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SUPREME COURT

OF THE

PHILIPPINES

FROM

JANUARY 7, 2013 TO JANUARY 21, 2013

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MANILA
2015

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by

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. P-12-3090. January 7, 2013]
(Formerly A.M. OCA IPI No. 11-3662-P)

MARIANO T. ONG, *complainant, vs.* **EVA G. BASIYA-SARATAN, CLERK OF COURT, REGIONAL TRIAL COURT, ILOILO CITY, BRANCH 32,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CLERKS OF COURT; FAILURE, TO ISSUE *ALIAS* WRITS OF EXECUTION DESPITE ORDER AND FAILURE TO FILE COMMENT THEREON AS REQUIRED, IS REFUSAL TO PERFORM OFFICIAL DUTY; PENALTY.— As an officer of the court, respondent was duty-bound to use reasonable skill and diligence in the performance of her officially-designated duties as clerk of court, failing which, warrants the imposition of administrative sanctions. In this case, respondent unjustifiably failed to issue the *alias* writs of execution to implement the judgment in Civil Case No. 18978 despite orders from the RTC. Moreover, she failed to file the required comment in disregard of the duty of every employee in the judiciary to obey the orders and processes of the Court without delay. Such act evinces lack of interest in clearing her name, constituting an implied admission of the charges. Consequently, the Court finds her guilty of refusal to perform official duty classified as a grave offense under Section 52(A)(18) of the Revised Uniform Rules on

Administrative Cases in the Civil Service, punishable with suspension of six (6) months and one (1) day to one (1) year for the first offense and by dismissal for the second offense.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

On June 13, 2011, Mariano T. Ong (complainant) filed a verified letter-complaint[1] before the Office of the Court Administrator (OCA), charging Clerk of Court Eva G. Basiya-Saratan (respondent) of the Regional Trial Court (RTC) of Iloilo City, Branch 32 for inefficiency and/or negligence in the performance of her official duties. Complainant averred that respondent repeatedly failed to issue *Alias* Writs of Execution for almost three (3) years from the time she was first directed to do so by the RTC in its Order[2] dated September 26, 2008 in Civil Case No. 18978.

The Facts

Complainant is one of the defendants/judgment obligees in the Decision dated June 21, 1999 rendered in the aforementioned case,[3] in the amount of ₱800,000.00 representing damages and attorney's fees. To implement the judgment, the RTC issued the Order dated April 24, 2006 granting the issuance of the writ of execution. Since the judgment has remained unsatisfied, complainant moved for the issuance of an *Alias* Writ of Execution, which was granted by the RTC in its Order dated September 26, 2008, with a further directive to the Sheriff of the RTC of Valenzuela City, Branch 72 to proceed against plaintiff's attachment bond issued by Prudential Guarantee and Assurance, Inc.[4]

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[1] *Rollo*, pp. 1-6.

[2] *Id*. at 7. Penned by Presiding Judge Globert J. Justalero.

[3] A case for specific performance and damages filed by ARMCO Industrial Corp. against complainant Mario T. Ong, *among others*.

[4] Pursuant to Rule 57, Section 19 of the Rules of Court.

On November 26, 2010 or after the lapse of more than two (2) years with no action on the part of respondent, the RTC again directed the issuance of an *Alias* Writ of Execution and its implementation by Sheriff Romero L. Rivera (Sheriff Rivera).[5] Notwithstanding, respondent did not issue any, prompting complainant to file a "Very Urgent Motion to Be Furnished Certified True Copy of *Alias* Writ of Execution,"[6] which the RTC granted in its Order dated January 14, 2011.[7]

On February 7, 2011, complainant filed a Manifestation and Motion,[8] followed by a subsequent urgent motion[9] dated April 27, 2011, seeking to compel respondent to comply with the court's directive. He also averred that on February 1, 2011, he received an unsigned and uncertified copy of the *Alias* Amended Writ of Execution[10] dated June 7, 2007, addressed to "The Provincial Sheriff of Iloilo or any of his Lawful Deputies" and not to Sheriff Rivera, the deputized sheriff.

On August 15, 2011, the RTC issued an Amended Order[11] enjoining respondent to issue a certified true copy of the Amended Writ of Execution to complainant and to Sheriff Rivera. But up to the filing of the instant administrative complaint, no action has been taken by respondent.

The Action and Recommendation of the OCA

In the 1st Indorsement[12] dated June 17, 2011, the OCA required respondent to file her comment to the complaint which was

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[5] *Rollo,* p. 8.

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

[7] *Id*. at 11.

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

[9] *Id*. at 15-17.

[10] *Id*. at 19-21.

[11] *Id*. at 26-27.

[12] *Id*. at 23.

reiterated in the 1st Tracer[13] dated October 25, 2011. However, no comment was submitted.

Upon evaluation of the complaint, the OCA found respondent to have been remiss in the performance of her duties as Clerk of Court of the RTC of Iloilo City, Branch 32, in violation of Section 1, Canon IV of the Code of Conduct for Court Personnel, underscoring her failure to issue the corresponding *Alias* Writs of Execution as directed by the RTC as well as her failure to comment on the allegations of the complainant. The OCA also noted that this is not the first time respondent had failed to perform her official functions. In another complaint filed against her by Atty. Raul A. Muyco,[14] she was reprimanded by the Court for her failure to issue on time a certification requested by the complainant, and sternly warned that the commission of similar acts would be dealt with more severely. Accordingly, the OCA, applying Rule IV of the Uniform Rules on Administrative Cases in the Civil Service,[15] recommended her suspension from the service for six (6) months and one (1) day without pay, with a stern warning that a repetition of the same or any similar act will warrant a more severe penalty.

The Issue

The sole issue before the Court is whether respondent should be imposed the penalty as recommended by the OCA for her repeated failure to issue the corresponding alias writs of execution despite directives from the RTC.

The Court's Ruling

The Court finds the recommendation of the OCA to be well-taken.

Section 1, Canon IV of the Code of Conduct for Court Personnel[16] enjoins court personnel to perform their official duties

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[13] *Id*. at 28.

[14] *Muyco v. Saratan*, A.M. No. P-03-1761, April 2, 2004, 427 SCRA 1.

[15] Resolution No. 99-1936 dated August 31, 1999.

[16] A.M. No. 03-06-13-SC issued on June 4, 2004.

properly and with diligence at all times. Clerks of Court like respondent are primarily responsible for the speedy and efficient service of all court processes and writs. Hence, they cannot be allowed to slacken on their work since they are charged with the duty of keeping the records and the seal of the court, issuing processes, entering judgments and orders, and giving certified copies of records upon request. As such, they are expected to possess a high degree of discipline and efficiency in the performance of their functions to help ensure that the cause of justice is done without delay.[17]

As an officer of the court, respondent was duty-bound to use reasonable skill and diligence in the performance of her officially-designated duties as clerk of court,[18] failing which, warrants the imposition of administrative sanctions. In this case, respondent unjustifiably failed to issue the alias writs of execution to implement the judgment in Civil Case No. 18978 despite orders from the RTC. Moreover, she failed to file the required comment in disregard of the duty of every employee in the judiciary to obey the orders and processes of the Court without delay. Such act evinces lack of interest in clearing her name, constituting an implied admission of the charges.[19]

Consequently, the Court finds her guilty of refusal to perform official duty classified as a grave offense under Section 52(A)(18) of the Revised Uniform Rules on Administrative Cases in the Civil Service, punishable with suspension of six (6) months and one (1) day to one (1) year for the first offense and by dismissal for the second offense.

WHEREFORE, the Court finds respondent **ATTY. EVA G. BASIYA-SARATAN GUILTY** of **refusal to perform official duty** and accordingly, **SUSPENDS** her from office for **six (6)**

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[17] *Escobar Vda. de Lopez v. Luna*, A.M. No. P-04-1786, February 13, 2006, 482 SCRA 265, 273.

[18] *Panaligan v. Valente*, A.M. No. P-11-2952, July 30, 2012.

[19] *Re: Criminal Case No. MC-02-5637 Against Arturo V. Peralta and Larry C. De Guzman, Employees of MeTC, Br. 31, Q.C.*, A.M. No. 02-8-198-MeTC, June 8, 2005, 459 SCRA 278, 285.

months and one (1) day without pay effective immediately upon receipt of this resolution. She is **STERNLY WARNED** once again that a commission of the same or similar offense in the future shall be dealt with more severely.

Let a copy of this resolution be attached to the personal records of respondent in the Office of Administrative Services, Office of the Court Administrator.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172590. January 7, 2013]

MARY LOUISE R. ANDERSON, *petitioner, vs.* **ENRIQUE HO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST NON-FORUM SHOPPING; GUIDELINES FOR NON-COMPLIANCE WITH OR SUBMISSION OF DEFECTIVE CERTIFICATE; ELUCIDATED.— The need to abide by the Rules of Court and the procedural requirements it imposes has been constantly underscored by this Court. One of these procedural requirements is the certificate of non-forum shopping which, time and again, has been declared as basic, necessary and mandatory for procedural orderliness. In *Vda. De Formoso v. Philippine National Bank,* the Court reiterated the guidelines respecting non-compliance with or submission of a defective certificate of non-forum shopping, the relevant portions of which are as follows: 4) **As to certification against**

forum shopping, non-compliance therewith or a defect therein, x x x, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.' x x x 6) Finally, **the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.** The requirement that it is the petitioner, not her counsel, who should sign the certificate of non-forum shopping is due to the fact that a "certification is a peculiar personal representation on the part of the principal party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action." "Obviously, it is the petitioner, and not always the counsel whose professional services have been retained for a particular case, who is in the best position to know whether [she] actually filed or caused the filing of a petition in that case." Per the above guidelines, however, if a petitioner is unable to sign a certification for reasonable or justifiable reasons, she must execute an SPA designating her counsel of record to sign on her behalf. "[A] certification which had been signed by counsel without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition."

2. ID.; ID.; ID.; PETITION FOR REVIEW WITH THE CERTIFICATION SIGNED BY COUNSEL *SANS* AUTHORITY, CORRECTLY DISMISSED.— [T]he CA correctly dismissed Anderson's Petition for Review on the ground that the certificate of non-forum shopping attached thereto was signed by Atty. Oliva on her behalf *sans* any authority to do so. x x x Unlike in *Donato [v. CA]* and the other cases cited by Anderson, no sufficient and justifiable grounds exist in this case as to relax the rules on certification against forum shopping. x x x In *Donato*, the Court held that it was impossible for the petition to have been prepared and sent to the therein petitioner in the USA; for him to travel from Virginia to the nearest Philippine Consulate in Washington D.C.; and for the petition to be sent back to the Philippines *within the 15-day reglementary period*. The same could not, however, be said

in this case. It must be remembered that on top of the 15-day reglementary period to file the petition, Atty. Oliva sought and was granted a total extension of 30 days to file the same. Hence, Anderson had a total of 45 days to comply with the requirements of a Petition for Review as against the 15 days afforded to the petitioner in *Donato*. To this Court, the said period is more than enough time for Anderson to execute an SPA before the nearest Philippine Consulate, which again unlike in *Donato,* was located in the same state where Anderson was (Hawaii), and thereafter to send it to the Philippines. Anent her allegation that her health condition at that time hindered her from going to the proper authorities to execute an SPA, the same deserves scant consideration as no medical certificate was submitted to support this. "Indeed, the age-old but familiar rule is that he who alleges must prove his allegations."

APPEARANCES OF COUNSEL

R.V. Oliva and Associates for petitioner.
Raul Zosimo B. Panlasigui for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

As her petition for review was dismissed by the Court of Appeals (CA) on a technical ground, petitioner now invokes the liberal application of the rules of procedure.

Assailed in this Petition for Review on *Certiorari*[1] is the July 14, 2005 Resolution[2] of the CA in CA-G.R. SP No. 89793 which dismissed the petition for review of petitioner Mary Louise R. Anderson (Anderson) because the certification against forum shopping attached thereto was signed by counsel on her behalf without the proper authority. Likewise assailed is the CA's

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[1] *Rollo,* pp. 12-36.

[2] CA *rollo,* p. 221; penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Delilah Vidallon-Magtolis and Jose C. Mendoza (now a member of this Court).

May 4, 2006 Resolution[3] denying the motion for reconsideration thereof.

Factual Antecedents

On June 5, 2003, Anderson filed a Complaint[4] for Ejectment against respondent Enrique Ho (Ho) before the Metropolitan Trial Court (MeTC) of Quezon City.[5] She alleged that through her mere tolerance, Ho is in possession of her parcel of land at Roosevelt Avenue, Quezon City covered by Transfer Certificate of Title No. N-193368[6] (Roosevelt property). As she was already in need of the said property, Anderson served upon Ho a Demand Letter to Vacate but despite receipt thereof, Ho refused. Because of this, Anderson prayed that the MeTC order Ho to vacate the Roosevelt property and pay her damages and attorney's fees.

In his Answer with Compulsory Counterclaim,[7] Ho denied that his occupation of the Roosevelt property is through Anderson's mere tolerance. He claimed that since Anderson is an American citizen, he managed her affairs in the Philippines and administered her properties in Quezon City and Cebu. When Anderson sought his assistance in ejecting her relatives from the Roosevelt property and in demolishing the St. Anthony de Padua Church built thereon, Ho (1) secured the services of a lawyer to file an ejectment case against the occupants of the property; (2) dutifully appeared in court on Anderson's behalf who was then in the United States of America (U.S.A.); and (3) was able to secure a judgment from the court in favor of Anderson. For all these, Anderson did not pay Ho a single centavo

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[3] *Id.* at 246; penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Jose C. Mendoza (now a member of this Court).

[4] *Id.* at 55-59.

[5] The case was raffled to Branch 32 of said court and docketed as Civil Case No. 30840.

[6] CA *rollo*, pp. 60-61.

[7] *Id.* at 62-69.

and instead executed a written document dated January 14, 1999[8] which states that as partial payment for Ho's services, Anderson is authorizing him "to make use of the Roosevelt property as his residence free of charge provided he vacates [it] if there is a buyer for the lot" and "that the balance of Ho's compensation shall consist of 10% of the proceeds [of the sale of any or all of her properties located in Roosevelt Avenue, M.H. del Pilar Street and Ana Maria Street, all in Quezon City; Cebu City; and Cebu province]." In view of this, Ho averred that he possesses the property not through mere tolerance but as part of his compensation for services rendered to Anderson. Hence, he is entitled to the continued possession thereof until such time that the property is sold and he is paid the 10% of the proceeds of its sale.

Ruling of the Metropolitan Trial Court

On June 25, 2004, the MeTC rendered a Decision[9] dismissing the case for lack of cause of action. It gave much weight to the written document executed by Anderson wherein she gave her consent for Ho to occupy the Roosevelt property provided that the latter shall vacate the same if there is already a buyer for the lot. There being no allegation that the said property already has a buyer, she could not eject Ho therefrom.

Ruling of the Regional Trial Court

On appeal, the Regional Trial Court (RTC) in its Decision[10] of January 21, 2005 ruled as follows:

> The evidence of the parties thus stands upon an equipoise. With the equiponderance of evidence, the Court is inclined to consider the dismissal of the complaint as without prejudice depending on the outcome of the determination in the proper forum whether or not the [written document dated January 14, 1999] x x x was falsified.

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[8] *Id.* at 70.

[9] *Id.* at 158-162; penned by Judge Angelene Mary W. Quimpo Sale.

[10] *Id.* at 37-47; penned by Judge Thelma A. Ponferrada.

WHEREFORE, the Court modifies the Decision dated June 25, 2004 of the Metropolitan Trial Court of Quezon City in Civil Case No. 30840 by dismissing the complaint without prejudice.

SO ORDERED.[11]

Anderson moved for reconsideration,[12] but the same was denied by the RTC in an Order[13] dated April 1, 2005, a copy of which was received by her counsel on May 5, 2005.[14]

Ruling of the Court of Appeals

Intending to file with the CA a Petition for Review under Rule 42 of the Rules of Court, Anderson's counsel, Atty. Rommel V. Oliva (Atty. Oliva), filed a Motion for Extension of Time of 15 days from May 20, 2005 or until June 4, 2005 within which to file a petition[15] allegedly due to the revisions required in the initial draft and on account of heavy pressure of work. This was granted by the CA in a Minute Resolution[16] dated May 31, 2005. Subsequently, said counsel sought another extension of 15 days or until June 19, 2005,[17] this time claiming that the petition had already been finalized and sent to Anderson in Hawaii, U.S.A. for her to read as well as sign the certification and verification portion thereof. However, as of the last day of the extended period on June 4, 2005, the petition has not yet been sent back, hence, the additional extension being sought. In the interest of justice, the CA once again granted the said motion for extension.[18] On June 20, 2005,[19] Atty. Oliva was

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[11] *Id.* at 47.

[12] See Motion for Reconsideration, *id.* at 210-216.

[13] *Id.* at 48-54.

[14] See allegation in the Motion for Extension of Time to File Petition for Review, *id.* at 2.

[15] *Id.* at 2-6.

[16] *Id.* at 7.

[17] *Id.* at 8-12.

[18] See Minute Resolution dated June 23, 2005, *id.* at 13.

[19] The petition was filed on time since June 19, 2005 or the last day of the extended time to file the same was a Sunday.

finally able to file the Petition for Review[20] but the certification against forum shopping attached thereto was signed by him on Anderson's behalf without any accompanying authority to do so. Hence, the CA issued a Resolution[21] on July 14, 2005, *viz*:

> The Court resolves to DISMISS herein Petition for Review as the certification against forum shopping was executed not by the petitioner herself but [by] her counsel without attaching therewith any special authority to sign [on] her behalf.
>
> SO ORDERED.[22]

Anderson filed a Motion for Reconsideration.[23] During its pendency, she also filed a Manifestation[24] to which was attached an Affidavit[25] and a Special Power of Attorney (SPA)[26] authorizing her counsel to cause the preparation and filing of the Petition for Review and to sign and execute the verification and certification against forum shopping on her behalf. She explained in the Affidavit that at the time the petition was filed, her health condition hindered her from going to the proper authority to execute the necessary SPA so she just verbally instructed her lawyer to draft the petition and cause the filing of the same. Nevertheless, upon learning of the dismissal of her case, she returned to the Philippines even against her doctor's advice and executed an SPA in favor of her counsel. She thus prayed that the subsequently submitted documents be considered in resolving her pending Motion for Reconsideration.

The CA, however, remained unswayed and denied the Motion for Reconsideration in a Resolution[27] dated May 4, 2006.

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[20] CA *rollo*, pp. 18-36.

[21] *Id.* at 221.

[22] *Id.*

[23] *Id.* at 222-227.

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

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

[26] *Id.* at 242-243.

[27] *Id.* at 246.

Hence, this Petition for Review on *Certiorari*.

The Parties' Arguments

Anderson prays for the relaxation of the rules on certification against forum shopping and cites a number of jurisprudence wherein the Court considered the subsequent submission or correction of a certificate of non-forum shopping as substantial compliance. One in particular is *Donato v. Court of Appeals*[28] which she claims to be on all fours with the present case. Moreover, Anderson stresses that the merits of the case should at all times prevail over the rigid application of technical rules. She then proceeds to discuss her arguments relating to the substantial merits of her petition.

On the other hand, Ho points out that despite the extensions granted by the CA within which to file the Petition for Review, Anderson still failed to sign the certification against forum shopping. This, he avers, demonstrates Anderson's brazen disregard of technical rules. Anent the argument of substantial compliance, Ho cites *Mendigorin v. Cabantog*[29] where the Court reiterated its earlier pronouncement that substantial compliance will not suffice in a matter involving strict observance of the rule regarding a certificate of non-forum shopping.[30] At any rate, Ho insists that Anderson has no sufficient cause of action for ejectment and damages against him.

Our Ruling

The petition has no merit.

No justifiable reason exists in this case as to relax the rule on certification against forum shopping.

The need to abide by the Rules of Court and the procedural requirements it imposes has been constantly underscored by

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[28] 426 Phil. 676 (2003).

[29] 436 Phil. 483 (2002).

[30] *Id.* at 491.

this Court. One of these procedural requirements is the certificate of non-forum shopping which, time and again, has been declared as basic, necessary and mandatory for procedural orderliness.[31]

In *Vda. De Formoso v. Philippine National Bank*,[32] the Court reiterated the guidelines respecting non-compliance with or submission of a defective certificate of non-forum shopping, the relevant portions of which are as follows:

> 4) **As to certification against forum shopping, non-compliance therewith or a defect therein, x x x, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons'**.
>
> x x x x x x x x x
>
> 6) Finally, **the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.**[33] (Emphasis supplied)

The requirement that it is the petitioner, not her counsel, who should sign the certificate of non-forum shopping is due to the fact that a "certification is a peculiar personal representation on the part of the principal party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action."[34] "Obviously, it is the petitioner, and not always the counsel whose professional services have been retained for a particular case, who is in the best position to know whether [she] actually filed or caused the filing of a petition in that case."[35] Per the above

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[31] *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 168313, October 6, 2010, 632 SCRA 322, 331.

[32] G.R. No. 154704, June 1, 2011, 650 SCRA 35.

[33] *Id.* at 44-45.

[34] *Gutierrez v. Secretary of Labor and Employment*, 488 Phil.110, 121 (2004).

[35] *Id.* citing *Far Eastern Shipping Company v. Court of Appeals*, 357 Phil. 703, 720 (1998).

guidelines, however, if a petitioner is unable to sign a certification for reasonable or justifiable reasons, she must execute an SPA designating her counsel of record to sign on her behalf. "[A] certification which had been signed by counsel without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition."[36]

In this light, the Court finds that the CA correctly dismissed Anderson's Petition for Review on the ground that the certificate of non-forum shopping attached thereto was signed by Atty. Oliva on her behalf *sans* any authority to do so. While the Court notes that Anderson tried to correct this error by later submitting an SPA and by explaining her failure to execute one prior to the filing of the petition, this does not automatically denote substantial compliance. It must be remembered that a defective certification is generally not curable by its subsequent correction. And while it is true that in some cases the Court considered such a belated submission as substantial compliance, it "did so only on sufficient and justifiable grounds that compelled a liberal approach while avoiding the effective negation of the intent of the rule on non-forum shopping."[37]

Unlike in *Donato*[38] and the other cases cited by Anderson, no sufficient and justifiable grounds exist in this case as to relax the rules on certification against forum shopping.

In *Donato*, the CA dismissed therein petitioner's Petition for Review on the ground, among others, that the certification against forum shopping was signed by his counsel. In filing a motion for reconsideration, petitioner submitted a certification duly signed by himself. However, the CA ruled that his subsequent compliance did not cure the defect of the instant petition and denied his Motion for Reconsideration. When the case reached this Court, it was held, *viz*:

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[36] *Fuentebella v. Castro,* G.R. No. 150865, June 30, 2006, 494 SCRA 183, 191.

[37] *Bank of the Philippine Islands v. Court of Appeals, supra* note 31.

[38] *Supra* note 28.

The petition for review filed before the CA contains a certification against forum shopping but said certification was signed by petitioner's counsel. In submitting the certification of non-forum shopping duly signed by himself in his motion for reconsideration, petitioner has aptly drawn the Court's attention to the physical impossibility of filing the petition for review within the 15-day reglementary period to appeal considering that he is a resident of 1125 South Jefferson Street, Roanoke, Virginia, U.S.A. where he [needs] to personally accomplish and sign the verification.

We fully agree with petitioner that it was physically impossible for the petition to have been prepared and sent to the petitioner in the United States, for him to travel from Virginia, U.S.A. to the nearest Philippine Consulate in Washington, D.C., U.S.A. in order to sign the certification before the Philippine Consul, and for him to send back the petition to the Philippines within the 15-day reglementary period. Thus, we find that petitioner has adequately explained his failure to personally sign the certification which justifies relaxation of the rule.

We have stressed that the rules on forum shopping, which were precisely designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective which is simply to prohibit and penalize the evils of forum-shopping. The subsequent filing of the certification duly signed by the petitioner himself should thus be deemed substantial compliance, *pro hac vice*.[39]

While at first blush *Donato* appears to be similar with the case at bench, a deeper and meticulous comparison of the two cases reveals essential differences. In *Donato*, the Court held that it was impossible for the petition to have been prepared and sent to the therein petitioner in the USA; for him to travel from Virginia to the nearest Philippine Consulate in Washington D.C.; and for the petition to be sent back to the Philippines *within the 15-day reglementary period*. The same could not, however, be said in this case. It must be remembered that on top of the 15-day reglementary period to file the petition, Atty. Oliva sought and was granted a total extension of 30 days to file the same. Hence, Anderson had a total of 45 days to comply

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[39] *Id.* at 690.

with the requirements of a Petition for Review as against the 15 days afforded to the petitioner in *Donato*. To this Court, the said period is more than enough time for Anderson to execute an SPA before the nearest Philippine Consulate, which again unlike in *Donato*, was located in the same state where Anderson was (Hawaii), and thereafter to send it to the Philippines. Anent her allegation that her health condition at that time hindered her from going to the proper authorities to execute an SPA, the same deserves scant consideration as no medical certificate was submitted to support this. "Indeed, the age-old but familiar rule is that he who alleges must prove his allegations."[40]

Moreover, simultaneous with the filing of a Motion for Reconsideration, the proper certificate of non-forum shopping was submitted by the petitioner in *Donato*. Notably in this case, the SPA was submitted two months *after* the filing of Anderson's Motion for Reconsideration. It took that long because instead of executing an SPA before the proper authorities in Hawaii and sending the same to the Philippines, Anderson still waited until she came back to the country and only then did she execute one. It thus puzzles the Court why Anderson opted not to immediately submit the SPA despite her awareness that the same should have been submitted simultaneously with the Petition for Review. Hence, it cannot help but conclude that the delay in the submission of the SPA is nothing but a product of Anderson's sheer laxity and indifference in complying with the rules. It is well to stress that "[r]ules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding."[41] They should be faithfully complied with[42] and may not simply be ignored to suit the convenience of a party.[43] Although they are liberally construed

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[40] *Samson v. Judge Daway*, 478 Phil. 784, 794 (2004).

[41] *Philippine National Bank v. Deang Marketing Corporation*, G.R. No. 177931, December 8, 2008, 573 SCRA 312, 323.

[42] *Bolos v. Bolos*, G.R. No.186400, October 20, 2010, 634 SCRA 429, 437.

[43] *Iloilo La Filipina Uygongco Corporation v. Court of Appeals*, G.R. No. 170244, November 28, 2007, 539 SCRA 178, 191.

in some situations, there must, however, be a showing of justifiable reasons and at least a reasonable attempt at compliance therewith,[44] which unfortunately are not obtaining in this case.

In view of the foregoing, this Court affirms the CA's dismissal of Anderson's Petition for Review.

As a final note, the Court reiterates that:

> x x x procedural rules are designed to facilitate the adjudication of cases. Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, we allow a relaxation in the application of the rules, we never intend to forge a weapon for erring litigants to violate the rules with impunity. The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Party litigants and their counsels are well advised to abide by, rather than flaunt, procedural rules for these rules illumine the path of the law and rationalize the pursuit of justice.[45]

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED.** The assailed Resolutions dated July 14, 2005 and May 4, 2006 of the Court of Appeals in CA-G.R. SP No. 89793 are **AFFIRMED.**

SO ORDERED.

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

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[44] *Mediserv, Inc. v. Court of Appeals*, G.R. No. 161368, April 5, 2010, 617 SCRA 284, 296-297.

[45] *Land Bank of the Philippines v. Hon. Natividad,* 497 Phil. 738, 744-745 (2005).

[*] Per raffle dated December 10, 2012.

SECOND DIVISION

[G.R. No. 173559. January 7, 2013]

LETICIA DIONA, represented by her Attorney-in- Fact, MARCELINA DIONA, *petitioner, vs.* **ROMEO A. BALANGUE, SONNY A. BALANGUE, REYNALDO A. BALANGUE, and ESTEBAN A. BALANGUE, JR.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT; PROPRIETY THEREOF; FINAL JUDGMENT MAY STILL BE SET ASIDE IF PATENTLY NULL.—** A Petition for Annulment of Judgment under Rule 47 of the Rules of Court is a remedy granted only under exceptional circumstances where a party, without fault on his part, has failed to avail of the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies. Said rule explicitly provides that it is not available as a substitute for a remedy which was lost due to the party's own neglect in promptly availing of the same. x x x While under Section 2, Rule 47 of the Rules of Court a Petition for Annulment of Judgment may be based only on the grounds of extrinsic fraud and lack of jurisdiction, jurisprudence recognizes lack of due process as additional ground to annul a judgment. In *Arcelona v. Court of Appeals*, this Court declared that a final and executory judgment may still be set aside if, upon mere inspection thereof, its patent nullity can be shown for having been issued without jurisdiction or *for lack of due process of law*.

2. **ID.; ID.; JUDGMENTS; COURTS CANNOT GRANT RELIEF NOT PRAYED OR EVINCED.—** It is settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party. They cannot also grant a relief without first ascertaining the evidence presented in support thereof. Due process considerations require that judgments must conform to and be supported by the pleadings and evidence presented in court. x x x In the case at bench, the award of 5% monthly interest rate is not supported both by the allegations in the pleadings and the evidence on record.

x x x It violated the due process requirement because respondents were not informed of the possibility that the RTC may award 5% monthly interest. They were deprived of reasonable opportunity to refute and present controverting evidence as they were made to believe that the complainant [petitioner] was seeking for what she merely stated in her Complaint. x x x Besides, even assuming that the awarded 5% monthly or 60% *per annum* interest was properly alleged and proven during trial, the same remains unconscionably excessive and ought to be equitably reduced in accordance with applicable jurisprudence.

