181202, Dec. 05, 2012) p. 368

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

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

Page

D. BOOKS

(Local)

Agbayani, Commercial Laws of the Philippines,
1975 Ed., Vol. I 417
R.E. Agpalo, Agpalo's Words and Phrases 743 (1997) 87
Ruben E. Agpalo, Statutory Construction, p. 180 (2003) 627
Aquino, Torts and Damages, First Edition (2001),
pp. 154, 164 ..... 359, 363
J.G. Bernas, The 1987 Constitution of the Philippines:
A Commentary, 2003 Ed., p. 431 269
De Leon, Comments and Cases on Torts and Damages,
Third Edition (2012), p. 188 357-358
Francisco, The Revised Rules of Court in the Phils.,
Vol. V-B, 1970 Ed. 489
Pineda, Tort and Damages Annotated,
2004 Edition, p. 17 357
Reyes, Luis, B., The Revised Penal Code, Criminal Law,
Book Two, Seventeenth Edition, 2008, p. 718 61
Reyes, Revised Penal Code of the Philippines, p. 716 640
Willard B. Riano, Evidence (A Restatement for the Bar),
2006, p. 16 402
I. Tolentino, Civil Code of the Philippines (1990), p. 85 100
Tolentino, Arturo, Commentaries and Jurisprudence on the
Civil Code of the Phils., Vol. IV, 1985 Edition, p. 175 15

II. FOREIGN AUTHORITIES

BOOKS

25 Am. Jur. 37 489
Black's Law Dictionary 1616 (9th Ed.) 87

Page