3. ID.; ID.; EFFECT OF FAILURE TO PLEAD; EXTENT OF RELIEF TO BE AWARDED; TRANSGRESSION THEREOF; CONTESTED.— [For] defendant declared in default, Section 3(d), Rule 9 of the Rules of Court limits the relief that may be granted by the courts to what has been prayed for in the Complaint. x x x The *raison d'être* in limiting the extent of relief that may be granted is that it cannot be presumed that the defendant would not file an Answer and allow himself to be declared in default had he known that the plaintiff will be accorded a relief greater than or different in kind from that sought in the Complaint. No doubt, the reason behind Section 3(d), Rule 9 of the Rules of Court is to safeguard defendant's right to due process against unforeseen and arbitrarily issued judgment. This, to the mind of this Court, is akin to the very essence of due process. It embodies "the sporting idea of fair play" and forbids the grant of relief on matters where the defendant was not given the opportunity to be heard thereon. x x x It is understandable for the respondents not to contest the default order for, as alleged in their Comment, "it is not their intention to impugn or run away from their just and valid obligation." Nonetheless, their waiver to present evidence should never be construed as waiver to contest patently erroneous award which already transgresses their right to due process, as well as applicable jurisprudence.

4. LEGAL ETHICS; ATTORNEYS; GROSS NEGLIGENCE IN HANDLING CASE DOES NOT BIND THE CLIENT; CASE AT BAR.— Ordinarily, the mistake, negligence or lack of competence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his

> client. A recognized exception to the rule is when the lawyers were grossly negligent in their duty to maintain their client's cause and such amounted to a deprivation of their client's property without due process of law. In which case, the courts must step in and accord relief to a client who suffered thereby. x x x [Here, counsel] did not question the awarded 5% monthly interest of the RTC Decision. x x x [O]blivious to the fact that the erroneous award of 5% monthly interest would result to his clients' deprivation of property without due process of law, he even allowed the RTC Decision to become final by not perfecting an appeal. Neither did he file a petition for relief therefrom. It was only a year later that the patently erroneous award of 5% monthly interest was brought to the attention of the RTC when respondents, thru their new counsel, filed a Motion to Correct/Amend Judgment and To Set Aside Execution Sale. x x x In fine, respondents did not lose the remedies of new trial, appeal, petition for relief and other remedies through their own fault. It can only be attributed to the gross negligence of their erstwhile counsel which prevented them from pursuing such remedies.

APPEARANCES OF COUNSEL

Claustro & Claustro Law Office for petitioner.
Reynaldo A. Ruiz for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The grant of a relief neither sought by the party in whose favor it was given nor supported by the evidence presented violates the opposing party's right to due process and may be declared void *ab initio* in a proper proceeding.

This Petition for Review on *Certiorari*[1] assails the November 24, 2005 Resolution[2] of the Court of Appeals (CA)

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[1] *Rollo,* pp. 10-26.

[2] CA *rollo*, pp. 80-84; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Portia Aliño-Hormachuelos and Aurora Santiago-Lagman.

issued in CA-G.R. SP No. 85541 which granted the Petition for Annulment of Judgment[3] filed by the respondents seeking to nullify that portion of the October 17, 2000 Decision[4] of the Regional Trial Court (RTC), Branch 75, Valenzuela City awarding petitioner 5% monthly interest rate for the principal amount of the loan respondents obtained from her.

This Petition likewise assails the CA's June 26, 2006 Resolution[5] denying petitioner's Motion for Reconsideration.

Factual Antecedents

The facts of this case are simple and undisputed.

On March 2, 1991, respondents obtained a loan of ₱45,000.00 from petitioner payable in six months and secured by a Real Estate Mortgage[6] over their 202-square meter property located in Marulas, Valenzuela and covered by Transfer Certificate of Title (TCT) No. V-12296.[7] When the debt became due, respondents failed to pay notwithstanding demand. Thus, on September 17, 1999, petitioner filed with the RTC a Complaint[8] praying that respondents be ordered:

(a) To pay [petitioner] the principal obligation of ₱45,000.00, with interest thereon ***at the rate of 12% per annum***, from 02 March 1991 until the full obligation is paid.

(b) To pay [petitioner] actual damages as may be proven during the trial but shall in no case be less than ₱10,000.00; ₱25,000.00 by way of attorney's fee, plus ₱2,000.00 per hearing as appearance fee.

(c) To issue a decree of foreclosure for the sale at public auction of the aforementioned parcel of land, and for the disposition

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[3] *Id.* at 1-13.

[4] *Rollo*, pp. 60-62; penned by Judge Jaime F. Bautista.

[5] CA *rollo*, pp. 111-114.

[6] *Rollo*, p. 193.

[7] *Id.* at 191-192.

[8] *Id.* at 56-59; docketed as Civil Case No. 241-V-99.

of the proceeds [thereof] in accordance with law, upon failure of the [respondents] to fully pay [petitioner] within the period set by law the sums set forth in this complaint.

(d) Costs of this suit.

Other reliefs and remedies just and equitable under the premises are likewise prayed for.[9] (Emphasis supplied)

Respondents were served with summons thru respondent Sonny A. Balangue (Sonny). On October 15, 1999, with the assistance of Atty. Arthur C. Coroza (Atty. Coroza) of the Public Attorney's Office, they filed a Motion to Extend Period to Answer. Despite the requested extension, however, respondents failed to file any responsive pleadings. Thus, upon motion of the petitioner, the RTC declared them in default and allowed petitioner to present her evidence *ex parte*.[10]

Ruling of the RTC sought to be annulled.

In a Decision[11] dated October 17, 2000, the RTC granted petitioner's Complaint. The dispositive portion of said Decision reads:

WHEREFORE, judgment is hereby rendered in favor of the [petitioner], ordering the [respondents] to pay the [petitioner] as follows:

a) the sum of FORTY FIVE THOUSAND (₱45,000.00) PESOS, representing the unpaid principal loan obligation ***plus interest at 5% per month*** [*sic*] reckoned from March 2, 1991, until the same is fully paid;

b) ₱20,000.00 as attorney's fees plus cost of suit;

c) in the event the [respondents] fail to satisfy the aforesaid obligation, an order of foreclosure shall be issued accordingly for the sale at public auction of the subject property covered

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[9] *Id.* at 58.

[10] See Order dated December 29, 1999, *id.* at 198; penned by Judge Jaime F. Bautista.

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

> by Transfer Certificate of Title No. V-12296 and the improvements thereon for the satisfaction of the [petitioner's] claim.
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> SO ORDERED.[12] (Emphasis supplied)

Subsequently, petitioner filed a Motion for Execution,[13] alleging that respondents did not interpose a timely appeal despite receipt by their former counsel of the RTC's Decision on November 13, 2000. Before it could be resolved, however, respondents filed a Motion to Set Aside Judgment[14] dated January 26, 2001, claiming that not all of them were duly served with summons. According to the other respondents, they had no knowledge of the case because their co-respondent Sonny did not inform them about it. They prayed that the RTC's October 17, 2000 Decision be set aside and a new trial be conducted.

But on March 16, 2001, the RTC ordered[15] the issuance of a Writ of Execution to implement its October 17, 2000 Decision. However, since the writ could not be satisfied, petitioner moved for the public auction of the mortgaged property,[16] which the RTC granted.[17] In an auction sale conducted on November 7, 2001, petitioner was the only bidder in the amount of ₱420,000.00. Thus, a Certificate of Sale[18] was issued in her favor and accordingly annotated at the back of TCT No. V-12296.

Respondents then filed a Motion to Correct/Amend Judgment and To Set Aside Execution Sale[19] dated December 17, 2001, claiming that the parties did not agree in writing on any rate of

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[12] *Id.* at 62.

[13] *Id.* at 63-65.

[14] *Id.* at 66-69.

[15] See Order dated March 16, 2001, *id.* at 79.

[16] See Manifestation, *id.* at 84-85.

[17] See Order dated May 7, 2001, *id.* at 80; penned by Judge Floro P. Alejo.

[18] *Id.* at 204.

[19] *Id.* at 205-212.

interest and that petitioner merely sought for a 12% *per annum* interest in her Complaint. Surprisingly, the RTC awarded 5% monthly interest (or 60% *per annum*) from March 2, 1991 until full payment. Resultantly, their indebtedness inclusive of the exorbitant interest from March 2, 1991 to May 22, 2001 ballooned from ₱124,400.00 to ₱652,000.00.

In an Order[20] dated May 7, 2002, the RTC granted respondents' motion and accordingly modified the interest rate awarded from 5% monthly to 12% *per annum*. Then on August 2, 2002, respondents filed a Motion for Leave To Deposit/Consign Judgment Obligation[21] in the total amount of ₱126,650.00.[22]

Displeased with the RTC's May 7, 2002 Order, petitioner elevated the matter to the CA *via* a Petition for *Certiorari*[23] under Rule 65 of the Rules of Court. On August 5, 2003, the CA rendered a Decision[24] declaring that the RTC exceeded its jurisdiction in awarding the 5% monthly interest but at the same time pronouncing that the RTC gravely abused its discretion in subsequently reducing the rate of interest to 12% *per annum*. In so ruling, the CA ratiocinated:

> Indeed, We are convinced that the Trial Court exceeded its jurisdiction when it granted 5% monthly interest instead of the 12% per annum prayed for in the complaint. However, the proper remedy is not to amend the judgment but to declare that portion as a nullity. Void judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right nor the creator of any obligation (***Leonor vs. CA*, 256 SCRA 69**). No legal rights can emanate from

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[20] CA *rollo*, pp. 36-38; penned by Acting Presiding Judge Dionisio C. Sison.

[21] *Rollo*, pp. 217-219.

[22] In their Comment, *id.* at 178-190, respondents alleged that their Motion for Leave To Deposit/Consign Judgment Obligation remained unresolved as the same was overtaken by petitioner's Petition for *Certiorari* filed with the CA.

[23] Docketed as CA-G.R. SP No. 73360.

[24] *Rollo*, pp. 102-108; penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices B. A. Adefuin-De La Cruz and Hakim S. Abdulwahid.

a resolution that is null and void (***Fortich vs. Corona,* 312 SCRA 751**).

From the foregoing, the remedy of [the respondents] is to have the Court declare the portion of the judgment providing for a higher interest than that prayed for as null and void for want of or in excess of jurisdiction. A void judgment never acquire[s] finality and any action to declare its nullity does not prescribe (***Heirs of Mayor Nemencio Galvez vs. CA*, 255 SCRA 672**).

WHEREFORE, foregoing premises considered, the Petition having merit, is hereby **GIVEN DUE COURSE**. Resultantly, the challenged May 7, 2002 and September 5, 2000 orders of Public Respondent Court are hereby **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. No costs.

SO ORDERED.[25] (Emphases in the original; italics supplied.)

Proceedings before the Court of Appeals

Taking their cue from the Decision of the CA in the special civil action for *certiorari*, respondents filed with the same court a Petition for Annulment of Judgment and Execution Sale with Damages.[26] They contended that the portion of the RTC Decision granting petitioner 5% monthly interest rate is in gross violation of Section 3(d) of Rule 9 of the Rules of Court and of their right to due process. According to respondents, the loan did not carry any interest as it was the verbal agreement of the parties that in lieu thereof petitioner's family can continue occupying respondents' residential building located in Marulas, Valenzuela for free until said loan is fully paid.

Ruling of the Court of Appeals

Initially, the CA denied due course to the Petition.[27] Upon respondents' motion, however, it reinstated and granted the

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[25] *Id.* at 107.

[26] CA *rollo*, pp. 1-3.

[27] See Resolution promulgated on October 13, 2004, *id.* at 58-60; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Portia Aliño-Hormachuelos and Aurora Santiago-Lagman.

Petition. In setting aside portions of the RTC's October 17, 2000 Decision, the CA ruled that aside from being unconscionably excessive, the monthly interest rate of 5% was not agreed upon by the parties and that petitioner's Complaint clearly sought only the legal rate of 12% *per annum*. Following the mandate of Section 3(d) of Rule 9 of the Rules of Court, the CA concluded that the awarded rate of interest is void for being in excess of the relief sought in the Complaint. It ruled thus:

> WHEREFORE, [respondents'] motion for reconsideration is **GRANTED** and our resolution dated October 13, 2004 is, accordingly, **REVERSED** and **SET ASIDE**. In lieu thereof, another is entered ordering the **ANNULMENT OF:**
>
> (a) public respondent's impugned October 17, 2000 judgment, insofar as it awarded 5% monthly interest in favor of [petitioner]; and
>
> (b) all proceedings relative to the sale at public auction of the property titled in [respondents'] names under Transfer Certificate of Title No. V-12296 of the Valenzuela registry.
>
> The judgment debt adjudicated in public respondent's impugned October [17, 2000] judgment is, likewise, ordered **RECOMPUTED** at the rate of 12% per annum from March 2, 1991. No costs.
>
> SO ORDERED.[28] (Emphases in the original.)

Petitioner sought reconsideration, which was denied by the CA in its June 26, 2006 Resolution. [29]

Issues

Hence, this Petition anchored on the following grounds:

> I. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR OF LAW WHEN IT GRANTED RESPONDENTS' PETITION FOR ANNULMENT OF JUDGMENT AS A SUBSTITUTE OR ALTERNATIVE REMEDY OF A LOST APPEAL.

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[28] *Id.* at 84.

[29] *Id.* at 111-114.

II. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR AND MISAPPREHENSION OF LAW AND THE FACTS WHEN IT GRANTED RESPONDENTS' PETITION FOR ANNULMENT OF JUDGMENT OF THE DECISION OF THE REGIONAL TRIAL COURT OF VALENZUELA, BRANCH 75 DATED OCTOBER 17, 2000 IN CIVIL CASE NO. 241-V-99, DESPITE THE FACT THAT SAID DECISION HAS BECOME FINAL AND ALREADY EXECUTED CONTRARY TO THE DOCTRINE OF IMMUTABILITY OF JUDGMENT.[30]

Petitioner's Arguments

Petitioner claims that the CA erred in partially annulling the RTC's October 17, 2000 Decision. She contends that a Petition for Annulment of Judgment may be availed of only when the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the claimant. In the present case, however, respondents had all the opportunity to question the October 17, 2000 Decision of the RTC, but because of their own inaction or negligence they failed to avail of the remedies sanctioned by the rules. Instead, they contented themselves with the filing of a Motion to Set Aside Judgment and then a Motion to Correct/Amend Judgment and to Set Aside Execution Sale.

Petitioner likewise argues that for a Rule 47 petition to prosper, the same must either be based on extrinsic fraud or lack of jurisdiction. However, the allegations in respondents' Rule 47 petition do not constitute extrinsic fraud because they simply pass the blame to the negligence of their former counsel. In addition, it is too late for respondents to pass the buck to their erstwhile counsel considering that when they filed their Motion to Correct/Amend Judgment and To Set Aside Execution Sale they were already assisted by their new lawyer, Atty. Reynaldo A. Ruiz, who did not also avail of the remedies of new trial, appeal, *etc*. As to the ground of lack of jurisdiction, petitioner posits that there is no reason to doubt that the RTC had jurisdiction

[30] *Rollo*, p. 10.

over the subject matter of the case and over the persons of the respondents.

While conceding that the RTC patently made a mistake in awarding 5% monthly interest, petitioner nonetheless invokes the doctrine of immutability of final judgment and contends that the RTC Decision can no longer be corrected or modified since it had long become final and executory. She likewise points out that respondents received a copy of said Decision on November 13, 2000 but did nothing to correct the same. They did not even question the award of 5% monthly interest when they filed their Motion to Set Aside Judgment which they anchored on the sole ground of the RTC's lack of jurisdiction over the persons of some of the respondents.

Respondents' Arguments

Respondents do not contest the existence of their obligation and the principal amount thereof. They only seek quittance from the 5% monthly interest or 60% *per annum* imposed by the RTC. Respondents contend that Section (3)d of Rule 9 of the Rules of Court is clear that when the defendant is declared in default, the court cannot grant a relief more than what is being prayed for in the Complaint. A judgment which transgresses said rule, according to the respondents, is void for having been issued without jurisdiction and for being violative of due process of law.

Respondents maintain that it was through no fault of their own, but through the gross negligence of their former counsel, Atty. Coroza, that the remedies of new trial, appeal or petition for relief from judgment were lost. They allege that after filing a Motion to Extend Period to Answer, Atty. Coroza did not file any pleading resulting to their being declared in default. While the said lawyer filed on their behalf a Motion to Set Aside Judgment dated January 26, 2001, he however took no steps to appeal from the Decision of the RTC, thereby allowing said judgment to lapse into finality. Citing *Legarda v. Court of Appeals*,[31] respondents aver that clients are not always bound

[31] G.R. No. 94457, March 18, 1991, 195 SCRA 418.

by the actions of their counsel, as in the present case where the clients are to lose their property due to the gross negligence of their counsel.

With regard to petitioner's invocation of immutability of judgment, respondents argue that said doctrine applies only to valid and not to void judgments.

Our Ruling

The petition must fail.

We agree with respondents that the award of 5% monthly interest violated their right to due process and, hence, the same may be set aside in a Petition for Annulment of Judgment filed under Rule 47 of the Rules of Court.

Annulment of judgment under Rule 47; an exception to the final judgment rule; grounds therefor.

A Petition for Annulment of Judgment under Rule 47 of the Rules of Court is a remedy granted only under exceptional circumstances where a party, without fault on his part, has failed to avail of the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies. Said rule explicitly provides that it is not available as a substitute for a remedy which was lost due to the party's own neglect in promptly availing of the same. "The underlying reason is traceable to the notion that annulling final judgments goes against the grain of finality of judgment. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest."[32]

While under Section 2, Rule 47[33] of the Rules of Court a Petition for Annulment of Judgment may be based only on the

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[32] *Ramos v. Judge Combong, Jr.*, 510 Phil. 277, 281-282 (2005).

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

x x x x x x x x x

grounds of extrinsic fraud and lack of jurisdiction, jurisprudence recognizes lack of due process as additional ground to annul a judgment.[34] In *Arcelona v. Court of Appeals*,[35] this Court declared that a final and executory judgment may still be set aside if, upon mere inspection thereof, its patent nullity can be shown for having been issued without jurisdiction or *for lack of due process of law*.

Grant of 5% monthly interest is way beyond the 12% per annum interest sought in the Complaint and smacks of violation of due process.

It is settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party. They cannot also grant a relief without first ascertaining the evidence presented in support thereof. Due process considerations require that judgments must conform to and be supported by the pleadings and evidence presented in court. In *Development Bank of the Philippines v. Teston*,[36] this Court expounded that:

> Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.

Notably, the Rules is even more strict in safeguarding the right to due process of a defendant who was declared in default

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[34] See *Intestate Estate of the Late Nimfa Sian v. Philippine National Bank*, G.R. No. 168882, January 31, 2007, 513 SCRA 662, 667-668.

[35] 345 Phil. 250, 264 (1997), citing *Santiago v. Ceniza*, 115 Phil. 493, 495-496 (1962); *Mercado v. Ubay*, G.R. No. 35830, July 24, 1990, 187 SCRA 719, 725; and *Regidor v. Court of Appeals*, G.R. No. 78115, March 5, 1993, 219 SCRA 530, 534.

[36] G.R. No. 174966, February 14, 2008, 545 SCRA 422, 429.

than of a defendant who participated in trial. For instance, amendment to conform to the evidence presented during trial is allowed the parties under the Rules.[37] But the same is not feasible when the defendant is declared in default because Section 3(d), Rule 9 of the Rules of Court comes into play and limits the relief that may be granted by the courts to what has been prayed for in the Complaint. It provides:

> (d) *Extent of relief to be awarded.* — A judgment rendered against a party in default shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.

The *raison d'être* in limiting the extent of relief that may be granted is that it cannot be presumed that the defendant would not file an Answer and allow himself to be declared in default had he known that the plaintiff will be accorded a relief greater than or different in kind from that sought in the Complaint.[38] No doubt, the reason behind Section 3(d), Rule 9 of the Rules of Court is to safeguard defendant's right to due process against unforeseen and arbitrarily issued judgment. This, to the mind of this Court, is akin to the very essence of due process. It embodies "the sporting idea of fair play"[39] and forbids the grant of relief on matters where the defendant was not given the opportunity to be heard thereon.

In the case at bench, the award of 5% monthly interest rate is not supported both by the allegations in the pleadings and the evidence on record. The Real Estate Mortgage[40] executed by the parties does not include any provision on interest. When petitioner filed her Complaint before the RTC, she alleged that respondents borrowed from her "the sum of FORTY-FIVE THOUSAND PESOS (₱45,000.00), with interest thereon at the

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[37] See Section 5, Rule 10 of the Rules of Court.

[38] Herrera, Oscar M., *Remedial Law*, Vol. I, 2007 Edition, pp. 821-822, citing *Lim Toco v. Go Fay*, 80 Phil. 166, 169-170 (1948).

[39] Frankfurter, Mr. Justice Holmes and the Supreme Court, pp. 32-33, cited in Cruz, Isagani A., *Constitutional Law*, 2007 Edition, p. 100.

[40] *Supra* note 6.

rate of 12% per annum"[41] and sought payment thereof. She did not allege or pray for the disputed 5% monthly interest. Neither did she present evidence nor testified thereon. Clearly, the RTC's award of 5% monthly interest or 60% *per annum* lacks basis and disregards due process. It violated the due process requirement because respondents were not informed of the possibility that the RTC may award 5% monthly interest. They were deprived of reasonable opportunity to refute and present controverting evidence as they were made to believe that the complainant [petitioner] was seeking for what she merely stated in her Complaint.

Neither can the grant of the 5% monthly interest be considered subsumed by petitioner's general prayer for "[o]ther reliefs and remedies just and equitable under the premises x x x."[42] To repeat, the court's grant of relief is limited only to what has been prayed for in the Complaint or related thereto, supported by evidence, and covered by the party's cause of action.[43] Besides, even assuming that the awarded 5% monthly or 60% *per annum* interest was properly alleged and proven during trial, the same remains unconscionably excessive and ought to be equitably reduced in accordance with applicable jurisprudence. In *Bulos, Jr. v. Yasuma*,[44] this Court held:

> In the case of *Ruiz v. Court of Appeals,* citing the cases of *Medel v. Court of Appeals, Garcia v. Court of Appeals, Spouses Bautista v. Pilar Development Corporation* and the recent case of *Spouses Solangon v. Salazar,* this Court considered the 3% interest per month or 36% interest *per annum* as excessive and unconscionable. Thereby, the Court, in the said case, equitably reduced the rate of interest to 1% interest per month or 12% interest *per annum*. (Citations omitted)

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[41] *Rollo,* p. 56.

[42] *Id.* at 58.

[43] *Philippine Charter Insurance Corporation v. Philippine National Construction Corporation*, G.R. No. 185066, October 2, 2009, 602 SCRA 723, 736.

[44] G.R. No. 164159, July 17, 2007, 527 SCRA 727, 742.

It is understandable for the respondents not to contest the default order for, as alleged in their Comment, "it is not their intention to impugn or run away from their just and valid obligation."[45] Nonetheless, their waiver to present evidence should never be construed as waiver to contest patently erroneous award which already transgresses their right to due process, as well as applicable jurisprudence.

Respondents' former counsel was grossly negligent in handling the case of his clients; respondents did not lose ordinary remedies of new trial, petition for relief, etc. through their own fault.

Ordinarily, the mistake, negligence or lack of competence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. A recognized exception to the rule is when the lawyers were grossly negligent in their duty to maintain their client's cause and such amounted to a deprivation of their client's property without due process of law.[46] In which case, the courts must step in and accord relief to a client who suffered thereby. [47]

The manifest indifference of respondents' former counsel in handling the cause of his client was already present even from the beginning. It should be recalled that after filing in behalf of his clients a Motion to Extend Period to Answer, said counsel allowed the requested extension to pass without filing an Answer, which resulted to respondents being declared in default. His negligence was aggravated by the fact that he did not question the awarded 5% monthly interest despite receipt of the RTC Decision on November 13, 2000.[48] A simple reading of the

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[45] *Rollo*, p. 183.

[46] *Legarda v. Court of Appeals*, *supra* note 31 at 426-427; *Trust International Paper Corporation v. Pelaez*, 531 Phil. 150, 160-161 (2006).

[47] *Legarda v. Court of Appeals*, *supra* note 31 at 428.

[48] Per petitioner's allegation.

dispositive portion of the RTC Decision readily reveals that it awarded exorbitant and unconscionable rate of interest. Its difference from what is being prayed for by the petitioner in her Complaint is so blatant and very patent. It also defies elementary jurisprudence on legal rate of interests. Had the counsel carefully read the judgment it would have caught his attention and compelled him to take the necessary steps to protect the interest of his client. But he did not. Instead, he filed in behalf of his clients a Motion to Set Aside Judgment[49] dated January 26, 2001 based on the sole ground of lack of jurisdiction, oblivious to the fact that the erroneous award of 5% monthly interest would result to his clients' deprivation of property without due process of law. Worse, he even allowed the RTC Decision to become final by not perfecting an appeal. Neither did he file a petition for relief therefrom. It was only a year later that the patently erroneous award of 5% monthly interest was brought to the attention of the RTC when respondents, thru their new counsel, filed a Motion to Correct/Amend Judgment and To Set Aside Execution Sale. Even the RTC candidly admitted that it "made a *glaring* mistake in directing the defendants to pay interest on the principal loan at 5% per month which is very different from what was prayed for by the plaintiff."[50]

"A lawyer owes entire devotion to the interest of his client, warmth and zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing can be taken or withheld from his client except in accordance with the law."[51] Judging from how respondents' former counsel handled the cause of his clients, there is no doubt that he was grossly negligent in protecting their rights, to the extent that they were deprived of their property without due process of law.

In fine, respondents did not lose the remedies of new trial, appeal, petition for relief and other remedies through their own

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[49] *Supra* note 14.

[50] CA *rollo*, p. 37.

[51] *Legarda v. Court of Appeals*, *supra* note 31 at 425.

fault. It can only be attributed to the gross negligence of their erstwhile counsel which prevented them from pursuing such remedies. We cannot also blame respondents for relying too much on their former counsel. Clients have reasonable expectations that their lawyer would amply protect their interest during the trial of the case.[52] Here, "[r]espondents are plain and ordinary people x x x who are totally ignorant of the intricacies and technicalities of law and legal procedures. Being so, they completely relied upon and trusted their former counsel to appropriately act as their interest may lawfully warrant and require."[53]

As a final word, it is worth noting that respondents' principal obligation was only ₱45,000.00. Due to their former counsel's gross negligence in handling their cause, coupled with the RTC's erroneous, baseless, and illegal award of 5% monthly interest, they now stand to lose their property and still owe petitioner a large amount of money. As aptly observed by the CA:

> x x x If the impugned judgment is not, therefore, rightfully nullified, petitioners will not only end up losing their property but will additionally owe private respondent the sum of ₱232,000.00 plus the legal interest said balance had, in the meantime, earned. As a court of justice and equity, we cannot, in good conscience, allow this unconscionable situation to prevail.[54]

Indeed, this Court is appalled by petitioner's invocation of the doctrine of immutability of judgment. Petitioner does not contest as she even admits that the RTC made a glaring mistake in awarding 5% monthly interest.[55] Amazingly, she wants to benefit from such erroneous award. This Court cannot allow this injustice to happen.

WHEREFORE, the instant Petition is hereby **DENIED** and the assailed November 24, 2005 and June 26, 2006 Resolutions

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[52] *APEX Mining, Inc. v. Court of Appeals*, 377 Phil. 482, 494 (1999).

[53] See respondents' Memorandum, *rollo*, p. 266.

[54] CA *rollo*, p. 83.

[55] See paragraph 54 of her Petition, *rollo*, p. 22.

of the Court of Appeals in CA-G.R. SP No. 85541 are **AFFIRMED.**

SO ORDERED.

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

SPECIAL FIRST DIVISION

[G.R. No. 177751. January 7, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FLORENCIO AGACER,[*] EDDIE AGACER, ELYNOR AGACER, FRANKLIN AGACER and ERIC[**] AGACER,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; PRIVILEGED MITIGATING CIRCUMSTANCES; MINORITY; APPRECIATED EVEN IF BELATEDLY PRESENTED FOR CONSIDERATION.— Franklin is entitled to the privileged mitigating circumstance of minority. Franklin's Certificate of Live Birth shows that he was born on December 20, 1981, hence, was merely 16 years old at the time of the commission of the crime on April 2, 1998. He is therefore entitled to the privileged mitigating circumstance of minority embodied in Article 68(2) of the Revised Penal Code. It provides that when the offender is a minor over 15 and under 18 years, the penalty next lower than that prescribed by law shall be imposed on the accused but always in the proper period. The rationale of the law in

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[*] Deceased as of February 17, 2007. *Rollo,* p. 100.

[**] Also spelled as Erick in some parts of the records.

extending such leniency and compassion is that because of his age, the accused is presumed to have acted with less discernment. This is regardless of the fact that his minority was not proved during the trial and that his birth certificate was belatedly presented for our consideration, since to rule accordingly will not adversely affect the rights of the state, the victim and his heirs.

2. ID.; ID.; ID.; PROPER PENALTY FOR MURDER COMMITTED BY A MINOR IN CASE AT BAR.— The penalty for murder is *reclusion perpetua* to death. A degree lower is *reclusion temporal*. There being no aggravating and ordinary mitigating circumstance, the penalty to be imposed on Franklin should be *reclusion temporal* in its medium period, as maximum, which ranges from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor,* the medium period of which ranges from eight 8 years and one (1) day to ten (10) years. Due to the seriousness of the crime and the manner it was committed, the penalty must be imposed at its most severe range.

3. ID.; CRIMINAL LIABILITY; TOTALLY EXTINGUISHED BY DEATH.— On the effect of the death of appellant Florencio on his criminal liability, Article 89(1) of the Revised Penal Code provides that: xxx 'Criminal liability is totally extinguished: 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment; x x x' It is also settled that "[u]pon the death of the accused pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal."

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

DEL CASTILLO, *J.*:

For resolution is appellants' Motion for Reconsideration[1] of our December 14, 2011 Decision[2] affirming their conviction for the murder of Cesario Agacer, the dispositive portion of which reads as follows:

> WHEREFORE, the Court AFFIRMS the November 17, 2006 Decision of the Court of Appeals in CA-G.R. CR-HC. No. 01543 which affirmed the August 7,2001 Decision of the Regional Trial Court, Branch 8, Aparri, Cagayan, finding appellants Florencio, Franklin, Elynor, Eddie and Eric, all surnamed Agacer. guilty beyond reasonable doubt of the crime of murder, with the following modifications:
>
> (l) actual damages is DELETED;
>
> (2) the appellants are ORDERED to pay the heirs of Cesario Agacer ₱25,000.0 as temperate damages; and
>
> (3) the appellants are ORDERED to pay the heirs of Cesario Agacer interest at the legal rate of six percent (6%) per annum on all the amounts of damages awarded, commencing from the date of finality of this Decision until fully paid.
>
> Costs against appellants.
>
> SO ORDERED.[3]

Appellants assert that their mere presence at the scene of the crime is not evidence of conspiracy;[4] that there was no treachery since a heated argument preceded the killing of the victim;[5] and that even assuming that their guilt was duly established, the privileged mitigating circumstance of minority should have been

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[1] *Rollo*, pp. 88-93.

[2] *Id*. at 67-82.

[3] *Id*. at 81.

[4] *Id*. at 89.

[5] *Id*. at 89-90.

appreciated in favor of appellant Franklin Agacer (Franklin) who was only 16 years and 106 days old at the time of the incident, having been born on December 21, 1981.[6]

In our February 13, 2012 Resolution,[7] we required the Office of the Solicitor General (OSG) to comment on the Motion for Reconsideration particularly on the issue of Franklin's minority.

Meanwhile, in a letter[8] dated June 8, 2012, the Officer-in-Charge of the New Bilibid Prison, informed us that appellant Florencio Agacer (Florencio) died on February 17, 2007, as evidenced by the attached Certificate of Death indicating cardio pulmonary arrest secondary to *status asthmaticus* as the cause of death.[9]

The OSG, in its Comment,[10] asserts that there exists no cogent reason to disturb our findings and conclusions as to the guilt of the appellants since the facts and evidence clearly established conspiracy and treachery. However, it did not oppose and even agreed with appellants' argument that minority should have been appreciated as a privileged mitigating circumstance in favor of Franklin, the same being duly supported by a copy of Franklin's Certificate of Live Birth secured from the National Statistics Office (NSO) Document Management Division.[11]

Issues

Hence, the following issues for our resolution:

1. Was the evidence sufficient to establish the existence of conspiracy and treachery in the commission of the crime charged?

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[6] *Id*. at 90-91.

[7] *Id*. at 94.

[8] *Id*. at 99.

[9] *Id*. at 100.

[10] *Id*. at 111-122.

[11] *Id.* at 121.

2. Should the mitigating circumstance of minority be appreciated in favor of appellant Franklin?

3. Does the death of appellant Florencio extinguish his criminal and civil liabilities?

Our Ruling

There is partial merit in appellants' Motion for Reconsideration.

Reiterated Arguments in a Motion for Reconsideration Do Not Need a New Judicial Determination.

Appellants' contention that the prosecution's evidence is insufficient to prove conspiracy and treachery is a mere rehash of their argument set forth in their brief, "which we already considered, weighed and resolved before we rendered the Decision sought to be reconsidered."[12] It is not a new issue that needs further judicial determination.[13] There is therefore no necessity to discuss and rule again on this ground since "this would be a useless formality of ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant."[14]

As a Minor, Franklin is Entitled to the Privileged Mitigating Circumstance of Minority.

Nevertheless, we agree with appellants that Franklin is entitled to the privileged mitigating circumstance of minority. Franklin's Certificate of Live Birth shows that he was born on December 20, 1981, hence, was merely 16 years old at the time of the commission of the crime on April 2, 1998. He is therefore entitled

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[12] *People v. Larrañaga*, 502 Phil. 231, 240 (2005).

[13] *Id.*

[14] *Id*. at 239-240, citing *Ortigas and Co. Ltd. Partnership v. Judge Velasco*, 324 Phil. 483, 491 (1996).

to the privileged mitigating circumstance of minority embodied in Article 68(2) of the Revised Penal Code. It provides that when the offender is a minor over 15 and under 18 years, the penalty next lower than that prescribed by law shall be imposed on the accused but always in the proper period. The rationale of the law in extending such leniency and compassion is that because of his age, the accused is presumed to have acted with less discernment.[15] This is regardless of the fact that his minority was not proved during the trial and that his birth certificate was belatedly presented for our consideration, since to rule accordingly will not adversely affect the rights of the state, the victim and his heirs.

Penalty to be Imposed Upon Franklin.

Pursuant to the above discussion, the penalty imposed upon Franklin must be accordingly modified. The penalty for murder is *reclusion perpetua* to death. A degree lower is *reclusion temporal*.[16] There being no aggravating and ordinary mitigating circumstance, the penalty to be imposed on Franklin should be *reclusion temporal* in its medium period, as maximum, which ranges from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.[17] Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor*, the medium period of which ranges from eight years and one (1) day to ten (10) years. Due to the seriousness of the crime and the manner it was committed, the penalty must be imposed at its most severe range.

The Death of Florencio Prior to Our Final Judgment Extinguishes His Criminal Liability and Civil Liability Ex Delicto.

On the effect of the death of appellant Florencio on his criminal liability, Article 89(1) of the Revised Penal Code provides that:

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[15] *People v. Larrañaga*, 516 Phil. 524, 525 (2006).

[16] *Id*. at 529.

[17] *Id*.

Art. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished.

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;

x x x x x x x x x

It is also settled that "[u]pon the death of the accused pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal."[18]

While Florencio died way back on February 7, 2007, the said information was not timely relayed to the Court, such that we were unaware of the same when we rendered our December 14, 2011 Decision. It was only later that we were informed of Florencio's death through the June 8, 2012 letter of the Officer-in-Charge of the New Bil ibid Prison. Due to this development, it therefore becomes necessary for us to declare Florencio's criminal liability as well as his civil liability *ex delicto* to have been extinguished by his death prior to final judgment. The judgment of conviction is thus set aside insofar as Florencio is concerned.

WHEREFORE, appellants' Motion for Reconsideration is **PARTIALLY GRANTED.** Our Decision dated December 14, 2011 is **MODIFIED** as follows: (a) appellant Franklin Agacer is sentenced to suffer the penalty often (10) years of *prision mayor* in its medium period, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* in its medium period, as maximum, and (b) the criminal liability and civil liability *ex delicto* of appellant Florencio Agacer are declared **EXTINGUISHED** by his death prior to final judgment. The judgment or conviction against him is therefore **SET ASIDE.**

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[18] *De Guzman v. People*, 459 Phil. 576, 580 (2003), citing *People v. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188768. January 7, 2013]

TML GASKET INDUSTRIES, INC., *petitioner, vs.* **BPI FAMILY SAVINGS BANK, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; WHEN PROPER.— Section 3, Rule 58 of the Rules of Court lists the grounds for the issuance of a writ of preliminary injunction. x x x As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The requisites of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.

2. ID.; ID.; ID.; ISSUANCE THEREOF DISCRETIONARY TO THE COURT; ISSUANCE *SANS* CLEAR LEGAL RIGHT CONSTITUTES GRAVE ABUSE OF DISCRETION.— The issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and is generally not interfered with except in cases of manifest abuse. For the issuance of the writ of preliminary injunction to be

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[***] Per raffle dated November 14. 2012.

proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of a writ of injunction constitutes grave abuse of discretion.

APPEARANCES OF COUNSEL

Tristram B. Zoleta for petitioner.
Benedicto Versoza Gealogo & Burkley for respondent.

R E S O L U T I O N

PEREZ, *J.*:

We are urged in this petition for review on *certiorari* to reverse and set aside the Decision[1] of the Court of Appeals in CA-G.R. SP No. 81932 which, in turn, reversed the Orders,[2] respectively dated 22 August 2003 and 27 November 2003, of the Regional Trial Court (RTC), Branch 194, Parañaque City in Civil Case No. 02-0504. The assailed Orders issued a writ of preliminary injunction in favor of petitioner TML Gasket Industries, Inc. (TML), enjoining respondent BPI Family Savings Bank, Inc.'s (BPI's) extra-judicial foreclosure of TML's mortgaged properties, and denied TML's motion for reconsideration thereof.

The facts are not in dispute.

Sometime in September 1996, TML obtained a loan from the Bank of Southeast Asia, Inc. (BSA), which TML can avail *via* a credit facility of ₱85,000,000.00. As security for the loan, TML executed a real estate mortgage over commercial and industrial lots located at Dr. A. Santos Avenue, Parañaque City covered by Transfer Certificate of Title (TCT) Nos. 81278

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[1] Penned by Associate Justice Noel G. Tijam with Associate Justices Martin S. Villarama, Jr. (now a Member of this Court) and Arturo G. Tayag, concurring. *Rollo* pp. 39-51.

[2] Penned by Judge Leoncio Real-Dimagiba. *Id.* at 181-182 and 187.

and 81303 of the Registry of Deeds of Parañaque City. For additional security, BSA required TML to execute a promissory note for each availment from the credit facility.

On different dates from September 1996 to 31 July 1997, TML executed several promissory notes (PN), which provided in pertinent part:

> Since time is of the essence hereof, [TML] is in default under this Note, without need for notice, demand, presentment or any other act or deed in any of the following events: a) [TML] fails to pay when due, totally or partially, the principal, interest and other charges under this Note x x x.[3]

During the period of the loan, BSA changed its corporate name to DBS Bank Phils. (DBS), which eventually merged with BPI under the latter's corporate name.

TML defaulted in the payment of its loan leading BPI to extra-judicially foreclose the mortgaged properties. As of 25 June 2002, TML's indebtedness to BPI amounted to ₱71,877,930.56, excluding penalties, charges, attorney's fees and other expenses of foreclosure.

On 24 October 2002, the *Ex-Officio* Sheriff of RTC, Parañaque City issued a Notice of Extra-judicial Foreclosure Sale of the mortgaged properties.

Because of the imminent foreclosure sale of its mortgaged properties, TML, on 21 November 2002, filed a "Complaint for Declaratory Relief, Accounting, Declaration of Nullity of Notice of Extra-Judicial Sale, Increased *(sic)* in Interest Rates, Penalty Charges Plus, *(sic)* Damages, with Prayer for the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction" against BPI and DBS before the RTC, Branch 194, Parañaque City.

The complaint highlighted the following clause in the PNs signed by TML, to wit:

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[3] *Id.* at 41.

If changes in the conditions and/or circumstances occur which, directly or indirectly, increase the overall costs of money to the Lender, such as but not limited to the following: (i) any change in the laws or regulations, including any amendments, modifications, interpretations, administrative implementation or repeal thereof affecting the Lender or its business such as reserve or similar requirement, tax on income, gross receipts, or the imposition of any levy, fees or other taxes; or (ii) changes in the interest rate of forbearance of money whether in the prevailing market rates or such other guiding or reference rates as may be adopted, determined and/or authorized by the CB; (iii) extraordinary inflation or there is an increase of fifteen percent (15%) in the consumer price index as announced by the CB or the National Economic Development Authority reckoned from the date of the granting of the loan or the credit line; or (iv) devaluation, revaluation, or depreciation in real value or purchasing power of the Philippine Peso, that is, when there has been an adverse change of at least fifteen percent (15%), in the CB Reference Exchange Rate for the Philippine Peso to the US Dollar and/or such other foreign currencies adopted by the Philippine Government or its instrumentalities or agencies, as forming part of its international reserves, reckoned from the date of granting of the loan or credit line; (v) any change in the reserve or similar requirements as a necessary consequence of obtaining a unibanking license on the part of the Lender, then the Lender may, at its sole option, correspondingly adjust the interest rate in all outstanding loans(s) and other obligations under this Note/s and such other documents that may be thereafter be executed. The adjustment in interest rate shall take effect three (3) days after receipt by [TML] of the notice of adjustment.[4]

TML asseverated that BSA made it understand that the stipulation meant that TML's loan would be subject to only a 16% interest rate *per annum*. TML alleged that "despite [the] odds and difficulties [it] encountered, aggravated by the global economic crisis, [it] tried hard to religiously pay its x x x obligation to [BPI] x x x." However, contrary to their actual understanding, BSA "unreasonably, unconscionably and unilaterally" imposed a 33% interest rate *per annum*, and ultimately, a penalty of 36% interest on past due principal and corresponding interest thereon.

[4] *Id.* at 106.

TML likewise pointed out that it had demanded an independent accounting and liquidation of its loan account, which went unheeded. Ultimately, for TML, it cannot be considered in default of an obligation with an undetermined and unascertained amount. In that regard, TML argued that the intended foreclosure of TML's mortgaged properties is unwarranted for being illegal; thus, the foreclosure ought to be enjoined to prevent TML from suffering grave and irreparable damage, especially since TML's office and factory are located at the mortgaged properties.

Refuting TML's allegations, BPI maintained that the interest rates on TML's loan obligation were mutually and voluntarily agreed upon. On TML's application for the issuance of a writ of preliminary injunction, BPI countered that it has the absolute right to foreclose the mortgage constituted over TML's properties given that TML defaulted on its loan obligation, which had already become due and demandable.

In an Order dated 20 June 2003, the trial court denied TML's application for the issuance of a preliminary injunction, ratiocinating thus:

> In resolving whether or not to grant the injunctive writ, this Court is guided by the requisites thereof, as repeatedly (sic) enunciated by the Supreme Court, to wit: (1) the invasion of a right is material and substantial; (2) the right of complainant is clear and unmistakable; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. x x x.
>
> From the testimony of [TML's] witness[,] Lyman Lozada[,] it was established that [TML] is indeed indebted to [BPI] and has become delinquent in the payment of the loan obligation; that [TML] is willing to let go off (sic) the collaterals, the properties subject matter hereof, by way of *dacion en pago*. Apparently, the only concern of [TML] is the fact that it will be ousted from the properties after the period of redemption shall have lapsed.
>
> The foregoing testimony of [TML] casts [doubt] on its right over the property. The aforementioned requisites are not obtaining in favor of [TML]. Moreover[,] as held by the Supreme Court[,] "where the complainant's right or title is doubtful or disputed, injunction is not proper. x x x.

Furthermore, [TML] has in its favor the right of redemption.[5]

On motion for reconsideration, the trial court made a complete turn-around. It ordered the issuance of the writ in favor of TML, subject to the posting of a bond in the amount of ₱300,000.00, to wit:

While it is admitted that [TML] has defaulted in the payment of its loan obligation, which thus conferred upon [BPI] the right of foreclosure, the Court, after a contemplation of the logical consequence of the denial of the injunctive writ, is convinced that great and irreparable damages may be caused [TML]. As pointed out by [TML], it might lead to an absurd scenario of [TML] winning the case but losing its property in [BPI's] favor or in an even worse scenario, in favor of third parties. This is because of the short period within which [TML] could exercise its redemption right under the General Banking Act.[6]

BPI moved for reconsideration of the order. However, the trial court maintained its ruling:

Admittedly, [TML] has incurred in default in the payment of its obligation but the amount has yet to be determined, the determination thereof being one of the provinces of the instant complaint, and considering the brief redemption period under the General Banking Act[,] the redemption is next to impossible. Thus, the injury to [TML] would be very grave if not irreparable.[7]

Posthaste, BPI filed a petition for *certiorari* under Rule 65 of the Rules of Court before the Court of Appeals, seeking to annul and set aside the twin Orders of the trial court respectively dated 22 August 2003 and 27 November 2003 which granted the writ of preliminary injunction in favor of TML and enjoined the foreclosure sale of the mortgaged properties.

The appellate court found grave abuse of discretion in the trial court's issuance of the orders as demonstrated by the following:

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[5] *Id.* at 165.

[6] *Id.* at 182.

[7] *Id.* at 187.

1. TML signed the PNs which stipulated that TML, as the Borrower, is considered **in default** when it "fails to pay, when due, totally or partially, the principal, interest and other charges [thereunder]."

2. Consistent therewith, the Real Estate Mortgage signed by TML provides that one of the effects of default of the mortgagor (TML) includes the right of the mortgagee (BPI) to **immediately foreclose** the mortgage, which foreclosure may be undertaken judicially or extra-judicially, at the discretion of the mortgagee (BPI).

3. TML itself admitted in its complaint that it has failed to pay its outstanding loan to BPI.

4. From all three points, BPI has the right to extra-judicially foreclose the mortgaged properties.

5. TML did not demonstrate an actual existing right to be protected.

6. Corollary thereto, there is no threatened or actual violation of TML's doubtful right to the mortgaged properties.

The dispositive portion of the appellate court's decision reads, thus:

> WHEREFORE, the *Petition* is **GRANTED.** The twin *Order(s)*, dated August 22, 2003 and November 27, 2003, of the Regional Trial Court of Parañaque City, Branch 164 *(sic)* in Civil Case No. 02-0504, are hereby **REVERSED and SET ASIDE.** Accordingly, the writ of preliminary injunction granted in favor of [TML] is hereby **LIFTED.**[8]

TML filed a motion for reconsideration. While the resolution thereof was pending, TML filed a Supplemental Motion for Reconsideration arguing that BPI's petition for *certiorari* has become moot and academic because BPI had supposedly filed an Amended Petition for Extra-judicial Foreclosure of Real Estate Mortgage under Act No. 3135 before the trial court. For TML, that effectively changed the amount of its obligation to BPI,

[8] *Id.* at 50.

which, in turn, rendered BPI's original petition for extra-judicial foreclosure of mortgage moot and academic.

The appellate court denied the motions and affirmed its original decision:

> WHEREFORE, the instant motion for reconsideration and supplemental motion for reconsideration are hereby **DENIED.** Accordingly, Our Decision, dated August 19, 2008, **STANDS**.[9]

Hence, this petition for review on *certiorari* positing that the appellate court erred when it reversed and set aside the twin Orders of the trial court and lifted the injunctive writ.

We subscribe to the appellate court's ruling.

Section 3, Rule 58 of the Rules of Court lists the grounds for the issuance of a writ of preliminary injunction:

> **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;
>
> (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 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.

As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The requisites of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ,

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[9] *Id.* at 55.

the right to be protected and the violation against that right must be shown.[10]

In this case, TML anchors its right to the mortgaged properties on its claim that it cannot be considered in default of its loan obligation to BPI. Consequently, the mortgaged properties cannot be foreclosed. TML claims it had been religiously paying its loan; however, BPI's unilateral increase of the rate of interest to 33% prevented TML from further paying the loan. Thus, for TML, while an accounting and liquidation of the actual amount of its obligation to BPI remains undetermined, it cannot be considered in default. Ultimately, TML avers that the threatened foreclosure and auction sale of its mortgaged properties while its loan with BPI subsists is a violation of its right.

We note that TML categorically admitted that it has an existing loan with BPI, secured by a real estate mortgage and several promissory notes, and that it stopped paying for one reason or another. On that point, we affirm the appellate court's findings:

> It is settled rule of law that foreclosure is proper when the debtors are in default of the payment of their obligation. On this note, it must be recalled that the promissory notes executed by [TML] in favor of [BPI] states that the Borrower - in this case, [TML] — is considered **in default** when it *fails to pay when due, totally or partially, the principal, interest and other charges under [the promissory note(s)]*. In conjunction therewith, the [real estate mortgage] executed by the parties stipulates, among others, that:
>
> Sec. 6. **Effects of Default by the Mortgagor**. *xxx*
>
> a) The **MORTGAGEE** shall have the right to immediately foreclose on this Mortgage in accordance with Sec. 7, hereof; *xxx*
>
> Sec. 7. **Foreclosure**. Foreclosure shall, at the sole discretion of the **MORTGAGEE**, be either judicial or extrajudicial, *xxx xxx*.
>
> In its *Complaint*, [TML] admitted that it has not paid its obligation with [BPI] by reason of the exorbitant rates of interest unilaterally

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[10] *Equitable PCI-Bank, Inc. v. OJ-Mark Trading, Inc.*, G.R. No. 165950, 11 August 2010, 628 SCRA 79, 88.

imposed by the latter. However, regardless of [TML's] defenses, the fact that it has an outstanding obligation with [BPI] which it failed to pay despite demand remains undisputed. **Verily, [TML's] failure to comply with the terms and conditions of its credit agreement with [BPI], as embodied in the [real estate mortgage] and the promissory notes it issued in favor of the latter, entitles [BPI] to extrajudicially foreclose the mortgaged properties**.

x x x x x x x x x

To [o]ur mind, the grounds relied upon by [the trial court], do not justify the issuance of a writ of preliminary injunction in favor of [TML]. Under the factual setting of this case, [TML] has no right to be protected from the impending foreclosure of its properties. Certainly, the said foreclosure is authorized under the [real estate mortgage] and the promissory notes voluntarily executed by [TML] in favor of [BPI]. Needless to say, [BPI's] exercise of its right to foreclose the subject properties does not, in any way, constitute a violation of [TML's] property rights. On the contrary, the foreclosure of the mortgage is to enforce the contractual obligation of [BPI].[11]

The issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and is generally not interfered with except in cases of manifest abuse. For the issuance of the writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage.[12] In the absence of a clear legal right, the issuance of a writ of injunction constitutes grave abuse of discretion.

From the foregoing, it is apparent that the trial court committed grave abuse of discretion when it revoked its previous order and subsequently issued a writ of preliminary injunction simply on the following grounds: "(a) that [TML's] mortgage debt is unliquidated; (b) that [TML] stands to suffer great and irreparable damages if it wins the case but, in the process, loses its mortgaged

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[11] *Rollo,* pp. 46-48.

[12] *Supra* note 10.

properties to [BPI], or even worse, to third parties; and, (c) that, considering, the brief redemption period under the General Banking Act, [TML's] chance to redeem its properties would be next to impossible."

In *Selegna Management and Development Corporation v. United Coconut Planters Bank*,[13] we ruled that the debt is considered liquidated despite the alleged lack of accounting:

> A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of the relevant promissory notes and related documentation. Failure to furnish a debtor a detailed statement of account does not *ipso facto* result in an unliquidated obligation.
>
> Petitioners executed a Promissory Note, in which they stated that their principal obligation was in the amount of ₱103,909,710.82, subject to an interest rate of 21.75 percent per annum. Pursuant to the parties' Credit Agreement, petitioners likewise know that any delay in the payment of the principal obligation will subject them to a penalty charge of one percent per month, computed from the due date until the obligation is paid in full.
>
> It is in fact clear from the agreement of the parties that when the payment is accelerated due to an event of default, the penalty charge shall be based on the total principal amount outstanding, to be computed from the date of acceleration until the obligation is paid in full. Their Credit Agreement even provides for the application of payments. It appears from the agreements that the amount of total obligation is known or, at the very least, determinable.
>
> Moreover, when they made their partial payment, petitioners did not question the principal, interest or penalties demanded from them. They only sought additional time to update their interest payments or to negotiate a possible restructuring of their account. Hence, there is no basis for their allegation that a statement of account was necessary for them *to know* their obligation. We cannot impair respondent's right to foreclose the properties on the basis of their unsubstantiated allegation of a violation of due process.[14]

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[13] 522 Phil. 671 (2006).

[14] *Id.* at 687-688.

Clearly, the possibility of irreparable damage without proof of actual existing right is no ground for an injunction. Once again, our holding in *Selegna* is relevant and sound:

> x x x Injunction is not designed to protect contingent or future rights. It is not proper when the complainant's right is doubtful or disputed.
>
> x x x x x x x x x
>
> Petitioners do not have any clear right to be protected. As shown in our earlier findings, they failed to substantiate their allegations that their right to due process had been violated and the maturity of their obligation forestalled. Since they indisputably failed to meet their obligations in spite of repeated demands, we hold that there is no legal justification to enjoin respondent from enforcing its undeniable right to foreclose the mortgaged properties.
>
> In any case, petitioners will not be deprived outrightly of their property. Pursuant to Section 47 of the General Banking Law of 2000, mortgagors who have judicially or extrajudicially sold their real property for the full or partial payment of their obligation have the right to redeem the property within one year after the sale. They can redeem their real estate by paying the amount due, with interest rate specified, under the mortgage deed; as well as all the costs and expenses incurred by the bank.[15]

Lastly, as the Court of Appeals had done, we clarify that our disposition in this case pertains only to the propriety of the trial court's Orders issuing a writ of preliminary injunction in favor of TML to enjoin the foreclosure of TML's mortgaged properties. We do not dispose herein of the main case pending before the RTC, Branch 194, Parañaque City docketed as Civil Case No. 02-0504.

All told, there is no reversible error in the appellate court's decision, reversing and setting aside the Orders dated 22 August 2003 and 27 November 2003 of the trial court and lifting the writ of preliminary injunction issued in favor of TML.

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[15] *Id.* at 691-692.

WHEREFORE, the Petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 81932 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 193960. January 7, 2013]

KARLO ANGELO DABALOS *Y* SAN DIEGO, *petitioner, vs.* **REGIONAL TRIAL COURT, BRANCH 59, ANGELES CITY (PAMPANGA), REPRESENTED BY ITS PRESIDING JUDGE MA. ANGELICA T. PARAS-QUIAMBAO; THE OFFICE OF THE CITY PROSECUTOR, ANGELES CITY (PAMPANGA); and ABC,**[1] *respondents.*

SYLLABUS

1. CRIMINAL LAW; ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (RA 9262); VIOLENCE AGAINST WOMEN THROUGH PHYSICAL HARM; LIMITING QUALIFICATIONS. — Sec. 3(a) of RA 9262 reads: "*Violence against women and their children*" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a

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[1] Pursuant to RA 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," and its implementing rules, the real name of the victim, together with the names of her immediate family members, is withheld, and fictitious initials instead are used to represent her, to protect her privacy.

woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. x x x. The law is broad in scope but specifies two limiting qualifications for *any* act or series of acts to be considered as a crime of violence against women through physical harm, namely: 1) it is committed against a woman or her child and the woman is the offender's wife, former wife, or with whom he has or had sexual or dating relationship or with whom he has a common child; and 2) it results in or is likely to result in physical harm or suffering.

2. ID.; ID.; ID.; ID.; RE SEXUAL OR DATING RELATIONSHIP; ELUCIDATED. — [W]hile it is required that the offender has or had a sexual or dating relationship with the offended woman, for RA 9262 to be applicable, it is not indispensable that the act of violence be a consequence of such relationship. x x x [T]he punishable acts refer to all acts of violence against women with whom the offender has or had a sexual or dating relationship. As correctly ruled by the RTC, it is immaterial whether the relationship had ceased for as long as there is sufficient evidence showing the past or present existence of such relationship between the offender and the victim when the physical harm was committed.

3. ID.; ID.; ID.; HIGHER PENALTY, JUSTIFIED. — While the degree of physical harm under RA 9262 and Article 266 of the Revised Penal Code are the same, there is sufficient justification for prescribing a higher penalty for the former. Clearly, the legislative intent is to purposely impose a more severe sanction on the offenders whose violent act/s physically harm women with whom they have or had a sexual or dating relationship, and/or their children with the end in view of promoting the protection of women and children.

4. REMEDIAL LAW; REGIONAL TRIAL COURT; JURISDICTION; VIOLENCE AGAINST WOMEN AND CHILDREN. — Accordingly, the Information having sufficiently alleged the necessary elements of the crime, x x x the offense is covered by RA 9262 which falls under the

jurisdiction of the RTC in accordance with Sec. 7 of the said law which reads: SEC. 7. *Venue* — The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the complainant.

5. ID.; CRIMINAL PROCEDURE; MOTION TO QUASH; AMENDMENT OF COMPLAINT OR INFORMATION MAY BE DIRECTED TO CURE DEFECT THEREIN INSTEAD OF ALLOWING MOTION TO QUASH. — [T]he Court finds the Order of the RTC, giving the prosecutor a period of two (2) days to amend the Information to reflect the cessation of the dating relationship between the petitioner and the offended party, to be in accord with Sec. 4 of Rule 117 of the Rules of Court, to wit: SEC. 4. *Amendment of complaint or information*.— If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made. Furthermore, Sec. 14 of Rule 110 of the Rules of Court provides that an information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. In the present case, the accused petitioner has not yet been arraigned, hence, the RTC was correct in directing the amendment of the Information and in denying the motion to quash the same.

APPEARANCES OF COUNSEL

Rivera Perico David & Rivera Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The Court will not read into Republic Act (RA) No. 9262 a provision that would render it toothless in the pursuit of the declared policy of the State to protect women and children from violence and threats to their personal safety and security.

Before the Court is a petition for *certiorari* and prohibition assailing the Orders dated September 13, 2010[2] and October 5, 2010[3] of the Regional Trial Court (RTC) of Angeles City, Branch 59 in Criminal Case No. 09-5210 which denied petitioner's Motion for Judicial Determination of Probable Cause with Motion to Quash the Information.

The Facts

Petitioner was charged with violation of Section 5(a) of RA 9262 before the RTC of Angeles City, Branch 59, in an Information which states:

> That on or about the 13th day of July, 2009, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the boyfriend of the complainant, x x x did then and there wilfully, unlawfully and feloniously use personal violence [on] the complainant, by pulling her hair, punching complainant's back, shoulder and left eye, thereby demeaning and degrading the complainant's intrinsic worth and dignity as a human being, in violation of Section 5(a) of the Republic Act 9262.[4]

After examining the supporting evidence, the RTC found probable cause and consequently, issued a warrant of arrest against petitioner on November 19, 2009. The latter posted a cash bond for his provisional liberty and on August 12, 2010, filed a Motion for Judicial Determination of Probable Cause with Motion to Quash the Information. Petitioner averred that at the time of the alleged incident on July 13, 2009, he was no longer in a dating relationship with private respondent; hence, RA 9262 was inapplicable.

In her affidavit, private respondent admitted that her relationship with petitioner had ended prior to the subject incident. She narrated that on July 13, 2009, she sought payment of the money she had lent to petitioner but the latter could not pay.

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[2] *Rollo*, pp. 33-36. Penned by Presiding Judge Ma. Angelica T. Paras-Quiambao.

[3] *Id.* at 29-32.

[4] *Id.* at 37.

She then inquired from petitioner if he was responsible for spreading rumors about her which he admitted. Thereupon, private respondent slapped petitioner causing the latter to inflict on her the physical injuries alleged in the Information.

The RTC Ruling

The RTC denied petitioner's motion. It did not consider material the fact that the parties' dating relationship had ceased prior to the incident, ratiocinating that since the parties had admitted a prior dating relationship, the infliction of slight physical injuries constituted an act of violence against women and their children as defined in Sec. 3(a) of RA 9262.

Issues

Hence, the instant petition raising the following issues: 1) whether the RTC has jurisdiction over the offense; 2) whether RA 9262 should be construed in a manner that will favor the accused; and 3) whether the Information alleging a fact contrary to what has been admitted should be quashed.

The Court's Ruling

The petition has no merit.

Petitioner insists that the act which resulted in physical injuries to private respondent is not covered by RA 9262 because its proximate cause was not their dating relationship. Instead, he claims that the offense committed was only slight physical injuries under the Revised Penal Code which falls under the jurisdiction of the Municipal Trial Court.

The Court is not persuaded.

Sec. 3(a) of RA 9262 reads:

SEC. 3. *Definition of Terms*.— As used in this Act,

(a) "*Violence against women and their children*" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or

is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. x x x.

The law is broad in scope but specifies two limiting qualifications for ***any*** act or series of acts to be considered as a crime of violence against women through physical harm, namely: 1) it is committed against a woman or her child and the woman is the offender's wife, former wife, or with whom he has or had sexual or dating relationship or with whom he has a common child; and 2) it results in or is likely to result in physical harm or suffering.

In *Ang v. Court of Appeals*,[5] the Court enumerated the elements of the crime of violence against women through harassment, to wit:

1. The offender has or had a sexual or dating relationship with the offended woman;
2. The offender, by himself or through another, commits an act or series of acts of harassment against the woman; and
3. The harassment alarms or causes substantial emotional or psychological distress to her.[6]

Notably, while it is required that the offender has or had a sexual or dating relationship with the offended woman, for RA 9262 to be applicable, it is not indispensable that the act of violence be a consequence of such relationship. Nowhere in the law can such limitation be inferred. Hence, applying the rule on statutory construction that when the law does not distinguish, neither should the courts, then, clearly, the punishable acts refer to all acts of violence against women with whom the offender has or had a sexual or dating relationship. As correctly ruled by the RTC, it is immaterial whether the relationship had ceased for as long as there is sufficient evidence showing the past or present existence of such relationship between the offender and the victim when the physical harm was committed. Consequently, the Court cannot depart from the parallelism in

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[5] G.R. No. 182835, April 20, 2010, 618 SCRA 592.

[6] *Id.* at 600.

Ang and give credence to petitioner's assertion that the act of violence should be due to the sexual or dating relationship.

Neither can the Court construe the statute in favor of petitioner using the rule of lenity[7] because there is no ambiguity in RA 9262 that would necessitate any construction. While the degree of physical harm under RA 9262 and Article 266[8] of the Revised Penal Code are the same, there is sufficient justification for prescribing a higher penalty for the former. Clearly, the legislative intent is to purposely impose a more severe sanction on the offenders whose violent act/s physically harm women with whom they have or had a sexual or dating relationship, and/or their children with the end in view of promoting the protection of women and children.

Accordingly, the Information having sufficiently alleged the necessary elements of the crime, such as: a dating relationship between the petitioner and the private respondent; the act of violence committed by the petitioner; and the resulting physical harm to private respondent, the offense is covered by RA 9262 which falls under the jurisdiction of the RTC in accordance with Sec. 7 of the said law which reads:

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[7] "Intimately intertwined with the *in dubio pro reo* principle is the rule of lenity. It is the doctrine that 'a court, in construing an ambiguous criminal statute that sets out multiple or inconsistent punishments, should resolve the ambiguity in favor of the more lenient punishment.'" Separate Opinion of *CJ* Corona in *People v.Temporada*, G.R. No. 173473, December 17, 2008, citing *Black's Law Dictionary*, Eighth Edition, p. 1359 (2004).

[8] ART. 266. *Slight physical injuries and maltreatment.*— The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period;
2. By *arresto menor* or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance;
3. By *arresto menor* in its minimum period or a fine not exceeding 50 pesos when the offender shall ill-treat another by deed without causing any injury.

SEC. 7. *Venue* — The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law. In the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the complainant.

Finally, the Court finds the Order[9] of the RTC, giving the prosecutor a period of two (2) days to amend the Information to reflect the cessation of the dating relationship between the petitioner and the offended party, to be in accord with Sec. 4 of Rule 117 of the Rules of Court, to wit:

SEC. 4. *Amendment of complaint or information*.— If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.

Furthermore, Sec. 14 of Rule 110 of the Rules of Court provides that an information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. In the present case, the accused petitioner has not yet been arraigned, hence, the RTC was correct in directing the amendment of the Information and in denying the motion to quash the same.

WHEREFORE, the petition is **DISMISSED.** The Orders dated September 13, 2010 and October 5, 2010 of the Regional Trial Court (RTC) of Angeles City, Branch 59 in Criminal Case No. 09-5210 are **AFFIRMED.** The Temporary Restraining Order issued by the Court is **LIFTED** and the RTC is directed to continue with the proceedings in Criminal Case No. 09-5210.

SO ORDERED.

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

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[9] *Rollo,* p. 32.

SECOND DIVISION

[G.R. No. 199324. January 7, 2013]

EXECUTIVE SECRETARY, SECRETARY OF FINANCE, COMMISSIONER OF CUSTOMS, DISTRICT COLLECTOR OF CUSTOMS, Port of Aparri, Cagayan, DISTRICT COLLECTOR OF CUSTOMS, Port of San Fernando, La Union, and HEAD OF THE LAND TRANSPORTATION OFFICE, *petitioners, vs.* **FORERUNNER MULTI RESOURCES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ISSUES ONLY UPON SHOWING OF THE APPLICANT'S "CLEAR LEGAL RIGHT" BEING VIOLATED.— [A] preliminary injunctive writ under Rule 58 issues only upon a showing of the applicant's "clear legal right" being violated or under threat of violation by the defendant. "Clear legal right," within the meaning of Rule 58, contemplates a right "clearly founded in or granted by law." Any hint of doubt or dispute on the asserted legal right precludes the grant of preliminary injunctive relief.

2. ID.; ID.; ID.; ID.; PRELIMINARY INJUNCTION SOUGHT AS ANCILLARY TO THE ACTION TO INVALIDATE EO 156; WILL NOT ISSUE FOR THE MERE POSSIBILITY OF SUSTAINING DAMAGE.— Respondent sought preliminary injunctive relief as ancillary to its principal cause of action to invalidate EO 156. Respondent's attack on EO 156, however, comes on the heels of *Southwing* [case] where we passed upon and found EO 156 legally sound, albeit overextended in application. x x x In arriving at a contrary conclusion, the Court of Appeals dwelt on the "grave and irremediable" financial losses respondent was poised to sustain as a result of EO 156's enforcement, finding such prejudice "inequitable." No doubt, by importing used motor vehicles in contravention of the ban under EO 156, respondent risked sustaining losses. Such risk, however, was self-imposed. Having

miscalculated its chances, respondent cannot look to courts for injunctive relief against self-inflicted losses which are in the nature of *damnum absque injuria*. Injunction will not issue on the mere possibility that a litigant will sustain damage, without proof of a clear legal right entitling the litigant to protection.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Ponce Enrile Reyes & Manalastas for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

We review[1] a ruling[2] of the Court of Appeals enjoining the government from enforcing, *litis pendentia*, a ban on the importation of used motor vehicles.

The Facts

Executive Order No. 156 (EO 156),[3] issued by President Gloria Macapagal-Arroyo (President Arroyo) on 12 December 2002, imposes a partial ban on the importation of used motor vehicles.[4] The ban is part of several measures EO 156 adopts to "accelerate the sound development of the motor vehicle industry

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Decision dated 27 June 2011 and Resolution denying reconsideration dated 14 November 2011, penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Fernanda Lampas Peralta and Priscilla J. Baltazar-Padilla, concurring.

[3] Entitled "Providing for a Comprehensive Industrial Policy and Directions for the Motor Vehicle Development Program and its Implementing Guidelines."

[4] Exempted from the ban's coverage are personal vehicles of returning residents or immigrants, diplomatic vehicles, trucks, buses, and special purpose vehicles (Section 3.1.1 to Section 3.1.5).

in the Philippines."[5] In *Executive Secretary v. Southwing Heavy Industries, Inc.* and two related petitions[6] (collectively, *Southwing*), we found EO 156 a valid executive issuance enforceable throughout the Philippine customs territory, except in the Subic Special Economic and Freeport Zone in Zambales (Subic Freeport) by virtue of its status as a "separate customs territory" under Republic Act No. 7227.[7]

Respondent Forerunner Multi Resources, Inc. (respondent), a corporation engaged in the importation of used motor vehicles via the ports of Aparri, Cagayan and San Fernando, La Union, sued the government in the Regional Trial Court of Aparri, Cagayan (trial court) to declare invalid EO 156, impleading petitioner public officials as respondents.[8] Respondent attacked EO 156 for (1) having been issued by President Arroyo *ultra vires*; (2) trenching the Due Process and Equal Protection Clauses of the Constitution; and (3) having been superseded by Executive Order No. 418 (EO 418),[9] issued by President Arroyo on 4 April 2005, modifying the tariff rates of imported used motor vehicles. Respondent sought a preliminary injunctive writ to enjoin, *litis pendentia*, the enforcement of EO 156.

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[5] EO 156, 13th Whereas Clause.

[6] G.R. No. 164172 (*Executive Secretary v. Subic Integrated Macro Ventures Corp.*) and G.R. No. 168741 (*Executive Secretary v. Motor Vehicle Importers Association of Subic Bay Freeport, Inc.*), all reported in 518 Phil. 103 (2006).

[7] We held in *Southwing*: "In sum, the Court finds that Article 2, Section 3.1 of EO 156 is void insofar as it is made applicable to the presently secured fenced-in former Subic Naval Base area as stated in Section 1.1 of EO 97-A. *Pursuant to the separability clause of EO 156, Section 3.1 is declared valid insofar as it applies to the customs territory or the Philippine territory outside the presently secured fenced-in former Subic Naval Base area* as stated in Section 1.1 of EO 97-A. x x x" (*id.* at 133; emphasis supplied).

[8] Docketed as SCA II-4677 for the writs of *certiorari* and prohibition.

[9] Entitled: "Modifying the Tariff Nomenclature and Rates of Import Duty on Used Motor Vehicles Under Section 104 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464, as Amended)."

The Ruling of the Trial Court

Acting on respondent's application for preliminary injunctive remedy, the trial court granted relief, initially by issuing a temporary restraining order followed by a writ of preliminary injunction granted in its Order of 27 November 2008.[10] On petitioners' motion, however, the trial court reconsidered its Order and lifted the injunctive writ on 7 July 2010. The trial court grounded its ruling on *Southwing* which it considered as negating any "clear and unmistakable legal right" on the part of respondent to receive the "protection of a writ of preliminary injunction."[11]

Respondent elevated the case to the Court of Appeals in a *certiorari* petition.

The Ruling of the Court of Appeals

The Court of A ppeals granted *certiorari*, set aside the trial court's Order of 7 July 2010 and reinstated its Order of 27 November 2008. In the appellate court's estimation, the trial court committed grave abuse of discretion in lifting the preliminary injunctive writ it earlier issued. The appellate court held that the implementation of EO 156 "would put petitioner in a financial crisis."[12] A s authority, the appellate court invoked by analogy this Court's ruling in *Filipino Metals Corporation v. Secretary of the Department of Trade and Industry*.[13]

Petitioners are now before this Court charging the Court of A ppeals with having committed an error of law in reinstating the preliminary injunctive writ for respondent. They argue that *Southwing* controls the case, precluding the Court of Appeals from recognizing a clear legal right of respondent to import used motor vehicles.

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[10] Branch 6 of the trial court initially refused to issue a writ of preliminary injunction but Branch 10, to which the case was re-raffled, reconsidered in the Order of 27 November 2008.

[11] *Rollo*, p. 212.

[12] *Id*. at 23.

[13] 502 Phil. 191 (2005).

Respondent counters that the doctrinal import of *Southwing* was weakened by the subsequent issuance of EO 418, allegedly repealing EO 156. Respondent invokes our minute Resolution of 15 November 2010 denying the petition in G.R. No. 187475 (*Executive Secretary v. Feniz [CEZA] International, Inc.*) as judicial confirmation of the supposed repeal.

As prayed for by petitioners, we issued a temporary restraining order on 16 January 2012 against the Court of Appeals' ruling.

The Issue

The question is whether the Court of Appeals erred in granting preliminary injunctive relief to respondent to enjoin enforcement of EO 156.

The Court's Ruling

We hold that it was error for the Court of Appeals to grant preliminary injunctive relief to respondent. We set aside the Court of Appeals' ruling and reinstate the trial court's Order of 7 July 2010.

Respondent Without Clear Legal Right to Import Used Motor Vehicles

It is a deeply ingrained doctrine in Philippine remedial law that a preliminary injunctive writ under Rule 58[14] issues only upon a showing of the applicant's "clear legal right"[15] being violated or under threat of violation by the defendant.[16] "Clear

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[14] 1997 Rules of Civil Procedure.

[15] Also variously phrased as "clear unmistakable right" (*Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*, G.R. No. 165950, 11 A ugust 2010, 628 SCRA 79, 89) or "clear and positive right" (*Valley Trading Co., Inc. v. Court of First Instance of Isabela*, Branch 11, 253 Phil. 494, 499 [1989]).

[16] *Angela Estate, Inc. v. Court of First Instance of Negros Occidental*, 133 Phil. 561 1968) reiterated in *Locsin v. Climaco*, 136 Phil. 216 (1969); *Bacolod Murcia Milling Co., Inc. v. Capitol Subdivision, Inc.*, 124 Phil. 128 (1966); *Dizon v. Yatco*, 121 Phil. 180 (1965).

legal right," within the meaning of Rule 58, contemplates a right "clearly founded in or granted by law."[17] Any hint of doubt or dispute on the asserted legal right precludes the grant of preliminary injunctive relief.[18] For suits attacking the validity of laws or issuances with the force and effect of law, as here, the applicant for preliminary injunctive relief bears the added burden of overcoming the presumption of validity inhering in such laws or issuances.[19] These procedural barriers to the issuance of a preliminary injunctive writ are rooted on the equitable nature of such relief, preserving the status quo while, at the same time, restricting the course of action of the defendants even before adverse judgment is rendered against them.

Respondent sought preliminary injunctive relief as ancillary to its principal cause of action to invalidate EO 156. Respondent's attack on EO 156, however, comes on the heels of *Southwing* where we passed upon and found EO 156 legally sound, albeit overextended in application. We found EO 156 a valid police power measure addressing an "urgent national concern":

> There is no doubt that the issuance of the ban to protect the domestic industry is a reasonable exercise of police power. The deterioration of the local motor manufacturing firms due to the influx of imported used motor vehicles is an urgent national concern that needs to be swiftly addressed by the President. In the exercise of delegated police power, the executive can therefore validly proscribe the importation of these vehicles. x x x[20]

The narrow ambit of this review precludes us from passing upon the merits of the constitutional and administrative issues respondent raised to attack EO 156. Nevertheless, we have no

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[17] *Boncodin v. National Power Corporation Employees Consolidated Union (NECU)*, 534 Phil. 741, 754 (2006).

[18] *Sps. Arcega v. Court of Appeals*, 341 Phil. 166 (1997).

[19] *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch 11, supra*; *Tablarin v.Gutierrez*, 236 Phil. 768 (1987); *Vera v. Arca*, 138 Phil. 369 (1969).

[20] *Supra* note 6 at 129.

hesitation in holding that whatever legal right respondent may possess *vis à vis* the operation of EO 156, we find such legal right to be doubtful by force of the *Southwing* precedent. Until reversed or modified by this Court, *Southwing* makes conclusive the presumption of EO 156's validity. Our holding is bolstered by respondent's failure to remove its case from the confines of such ruling.

In arriving at a contrary conclusion, the Court of Appeals dwelt on the "grave and irremediable" financial losses respondent was poised to sustain as a result of EO 156's enforcement, finding such prejudice "inequitable."[21] No doubt, by importing used motor vehicles in contravention of the ban under EO 156, respondent risked sustaining losses. Such risk, however, was self-imposed. Having miscalculated its chances, respondent cannot look to courts for injunctive relief against self-inflicted losses which are in the nature of *damnum absque injuria*. Injunction will not issue on the mere possibility that a litigant will sustain damage, without proof of a clear legal right entitling the litigant to protection.[22]

Nor does our ruling in *Filipino Metals* furnish doctrinal support for respondent. We sustained the trial court's issuance of a preliminary injunctive writ in that case to enjoin the enforcement of Republic Act No. 8800 (RA 8800) delegating to a cabinet member the power to adopt measures to address prejudicial importations in contravention of relevant international agreements. We grounded our ruling on the fact that the petitioners, which principally argued that RA 8800 violates Article VI, Section 28(2) of the Constitution (limiting Congress' delegation of the power to fix trade quotas to the President), "have established a strong case for the unconstitutionality of [RA 8800]."[23] In short, the petitioners in *Filipino Metals*

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

[22] *Talisay-Silay Milling Co., Inc. v. CFI of Negros Occidental*, 149 Phil. 676 (1971); *Bacolod Murcia Milling Co., Inc. v. Capitol Subdivision, Inc.*, *supra* note 16.

[23] *Supra* note 13 at 200.

discharged the burden of overcoming the presumption of validity accorded to RA 8800, warranting the issuance of a preliminary injunctive writ in their favor. *Southwing* forecloses a similar finding for respondent.

Lastly, we find no merit in respondent's submission that EO 418 repealed EO 156, removing the legal bar to its importation of used motor vehicles. The question of whether EO 418 repealed EO 156 was already settled in our Resolution dated 22 August 2006 denying reconsideration of our ruling in *Southwing*. The respondents in those cases, importers of used motor vehicles via the Subic Freeport, had espoused the theory presently advanced by respondent. We rejected the proffered construction of the two issuances:

> The subsequent issuance of E.O. No. 418 increasing the import duties on used motor vehicles *did not alter the policy of the executive department to prohibit the importation of said vehicles*. x x x !Tl here is nothing in the text of E.O. No. 418 which expressly repeals E.O. No. 156. The Congress, or the Office of 1he President in this case, is presumed to know the existing laws, such that whenever it intends to repeal a particular or specific provision of law, it docs so expressly. *The failure to add a specific repealing clause indicates that the intent was not to repeal previous administrative issuances*. x x x
>
> [E].O. No. 156 is very explicit in its prohibition on the importation of used motor vehicles. On the other hand, E.O. No. 418 merely modifies the tariff and nomenclature rates of import duty on used motor vehicles. Nothing therein expressly revokes the importation ban. (Italicization supplied)

Contrary to respondent's claim, our minute Resolution dated 15 November 2010 denying the petition in *Feniz* did not have the effect of modifying much less reversing our holding in *Southwing*. The petition in *Feniz* sought a review of the ruling of the trial court striking down Section 2 of EO 418. The trial court found such provision, which imposed additional specific duty of ₱500,000 on each imported used motor vehicle, void for having been issued by President Arroyo *ultra vires*. Neither the validity of EO 156 nor the alleged repeal by EO 418 of EO 156 was the *lis mota* in *Feniz.*

WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the Decision dated 27 June 2011 and the Resolution dated 14 November 2011 of the Court of Appeals. The Order dated 7 July 2010 of the Regional Trial Court of Aparri, Cagayan, Branch10, is **REINSTATED.** The temporary restraining order issued on 16 January 2012 is made **PERMANENT.**

SO ORDERED.

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

EN BANC

[G.R. No. 170634. January 8, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PEDRO BUADO, JR.** ***y*** **CIPRIANO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN REVIEW THEREOF. — In reviewing rape convictions, the Court has been guided by three principles, namely: (*a*) that an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (*b*) that in view of the intrinsic nature of the crime of rape as involving only two persons, the rapist and the victim, the testimony of the complainant must be scrutinized with extreme caution; and (*c*) that the evidence for the Prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the Defense.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF RAPE VICTIM; FINDINGS OF TRIAL COURT, RESPECTED. — Ultimately and frequently, the resolution of the charge of

rape hinges on the credibility of the victim's testimony. The Court has consistently relied on the assessment of such credibility by the trial court. [A]n appellate court will not disturb the credence the trial court accorded to the testimonies of the witnesses unless the trial court is shown to have overlooked or arbitrarily disregarded facts and circumstances of significance in the correct resolution of the case.

3. CRIMINAL LAW; RAPE; NOT NEGATED BY DELAY IN REPORTING THE CRIME. — Under the circumstances, the delay in reporting [appellant] to the proper authorities is not a factor in determining the credibility of the charge against him of his own daughter. To a child of very tender years like AAA, the threats of actual physical harm would definitely instill a fear overwhelming enough to force her to suffer her ordeals in silence for a period of time. x x x Also, we cannot expect from the immature and inexperienced AAA to measure up to the same standard of conduct and reaction that we would expect from adults whose maturity in age and experience could have brought them to stand up more quickly to their interest. Lastly, long silence and delay in reporting the crime of rape to the proper authorities have not always been considered as an indication of a false accusation.

4. ID.; ID.; ALLEGATION OF ILL-MOTIVE IN FILING RAPE CASE, NOT APPRECIATED.— The ill motive that supposedly impelled A A A and BBB to initiate the charges against their own father is unworthy of serious consideration. To start with, the imputation of ill motive, being outrightly speculative, was unreliable. Moreover, the imputed ill motive, even assuming it to be true, did not necessarily mean that the very serious charges of rape were fabricated only to get back at him. And, finally, the Court has not been deterred from affirming the conviction in incestuous rape by rejecting the lecherous father's imputation of ill motive based on alleged familial discord and undue influence, hostility or revenge, or on parental punishment or disciplinary chastisement.

5. ID.; ID.; RAPE NOT NEGATED BY THE ABSENCE OF PHYSICAL EVIDENCE. — Carnal knowledge of a female simply means a male having bodily connections with a female. As such, the presence or absence of injury or laceration in the genitalia of the victim is not decisive of whether rape has

been committed or not. Such injury or laceration is material only if force or intimidation is an element of the rape charged; otherwise, it is merely circumstantial evidence of the commission of the rape. Verily, a medical examination and a medical certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape. The accused may then be convicted solely on the basis of the victim's credible, natural and convincing testimony.

6. ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY OF AND RELATIONSHIP TO THE VICTIM; BOTH MUST BE ALLEGED AND PROVED OR RAPE IN ITS QUALIFIED FORM IS BARRED; PENALTY AND DAMAGES. — Under Article 266-B of the *Revised Penal Code*, the death penalty is imposed if the rape is committed with the attendance of any "aggravating/ qualifying circumstances." One of such "aggravating/qualifying circumstances" is "when the victim is under eighteen (18) years of age and offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim." Both minority and actual relationship must be alleged and proved; otherwise, conviction for rape in its qualified form will be barred.

7. ID.; ID.; ID.; ID.; ID.; DEATH PENALTY PROPER FOR QUALIFIED RAPE, MODIFIED TO *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE UNDER RA 9346; DAMAGES. – [T]he amended information in Criminal Case No. 974-V-99 sufficiently stated the minority of BBB and her being the daughter of the accused. [T]he Prosecution established that BBB was only nine years old at the time of the rape [and] x x x that she was the legitimate daughter of the accused. x x x [Thus,] the CA correctly affirmed the penalty of death meted by the RTC. With the intervening passage on June 24, 2006 of Republic Act No. 9346, however, the imposition of the death penalty has become prohibited. x x x Nonetheless, he shall not be eligible for parole, because Section 3 of Republic Act No. 9346 expressly provides that persons "whose sentences will be reduced to *reclusion perpetua* by reason of this A ct" shall not be eligible for parole under Act No. 4103 (*Indeterminate Sentence Law*), as amended. x x x Instructive on the civil liabilities to be imposed in Criminal

Case No. 974-V-99 is *People v. Antonio*, where the Court held that Republic Act No. 9346 prohibited only the imposition of the death penalty and did not affect the corresponding pecuniary or civil liabilities. Based on the pronouncement in *People v. Bejic* to the effect that the civil indemnity should be in the amount of ₱75,000.00 if the crime is qualified by circumstances that warrant the imposition of the death penalty, the Court affirms the separate amounts of ₱75,000.00 for civil indemnity and moral damages, without need of any pleading and proof, but raises the amount of exemplary damages [to] ₱30,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

This case tells the revolting story of a lecherous father who made two of his very young daughters his sex slaves for several years right in the family home. The trial court convicted him and prescribed the death penalty for each of the two counts of rape. There would be no hesitation to affirm the penalty, but the intervening passage of the law prohibiting the imposition of the death penalty now spares him from the supreme penalty.

The Case

Under final review is the Decision promulgated on April 27, 2005,[1] whereby the Court of Appeals (CA) affirmed with modification the May 5, 2003 judgment rendered in Criminal Case No. 912-V-99 and Criminal Case No. 974-V-99 by the Regional Trial Court (Branch 171) in Valenzuela City (RTC),[2]

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[1] *Rollo*, pp. 3-18; penned by Associate Justice Arcangelita Romilla-Lontok (retired), and concurred in by Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Danilo B. Pine (retired).

[2] CA *rollo*, pp. 72-85.

finding Pedro Buado *y* Cipriano Jr. guilty of two counts of rape committed against his two minor daughters.

Antecedents

The amended informations alleged as follows:

Criminal Case No. 912-V-99

That sometime April 1999, in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, force, threat and intimidation, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge of AAA,[3] his daughter, a ten (10) year old minor, against her will and consent, to her damage and prejudice in whatever amounts may be awarded her under the provisions of the Civil Code.

Contrary to Law.

Criminal Case No. 974-V-99

That on or about November 10, 1999 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously he and have sexual intercourse with one BBB, 8 years old, his daughter.

Contrary to Law.[4]

The accused, assisted by counsel *de officio,* pled *not guilty* to each of the amended informations.

Evidence of the Prosecution

The Prosecution presented eight witnesses, namely: victims AAA and BBB; their mother CCC and older sister DDD;

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[3] For purposes of this decision, the real names of the victims in these two cases and of their mother and sister are withheld pursuant to Republic Act No. 7610 and Republic Act No. 9262; in lieu of their real names, they are designated by assumed appellations and sufficient descriptions; see also *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419.

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

Dr. Ida de Perio-Daniel; Dr. Mariella S. Castillo; PO2 Luisito M. Dela Cruz; and Rosalina E. Chiong.

The accused and CCC were legally married, and used to live together in F. Bautista Street at Marulas, Valenzuela City with their 13 children, eight of whom are girls. Among their children were AAA and BBB. AAA was born on February 13, 1989,[5] and BBB on October 11, 1990.[6]

A.
The rape of AAA

On April 13, 1999, at about 3:00 p.m., CCC and her children were attending a get-together party in the adjacent house of DDD, then already married. The accused summoned AAA home from the party. Upon AAA getting home, he ordered her to enter the bedroom, and once she was inside, he undressed her and inserted his finger in her vagina.[7] He then went on top of her and inserted his penis in her vagina, giving vent to his lust.[8] AAA could only cry while he was forcing himself on her.[9]

Missing AAA at the party, CCC returned to the house and saw that her husband was there. He cursed her many times, but she simply ignored him and went upstairs, where she found AAA crying. AAA told her mother that her father had just molested her. AAA further told her mother that he had done the same thing to her several times in the past,[10] starting when she was still in Grade I. At the time, AAA was already in Grade 4. AAA told her mother that he had also raped her several times in the past only when CCC was not home, but that she had kept silent about the rapes because she had been too afraid of him

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[5] TSN, 8 May 2000, p. 6.

[6] Certificate of Live Birth of BBB; Exh. "A" (Crim. Case No. 974-V-99) for BBB.

[7] TSN, 8 May 2000, pp. 7 and 12.

[8] *Id.*

[9] *Id*.

[10] *Id.* at 7-8.

to complain. Besides, AAA also knew that he kept a gun at home and had a violent temper, having frequently beaten his wife and children for no apparent reason. AAA explained in court that she finally revealed her ordeals to her mother because her sufferings had become unbearable,[11] saying: *Nahihirapan po ako.*[12]

It was not until June 9, 1999, however, that CCC and AAA mustered the courage to leave home and denounce the father's crimes. They hastened to the National Bureau of Investigation (NBI) to finally lodge a complaint against him. AAA was examined by Dr. Ida Perio-Daniel, who incorporated her findings in Living Case No. MG-99-537,[13] to wit:

GENERAL PHYSICAL EXAMINATION:

Height: 123.0 cms. Weight: 44 lbs

Fairly nourished conscious, coherent, cooperative, ambulatory subject. Breast infantile. Areola, light brown, 1.4 cm, in diameter, Nipples light brown, flat 0.3 cm. In diameter.

No extragenital physical injury noted.

GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, short, thin, with old healed complete laceration at 6 o'clock position corresponding to the face of a watch, edges rounded non-coaptable. Hymenal orifice, admits a tube 2.0 in diameter. Vaginal walls, tight. Rugosities, prominent.

* * * * * * * * *

CONCLUSIONS:

1. No evident sign of extragenital physical injury present on the body of the subject at the time of the examination.

2. Old healed hymenal laceration present.

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[11] *Id.* at 9.

[12] *Id.*

[13] Exhibit C.

Afterwards, CCC and AAA, still in fear of the accused, did not want to return home. Hence, the NBI referred them for temporary shelter to the Department of Social Welfare and Development (DSWD) Haven in Alabang, Muntinlupa City. The rest of the unmarried children, including the then 9-year old BBB, continued to live with their father.

B.
The rape of BBB

The rape of BBB was committed a few months later. At 6:00 a.m. of November 10, 1999, the accused commanded BBB, who was then in the kitchen of their house, to undress and lie down on a piece of plywood laid out on the ground.[14] Already naked from the waist down, he pushed her down to the floor, and lubricated his penis and BBB's vagina with cooking oil.[15] He next went on top of her, inserted his penis into her genitalia, and made pumping motions.[16] He ignored all her pleas for him to stop.[17] She stated that he had also raped her many times previously but that she had kept silent about the rapes out of fear of him.[18] But she could not anymore bear her pain that last time; hence, she went to her older sister DDD's house and finally reported the rape to DDD.[19] When BBB was narrating about her last rape, DDD could only embrace her young sister and cry.

Later on, DDD called up their mother who was then staying at the DSWD Haven in Alabang to tell her about what the accused had just committed against BBB. CCC advised DDD to bring BBB to the DSWD office in Valenzuela. The DSWD office endorsed BBB to the Child Protection Unit of the Philippine

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[14] TSN, 21 August 2000, pp. 5-6, 21.

[15] *Id.* at 6, 23-24.

[16] *Id.* at 25.

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

[18] *Id.* at 7-8.

[19] *Id.*

General Hospital (PGH), where Dr. Mariella S. Castillo examined the child. The findings were initially reflected in a provisional medical certificate on November 10, 1999,[20] and ultimately in a final medical certificate issued on the same date,[21] to wit:

> GENITAL EXAMINATION:
>
> External Genitalia: normal
>
> Hymen: crescentic, (+) absent hymenal tissue at 6 o'clock, (+) attenuation from 2 o'clock to 6 o'clock, no hematoma, no laceration, no discharge
>
> Anus: Normal
>
> LABORATORY EXAMINATION:
>
> Vaginal swab smear: no spermatozoa seen.
>
> IMPRESSION:
>
> Disclosure of physical and sexual abuse.
>
> Multiple hematomas on chest and lower extremities.
>
> Hematomas on chest and extremities are consistent with the patient's disclosure
>
> Genital finding of absent posterior hymen and is indicative of prior penetration injury that has healed.

Armed with the provisional medical certificate issued by Dr. Castillo, DDD brought BBB to the Valenzuela Police Station to charge the accused with rape. A police team was immediately dispatched to the house of the accused to invite him for investigation. After the accused was brought in to the station, BBB and her elder sister gave their respective written statements.[22] On that occasion, BBB positively pointed to her father as the rapist.[23]

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[20] Exhibit C (Crim. Case No. 974-V-99) and submarkings.

[21] Exhibit E and submarkings.

[22] Exhibit B; Exhibit D.

[23] TSN, 21 August 2000, p. 12.

Version of the Defense

The accused was his own sole witness. He denied raping AAA and BBB.[24] He justified the medico-legal findings on BBB by shifting the blame on his drug addict son EEE, stating that in May 1999, BBB had told him about EEE raping her;[25] that BBB even showed him a plastic sachet containing small white granules that EEE had supposedly dropped when he raped her;[26] that he hit EEE upon learning about the rape; that he wanted to charge EEE but his wife prevented him from doing so in order to avoid embarrassment to the family; and that after CCC left home, he planned on reporting the rape to the police authorities, but EEE became aware of his plan and quickly left home and stayed away.

The accused testified that he was a shoemaker earning an average of ₱15,000.00/month; that although he thought that his income sufficed for him and his family, CCC felt differently, because she was envious of their rich neighbors; that CCC suggested that he change his livelihood and deal in prohibited drugs; that because he refused, CCC became angry and caused AAA and BBB to bring the false charges against him;[27] that CCC also wanted to reconcile with her former live-in partner with whom she had cohabited prior to their marriage; that he could not understand why she wanted to do that, but there was nothing he could do about it; that in May 1999, CCC left their conjugal home along with their two youngest daughters; that he had no idea about where they had gone to until he learned that they were sheltered in the DSWD Haven in Alabang; and that they returned home after six months only when he was already in detention.[28]

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[24] TSN, 29 January 2001, pp. 4-5.

[25] *Id.* at 18.

[26] *Id.* at 17-19.

[27] *Id.* at 5-7.

[28] TSN, 9 August 2001, pp. 4-5.

The accused said that he had disciplined his children either verbally or physically (*i.e.*, by hitting them with his bare hands or with a piece of wood).[29] In that regard, he admitted having been charged with child abuse in 1999 for spanking FFF, another son, but he insisted that the charge had been dismissed.

Ruling of the RTC

After trial, the RTC convicted the accused, disposing as follows:

> WHEREFORE, premised on the foregoing, the Court finds accused PEDRO BUADO, JR. *y* CIPRIANO **GUILTY** beyond reasonable doubt of the crime of two (2) counts of Rape penalized under Article 335 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659, and sentencing him to suffer in each case the death penalty and to pay in each case the victims the following sums: Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity; Fifty Thousand Pesos (₱50,000.00) as moral damages and Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages.
>
> Pursuant to the Constitution, let the entire records of these cases be forwarded to the Honorable Supreme Court for automatic review.
>
> SO ORDERED.[30]

Ruling of the CA

Elevated to the Court on automatic appeal, the records were transferred to the CA for intermediate review pursuant to *People v. Mateo*.[31]

In due course, on April 27, 2005, the CA affirmed the conviction, but reduced the death penalty to *reclusion perpetua* in Criminal Case No. 912-V-99,[32] as follows:

> WHEREFORE, premises considered, the Decision of Branch 171, Regional Trial Court, Valenzuela City, dated May 5, 2003, is

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[29] TSN, 12 July 2001, p. 19.

[30] CA *rollo*, p. 39.

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

[32] *Supra* note 1, at 18.

MODIFIED relative to Criminal Case No. 912-V-99 wherein the penalty imposed is reduced to ***Reclusion Perpetua*** and the civil liability *ex delicto* is reduced to ₱50,000.00. The award of moral and exemplary damages is **AFFIRMED.**

Relative to Criminal Case No. 974-V-99, the penalty of death and the award of civil liability *ex delicto* of ₱75,000.00 and exemplary damages of ₱25,000.00 are **AFFIRMED.** The award of moral damages is hereby **INCREASED** to ₱75,000.00

SO ORDERED.

Issues

Hence, this appeal upon the following errors, namely:[33]

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY UPON THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE SPECIAL QUALIFYING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY.

The accused continues to assail the credibility of AAA and BBB, stressing that their testimonies were replete with incredulous statements, and insisting that they were motivated by anger and revenge rather than by a sincere call for justice.

Ruling

The appeal has no merit.

In reviewing rape convictions, the Court has been guided by three principles, namely: (*a*) that an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove;

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[33] CA *rollo*, p. 51.

(*b*) that in view of the intrinsic nature of the crime of rape as involving only two persons, the rapist and the victim, the testimony of the complainant must be scrutinized with extreme caution; and (*c*) that the evidence for the Prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the Defense.[34]

Ultimately and frequently, the resolution of the charge of rape hinges on the credibility of the victim's testimony. The Court has consistently relied on the assessment of such credibility by the trial court, because the factual findings of the trial court, particularly those bearing on such assessment, are the product of the trial judge's peculiar opportunity to observe the deportment and demeanor of the witnesses while they personally appear and testify during the trial, as contrasted with the dependence by the appellate courts on the mute pages of the records of the trial.[35] This consistent reliance proceeds from the reality that the trial judge is in the best position to detect that frequently thin line between truth and prevarication that determines the guilt or innocence of the accused.[36] Thus, an appellate court will not disturb the credence the trial court accorded to the testimonies of the witnesses unless the trial court is shown to have overlooked or arbitrarily disregarded facts and circumstances of significance in the correct resolution of the case.[37]

Here, the RTC as the trial court and the CA as the intermediately reviewing tribunal did not overlook or disregard any fact or circumstance of significance. Instead, they correctly appreciated the evidence, and rightly concluded that the accused committed the rapes of his own daughters. They regarded and

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[34] *People v. Ortoa*, G.R. No. 176266, August 8, 2007, 529 SCRA 536, 546; *People v. Marahay*, G.R. Nos. 120625-29, January 28, 2003, 396 SCRA 129, 137.

[35] *People v. Ortoa*, p. 546.

[36] *People v. Cruz*, G.R. Nos. 128346-48, August 14, 2000, 337 SCRA 680, 693.

[37] *People v. Miranda*, G.R. No. 176064, August 7, 2007; 529 SCRA 399, 406-407.

accepted AAA and BBB as credible witnesses whose recollections about their father's lecherous acts deserved the fullest faith and credence.

The trial records entirely supported the lower courts' findings in favor of the credibility of AAA and BBB's recollections. Indeed, AAA and BBB deserved the credence accorded to them, for they were reliable in their recollection of their ordeals at the hands of the accused.

AAA narrated the rape in sufficient detail and candor during her direct examination, *viz*:

x x x x x x x x x

ATTY. VINARAO

Q. Now, will you please tell this Court what if anything happened to you on that date, April 13, 1999?
A. I was called by my father to go to the bedroom, maam.

Q. And what happened if any inside the room?
A. He removed my clothes and he placed his fingers to my vagina and he placed his penis into my vagina, maam.

Q. What was your reaction if any when your father was committing those sexual acts?
A. I was crying, maam.

Q. Is that the only time the sexual acts was committed to you by your father?
A. No ma'am, several times.

Q. When you mentioned the words "several times", can you please give us the numerical value of such word?
A. More than ten (10) times, maam, but I cannot remember the exact date but it started when I was in Grade I.

Q. And what grade were you when your father raped you last April 13, 1999?
A. When I was going to Grade 4, sir.

Q. On what occasion does this sexual act occurred?
A. Everytime my mother is not in the house, ma'am.

Q. And what did you do if any after the last incident on April 13, 1999?
A. I reported it to my mother, maam.

Q. Why did you not tell your mother or any other person regarding the incident on April 13, 1999?
A. Because I was threatened by my father that he will kill me if I will report the matter to my mother, maam.

Q. And what made you decide to tell your mother finally about the incident on April 13, 1999?
A. Because I was suffering, maam. (*Nahihirapan po ako*).[38]

x x x x x x x x x

On her part, BBB directly and candidly reported the details of the rape, to wit:

x x x x x x x x x

Q. Do you recall the 10th of November, 1999?
A. Yes, maam.

Q. Where were you on that day?
A. I was in our house, maam.[39]

x x x x x x x x x

Q. Now, will you please tell this Court what if anything happened to you on that day?
A. At 6: 00 a.m., I was in our kitchen and I was instructed by my father to undress and lie on a plywood. He placed a cooking oil in my crotch and he inserted it in my crotch.

Q. When you mentioned the word "*Singit,*" what part of your body are you referring to?
A. In my vagina, maam. (Witness pointing to her vagina)
Q. And when you mentioned the word "*Singit,*" what part of your father's body were you referring to?
A. His penis, maam.

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[38] TSN, 8 May 2000, pp. 7-9.

[39] TSN, 21 August 2000, p. 5.

Q. So what was your reaction when your father was committing those sexual acts on you?
A. I was pleading on him and told him to stop, maam.

Q: Was that the only time that your father committed sexual acts on you?
A: No, maam.[40]

x x x x x x x x x

Q: So what did you do after that incident on November 10, 1999?
A: I told my DDD about that incident, maam.

Q: Why did you not tell your mother or other persons about that incident on November 10, 1999?
A: Because I was afraid of my father. He always maul us, maam.

Q: And what made you decide to tell your sister DDD about the November 10, 1999 incident?
A: Because I can no longer bear anymore the things my father was doing to me, maam.[41]

x x x x x x x x x

ATTY. CRISOSTOMO

Q: This oil, let's be specific about this oil. What is this oil you are speaking of?
A: The one used in frying fish, sir.

Q: Did you follow your father's order for you to apply oil in your crotch?
A: No. sir.

Q: So you did not apply oil in your crotch?
A: Yes, sir.

Q: What about his order for you to lie down on the plywood, did you heed his order?
A: He made me to lie down, sir.

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

[41] *Id.* at 7-8.

Q: How did he make lie down?
A: He made me lie down; and he suddenly pushed me, sir.

Q: After that what happened?
A: He placed an edible oil on his crotch sir.

Q: How did he do it?
A: He got some cooking oil and placed it on his crotch, sir.

Q: Not on your crotch?
A: Also on my crotch, sir.[42]

ATTY. CRISOSTOMO

Q: Was he naked at the time he applied oil on his crotch or (was) he still wearing his pants?
A: He was already naked, sir.

Q: Naked from the waist down only?
A: Yes, sir.

Q: And after he applied oil on his crotch, you said he placed his penis between your thighs, is that correct?
A: Yes, sir.

Q: In other words, for clarity, what he did was to, what he did, in Tagalog, "*IPINAIPIT NIYA ANG ARI NIYA SA HITA MO," ganyan ba ang ginawa nya*?
A: Yes, sir.[43]

Q: What did you feel when your father inserted his penis between your tightly closed thighs?
A: It was painful, sir.

Q: What part of your body was aching?
A: (Witness pointing to her vagina)

Q: Not your thighs?
A: My vagina, sir. *PEPE*

Q: Did you bleed when your father did what you just described, to you?
A: Yes, sir.

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

[43] *Id.* at 24-25.

Q: All this time that your father was doing the alleged act which according to you lasted for two (2) hours, what are you doing or how were you reacting? What is your reaction?

A: I was pleading to him, sir.[44]

x x x x x x x x x

On the other hand, the accused did not bring to the Court's attention any facts and circumstances of weight that, if properly considered, would change the result into one favorable to him. He did not also submit to us any argument that would lead us to doubt the findings of the RTC and the CA on the credibility of AAA and BBB.

Although the accused would discredit AAA by harping on her failure to immediately report the rape and to denounce him sooner to the proper authorities, the Court cannot but reject his attempt to discredit AAA's accusation. The attempt would rest on drawing an inference of estoppel against AAA, in that AAA would have denounced him sooner if he had truly ravished her. However, the inference of estoppel could be properly drawn against AAA only if the trial records did not plausibly explain the cause of delay. We find that his frequent acts of domestic violence against even the young members of his family caused AAA and her mother to fear him. He justified his violent tendencies by describing himself as a strict disciplinarian at home. His justification was implausible, however, considering that his having been once charged with child abuse in which the victim had been one of his own sons confirmed that his chastisement had exceeded the tolerable limits of parental discipline. Moreover, AAA knew that he had kept a gun at home. This, coupled by his children's undue fear of him, cowed AAA into silence about her great sufferings for a long period of time, and explained why she came out into the open to denounce him only on June 9, 1999. By then, his unabated lecherousness towards AAA had become unbearable. Under the circumstances, the delay in reporting him to the proper authorities is not a factor in

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[44] *Id.* at 25-26.

determining the credibility of the charge against him of his own daughter.[45] To a child of very tender years like AAA, the threats of actual physical harm would definitely instill a fear overwhelming enough to force her to suffer her ordeals in silence for a period of time.

Verily, there has never been any uniformity or consistency of behavior to be expected from those who had the misfortune of being sexually molested.[46] The Court has pointed out that some of them have found the courage early on to publicly denounce the abuses they experienced, but that there were others who have opted to initially keep their harrowing ordeals to themselves and to just move on with their lives as if nothing had happened,[47] until the limits of their tolerance were reached. AAA belonged to the latter group of victims, as her honest declarations to the trial court revealed. Also, we cannot expect from the immature and inexperienced AAA to measure up to the same standard of conduct and reaction that we would expect from adults whose maturity in age and experience could have brought them to stand up more quickly to their interest. Lastly, long silence and delay in reporting the crime of rape to the proper authorities have not always been considered as an indication of a false accusation.[48]

The ill motive that supposedly impelled AAA and BBB to initiate the charges against their own father (*i.e.*, they hated him because of the physical abuse he had inflicted on them and on their mother) is unworthy of serious consideration. To start with, the imputation of ill motive, being outrightly speculative, was unreliable. Moreover, the imputed ill motive, even assuming it to be true, did not necessarily mean that the very serious charges of rape were fabricated only to get back at him. And, finally, the Court has not been deterred from affirming the

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[45] *People v. Dimaano*, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 663.

[46] *People v. Ortoa, supra* note 34, at 553.

[47] *Id.*

[48] *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 346.

conviction in incestuous rape by rejecting the lecherous father's imputation of ill motive based on alleged familial discord and undue influence, hostility or revenge,[49] or on parental punishment or disciplinary chastisement. [50]

The accused argues that the findings of old healed vaginal lacerations during the physical examinations disproved the charges against him, stressing that the old healed lacerations, being indicative of the lapse of three months from the time of the alleged sexual assault to the time of the medical examination, belied AAA's claim of being raped on April 13, 1999, which was but only two months prior to the medical examination. He insists that the finding that her genitalia showed no fresh laceration or hymenal injury suffered in the previous seven days was inconsistent with BBB's claim about being raped nine hours prior to her physical examination.

The arguments of the accused are unwarranted. The essence of rape is the carnal knowledge of a female either *against her will* (through force or intimidation) or *without her consent* (where the female is deprived of reason or otherwise unconscious, or is under 12 years of age, or is demented).[51] Carnal knowledge of a female simply means a male having bodily connections with a female. As such, the presence or absence of injury or laceration in the genitalia of the victim is not decisive of whether rape has been committed or not.[52] Such injury or laceration is material only if force or intimidation is an element of the rape charged; otherwise, it is merely circumstantial evidence of the commission of the rape. Verily, a medical examination and a

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[49] *People v. Ortoa, supra* note 34, at p. 551.

[50] *People v. Ceballos, Jr.,* G.R. No. 169642, September 14, 2007, 533 SCRA 493, 510.

[51] *People v. Lupac*, G.R. No. 182230, September 19, 2012; *People v. Taguilid*, G.R. No. 181544, April 11, 2012, 669 SCRA 341, 350; *People v. Butiong*, G.R. No. 168932, October 19, 2011.

[52] *People v. Aguiluz*, G.R. No. 133480, March 15, 2001, 354 SCRA 465, 471-472; *People v. Gabayron*, G.R. No. 102018, August 21, 1997, 278 SCRA 78, 93.

medical certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape.[53] The accused may then be convicted solely on the basis of the victim's credible, natural and convincing testimony.[54] This is no less true when the rape victim testifies against her own father; unquestionably, there would be reason to give her testimony greater weight than usual.[55]

In fine, the proof of guilt adduced against the accused for each of the rapes charged was beyond reasonable doubt if all he could assert in his defense was a mere denial of the positive declarations of his two minor daughters. He now deserves to the fullest extent the condign penalties the law sets for his crimes.

We next deal with the penalty to be properly meted on the accused.

Under Article 266-B of the *Revised Penal Code*, the death penalty is imposed if the rape is committed with the attendance of any "aggravating/qualifying circumstances." One of such "aggravating/qualifying circumstances" is "when the victim is under eighteen (18) years of age and offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim." Both minority and actual relationship must be alleged and proved; otherwise, conviction for rape in its qualified form will be barred.[56]

To establish the age of the minor victim, either as an element of the crime or as a qualifying circumstance, the Court has set the guidelines in *People v. Pruna*,[57] as follows:

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[53] *People v. Ela*, G.R. No. 172368, December 27, 2007; 541 SCRA 508, 512-513.

[54] *Id.* at 513.

[55] *Id.*

[56] *People v. Latag*, G.R. Nos. 140411-13, December 11, 2003, 418 SCRA 122, 134.

[57] G.R. No. 138471, October 10, 2002, 390 SCRA 577.

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

   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.[58]

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

In Criminal Case No. 912-V-99, the amended information alleged that AAA was only ten years old when the rape was committed in April 1999 and that she was the daughter of the accused. During the trial, however, the Prosecution adduced no evidence to establish her minority save her testimony and that of her mother's.[59] In the absence of proof of AAA's minority in accordance with the guidelines set in *People v. Pruna*, we concur with the CA's conclusion that he could not be properly found guilty of qualified rape. Indeed, his substantial right to be informed of the nature and cause of the accusation against him would be nullified otherwise. Accordingly, the CA correctly prescribed *reclusion perpetua* as the penalty.

On the other hand, the amended information in Criminal Case No. 974-V-99 sufficiently stated the minority of BBB and her being the daughter of the accused. Further, the Prosecution established that BBB was only nine years old at the time of the rape on November 10, 1999 through her certificate of live birth. In addition, her own mother and older sister DDD both attested that she was the legitimate daughter of the accused.[60] In fact, even the accused himself admitted his legitimate paternity of BBB.[61] Considering that the Prosecution duly proved BBB's minority and her relationship with the accused, the CA correctly affirmed the penalty of death meted by the RTC.

With the intervening passage on June 24, 2006 of Republic Act No. 9346,[62] however, the imposition of the death penalty has become prohibited. The retroactive application to Criminal Case No. 974-V-99 of the prohibition against the death penalty must be made here because it is favorable to the accused.[63]

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[59] TSN, 8 May 2000; p. 6; TSN, 7 August 2000, p. 4.

[60] TSN, 7 August 2000, p. 20; TSN, 4 September 2000, p. 5.

[61] TSN, 29 January 2001, pp. 3-4.

[62] *An Act Prohibiting the Imposition of Death Penalty in the Philippines.*

[63] The *Revised Penal Code* provides:

Article 22. *Retroactive effect of penal laws*. — Penal Laws shall have a retroactive effect insofar as they favor the persons guilty of a felony,

Nonetheless, he shall not be eligible for parole, because Section 3 of Republic Act No. 9346 expressly provides that persons "whose sentences will be reduced to *reclusion perpetua* by reason of this Act" shall not be eligible for parole under Act No. 4103 (*Indeterminate Sentence Law*), as amended.

We uphold the award by the CA of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, but raise the amount of exemplary damages in Criminal Case No. 912-V-99 to ₱30,000.00 to conform to prevailing jurisprudence.

In Criminal Case No. 974-V-99, the CA sustained the ₱75,000.00 granted as civil indemnity, increased the moral damages to ₱75,000.00, and retained ₱25,000.00 as exemplary damages. Instructive on the civil liabilities to be imposed in Criminal Case No. 974-V-99 is *People v. Antonio*,[64] where the Court held that Republic Act No. 9346 prohibited only the imposition of the death penalty and did not affect the corresponding pecuniary or civil liabilities. Based on the pronouncement in *People v. Bejic*[65] to the effect that the civil indemnity should be in the amount of ₱75,000.00 if the crime is qualified by circumstances that warrant the imposition of the death penalty, the Court affirms the separate amounts of ₱75,000.00 for civil indemnity and moral damages, without need of any pleading and proof, but raises the amount of exemplary damages from ₱25,000.00 to ₱30,000.00.[66]

WHEREFORE, the Court **AFFIRMS** the decision promulgated on April 27, 2005 in all respects, subject to the **MODIFICATION** that: (*a*) the penalty in Criminal Case No. 974-V-99 is *reclusion perpetua*, without eligibility for parole;

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who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

[64] G.R. No. 180920, March 27, 2008, 549 SCRA 569.

[65] G.R. No. 174060, June 25, 2007, 525 SCRA 488, 513.

[66] *People v. Llanas, Jr.*, G.R. No. 190616, June 29, 2010, 622 SCRA 602; *People v. Miranda*, G.R. No. 176634, April 5, 2010, 617 SCRA 298.

(b) the amount of exemplary damages in Criminal Case No. 912-V-99 and Criminal Case No. 974-V-99 is raised to ₱30,000.00 each; and (*c*) all the items of civil liability shall earn interest of 6% *per annum* from the finality of this decision until full payment.

The accused shall further pay the costs of suit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

EN BANC

[G.R. No. 188056. January 8, 2013]

SPOUSES AUGUSTO G. DACUDAO AND OFELIA R. DACUDAO, *petitioners, vs.* **SECRETARY OF JUSTICE RAUL M. GONZALES OF THE DEPARTMENT OF JUSTICE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; HIERARCHY OF COURTS; DISREGARDED WHEN PETITIONERS WENT DIRECTLY TO THE COURT WITH THEIR PETITION FOR *CERTIORARI*, PROHIBITION AND *MANDAMUS*.— [P]etitioners have unduly disregarded the hierarchy of courts by coming directly to the Court with their petition for *certiorari*, prohibition and *mandamus* without tendering therein any special, important or compelling reason to justify the direct filing of the petition. We emphasize that the concurrence of jurisdiction among the Supreme Court, Court of Appeals and

the Regional Trial Courts to issue the writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction did not give petitioners the unrestricted freedom of choice of court forum. An undue disregard of this policy against direct resort to the Court will cause the dismissal of the recourse. x x x A ccordingly, every litigant must remember that the Court is not the only judicial forum from which to seek and obtain effective redress of their grievances. As a rule, the Court is a court of last resort, not a court of the first instance. Hence, every litigant who brings the petitions for the extraordinary writs of *certiorari*, prohibition and *mandamus* should ever be mindful of the policy on the hierarchy of courts, the observance of which is explicitly defined and enjoined in Section 4 of Rule 65, Rules of Court.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPRIETY AND REQUISITES THEREOF.— The writ of *certiorari* is available only when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. x x x For a special civil action for certiorari to prosper, the following requisites must concur, namely: (a) it must be directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (c) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. The burden of proof lies on petitioners to demonstrate that the assailed order was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

3. POLITICAL LAW; DEPARTMENT OF JUSTICE (DOJ); NOT A QUASI-JUDICIAL OFFICE AND ITS PRELIMINARY INVESTIGATION OF CASES IS NOT A QUASI-JUDICIAL PROCEEDINGS; DISCUSSED.— The fact that the DOJ is the primary prosecution arm of the Government does not make it a quasi-judicial office or agency. Its preliminary investigation of cases is not a quasi-judicial proceeding. Nor does the DOJ exercise a quasi-judicial function when it reviews the

findings of a public prosecutor on the finding of probable cause in any case. Indeed, in Bautista v. Court of Appeals, the Supreme Court has held that a preliminary investigation is not a quasi-judicial proceeding. x x x There may be some decisions of the Court that have characterized the public prosecutor's power to conduct a preliminary investigation as quasi- judicial in nature. Still, this characterization is true only to the extent that the public prosecutor, like a quasi-judicial body, is an officer of the executive department exercising powers akin to those of a court of law. But the limited similarity between the public prosecutor and a quasi-judicial body quickly ends there. For sure, a quasi-judicial body is an organ of government other than a court of law or a legislative office that affects the rights of private parties through either adjudication or rule-making; it performs adjudicatory functions, and its awards and adjudications determine the rights of the parties coming before it; its decisions have the same effect as the judgments of a court of law. In contrast, that is not the effect whenever a public prosecutor conducts a preliminary investigation to determine probable cause in order to file a criminal information against a person properly charged with the offense, or whenever the Secretary of Justice reviews the public prosecutor's orders or resolutions.

4. ID.; ID.; DOJ ORDER (DO) NO. 182 DIRECTING ALL CASES FILED AGAINST DELOS ANGELES (LEGACY GROUP) BE FORWARDED TO THE DOJ SPECIAL PANEL IN MANILA FOR APPROPRIATE ACTION; VALIDITY, UPHELD.— [T]he Secretary of Justice issued Department of Justice DOJ) Order No. 182 (DO No. 182), directing all Regional State Prosecutors, Provincial Prosecutors, and City Prosecutors to forward all cases already filed against Delos Angeles, Jr., et al. to the Secretariat of the DOJ Special Panel in Manila for appropriate action. x x x Did respondent Secretary of Justice commit grave abuse of discretion in issuing DO No. 182? x x x DO No. 182 was issued pursuant to Department Order No. 84 that the Secretary of Justice had promulgated to govern the performance of the mandate of the DOJ to "administer the criminal justice system in accordance with the accepted processes thereof" x x x To overcome this strong presumption of validity of the questioned issuances, it became incumbent upon petitioners to prove their unconstitutionality

and invalidity, either by showing that the Administrative Code of 1987 did not authorize the Secretary of Justice to issue DO No. 182, or by demonstrating that DO No. 182 exceeded the bounds of the Administrative Code of 1987 and other pertinent laws. They did not do so. They must further show that the performance of the DOJ's functions under the Administrative Code of 1987 and other pertinent laws did not call for the impositions laid down by the assailed issuances. That was not true here, for DO No 182 did not deprive petitioners in any degree of their right to seek redress for the alleged wrong done against them by the Legacy Group. Instead, the issuances were designed to assist petitioners and others like them expedite the prosecution, if warranted under the law, of all those responsible for the wrong through the creation of the special panel of state prosecutors and prosecution attorneys in order to conduct a nationwide and comprehensive preliminary investigation and prosecution of the cases. Thereby, the Secretary of Justice did not act arbitrarily or oppressively against petitioners.

5. ID.; ID.; ID.; EXEMPTION FROM CONSOLIDATION OF CASES FILED IN CAGAYAN DE ORO DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.— [P]etitioners attack the exemption from the consolidation decreed in DO No. 182 of the cases filed or pending in the Office of the City Prosecutor of Cagayan de Oro City, claiming that the exemption traversed the constitutional guaranty in their favor of the equal protection of law. x x x Petitioners' attack deserves no consideration. The equal protection clause of the Constitution does not require the universal application of the laws to all persons or things without distinction; what it requires is simply equality among equals as determined according to a valid classification. Hence, the Court has affirmed that if a law neither burdens a fundamental right nor targets a suspect class, the classification stands as long as it bears a rational relationship to some legitimate government end. That is the situation here. In issuing the assailed DOJ Memorandum dated March 2, 2009, the Secretary of Justice took into account the relative distance between Cagayan de Oro, where many complainants against the Legacy Group resided, and Manila, where the preliminary investigations would be conducted by the special panel. He also took into

account that the cases had already been filed in the City Prosecutor's Office of Cagayan de Oro at the time he issued DO No. 182.

6. ID.; ID.; ID.; THAT DO NO. 182 WOULD CAUSE DELAY IN THE RESOLUTION OF PETITIONERS' CASES VIOLATING THEIR RIGHT TO SPEEDY DISPOSITION OF CASES; NOT APPRECIATED IN CASE AT BAR.— [P]etitioners contend that DO No. 182 violated their right to the speedy disposition of cases guaranteed by the Constitution. They posit that there would be considerable delay in the resolution of their cases that would definitely be "a flagrant transgression of petitioners' constitutional rights to speedy disposition of their cases." W e cannot favor their contention. x x x The consolidation of the cases against Delos Angeles, Jr., *et al*. was ordered obviously to obtain expeditious justice for the parties with the least cost and vexation to them. Inasmuch as the cases filed involved similar or related questions to be dealt with during the preliminary investigation, the Secretary of Justice rightly found the consolidation of the cases to be the most feasible means of promoting the efficient use of public resources and of having a comprehensive investigation of the cases. On the other hand, we do not ignore the possibility that there would be more cases reaching the DOJ in addition to those already brought by petitioners and other parties. Yet, any delays in petitioners' cases occasioned by such other and subsequent cases should not warrant the invalidation of DO No. 182. The Constitution prohibits only the delays that are unreasonable, arbitrary and oppressive, and tend to render rights nugatory. In fine, we see neither undue delays, nor any violation of the right of petitioners to the speedy disposition of their cases.

7. ID.; ID.; ID.; THAT DO NO. 182 COVERED CASES ALREADY BEING INVESTIGATED VIOLATING THE PROHIBITION AGAINST PASSING LAWS WITH RETROACTIVE EFFECT; NOT APPRECIATED AS DO NO. 182 IS A PROCEDURAL RULE.— As a general rule, laws shall have no retroactive effect. However, exceptions exist, and one such exception concerns a law that is procedural in nature. The reason is that a remedial statute or a statute relating to remedies or modes of procedure does not create new rights or take away vested rights but only operates in

furtherance of the remedy or the confirmation of already existing rights. A statute or rule regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of its passage. All procedural laws are retroactive in that sense and to that extent. The retroactive application is not violative of any right of a person who may feel adversely affected, for, verily, no vested right generally attaches to or arises from procedural laws.

APPEARANCES OF COUNSEL

Ramon J. Cuison, Jr. for petitioners.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Petitioners — residents of Bacaca Road, Davao City — were among the investors whom Celso G. Delos Angeles, Jr. and his associates in the Legacy Group of Companies (Legacy Group) allegedly defrauded through the Legacy Group's "buy back agreement" that earned them check payments that were dishonored. After their written demands for the return of their investments went unheeded, they initiated a number of charges for syndicated *estafa* against Delos Angeles, Jr., *et al*. in the Office of the City Prosecutor of Davao City on February 6, 2009. Three of the cases were docketed as NPS Docket No. XI-02-INV.-09-A-00356, Docket No. XI-02-INV.-09-C-00752, and Docket No. XI-02-INV.-09-C-00753.[1]

On March 18, 2009, the Secretary of Justice issued Department of Justice (DOJ) Order No. 182 (DO No. 182), directing all Regional State Prosecutors, Provincial Prosecutors, and City Prosecutors to forward all cases already filed against Delos Angeles, Jr., *et al*. to the Secretariat of the DOJ Special Panel in Manila for appropriate action.

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[1] *Rollo*, pp. 7 and 19.

DO No. 182 reads:[2]

> All cases against Celso G. delos Angeles, Jr., et al. under Legacy Group of Companies, may be filed with the docket section of the National Prosecution Service, Department of Justice, Padre Faura, Manila and shall be forwarded to the Secretariat of the Special Panel for assignment and distribution to panel members, per Department Order No. 84 dated February 13, 2009.
>
> However, cases already filed against Celso G. delos Angeles, Jr. et al. of Legacy group of Companies in your respective offices with the exemption of the cases filed in Cagayan de Oro City which is covered by Memorandum dated March 2, 2009, should be forwarded to the Secretariat of the Special Panel at Room 149, Department of Justice, Padre Faura, Manila, for proper disposition.
>
> For information and guidance.

Pursuant to DO No. 182, the complaints of petitioners were forwarded by the Office of the City Prosecutor of Davao City to the Secretariat of the Special Panel of the DOJ.[3]

Aggrieved by such turn of events, petitioners have directly come to the Court *via* petition for *certiorari*, prohibition and *mandamus*, ascribing to respondent Secretary of Justice grave abuse of discretion in issuing DO No. 182. They claim that DO No. 182 violated their right to due process, their right to the equal protection of the laws, and their right to the speedy disposition of cases. They insist that DO No. 182 was an obstruction of justice and a violation of the rule against enactment of laws with retroactive effect.

Petitioners also challenge as unconstitutional the issuance of DOJ Memorandum dated March 2, 2009 exempting from the coverage of DO No. No. 182 all the cases for syndicated *estafa* already filed and pending in the Office of the City Prosecutor of Cagayan de Oro City. They aver that DOJ Memorandum dated March 2, 2009 violated their right to equal protection under the Constitution.

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[2] *Id*. at 18.

[3] *Id*. at 19.

The Office of the Solicitor General (OSG), representing respondent Secretary of Justice, maintains the validity of DO No. 182 and DOJ Memorandum dated March 2, 2009, and prays that the petition be dismissed for its utter lack of merit.

Issues

The following issues are now to be resolved, to wit:

1. Did petitioners properly bring their petition for *certiorari*, prohibition and *mandamus* directly to the Court?
2. Did respondent Secretary of Justice commit grave abuse of discretion in issuing DO No. 182?
3. Did DO No. 182 and DOJ Memorandum dated March 2, 2009 violate petitioners' constitutionally guaranteed rights?

Ruling

The petition for *certiorari*, prohibition and *mandamus*, being bereft of substance and merit, is dismissed.

Firstly, petitioners have unduly disregarded the hierarchy of courts by coming directly to the Court with their petition for *certiorari*, prohibition and *mandamus* without tendering therein any special, important or compelling reason to justify the direct filing of the petition.

We emphasize that the concurrence of jurisdiction among the Supreme Court, Court of Appeals and the Regional Trial Courts to issue the writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction did not give petitioners the unrestricted freedom of choice of court forum.[4] An undue disregard of this policy against direct resort to the Court will cause the dismissal of the recourse. In *Bañez, Jr. v. Concepcion*,[5] we explained why, to wit:

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[4] *Heirs of Bertuldo Hinog v. Melicor*, G.R. No. 140954, April 12, 2005, 455 SCRA 460, 470.

[5] G.R. No. 159508, August 29, 2012.

The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of *certiorari*, prohibition and *mandamus* only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy. This was why the Court stressed in *Vergara, Sr. v. Suelto*:

> x x x. **The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition.** It cannot and should not be burdened with the task of dealing with causes in the first instance. **Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.** (Emphasis supplied)

In *People v. Cuaresma*, the Court has also amplified the need for strict adherence to the policy of hierarchy of courts. There, noting "a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land," the Court has cautioned lawyers and litigants against taking a direct resort to the highest tribunal, *viz*:

> x x x. **This Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus, quo warranto,***

***habeas corpus* and injunction) is not exclusive.** It is shared by this Court with Regional Trial Courts x x x, which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals x x x, although prior to the effectivity of *Batas Pambansa Bilang* 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." **This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed.** There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. **A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.** Indeed, the removal of the restriction on the jurisdiction of the Court of Appeals in this regard, *supra*— resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction" — was evidently intended precisely to relieve this Court *pro tanto* of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the Appellate Court corresponding jurisdiction, would have had to be filed with it.

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The Court therefore closes this decision with the declaration for the information and evidence of all concerned, that it will not only continue to enforce the policy, but will require a more strict observance thereof. (Emphasis supplied)

Accordingly, every litigant must remember that the Court is not the only judicial forum from which to seek and obtain effective redress of their grievances. As a rule, the Court is a court of last resort, not a court of the first instance. Hence, every litigant who brings the petitions for the extraordinary writs of *certiorari*, prohibition and *mandamus* should ever be mindful of the policy on the hierarchy of courts, the observance of which is explicitly defined and enjoined in Section 4 of Rule 65, *Rules of Court*, *viz*:

> Section 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of the said motion.
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> **The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in the aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.**
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> In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction.[6]

Secondly, even assuming *arguendo* that petitioners' direct resort to the Court was permissible, the petition must still be dismissed.

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[6] This rule has been amended, first by A.M. No. 00-2-03-SC (*Re*: *Amendment to Section 4, Rule 65 of the 1997 Rules of Civil Procedure*) to specify that the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed (effective September 1, 2000); and by A.M. No. 07-7-12-SC, to add the last paragraph (effective December 27, 2007).

The writ of *certiorari* is available only when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.[7] "The sole office of the writ of *certiorari*," according to *Delos Santos v. Metropolitan Bank and Trust Company*:[8]

> x x x is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. **The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction**.

For a special civil action for *certiorari* to prosper, therefore, the following requisites must concur, namely: (*a*) it must be directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (*b*) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (*c*) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.[9] The burden of proof lies on petitioners to demonstrate that the assailed order was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

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[7] Section 1, Rule 65, *Rules of Court*; *Pilipino Telephone Corporation v. Radiomarine Network, Inc.*, G.R. No. 152092, August 4, 2010, 626 SCRA 702, 735.

[8] G.R. No. 153852, October 24, 2012.

[9] *Acuzar v. Jorolan*, G.R. No. 177878, April 7, 2010, 617 SCRA 519, 527-528.

Yet, petitioners have not shown a compliance with the requisites. To start with, they merely alleged that the Secretary of Justice had acted without or in excess of his jurisdiction. Also, the petition did not show that the Secretary of Justice was an officer exercising judicial or quasi-judicial functions. Instead, the Secretary of Justice would appear to be not exercising any judicial or quasi-judicial functions because his questioned issuances were ostensibly intended to ensure his subordinates' efficiency and economy in the conduct of the preliminary investigation of all the cases involving the Legacy Group. The function involved was purely executive or administrative.

The fact that the DOJ is the primary prosecution arm of the Government does not make it a quasi-judicial office or agency. Its preliminary investigation of cases is not a quasi-judicial proceeding. Nor does the DOJ exercise a quasi-judicial function when it reviews the findings of a public prosecutor on the finding of probable cause in any case. Indeed, in *Bautista v. Court of Appeals*,[10] the Supreme Court has held that a preliminary investigation is not a quasi-judicial proceeding, stating:

> x x x [t]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.[11]

There may be some decisions of the Court that have characterized the public prosecutor's power to conduct a preliminary investigation as quasi-judicial in nature. Still, this

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[10] G.R. No. 143375, July 6, 2001, 360 SCRA 618.

[11] *Id*. at 623.

characterization is true only to the extent that the public prosecutor, like a quasi-judicial body, is an officer of the executive department exercising powers akin to those of a court of law.

But the limited similarity between the public prosecutor and a quasi-judicial body quickly ends there. For sure, a quasi-judicial body is an organ of government other than a court of law or a legislative office that affects the rights of private parties through either adjudication or rule-making; it performs adjudicatory functions, and its awards and adjudications determine the rights of the parties coming before it; its decisions have the same effect as the judgments of a court of law. In contrast, that is not the effect whenever a public prosecutor conducts a preliminary investigation to determine probable cause in order to file a criminal information against a person properly charged with the offense, or whenever the Secretary of Justice reviews the public prosecutor's orders or resolutions.

Petitioners have self-styled their petition to be also for prohibition. However, we do not see how that can be. They have not shown in their petition in what manner and at what point the Secretary of Justice, in handing out the assailed issuances, acted without or in excess of his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. On the other hand, we already indicated why the issuances were not infirmed by any defect of jurisdiction. Hence, the blatant omissions of the petition transgressed Section 2, Rule 65 of the *Rules of Court*, to wit:

> Section 2. *Petition for prohibition*. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (2a)

Similarly, the petition could not be one for *mandamus*, which is a remedy available only when "any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court."[12] The main objective of *mandamus* is to compel the performance of a ministerial duty on the part of the respondent. Plainly enough, the writ of *mandamus* does not issue to control or review the exercise of discretion or to compel a course of conduct,[13] which, it quickly seems to us, was what petitioners would have the Secretary of Justice do in their favor. Consequently, their petition has not indicated how and where the Secretary of Justice's assailed issuances excluded them from the use and enjoyment of a right or office to which they were unquestionably entitled.

Thirdly, there is no question that DO No. 182 enjoyed a strong presumption of its validity. In *ABAKADA Guro Party List v. Purisima*,[14] the Court has extended the presumption of validity to legislative issuances as well as to rules and regulations issued by administrative agencies, saying:

Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding

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[12] Section 3, Rule 65, *Rules of Court*.

[13] *University of San Agustin, Inc. v. Court of Appeals*, G.R. No. 100588, March 7, 1994, 230 SCRA 761, 771-772.

[14] G.R. No. 166715, August 14, 2008, 562 SCRA 251.

as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court.[15]

DO No. 182 was issued pursuant to Department Order No. 84 that the Secretary of Justice had promulgated to govern the performance of the mandate of the DOJ to "administer the criminal justice system in accordance with the accepted processes thereof"[16] as expressed in Republic Act No. 10071 (*Prosecution Service Act of 2010*) and Section 3, Chapter I, Title III and Section 1, Chapter I, Title III of Book IV of Executive Order 292 (*Administrative Code of 1987*).

To overcome this strong presumption of validity of the questioned issuances, it became incumbent upon petitioners to prove their unconstitutionality and invalidity, either by showing that the *Administrative Code of* 1987 did not authorize the Secretary of Justice to issue DO No. 182, or by demonstrating that DO No. 182 exceeded the bounds of the *Administrative Code of 1987* and other pertinent laws. They did not do so. They must further show that the performance of the DOJ's functions under the *Administrative Code of 1987* and other pertinent laws did not call for the impositions laid down by the assailed issuances. That was not true here, for DO No 182 did not deprive petitioners in any degree of their right to seek redress for the alleged wrong done against them by the Legacy Group. Instead, the issuances were designed to assist petitioners and others like them expedite the prosecution, if warranted under the law, of all those responsible for the wrong through the creation of the special panel of state prosecutors and prosecution attorneys in order to conduct a nationwide and comprehensive preliminary investigation and prosecution of the cases. Thereby, the Secretary of Justice did not act arbitrarily or oppressively against petitioners.

Fourthly, petitioners attack the exemption from the consolidation decreed in DO No. 182 of the cases filed or pending

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

[16] Section 1, Chapter I, Title III, Book IV, Executive Order No. 292.

in the Office of the City Prosecutor of Cagayan de Oro City, claiming that the exemption traversed the constitutional guaranty in their favor of the equal protection of law.[17]

The exemption is covered by the assailed DOJ Memorandum dated March 2, 2009, to wit:

> It has come to the attention of the undersigned that cases for syndicated estafa were filed with your office against officers of the Legacy Group of Companies. Considering the distance of the place of complainants therein to Manila, your Office is hereby exempted from the directive previously issued by the undersigned requiring prosecution offices to forward the records of all cases involving Legacy Group of Companies to the Task Force.
>
> Anent the foregoing, you are hereby directed to conduct preliminary investigation of all cases involving the Legacy Group of Companies filed in your office with dispatch and to file the corresponding informations if evidence warrants and to prosecute the same in court.

Petitioners' attack deserves no consideration. The equal protection clause of the Constitution does not require the universal application of the laws to all persons or things without distinction; what it requires is simply equality among equals as determined according to a valid classification.[18] Hence, the Court has affirmed that if a law neither burdens a fundamental right nor targets a suspect class, the classification stands as long as it bears a rational relationship to some legitimate government end.[19]

That is the situation here. In issuing the assailed DOJ Memorandum dated March 2, 2009, the Secretary of Justice took into account the relative distance between Cagayan de Oro, where many complainants against the Legacy Group resided, and Manila, where the preliminary investigations would be

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[17] *Rollo*, p. 11.

[18] *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010, 613 SCRA 385, 414; citing *The Philippine Judges Association v. Prado*, G.R. No. 105371, November 11, 1993, 227 SCRA 703, 712.

[19] *E.g., Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, April 8, 2010, 618 SCRA 32, 63.

conducted by the special panel. He also took into account that the cases had already been filed in the City Prosecutor's Office of Cagayan de Oro at the time he issued DO No. 182. Given the considerable number of complainants residing in Cagayan de Oro City, the Secretary of Justice was fully justified in excluding the cases commenced in Cagayan de Oro from the ambit of DO No. 182. The classification taken into consideration by the Secretary of Justice was really valid. Resultantly, petitioners could not inquire into the wisdom behind the exemption upon the ground that the non-application of the exemption to them would cause them some inconvenience.

Fifthly, petitioners contend that DO No. 182 violated their right to the speedy disposition of cases guaranteed by the Constitution. They posit that there would be considerable delay in the resolution of their cases that would definitely be "a flagrant transgression of petitioners' constitutional rights to speedy disposition of their cases."[20]

We cannot favor their contention.

In *The Ombudsman v. Jurado*,[21] the Court has clarified that although the Constitution guarantees the right to the speedy disposition of cases, such speedy disposition is a flexible concept. To properly define that concept, the facts and circumstances surrounding each case must be evaluated and taken into account. There occurs a violation of the right to a speedy disposition of a case only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are sought and secured, or when, without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.[22] It is cogent to mention that a mere mathematical reckoning of the time involved is not determinant of the concept.[23]

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[20] *Rollo*, p. 13.

[21] G.R. No. 154155, August 6, 2008, 561 SCRA 135, 146.

[22] *Yulo v. People*, G.R. No. 142762, March 4, 2005, 452 SCRA 705, 710.

[23] See *Bernat v. Sandiganbayan*, G.R. No. 158018, May 20, 2004, 428 SCRA 787, 789.

The consolidation of the cases against Delos Angeles, Jr., *et al.* was ordered obviously to obtain expeditious justice for the parties with the least cost and vexation to them. Inasmuch as the cases filed involved similar or related questions to be dealt with during the preliminary investigation, the Secretary of Justice rightly found the consolidation of the cases to be the most feasible means of promoting the efficient use of public resources and of having a comprehensive investigation of the cases.

On the other hand, we do not ignore the possibility that there would be more cases reaching the DOJ in addition to those already brought by petitioners and other parties. Yet, any delays in petitioners' cases occasioned by such other and subsequent cases should not warrant the invalidation of DO No. 182. The Constitution prohibits only the delays that are unreasonable, arbitrary and oppressive, and tend to render rights nugatory.[24] In fine, we see neither undue delays, nor any violation of the right of petitioners to the speedy disposition of their cases.

Sixthly, petitioners assert that the assailed issuances should cover only future cases against Delos Angeles, Jr., *et al.*, not those already being investigated. They maintain that DO No. 182 was issued in violation of the prohibition against passing laws with retroactive effect.

Petitioners' assertion is baseless.

As a general rule, laws shall have no retroactive effect. However, exceptions exist, and one such exception concerns a law that is procedural in nature. The reason is that a remedial statute or a statute relating to remedies or modes of procedure does not create new rights or take away vested rights but only operates in furtherance of the remedy or the confirmation of already existing rights.[25] A statute or rule regulating the procedure

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[24] *Caballero v. Alfonso, Jr.*, G.R. No. L-45647, August 21, 1987, 153 SCRA 153, 163.

[25] *Systems Factors Corporation v. National Labor Relations Commission*, G.R. No. 143789, November 27, 2000, 346 SCRA 149, 152; *Gregorio vs. Court of Appeals*, No. L-22802, November 29, 1968, 26 SCRA 229; *Tinio*

of the courts will be construed as applicable to actions pending and undetermined at the time of its passage. All procedural laws are retroactive in that sense and to that extent. The retroactive application is not violative of any right of a person who may feel adversely affected, for, verily, no vested right generally attaches to or arises from procedural laws.

Finally, petitioners have averred but failed to establish that DO No. 182 constituted obstruction of justice. This ground of the petition, being unsubstantiated, was unfounded.

Nonetheless, it is not amiss to reiterate that the authority of the Secretary of Justice to assume jurisdiction over matters involving the investigation of crimes and the prosecution of offenders is fully sanctioned by law. Towards that end, the Secretary of Justice exercises control and supervision over all the regional, provincial, and city prosecutors of the country; has broad discretion in the discharge of the DOJ's functions; and administers the DOJ and its adjunct offices and agencies by promulgating rules and regulations to carry out their objectives, policies and functions.

Consequently, unless and until the Secretary of Justice acts beyond the bounds of his authority, or arbitrarily, or whimsically, or oppressively, any person or entity who may feel to be thereby aggrieved or adversely affected should have no right to call for the invalidation or nullification of the rules and regulations issued by, as well as other actions taken by the Secretary of Justice.

WHEREFORE, the Court *DISMISSES* the omnibus petition for *certiorari*, prohibition, and *mandamus* for lack of merit.

Petitioners shall pay the costs of suit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Villarama, JR., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

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vs. Mina, No. L-29488, December 24, 1968, 26 SCRA 512; *Billiones vs. Court of Industrial Relations,* No. L-17566, July 30, 1965, 14 SCRA 674.

EN BANC

[G.R. No. 192289. January 8, 2013]

KAMARUDIN K. IBRAHIM, *petitioner, vs.* **COMMISSION ON ELECTIONS and ROLAN G. BUAGAS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS (COMELEC); FINAL DECISION OF THE COMELEC *EN BANC* MAY BE BROUGHT FOR REVIEW TO THE SUPREME COURT; CASE AT BAR.— Section 7, Article IX of the 1987 Constitution in part substantially provides that any decision, order or ruling of any of the Constitutional Commissions may be brought for review to the Supreme Court on *certiorari* within 30 days from receipt of a copy thereof. The orders, ruling and decisions rendered or issued by the COMELEC *en banc* must be final and made in the exercise of its adjudicatory or quasi-judicial power. Further, Section 1, Rule 64 of the Rules of Court states that it shall govern the review of final judgments and orders or resolutions of the COMELEC and the Commission on Audit. x x x In the case at bar, the now assailed Resolutions dated December 22, 2009 and May 6, 2010 were issued with finality by the COMELEC *en banc*. x x x What the instant Petition challenges is the authority of the Municipal Board of Canvassers (MBOC) to suspend Ibrahim's proclamation and of the COMELEC *en banc* to issue the assailed resolutions. The crux of the instant Petition does not qualify as one which can be raised as a pre-proclamation controversy.

2. ID.; ID.; ID.; PRE-PROCLAMATION CONTROVERSY; DEFINITION AND ISSUES THEREOF.— A pre-proclamation controversy is defined in Section 241 of the Omnibus Election Code (OEC) as referring to "any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation,

transmission, receipt, custody and appreciation of the election returns." Section 243 of the OEC restrictively enumerates as follows the issues which can be raised in a pre-proclamation controversy: (a) Illegal composition or proceedings of the board of canvassers; (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code; (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates. The illegality of the proceedings of the board of canvassers is the first issue which may be raised in a pre-proclamation controversy. To illustrate, the proceedings are to be considered as illegal when the board is constituted not in accordance with law, or is composed of members not enumerated therein, or when business is transacted *sans* a quorum.

3. ID.; ID.; ID.; COMELEC *SITTING IN DIVISION* HAS PRIOR JURISDICTION FOR DISQUALIFICATION OF CANDIDATE; CASE AT BAR. — In [*Bautista v. COMELEC*,] this Court discussed the COMELEC *en banc*'s jurisdiction over petitions for disqualification, for denial of due course, or cancellation of certificates of candidacy. [Thus,] x x x '*Under the [COMELEC] Rules of Procedure, jurisdiction over a petition to cancel a certificate of candidacy lies with the COMELEC sitting in Division, not en banc. Cases before a Division may only be entertained by the COMELEC en banc when the required number of votes to reach a decision, resolution, order or ruling is not obtained in the Division. Moreover, only motions to reconsider decisions, resolutions, orders or rulings of the COMELEC in Division are resolved by the COMELEC en banc.* x x x Under Section 3, Rule 23 of the 1993 COMELEC Rules of Procedure, a petition for the denial or cancellation of a certificate of candidacy must be heard summarily after due notice. *It is thus clear that cancellation proceedings involve the exercise of the quasi-judicial functions of the COMELEC which the COMELEC in division should first decide. More so in this case where the cancellation proceedings originated not from a petition but from a report of the election officer*

regarding the lack of qualification of the candidate in the barangay election. The COMELEC *en banc* cannot short cut the proceedings by acting on the case without a prior action by a division because it denies due process to the candidate.' **In the case at bar, the COMELEC *en banc*, through the herein assailed resolutions, ordered Ibrahim's disqualification even when no complaint or petition was filed against him yet.** Let it be stressed that if filed before the conduct of the elections, a petition to deny due course or cancel a certificate of candidacy under Section 78 of the OEC is the appropriate petition which should have been instituted against Ibrahim considering that his allegedly being an unregistered voter of Datu Unsay disqualified him from running as Vice-Mayor. His supposed misrepresentation as an eligible candidate was an act falling within the purview of Section 78 of the OEC. **Moreover, even if we were to assume that a proper petition had been filed, the COMELEC *en banc* still acted with grave abuse of discretion when it took cognizance of a matter, which by both constitutional prescription and jurisprudential declaration, instead aptly pertains to one of its divisions**.

4. REMEDIAL LAW; JURISDICTION; DOCTRINE OF ESTOPPEL BY LACHES; DISCUSSED. — In *Republic v. Bantigue Point Development Corporation*, we stated: '*The rule is settled that lack of jurisdiction over the subject matter may be raised at any stage of the proceedings. Jurisdiction over the subject matter is conferred only by the Constitution or the law. It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court. Consequently, questions of jurisdiction may be cognizable even if raised for the first time on appeal. The ruling of the Court of Appeals that "a party may be estopped from raising such [jurisdictional] question if he has actively taken part in the very proceeding which he questions, belatedly objecting to the court's jurisdiction in the event that the judgment or order subsequently rendered is adverse to him" is based on the doctrine of estoppel by laches.* We are aware of that doctrine first enunciated by this Court in *Tijam v. Sibonghanoy*.' x x x *In Figueroa v. People, we cautioned that Tijam must be construed as an exception to the general rule and applied only in the most exceptional cases whose factual milieu is similar to that in the latter case.*'

5. POLITICAL LAW; ELECTION LAWS; MUNICIPAL BOARD OF CANVASSERS (MBOC); NO AUTHORITY TO SUSPEND PROCLAMATION OF WINNING CANDIDATE. — The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting while all other questions are to be tried before the court or other tribunal for contesting elections or in *quo warranto* proceedings. In the case at bar, the MBOC *motu proprio* suspended Ibrahim's proclamation when the issue of the latter's eligibility is a matter which the board has no authority to resolve. Further, under Section 6 of R.A. 6646, the COMELEC and not the MBOC has the authority to order the suspension of a winning candidates's proclamation. Such suspension can only be ordered upon the motion of a complainant or intervenor relative to a case for disqualification, or a petition to deny due course or cancel a certificate of candidacy pending before the COMELEC, and only when the evidence of the winning candidate's guilt is strong.

APPEARANCES OF COUNSEL

G.E. Garcia Law Office for petitioner.
The Solicitor General for public respondent.

D E C I S I O N

REYES, *J.*:

Before us is a Petition for *Certiorari* and Prohibition with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order[1] filed under Rule 64 of the Rules of Court assailing the following resolutions of the public respondent Commission on Elections (COMELEC):

(a) Minute Resolution No. 09-0946[2] (December 22, 2009 Resolution), dated December 22, 2009, disqualifying the petitioner

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[1] *Rollo,* pp. 3-24.

[2] *Id.* at 26-29.

herein, Kamarudin K. Ibrahim (Ibrahim), from the 2010 Vice-Mayoralty race in Datu Unsay, Maguindanao for supposedly not being a registered voter of the said municipality; and

(b) Resolution[3] (May 6, 2010 Resolution) issued on May 6, 2010, relative to SPA Case No. 10-002 (MP) LOCAL, denying Ibrahim's opposition[4] to Resolution No. 09-0946.

Antecedent Facts

On December 1, 2009, Ibrahim filed his certificate of candidacy to run as Vice-Mayor of Datu-Unsay in the May 10, 2010 elections. Thereafter, respondent Rolan G. Buagas (Buagas), then Acting Election Officer in the said municipality, forwarded to the COMELEC's Law Department (Law Department) the names of 20 candidates who were not registered voters therein. The list[5] included Ibrahim's name, along with those of two candidates for mayor, one for vice-mayor and 16 for councilor.

In a Memorandum[6] dated December 10, 2009, the Law Department brought to the attention of the COMELEC *en banc* the names of 56 candidates running for various posts in Maguindanao and Davao del Sur who were not registered voters of the municipalities where they sought to be elected. The Law Department recommended the retention of the said names in the Certified List of Candidates, but for the COMELEC to *motu proprio* institute actions against them for disqualification and for violation of election laws. Thereafter, the COMELEC *en banc* issued the herein assailed December 22, 2009 Resolution approving, but with modification, the Law Department's recommendation in the following wise:

1. to *disqualify* the foregoing candidates for not being registered voters of the respective municipalities where they seek to be *elected*

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[3] *Id.* at 97-100.

[4] *Id.* at 66-73.

[5] Please see Memorandum dated December 2, 2009, *id.* at 37.

[6] Portions of the Memorandum were quoted in the "Excerpt from the Minutes of the Regular *En Banc* Meeting of the Commission on Elections Held on December 22, 2009, *id.* at 26-29.

without prejudice to their filing of an opposition within two (2) days from publication hereof; and

2. to file election offense cases against said candidates for violation of Sec. 74 in relation to Sec. 262 of the Omnibus Election Code.[7] (Italics ours)

On January 8, 2010, Ibrahim and 50 other candidates filed a Petition/Opposition[8] to assail the Resolution dated December 22, 2009. In the Petition/Opposition, which was docketed as SPA 10-002 (MP) LOCAL, it was stressed that some of those affected by the Resolution dated December 22, 2009 had participated as candidates in the 2004 and 2007 elections. If indeed they were not registered voters, they should have been disqualified then. Further, it was emphasized that the candidates who filed the Petition/Opposition were permanent residents and were domiciled at the place where they sought to be elected.

The COMELEC *en banc* denied the Petition/Opposition through the herein assailed Resolution dated May 6, 2010. The COMELEC declared that the Resolution dated December 22, 2009 was anchored on the certification, which was issued by Buagas and Acting Provincial Election Supervisor of Maguindanao, Estelita B. Orbase, stating that Ibrahim, among other candidates, were not registered voters of Datu Unsay, Maguindanao. The certification was issued in the performance of official duty, hence, the presumption of regularity attached to it in the absence of contrary evidence. Ibrahim and company failed to adduce evidence proving their allegations of registration and residence.

In the May 10, 2010 elections, during which time the Resolution dated May 6, 2010 had not yet attained finality, Ibrahim obtained 446 votes, the highest number cast for the Vice-Mayoralty race in Datu Unsay.[9] However, the Municipal

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[7] *Id.* at 28.

[8] *Id.* at 66-73.

[9] Please see City/Municipal Certificate of Canvass, *id.* at 102.

Board of Canvassers (MBOC), which was then chaired by Buagas, suspended Ibrahim's proclamation on the basis of Section 5, Rule 25[10] of the COMELEC Rules of Procedure.[11]

Issue

Whether or not the COMELEC *en banc* acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the Resolutions dated December 22, 2009 and May 6, 2010.

Arguments in Support of the Instant Petition

Ibrahim posits that the MBOC is a ministerial body created merely "to take the returns as made from the different voting precincts, add them up and declare the result."[12] As long as the returns are on their face genuine and are signed by the proper officers, *sans* indications of being spurious and forged, they cannot be rejected on the ground of alleged questions on the qualifications of voters and the existence of electoral frauds and irregularities. Further, since Ibrahim received the highest number of votes for Vice-Mayor, all possible doubts should be resolved in favor of his eligibility, lest the will of the electorate, which should be the paramount consideration, be defeated.[13]

In its Manifestation and Motion in Lieu of Comment,[14] the Office of the Solicitor General (OSG) proposes for the instant

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[10] Sec. 5. *Effect of Petition if Unresolved Before Completion of Canvass.* — If the petition, for reasons beyond the control of the Commission, cannot be decided before the completion of the canvass, the votes cast for the respondent may be included in the counting and in the canvassing; however, if the evidence of guilt is strong, his proclamation *shall* be suspended notwithstanding the fact that he received the winning number of votes in such election. (Italics ours)

[11] Please see Certificate of Canvass of Votes and Proclamation of Winning Candidates for Datu Unsay Mayor and Vice-Mayor, *rollo*, p. 101.

[12] Citing *Abdullah Sangki v. COMELEC, et al.*, 129 Phil. 666, 673 (1967).

[13] Citing *Sinaca v. Mula*, 373 Phil. 896 (1999).

[14] *Rollo*, pp. 115-138.

Petition to be granted. The OSG points out that in *Cipriano v. Commission on Elections*,[15] this court nullified, for lack of proper proceedings before their issuance, the resolutions issued by the COMELEC relative to the cancellation of a certificate of candidacy. The OSG emphasizes that similarly, Ibrahim was disqualified as a candidate without prior notice and hearing and he was given the chance to file an opposition only after the issuance of the Resolution dated December 22, 2009.

Further citing *Bautista v. Comelec*,[16] the OSG argues that jurisdiction over petitions to cancel a certificate of candidacy pertains to the COMELEC sitting in division and not to the COMELEC *en banc*. The COMELEC *en banc* can only take cognizance of petitions to cancel a certificate of candidacy when the required number of votes for a division to reach a decision, ruling, order or resolution is not obtained, or when motions for reconsideration are filed to assail the said issuances of a division.

The OSG likewise refers to Section 4(B)(3)[17] of Resolution No. 8696[18] to stress that generally, the COMELEC cannot *motu*

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[15] 479 Phil. 677 (2004).

[16] 460 Phil. 459 (2003).

[17] B. PETITION TO DISQUALIFY A CANDIDATE PURSUANT TO SECTION 68 OF THE OMNIBUS ELECTION CODE AND PETITION TO DISQUALIFY FOR LACK OF QUALIFICATIONS OR POSSESSING SOME GROUNDS FOR DISQUALIFICATION

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3. The petition to disqualify a candidate for lack of qualification or possessing some grounds for disqualification, shall be filed in ten (10) legible copies, personally or through a duly authorized representative, *by any person* of voting age, *or duly registered political party, organization or coalition of political parties* on the ground that the candidate does not possess all the qualifications as provided by the Constitution or by existing law or who possesses some grounds for disqualification as provided for by the Constitution or by existing law.

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(Italics ours)

[18] Rules on Disqualification Cases Filed in Connection with the May 10, 2010 Automated National and Local Elections, promulgated on November 11, 2010.

proprio file petitions for disqualification against candidates. Section 5[19] of the same resolution, however, provides the only exception to the foregoing, to wit, that certificates of candidacy of those running for the positions of President, Vice-President, Senator and Party-List maybe denied due course and canceled *motu proprio* by the COMELEC based on grounds enumerated therein. While there was a Petition for Disqualification[20] filed by Bai Reshal S. Ampatuan against Ibrahim and company, it was not the basis for the COMELEC *en banc's* issuance of the Resolutions dated December 22, 2009 and May 6, 2010. Instead, the certification issued by Buagas was the basis for the subsequent actions of the Law Department and the COMELEC *en banc* leading to the issuance of the herein assailed resolutions.

The OSG also invokes Section 16[21] of COMELEC Resolution No. 8678[22] to assert that the MBOC had no authority to order the suspension of Ibrahim's proclamation. Upon motion, the suspension of a winning candidate's proclamation can be ordered during the pendency of a disqualification case before the COMELEC. However, only the COMELEC, as a tribunal, has the authority to issue orders relative to cases pending before it.

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[19] Sec. 5. *Motu Proprio* Cases. — The Commission may, at any time before the election, *motu proprio* refuse to give due course to or cancel any certificate of candidacy of any candidate for the positions of President, Vice-President, Senator and Party-List xxx.

[20] The petition, docketed as SPA No. 09-204 (DC), was dismissed through a resolution (*id.* at 91-96) issued on March 2, 2010 by the COMELEC's Second Division; *rollo,* pp. 30-34.

[21] Sec. 16. Effects of Disqualification. — Any candidate who has been declared disqualified by final judgment shall not be voted for and the votes cast in his favor shall not be counted. If, for any reason, he is not declared disqualified by final judgment before the election and he is voted for and receives the winning number of votes, the case shall continue and upon motion of the petitioner, complainant, or intervenor, the proclamation of such candidate *may be ordered suspended during the pendency of the said case* whenever the evidence is strong. (Italics ours)

[22] Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections, promulgated on October 6, 2009.

The MBOC cannot substitute its own judgment for that of the COMELEC's. The MBOC can suspend a winning candidate's proclamation only when an actual issue within the Board's jurisdiction arises in the course of conducting a canvass. The aforementioned issues include the commission of violent and terrorist acts or the occurrence of a calamity at the canvassing site. Absent any determination of irregularity in the election returns, as well as an order enjoining the canvassing and proclamation of the winner, it is a mandatory and ministerial duty of the MBOC concerned to count the votes based on such returns and declare the result.[23]

It is also the OSG's position that Section 5, Rule 25[24] of the COMELEC Rules of Procedure was irregularly worded for using the word "shall" when Section 6[25] of Republic Act (R.A.) No. 6646,[26] which the rules seek to implement, merely employed the word "may". The use of the word "may" indicates that the suspension of a proclamation is merely directory and permissive in nature and operates to confer discretion.[27]

The COMELEC's Contentions

In the Compliance[28] filed with the court, the COMELEC assails as improper Ibrahim's immediate resort to the instant Petition

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[23] Citing *Grego v. Commission on Elections*, 340 Phil. 591, 608 (1997).

[24] *Supra* note 10.

[25] Sec. 6. Effect of Disqualification Case. — Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, *may* during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Italics ours).

[26] An Act Introducing Additional Reforms in the Electoral System and for Other Purposes, effective January 5, 1988.

[27] *Supra* note 23, at 606; citation omitted.

[28] *Rollo*, pp. 146-158.

for *Certiorari* under Rule 64 of the Rules of Court. Despite the issuance of the herein assailed resolutions, Ibrahim's name was not stricken off from the certified list of candidates during the May 10, 2010 elections and the votes cast for him were counted. Hence, no actual prejudice was caused upon him as the COMELEC did not even direct the MBOC to suspend his proclamation. It was the MBOC's ruling which resulted to the suspension of his proclamation. Such being the case, Ibrahim should have instead filed a pre-proclamation controversy before the COMELEC anchored on the supposed illegality of the MBOC's proceedings. Section 241 of Batas Pambansa Blg. 881 (BP 881), otherwise known as the Omnibus Election Code (OEC), defines pre-proclamation controversies as referring to any questions "pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised xxx in relation to the preparation, transmission, receipt, custody and appreciation of the election returns." Had Ibrahim instituted instead a pre-proclamation controversy, the COMELEC could have corrected the MBOC's ruling, if indeed, it was erroneous.

The COMELEC further argues that Ibrahim was not denied due process as he and the other candidates referred to in the Resolutions dated December 22, 2009 and May 6, 2010 were given the opportunity to file their opposition. Ibrahim did file his Petition/Opposition and sought reliefs from the *COMELEC en banc*. Now, he should not be allowed to repudiate the proceedings merely because the result was adverse to him. Moreover, the OSG's invocation of the doctrines enunciated in *Bautista v. Comelec*[29] is misplaced because in the said case, there was a total absence of notice and hearing.

The COMELEC emphasizes that Ibrahim was undeniably not a registered voter in Datu Unsay when he ran as Vice-Mayor

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[29] *Supra* note 16.

in the May 10, 2010 elections. He cannot possess any mandate to serve as an elected official as by his act and willful misrepresentations, he had deceived the electorate.

Our Ruling

We grant the instant Petition.

Before resolving the merits of the petition, the court shall first dispose of the procedural issue raised by the COMELEC.

Ibrahim properly resorted to the instant Petition filed under Rule 64 of the Rules of Court to assail the Resolutions dated December 22, 2009 and May 6, 2010 of the COMELEC *en banc*.

The COMELEC seeks the dismissal of the instant Petition on the basis of a technical ground, to wit, that Ibrahim's resort to a petition for *certiorari* filed under Rule 64 of the Rules of Court to challenge the Resolutions dated December 22, 2009 and May 6, 2010 is improper. Ibrahim should have instead filed before the COMELEC a pre-proclamation controversy to allow the latter to correct the MBOC's ruling if it was indeed erroneous.

The claim fails to persuade.

Section 7, Article IX of the 1987 Constitution in part substantially provides that any decision, order or ruling of any of the Constitutional Commissions may be brought for review to the Supreme Court on *certiorari* within 30 days from receipt of a copy thereof. The orders, ruling and decisions rendered or issued by the COMELEC *en banc* must be final and made in the exercise of its adjudicatory or quasi-judicial power.[30] Further, Section 1, Rule 64 of the Rules of Court states that it shall govern the review of final judgments and orders or resolutions of the COMELEC and the Commission on Audit.

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[30] *Cayetano v. Commission on Elections*, G.R. No. 193846, April 12, 2011, 648 SCRA 561, 569.

A pre-proclamation controversy is defined in Section 241 of the OEC as referring to "any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of parties before the board or directly with the Commission, or any matter raised under Sections 233,[31] 234,[32] 235[33] and 236[34] in relation to the preparation, transmission, receipt, custody and appreciation of the election returns." Section 243 of the OEC restrictively enumerates as follows the issues which can be raised in a pre-proclamation controversy:

(a) Illegal composition or proceedings of the board of canvassers;

(b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;

(c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and

(d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

The illegality of the proceedings of the board of canvassers is the first issue which may be raised in a pre-proclamation controversy. To illustrate, the proceedings are to be considered as illegal when the board is constituted not in accordance with law, or is composed of members not enumerated therein, or when business is transacted *sans* a quorum.

In the case at bar, the now assailed Resolutions dated December 22, 2009 and May 6, 2010 were issued with finality by the COMELEC *en banc*. Under the Constitution and the

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[31] When the election returns are delayed, lost or destroyed

[32] Material defects in the election returns

[33] When election returns appear to be tampered with or falsified

[34] Discrepancies in election returns

Rules of Court, the said resolutions can be reviewed by way of filing before us a petition for *certiorari.* Besides, the issues raised do not at all relate to alleged irregularities in the preparation, transmission, receipt, custody and appreciation of the election returns or to the composition and proceedings of the board of canvassers. What the instant Petition challenges is the authority of the MBOC to suspend Ibrahim's proclamation and of the COMELEC *en banc* to issue the assailed resolutions. The crux of the instant Petition does not qualify as one which can be raised as a pre-proclamation controversy.

The COMELEC *en banc* is devoid of authority to disqualify Ibrahim as a candidate for the position of Vice-Mayor of Datu Unsay.

Section 3(C), Article IX of the 1987 Constitution explicitly provides:

> Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of *election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc*. (Italics ours)

Further, the circumstances obtaining in *Bautista v. Comelec*[35] cited by the OSG in its Manifestation are similar to those attendant to the instant Petition. In *Bautista*, the election officer reported to the Law Department that Bautista was ineligible to run as a candidate by reason of his being an unregistered voter. The Law Department recommended to the COMELEC *en banc* to deny due course or cancel Bautista's certificate of candidacy. The COMELEC *en banc* adopted the recommendation and consequently issued a resolution. In the said case, this Court discussed the COMELEC *en banc*'s jurisdiction over petitions for disqualification, for denial of due course, or cancellation of certificates of candidacy in the following wise:

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[35] *Supra* note 16.

In *Garvida v. Sales, Jr.*, the Court held that *it is the COMELEC sitting in division and not the COMELEC en banc which has jurisdiction over petitions to cancel a certificate of candidacy.* The Court held:

> The Omnibus Election Code, in Section 78, Article IX, governs the procedure to deny due course to or cancel a certificate of candidacy, *viz*:
>
> *"Sec.78. Petition to deny due course to or cancel a certificate of candidacy. — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false.* The petition may be filed at any time not later than twenty-five days from the time of filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before election."

In relation thereto, Rule 23 of the COMELEC Rules of Procedure provides that a petition to deny due course to or cancel a certificate of candidacy for an elective office may be filed with the Law Department of the COMELEC on the ground that the candidate has made a false material representation in his certificate. The petition may be heard and evidence received by any official designated by the COMELEC after which the case shall be decided by the COMELEC itself.

Under the same Rules of Procedure, jurisdiction over a petition to cancel a certificate of candidacy lies with the COMELEC sitting in Division, not en banc. Cases before a Division may only be entertained by the COMELEC en banc when the required number of votes to reach a decision, resolution, order or ruling is not obtained in the Division. Moreover, only motions to reconsider decisions, resolutions, orders or rulings of the COMELEC in Division are resolved by the COMELEC en banc.

x x x x x x x x x

Under Section 3, Rule 23 of the 1993 COMELEC Rules of Procedure, a petition for the denial or cancellation of a certificate of candidacy must be heard summarily after due notice. *It is thus clear that cancellation proceedings involve the exercise of the quasi-judicial functions of the COMELEC which the COMELEC in division*

should first decide. More so in this case where the cancellation proceedings originated not from a petition but from a report of the election officer regarding the lack of qualification of the candidate in the barangay election. The COMELEC *en banc* cannot short cut the proceedings by acting on the case without a prior action by a division because it denies due process to the candidate.[36] (Citation omitted and italics ours)

In the case at bar, the COMELEC *en banc*, through the herein assailed resolutions, ordered Ibrahim's disqualification even when no complaint or petition was filed against him yet. Let it be stressed that if filed before the conduct of the elections, a petition to deny due course or cancel a certificate of candidacy under Section 78 of the OEC is the appropriate petition which should have been instituted against Ibrahim considering that his allegedly being an unregistered voter of Datu Unsay disqualified him from running as Vice-Mayor. His supposed misrepresentation as an eligible candidate was an act falling within the purview of Section 78 of the OEC. **Moreover, even if we were to assume that a proper petition had been filed, the COMELEC *en banc* still acted with grave abuse of discretion when it took cognizance of a matter, which by both constitutional prescription and jurisprudential declaration, instead aptly pertains to one of its divisions**.

Ibrahim is not estopped from challenging the COMELEC *en banc's* jurisdiction to issue the assailed resolutions.

In *Republic v. Bantigue Point Development Corporation*,[37] we stated:

The rule is settled that lack of jurisdiction over the subject matter may be raised at any stage of the proceedings. Jurisdiction over the subject matter is conferred only by the Constitution or the law. It cannot be acquired through a waiver or enlarged by the omission

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[36] *Id.* at 474, 477.

[37] G.R. No. 162322, March 14, 2012, 668 SCRA 158.

of the parties or conferred by the acquiescence of the court. Consequently, questions of jurisdiction may be cognizable even if raised for the first time on appeal.

The ruling of the Court of Appeals that "a party may be estopped from raising such [jurisdictional] question if he has actively taken part in the very proceeding which he questions, belatedly objecting to the court's jurisdiction in the event that the judgment or order subsequently rendered is adverse to him" is based on the doctrine of estoppel by laches. We are aware of that doctrine first enunciated by this Court in *Tijam v. Sibonghanoy*. In Tijam, the party-litigant actively participated in the proceedings before the lower court and filed pleadings therein. *Only 15 years thereafter, and after receiving an adverse Decision on the merits from the appellate court, did the party-litigant question the lower court's jurisdiction.* Considering the unique facts in that case, we held that estoppel by laches had already precluded the party-litigant from raising the question of lack of jurisdiction on appeal. *In Figueroa v. People, we cautioned that Tijam must be construed as an exception to the general rule and applied only in the most exceptional cases whose factual milieu is similar to that in the latter case*.[38] (Citations omitted and italics ours)

As enunciated above, estoppel by laches can only be invoked in exceptional cases with factual circumstances similar to those in *Tijam.*[39] In the case now before us, the assailed resolutions were issued on December 22, 2009 and May 6, 2010. The instant Petition, which now raises, among others, the issue of the COMELEC *en banc*'s jurisdiction, was filed on June 3, 2010. With the prompt filing of the instant Petition, Ibrahim can hardly be considered as guilty of laches.

Ibrahim was not denied due process.

Interminably, we have declared that deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.[40]

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[38] *Id.* at 163-164.

[39] 131 Phil. 556 (1968).

[40] *Villarosa v. COMELEC*, 377 Phil. 497, 504 (1999); citation omitted.

In the case before us, Ibrahim was afforded the chance to file an opposition to the assailed resolutions. Nonetheless, even if due process was substantially observed, the assailed resolutions remain null and void for want of authority on the part of the COMELEC *en banc* to take cognizance of a matter which should have instead been referred to one of its divisions.

The MBOC has no authority to suspend Ibrahim's proclamation especially since the herein assailed resolutions, upon which the suspension was anchored, were issued by the COMELEC *en banc* outside the ambit of its jurisdiction.

Mastura v. COMELEC[41] is emphatic that:

> *(T)he board of canvassers is a ministerial body.* It is enjoined by law to canvass all votes on election returns submitted to it in due form. It has been said, and properly, that its powers are limited generally to the mechanical or mathematical function of ascertaining and declaring the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns before them, and then declaring or certifying the result so ascertained. x x x.[42] (Italics ours)

The simple purpose and duty of the canvassing board is to ascertain and declare the apparent result of the voting while all other questions are to be tried before the court or other tribunal for contesting elections or in *quo warranto* proceedings.[43]

In the case at bar, the MBOC *motu proprio* suspended Ibrahim's proclamation when the issue of the latter's eligibility is a matter which the board has no authority to resolve. Further, under Section 6[44] of R.A. 6646, the COMELEC and not the

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[41] 349 Phil. 423 (1998).

[42] *Id.* at 430.

[43] *Supra* note 23, at 609, citing *Dizon v. Provincial Board of Canvassers of Laguna*, 52 Phil. 47 (1929).

[44] *Supra* note 25.

MBOC has the authority to order the suspension of a winning candidates's proclamation. Such suspension can only be ordered upon the motion of a complainant or intervenor relative to a case for disqualification, or a petition to deny due course or cancel a certificate of candidacy pending before the COMELEC, and only when the evidence of the winning candidate's guilt is strong. Besides, the COMELEC *en banc* itself could not have properly ordered Ibrahim's disqualification because in taking cognizance of the matter, it had already exceeded its jurisdiction.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is **GRANTED.** The December 22, 2009 and May 6, 2010 Resolutions issued by the COMELEC *en banc* is **ANNULLED and SET ASIDE.** Consequently, the suspension by the MBOC of Ibrahim's proclamation on the basis of the herein assailed resolutions is likewise **ANNULLED and SET ASIDE.** In the absence of a judgment, order or resolution relative to another action or petition finally disqualifying Ibrahim, denying due course or cancelling his certificate of candidacy, the MBOC of Datu Unsay is directed to convene within ten (10) days from receipt hereof and to proclaim Ibrahim as the duly-elected Vice-Mayor of the said municipality.

SO ORDERED.

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

EN BANC

[G.R. No. 201716. January 8, 2013]

MAYOR ABELARDO ABUNDO, SR., *petitioner, vs.* **COMMISSION ON ELECTIONS and ERNESTO R. VEGA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTION; LOCAL GOVERNMENTS; TERM OF OFFICE OF ELECTIVE LOCAL OFFICIALS; THREE-TERM LIMIT RULE; REQUISITES.— The three-term limit rule for elective local officials, a disqualification rule, is found in Section 8, Article X of the 1987 Constitution, x x x and is reiterated in Sec. 43(b) of Republic Act No. (RA) 7160, or the Local Government Code (LGC) of 1991. x x x To constitute a disqualification to run for an elective local office pursuant to the aforequoted constitutional and statutory provisions, the following requisites must concur: (1) that the official concerned has been ***elected for three consecutive terms*** in the same local government post; and (2) that he has ***fully served three consecutive terms***.

2. ID.; ID.; ID.; ID.; ID.; PREVAILING JURISPRUDENCE ON ISSUES AFFECTING CONSECUTIVENESS OF TERMS AND/OR INVOLUNTARY INTERRUPTION.— [H]ereunder are the prevailing jurisprudence on issues affecting consecutiveness of terms and/or involuntary interruption, *viz*: 1. When a permanent vacancy occurs in an elective position and the official merely assumed the position pursuant to the rules on succession under the LGC, then his service for the unexpired portion of the term of the replaced official cannot be treated as one full term as contemplated under the subject constitutional and statutory provision that service cannot be counted in the application of any term limit (*Borja, Jr.*). If the official runs again for the same position he held prior to his assumption of the higher office, then his succession to said position is by operation of law and is considered an involuntary severance or interruption (*Montebon*). 2. An elective

official, who has served for three consecutive terms and who did not seek the elective position for what could be his fourth term, but later won in a recall election, had an interruption in the continuity of the official's service. For, he had become in the interim, *i.e.*, from the end of the 3rd term up to the recall election, a private citizen (*Adormeo* and *Socrates*). 3. The abolition of an elective local office due to the conversion of a municipality to a city does not, by itself, work to interrupt the incumbent official's continuity of service (*Latasa*). 4. Preventive suspension is not a term-interrupting event as the elective officer's continued stay and entitlement to the office remain unaffected during the period of suspension, although he is barred from exercising the functions of his office during this period (*Aldovino, Jr.*). 5. When a candidate is proclaimed as winner for an elective position and assumes office, his term is interrupted when he loses in an election protest and is ousted from office, thus disenabling him from serving what would otherwise be the unexpired portion of his term of office had the protest been dismissed (*Lonzanida* and *Dizon*). The break or interruption need not be for a full term of three years or for the major part of the 3-year term; an interruption for any length of time, provided the cause is involuntary, is sufficient to break the continuity of service (*Socrates*, citing *Lonzanida*). 6. When an official is defeated in an election protest and said decision becomes final after said official had served the full term for said office, then his loss in the election contest *does not* constitute an interruption since he has managed to serve the term from start to finish. His full service, despite the defeat, should be counted in the application of term limits because the nullification of his proclamation came after the expiration of the term (*Ong* and *Rivera*).

3. ID.; ID.; ID.; ID.; ID.; SERVICE LESS THAN THE FULL THREE YEARS TERM BY AN ELECTED OFFICIAL DECLARED AS SUCH UPON AN ELECTION PROTEST IS *NOT* FULL SERVICE OF THE TERM FOR PURPOSES OF APPLYING THE THREE CONSECUTIVE TERM LIMIT FOR ELECTIVE LOCAL OFFICIALS.— For four (4) successive regular elections, namely, the 2001, 2004, 2007 and 2010 national and local elections, Abundo vied for the position of municipal mayor of Viga, Catanduanes. In both the 2001 and 2007 runs, he emerged and was proclaimed as

the winning mayoralty candidate and accordingly served the corresponding terms as mayor. In the 2004 electoral derby, however, the Viga municipal board of canvassers initially proclaimed as winner one Jose Torres (Torres), who, in due time, performed the functions of the office of mayor. Abundo protested Torres' election and proclamation. Abundo was eventually declared the winner of the 2004 mayoralty electoral contest, paving the way for his assumption of office starting May 9, 2006 until the end of the 2004-2007 term on June 30, 2007, or for a period of a little over one year and one month. x x x The pivotal determinative issue then is whether the service of a term less than the full three years by an elected official arising from his being declared as the duly elected official upon an election protest is considered as full service of the term for purposes of the application of the three consecutive term limit for elective local officials. x x x In the present case, the Court finds Abundo's case meritorious and declares that ***the two-year period during which his opponent, Torres, was serving as mayor should be considered as an interruption, which effectively removed Abundo's case from the ambit of the three-term limit rule.***

4. ID.; ID.; ID.; ID.; ID.; ID.; INVOLUNTARY INTERRUPTION OF OFFICE TERM; PRESENT IN CASE AT BAR.— While appearing to be seemingly simple, the three-term limit rule has engendered a host of disputes resulting from the varying interpretations applied on local officials who were elected and served for three terms or more, but whose terms or service was punctuated by what they view as involuntary interruptions, thus entitling them to a, but what their opponents perceive as a proscribed, fourth term. Involuntary interruption is claimed to result from any of these events or causes: succession or assumption of office by operation of law, preventive suspension, declaration of the defeated candidate as the winner in an election contest, declaration of the proclaimed candidate as the losing party in an election contest, proclamation of a non-candidate as the winner in a recall election, removal of the official by operation of law, and other analogous causes. x x x The facts of the case clearly point to an involuntary interruption during the July 2004-June 2007 term. There can be no quibbling that, during the term 2004-2007, and with the enforcement of the decision of the election protest in his favor, Abundo assumed

the mayoralty post only on May 9, 2006 and served the term until June 30, 2007 or for a period of a little over **one year and one month**. Consequently, it cannot be said that Mayor Abundo was able to serve *fully* the entire 2004-2007 term to which he was otherwise entitled.

BRION, *J., separate opinion:*

POLITICAL LAW; CONSTITUTION; LOCAL GOVERNMENTS; TERM OF OFFICE OF ELECTIVE LOCAL OFFICIALS; THREE-TERM LIMIT RULE; ON INTERRUPTION THEREOF, CASE OF *ALDOVINO V. COMELEC* WHERE ELECTED OFFICIAL WAS PREVENTIVELY SUSPENDED FROM OFFICE CANNOT BE EQUATED HERE WHERE PETITIONER WAS BELATEDLY PROCLAIMED ELECTED OFFICIAL IN AN ELECTION PROTEST.— The issue in *Aldovino* was whether the *preventive suspension* of a local elective official amounted to an interruption in the continuity of his term for the purpose of applying the three-term limit rule. x x x Based on its analysis of the provision and after a survey of jurisprudence on the three-term limit rule, the Court concluded that the interruption of a term that would prevent the operation of the rule involves "no less than the involuntary loss of title to office" or "at least an effective break from holding office[.] x x x The Court further concluded that while preventive suspension is involuntary in nature, its imposition on an elective local official cannot amount to an interruption of a term "because the suspended official *continues x x x in office* although he is barred from exercising the functions and prerogatives of the office within the suspension period." Based on these clear rulings, I consider it a grave error for the Comelec to equate the situation of a *preventively suspended elective local official* with the situation of a *non-proclaimed candidate who was later found to have actually won the election.* x x x The proclamation alone of an *apparent winner* (*i.e.*, the candidate immediately proclaimed but whose election is protested) entitles him to take his oath of office and to perform his duties as a newly-elected local official. That he may be characterized merely as a "presumptive winner" during the pendency of a protest against him does not make him any less of a duly elected local official; for the time being, he possesses all the rights and is burdened with all the duties of his office

under the law. In stark contrast with his situation, the non-proclaimed candidate cannot but be considered a private citizen while prosecuting his election protest; x x x Notably in *Aldovino*, while a preventive suspension is an involuntary imposition, what it affects is merely the authority to discharge the functions of an office that the suspended local official continues to hold.

APPEARANCES OF COUNSEL

G.E. Garcia Law Office for petitioner.
The Solicitor General for public respondent.
Hernandez Surtida & Galicia for private respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for *Certiorari* under Rule 65, petitioner Abelardo Abundo, Sr. (Abundo) assails and seeks to nullify (1) the February 8, 2012 Resolution[1] of the Second Division, Commission on Elections (COMELEC), in EAC (AE) No. A-25-2010 and (2) the May 10, 2012 Resolution[2] of the COMELEC *en banc* affirming that division's disposition. The assailed issuances, in turn, affirmed the Decision of the Regional Trial Court (RTC) of Virac, Catanduanes, Branch 43, dated August 9, 2010, in Election Case No. 55 declaring Abundo as ineligible, under the three-term limit rule, to run in the 2010 elections for the position of, and necessarily to sit as, Mayor of Viga, Catanduanes.

The antecedent facts are undisputed.

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[1] *Rollo*, pp. 47-56. Rendered by Presiding Commissioner Lucenito N. Tagle and Commissioner Elias R. Yusoph with Commissioner Augusto C. Lagman, dissenting. Dissenting Opinion, *id.* at 57-58.

[2] *Id.* at 40-46, per Commissioner Elias R. Yusoph and concurred in by Chairman Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Armando C. Velasco and Christian Robert S. Lim.

For four (4) successive regular elections, namely, the 2001, 2004, 2007 and 2010 national and local elections, Abundo vied for the position of municipal mayor of Viga, Catanduanes. In both the 2001 and 2007 runs, he emerged and was proclaimed as the winning mayoralty candidate and accordingly served the corresponding terms as mayor. In the 2004 electoral derby, however, the Viga municipal board of canvassers initially proclaimed as winner one Jose Torres (Torres), who, in due time, performed the functions of the office of mayor. Abundo protested Torres' election and proclamation. Abundo was eventually declared the winner of the 2004 mayoralty electoral contest, paving the way for his assumption of office starting May 9, 2006 until the end of the 2004-2007 term on June 30, 2007, or for a period of a little over one year and one month.

Then came the May 10, 2010 elections where Abundo and Torres again opposed each other. When Abundo filed his certificate of candidacy[3] for the mayoralty seat relative to this electoral contest, Torres lost no time in seeking the former's disqualification to run, the corresponding petition,[4] docketed as SPA Case No. 10-128 (DC), predicated on the three-consecutive term limit rule. On June 16, 2010, the COMELEC First Division issued a Resolution[5] finding for Abundo, who in the meantime bested Torres by 219 votes[6] and was accordingly proclaimed 2010 mayor-elect of Viga, Catanduanes.

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[3] *Id.* at 134.

[4] *Id.* at 127-133, dated March 10, 2010.

[5] *Id.* at 61-65, *per curiam* by Commissioners Rene V. Sarmiento (Presiding Commissioner), Armando C. Velasco and Gregorio Y. Larrazabal. The Resolution disposed as follows:

> WHEREFORE, premises considered, the petition to disqualify filed by petitioner Jose C. Torres against respondent Abelardo M. Abundo, Sr. is hereby DENIED for LACK OF MERIT.
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> SO ORDERED.

[6] *Id.* at 76-78, Certificate of Canvass of Votes and Proclamation of Winning Candidates for Viga Mayor and Vice-Mayor, dated May 11, 2010.

Meanwhile, on May 21, 2010, or before the COMELEC could resolve the adverted disqualification case Torres initiated against Abundo, herein private respondent Ernesto R. Vega (Vega) commenced a *quo warranto*[7] action before the RTC-Br. 43 in Virac, Catanduanes, docketed as Election Case No. 55, to unseat Abundo on essentially the same grounds Torres raised in his petition to disqualify.

The Ruling of the Regional Trial Court

By Decision[8] of August 9, 2010 in Election Case No. 55, the RTC declared Abundo ineligible to serve as municipal mayor, disposing as follows:

> WHEREFORE, Decision is, hereby, rendered GRANTING the petition and declaring Abelardo Abundo, Sr. ineligible to serve as municipal mayor of Viga, Catanduanes.
>
> SO ORDERED.[9]

In so ruling, the trial court, citing *Aldovino, Jr. v. COMELEC,*[10] found Abundo to have already served three consecutive mayoralty terms, to wit, 2001-2004, 2004-2007 and 2007-2010, and, hence, disqualified for another, *i.e.*, fourth, consecutive term. Abundo, the RTC noted, had been declared winner in the aforesaid 2004 elections consequent to his protest and occupied the position of and actually served as Viga mayor for over a year of the remaining term, *i.e.*, from May 9, 2006 to June 30, 2007, to be exact. To the RTC, the year and a month service constitutes a complete and full service of Abundo's second term as mayor.

Therefrom, Abundo appealed to the COMELEC, his recourse docketed as EAC (AE) No. A-25-2010.

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[7] *Id.* at 66-74, Petition dated May 20, 2010.

[8] *Id.* at 93-99, per Presiding Judge Lelu P. Contreras.

[9] *Id.* at 99.

[10] G.R. No. 184836, December 23, 2009, 609 SCRA 234.

The Ruling of the COMELEC

On February 8, 2012, in EAC (AE) No. A-25-2010, the COMELEC's Second Division rendered the first assailed Resolution, the dispositive portion of which reads as follows:

> WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court Branch 73, Virac, Catanduanes is AFFIRMED and the appeal is DISMISSED for lack of merit.
>
> SO ORDERED.[11]

Just like the RTC, the COMELEC's Second Division ruled against Abundo on the strength of *Aldovino, Jr.* and held that service of the unexpired portion of a term by a protestant who is declared winner in an election protest is considered as service for one full term within the contemplation of the three-term limit rule.

In time, Abundo sought but was denied reconsideration by the COMELEC *en banc* per its equally assailed Resolution of May 10, 2012. The *fallo* of the COMELEC *en banc*'s Resolution reads as follows:

> WHEREFORE, premises considered, the motion for reconsideration is DENIED for lack of merit. The Resolution of the Commission (Second Division) is hereby AFFIRMED.
>
> SO ORDERED.[12]

In affirming the Resolution of its Second Division, the COMELEC *en banc* held in essence the following: *first*, there was no involuntary interruption of Abundo's 2004-2007 term service which would be an exception to the three-term limit rule as he is considered never to have lost title to the disputed office after he won in his election protest; and *second*, what the Constitution prohibits is for an elective official to be in office for the same position for more than three consecutive terms and not to the service of the term.

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[11] *Rollo*, pp. 55-56.

[12] *Id.* at 46.

Hence, the instant petition with prayer for the issuance of a temporary restraining order (TRO) and/or preliminary injunction.

Intervening Events

In the meantime, following the issuance by the COMELEC of its May 10, 2012 Resolution denying Abundo's motion for reconsideration, the following events transpired:

1. On June 20, 2012, the COMELEC issued an Order[13] declaring its May 10, 2012 Resolution final and executory. The following day, June 21, 2012, the COMELEC issued an Entry of Judgment.[14]

2. On June 25, 2012, Vega filed a Motion for Execution[15] with the RTC-Br. 43 in Virac, Catanduanes.

3. On June 27, 2012, the COMELEC, acting on Vega's counsel's motion[16] filed a day earlier, issued an Order[17] directing the bailiff of ECAD (COMELEC) to personally deliver the entire records to said RTC.

On June 29, 2012, the COMELEC ECAD Bailiff personally delivered the entire records of the instant case to, and were duly received by, the clerk of court of RTC-Br. 43.

4. On June 29, 2012, or on the same day of its receipt of the case records, the RTC-Br. 43 in Virac, Catanduanes granted

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[13] *Id.* at 347-348, Annex "A" of Abundo's Most Extremely Urgent Manifestation with Sixth (6th) Reiterative Motion to Resolve the Application for the Immediate Issuance of an Injunctive Writ Due to Supervening Event, dated June 22, 2012.

[14] *Id.* at 349, Annex "A-1" of Abundo's Most Extremely Urgent Manifestation with Sixth (6th) Reiterative Motion to Resolve the Application for the Immediate Issuance of an Injunctive Writ Due to Supervening Event, dated June 22, 2012.

[15] *Id.* at 390, Annex "C" of Vega's Manifestation with Leave to Admit, dated July 5, 2012.

[16] Filed on June 26, 2012.

[17] *Rollo*, p. 389, Annex "C" of Vega's Manifestation with Leave to Admit, dated July 5, 2012.

Vega's Motion for Execution through an Order[18] of even date. And a Writ of Execution[19] was issued on the same day.

5. On July 2, 2012, Sheriff Q. Tador, Jr. received the Writ of Execution and served the same at the office of Mayor Abundo on the same day via substituted service.

6. On July 3, 2012, the Court issued a TRO[20] enjoining the enforcement of the assailed COMELEC Resolutions.

7. On July 4, 2012, Vega received the Court's July 3, 2012 Resolution[21] and a copy of the TRO. On the same day, Vice-Mayor Emeterio M. Tarin and First Councilor Cesar O. Cervantes of Viga, Catanduanes took their oaths of office[22] as mayor and vice-mayor of Viga, Catanduanes, respectively.

8. On July 5, 2012, Vega received a copy of Abundo's Seventh (7th) Most Extremely Urgent Manifestation and Motion[23] dated June 28, 2012 praying for the issuance of a TRO and/or *status quo ante* Order. On the same day, Vice-Mayor Emeterio M. Tarin and First Councilor Cesar O. Cervantes—who had taken their oaths of office the day before—assumed the posts of mayor and vice-mayor of Viga, Catanduanes.[24]

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[18] *Id.* at 390-391, Annex "D" of Vega's Manifestation with Leave to Admit, dated July 5, 2012.

[19] *Id.* at 392, Annex "E" of Vega's Manifestation with Leave to Admit, dated July 5, 2012.

[20] *Id.* at 356-357.

[21] *Id.* at 357.

[22] *Id.* at 462, *Panunumpa sa Katungkulan* of Emeterio M. Tarin done on July 4, 2012, Annex "B" of Abundo's Most Urgent Manifestation and Motion to Convert the July 3, 2012 Temporary Restraining Order into a *Status Quo Ante* Order (In View of the Unreasonable and Inappropriate Progression of Events), dated July 4, 2012.

[23] *Id.* at 367.

[24] *Id.* at 463, 464, Certifications of the OIC, Provincial Director of the DILG, Annexes "B-1" and "B-2" of Abundo's Most Urgent Manifestation and Motion to Convert the July 3, 2012 Temporary Restraining Order into a *Status Quo Ante* Order (In View of the Unreasonable and Inappropriate Progression of Events), dated July 4, 2012.

9. On July 6, 2012, Vega interposed a Motion (To Admit Attached Manifestation)[25] and Manifestation with Leave to Admit[26] dated July 5, 2012 stating that the TRO thus issued by the Court has become *functus officio* owing to the execution of the RTC's Decision in Election Case No. 55.

10. On July 10, 2012, Vega filed his Comment/Opposition with Leave to the Petitioner's Prayer for the Issuance of a *Status Quo Ante* Order[27] reiterating the argument that since Vice-Mayor Emeterio M. Tarin and First Councilor Cesar O. Cervantes already assumed the posts of Mayor and Vice-Mayor of Viga, Catanduanes, then a *Status Quo Ante* Order would serve no purpose.

11. On July 12, 2012, Abundo filed his Most Urgent Manifestation and Motion to Convert the July 3, 2012 TRO into a *Status Quo Ante* Order (In View of the Unreasonable and Inappropriate Progression of Events).[28]

It is upon the foregoing backdrop of events that Abundo was dislodged from his post as incumbent mayor of Viga, Catanduanes. To be sure, the speed which characterized Abundo's ouster despite the supervening issuance by the Court of a TRO on July 3, 2012 is not lost on the Court. While it is not clear whether Vice-Mayor Tarin and First Councilor Cervantes knew of or put on notice about the TRO either before they took their oaths of office on July 4, 2012 or before assuming the posts of mayor and vice-mayor on July 5, 2012, the confluence of events following the issuance of the assailed COMELEC *en banc* irresistibly tends to show that the TRO—issued as it were to maintain the status quo, thus averting the premature ouster of Abundo pending this Court's resolution of his appeal—appears to have been trivialized.

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[25] *Id.* at 369-373, dated July 5, 2012.

[26] *Id.* at 374-420, dated July 5, 2012.

[27] *Id.* at 421-437, dated July 9, 2012.

[28] *Id.* at 438-482, dated July 4, 2012.

On September 11, 2012, Vega filed his Comment on Abundo's petition, followed not long after by public respondent COMELEC's Consolidated Comment.[29]

The Issues

Abundo raises the following grounds for the allowance of the petition:

6.1 The Commission *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared the arguments in Abundo's motion for reconsideration as mere rehash and reiterations of the claims he raised prior to the promulgation of the Resolution.

6.2 The Commission *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that Abundo has consecutively served for three terms despite the fact that he only served the remaining one year and one month of the second term as a result of an election protest.[30]

First Issue:
Arguments in Motion for Reconsideration Not Mere Reiteration

The COMELEC *en banc* denied Abundo's motion for reconsideration on the basis that his arguments in said motion are mere reiterations of what he already brought up in his appeal Brief before the COMELEC Second Division. In this petition, petitioner claims otherwise.

Petitioner's assertion is devoid of merit.

A comparison of Abundo's arguments in the latter's Brief *vis-à-vis* those in his Motion for Reconsideration (MR) reveals that the arguments in the MR are elucidations and amplications of the same issues raised in the brief. *First*, in his Brief, Abundo raised the *sole issue of lack of jurisdiction* of the RTC to consider

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[29] *Id.* at 639-665 (Vega's Comment); *id.* at 668-687, 697-719 (public respondent's Comment and Consolidated Comment, respectively).

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

the *quo warranto* case since the alleged violation of the three-term limit has already been rejected by the COMELEC First Division in SPA Case No. 10-128 (DC), while in his MR, Abundo raised the similar ground of the conclusiveness of the COMELEC's finding on the issue of his qualification to run for the current term. *Second*, in his Brief, Abundo assailed RTC's reliance on *Aldovino, Jr*., while in his MR, he argued that the Court's pronouncement in *Aldovino, Jr*., which dealt with preventive suspension, is not applicable to the instant case as it involves only a partial service of the term. Abundo argued in his Brief that his situation cannot be equated with the case of preventive suspension as held in *Aldovino, Jr*., while in his MR, he argued before that the almost two years which he did not sit as mayor during the 2004-2007 term is an interruption in the continuity of his service for the full term.

Thus, COMELEC did not err in ruling that the issues in the MR are a rehash of those in the Brief.

Core Issue:
Whether or not Abundo is deemed to have served three consecutive terms

The pivotal determinative issue then is whether the service of a term less than the full three years by an elected official arising from his being declared as the duly elected official upon an election protest is considered as full service of the term for purposes of the application of the three consecutive term limit for elective local officials.

On this core issue, We find the petition *meritorious*. The consecutiveness of what otherwise would have been Abundo's three successive, continuous mayorship was effectively broken during the 2004-2007 term when he was initially deprived of title to, and was veritably disallowed to serve and occupy, an office to which he, after due proceedings, was eventually declared to have been the rightful choice of the electorate.

The three-term limit rule for elective local officials, a disqualification rule, is found in Section 8, Article X of the 1987 Constitution, which provides:

> Sec. 8. The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and **no such official shall serve for more than three consecutive terms**. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. (Emphasis supplied.)

and is reiterated in Sec. 43(b) of Republic Act No. (RA) 7160, or the Local Government Code (LGC) of 1991, thusly:

> Sec. 43. *Term of Office.* —
>
> x x x x x x x x x
>
> (b) **No local elective official shall serve for more than three (3) consecutive terms in the same position**. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected. (Emphasis Ours.)

To constitute a disqualification to run for an elective local office pursuant to the aforequoted constitutional and statutory provisions, the following requisites must concur:

(1) that the official concerned has been ***elected for three consecutive terms*** in the same local government post; and

(2) that he has ***fully served three consecutive terms***.[31]

Judging from extant jurisprudence, the three-term limit rule, as applied to the different factual milieus, has its complicated side. We shall revisit and analyze the various holdings and relevant pronouncements of the Court on the matter.

As is clearly provided in Sec. 8, Art. X of the Constitution as well as in Sec. 43(b) of the LGC, voluntary renunciation of the office by the incumbent elective local official for any length of time shall NOT, in determining service for three consecutive terms, be considered an interruption in the continuity of service for the full term for which the elective official concerned was

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[31] *Lonzanida v. Commission on Elections*, G.R. No. 135150, July 28, 1999, 311 SCRA 602.

elected. In *Aldovino, Jr.*, however, the Court stated the observation that the law "does not *textually* state that voluntary renunciation is the *only* actual interruption of service that does not affect 'continuity of service for a full term' for purposes of the three-term limit rule."[32]

As stressed in *Socrates v. Commission on Elections*,[33] the principle behind the three-term limit rule covers only *consecutive terms* and that what the Constitution prohibits is a ***consecutive fourth term***. Put a bit differently, an elective local official cannot, following his third consecutive term, seek immediate reelection for a fourth term,[34] albeit he is allowed to seek a fresh term for the same position after the election where he could have sought his fourth term but prevented to do so by reason of the prohibition.

There has, in fine, to be a break or interruption in the successive terms of the official after his or her third term. An interruption usually occurs when the official does not seek a fourth term, immediately following the third. Of course, the basic law is unequivocal that a "*voluntary renunciation of the office for any length of time shall NOT be considered an interruption in the continuity of service for the full term for which the elective official concerned was elected*." This qualification was made as a deterrent against an elective local official intending to skirt the three-term limit rule by merely resigning before his or her third term ends. This is a voluntary interruption as distinguished from involuntary interruption which may be brought about by certain events or causes.

While appearing to be seemingly simple, the three-term limit rule has engendered a host of disputes resulting from the varying interpretations applied on local officials who were elected and served for three terms or more, but whose terms or service was punctuated by what they view as involuntary interruptions, thus

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[32] *Aldovino Jr.*, *supra* note 10.

[33] G.R. No. 154512, November 12, 2002, 391 SCRA 457.

[34] *Id.*

entitling them to a, but what their opponents perceive as a proscribed, fourth term. Involuntary interruption is claimed to result from any of these events or causes: succession or assumption of office by operation of law, preventive suspension, declaration of the defeated candidate as the winner in an election contest, declaration of the proclaimed candidate as the losing party in an election contest, proclamation of a non-candidate as the winner in a recall election, removal of the official by operation of law, and other analogous causes.

This brings us to an examination of situations and jurisprudence wherein such consecutive terms were considered or not considered as having been "*involuntarily interrupted or broken.*"

(1) Assumption of Office by Operation of Law

In *Borja, Jr. v. Commission on Elections and Jose T. Capco, Jr.*[35] (1998) and *Montebon v. Commission on Elections*[36] (2008), the Court delved on the effects of "*assumption to office by operation of law*" on the three-term limit rule. This contemplates a situation wherein an elective local official fills by succession a higher local government post permanently left vacant due to any of the following contingencies, *i.e.*, when the supposed incumbent refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns or is otherwise permanently incapacitated to discharge the functions of his office.[37]

In *Borja, Jr.*, Jose T. Capco, Jr. (Capco) was elected vice-mayor of Pateros on January 18, 1988 for a term ending June 30, 1992. On September 2, 1989, Capco became mayor, by operation of law, upon the death of the incumbent mayor, Cesar Borja. Capco was then elected and served as mayor for terms 1992-1995 and 1995-1998. When Capco expressed his intention to run again for the mayoralty position during the 1998 elections,

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[35] G.R. No. 133495, September 3, 1998, 295 SCRA 157.

[36] G.R. No. 180444, April 8, 2008, 551 SCRA 50.

[37] Section 44, Chapter II "Vacancies and Succession," Title II "Elective Officials," Republic Act No. 7160, Local Government Code of 1991.

Benjamin U. Borja, Jr., who was then also a candidate for mayor, sought Capco's disqualification for violation of the three-term limit rule.

Finding for Capco, the Court held that for the disqualification rule to apply, "it is not enough that an individual has *served* three consecutive terms in an elective local office, he must also have been *elected* to the same position for the same number of times before the disqualification can apply."[38] There was, the Court ruled, *no violation of the three-term limit,* for Capco "*was not elected to the office of the mayor in the first term but simply found himself thrust into it by operation of law*"[39] when a permanent vacancy occurred in that office.

The Court arrived at a parallel conclusion in the case of *Montebon*. There, Montebon had been elected for three consecutive terms as municipal councilor of Tuburan, Cebu in 1998-2001, 2001-2004, and 2004-2007. However, in January 2004, or during his second term, Montebon succeeded and assumed the position of vice-mayor of Tuburan when the incumbent vice-mayor retired. When Montebon filed his certificate of candidacy again as municipal councilor, a petition for disqualification was filed against him based on the three-term limit rule. The Court ruled that Montebon's assumption of office as vice-mayor in January 2004 was an interruption of his continuity of service as councilor. The Court emphasized that ***succession in local government office is by operation of law*** **and as such, it is an involuntary severance from office.** Since the law no less allowed Montebon to vacate his post as councilor in order to assume office as vice-mayor, his occupation of the higher office cannot, without more, be deemed as a voluntary renunciation of his position as councilor.

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[38] *Borja, Jr., supra* note 35, at 169.

[39] *Id.*

(2) Recall Election

With reference to the effects of recall election on the continuity of service, *Adormeo v. Commission on Elections*[40] (2002) and the aforementioned case of *Socrates* (2002) provide guidance.

In *Adormeo*, Ramon Talaga, Jr. (Talaga) was elected and served as mayor of Lucena City during terms 1992-1995 and 1995-1998. During the 1998 elections, *Talaga lost* to Bernard G. Tagarao. However, before Tagarao's 1998-2001 term ended, a *recall election* was conducted in May 2000 wherein Talaga won and served the unexpired term of Tagarao until June 2001. When Talaga ran for mayor in 2001, his candidacy was challenged on the ground he had already served as mayor for three consecutive terms for violation of the three term-limit rule. The Court held therein that the remainder of Tagarao's term after the recall election during which Talaga served as mayor should not be considered for purposes of applying the three-term limit rule. The Court emphasized that ***the continuity of Talaga's mayorship was disrupted by his defeat*** *during the 1998 elections*.

A similar conclusion was reached by the Court in *Socrates*. The petitioners in that case assailed the COMELEC Resolution which declared Edward Hagedorn qualified to run for mayor in a recall election. It appeared that Hagedorn had been elected and served as mayor of Puerto Princesa City for three consecutive terms: in 1992-1995, 1995-1998 and 1998-2001. Obviously aware of the three-term limit principle, Hagedorn opted not to vie for the same mayoralty position in the 2001 elections, in which Socrates ran and eventually won. However, midway into his term, Socrates faced recall proceedings and in the recall election held, Hagedorn run for the former's unexpired term as mayor. Socrates sought Hagedorn's disqualification under the three-term limit rule.

In upholding Hagedorn's candidacy to run in the recall election, the Court ruled:

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[40] G.R. No. 147927, February 4, 2002, 376 SCRA 90.

x x x After Hagedorn ceased to be mayor on June 30, 2001, he became ***a private citizen until the recall election*** of September 24, 2002 when he won by 3,018 votes over his closest opponent, Socrates.

From June 30, 2001 until the recall election on September 24, 2002, the mayor of Puerto Princesa was Socrates. During the same period, **Hagedorn was simply a private citizen.** *This period is clearly an interruption in the continuity of Hagedorn's service as mayor, not because of his voluntary renunciation, but because of a legal prohibition.*[41]

The Court likewise emphasized in *Socrates* that "an elective local official cannot seek **immediate reelection** for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term [and, hence], *[a]ny subsequent election, like recall election, is no longer covered* x x x."[42]

(3) Conversion of a Municipality into a City

On the other hand, ***the conversion of a municipality into a city does not constitute an interruption of the incumbent official's continuity of service***. The Court said so in *Latasa v. Commission on Elections*[43] (2003).

Latasa is cast against the ensuing backdrop: Arsenio A. Latasa was elected and served as mayor of the Municipality of Digos, Davao del Sur for terms 1992-1995, 1995-1998, and 1998-2001. During his third term, Digos was converted into a component city, with the corresponding cityhood law providing the holdover of elective officials. When Latasa filed his certificate of candidacy as mayor for the 2001 elections, the Court declared Latasa as disqualified to run as mayor of Digos City for violation of the three-term limit rule on the basis of the following ratiocination:

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[41] *Socrates*, *supra* note 33.

[42] *Id.*

[43] G.R. No. 154829, December 10, 2003, 417 SCRA 601.

This Court believes that (Latasa) did involuntarily relinquish his office as municipal mayor since the said office has been deemed abolished due to the conversion. However, **the very instant he vacated his office as municipal mayor, he also assumed office as city mayor.** Unlike in *Lonzanida,* where petitioner therein, for even just a short period of time, stepped down from office, petitioner **Latasa never ceased from acting as chief executive of the local government unit.** He never ceased from discharging his duties and responsibilities as chief executive of Digos. (Emphasis supplied.)

(4) Period of Preventive Suspension

In 2009, in the case *Aldovino Jr.*, the Court espoused the doctrine that the **period during which a local elected official is under preventive suspension cannot be considered as an interruption of the continuity of his service**. The Court explained why so:

Strict adherence to the intent of the three-term limit rule demands that preventive suspension should not be considered an interruption that allows an elective official's stay in office beyond three terms. A **preventive suspension cannot simply be a term interruption because the suspended official continues to stay in office although he is barred from exercising the functions and prerogatives of the office within the suspension period**. *The best indicator of the suspended official's continuity in office is the* ***absence of a permanent replacement*** *and the* ***lack of the authority to appoint one*** *since no vacancy exists*.[44] (Emphasis supplied.)

(5) Election Protest

With regard to the effects of an election protest *vis-à-vis* the three-term limit rule, jurisprudence presents a more differing picture. The Court's pronouncements in *Lonzanida v. Commission on Elections*[45] (1999), *Ong v. Alegre*[46] (2006), *Rivera III v. Commission on Elections*[47] (2007) and *Dizon v.*

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[44] *Supra* note 10.

[45] *Supra* note 31.

[46] G.R. Nos. 163295 & 163354, January 23, 2006, 479 SCRA 473.

[47] G.R. Nos. 167591 & 170577, May 9, 2007, 523 SCRA 41.

Commission on Elections[48] (2009), all protest cases, are illuminating.

In *Lonzanida*, Romeo Lonzanida was elected and had served as municipal mayor of San Antonio, Zambales in terms 1989-1992, 1992-1995 and 1995-1998. However, his proclamation relative to the 1995 election was protested and was eventually declared by the RTC and then by COMELEC null and void on the ground of *failure of elections*. On February 27, 1998, or about *three months before the May 1998 elections*, Lonzanida vacated the mayoralty post in light of a COMELEC order and writ of execution it issued. Lonzanida's opponent assumed office for the remainder of the term. In the May 1998 elections, Lonzanida again filed his certificate of candidacy. His opponent, Efren Muli, filed a petition for disqualification on the ground that Lonzanida had already served three consecutive terms in the same post. The Court, citing *Borja, Jr.*, reiterated the two (2) conditions which must concur for the three-term limit to apply: "1) that the official concerned has been elected for three consecutive terms in the same local government post and 2) that he has fully served three consecutive terms."[49]

In view of *Borja, Jr.*, the Court ruled that the foregoing requisites were absent in the case of *Lonzanida*. The Court held that Lonzanida cannot be considered as having been duly elected to the post in the May 1995 elections since his assumption of office as mayor "*cannot be deemed to have been by reason of a valid election but by reason of a void proclamation*." And as a corollary point, the Court stated that Lonzanida did not fully serve the 1995-1998 mayoral term having been *ordered to vacate his post before the expiration of the term*, a situation which amounts to an *involuntary relinquishment* of office.

This Court deviated from the ruling in *Lonzanida* in *Ong v. Alegre*[50] owing to a variance in the factual situations attendant.

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[48] G.R. No. 182088, January 30, 2009, 577 SCRA 589.

[49] *Lonzanida*, *supra* note 31.

[50] *Supra* note 46.

In that case, Francis Ong (Ong) was elected and served as mayor of San Vicente, Camarines Norte for terms 1995-1998, 1998-2001, and 2001-2004. During the 1998 mayoralty elections, or during his supposed second term, the COMELEC nullified Ong's proclamation on the postulate that Ong lost during the 1998 elections. However, the COMELEC's decision became final and executory on July 4, 2001, *when Ong had fully served the 1998-2001 mayoralty term* and was in fact already starting to serve the 2001-2004 term as mayor-elect of the municipality of San Vicente. In 2004, Ong filed his certificate of candidacy for the same position as mayor, which his opponent opposed for violation of the three-term limit rule.

Ong invoked the ruling in *Lonzanida* and argued that he could not be considered as having served as mayor from 1998-2001 because he was not duly elected to the post and merely assumed office as a "presumptive winner." Dismissing Ong's argument, the Court held that his assumption of office as mayor for the term 1998-2001 constitutes "*service for the full term*" and hence, should be counted for purposes of the three-term limit rule. The Court modified the conditions stated in *Lonzanida* in the sense that Ong's service was deemed and counted as service for a full term because *Ong's proclamation was voided only after the expiry of the term.* The Court noted that the COMELEC decision which declared Ong as not having won the 1998 elections was "without practical and legal use and value" promulgated as it was after the contested term has expired. The Court further reasoned:

> Petitioner [Francis Ong's] contention that he was only a presumptive winner in the 1998 mayoralty derby as his proclamation was under protest *did not make him less than a duly elected mayor*. **His *proclamation* as the duly elected mayor in the 1998 mayoralty election *coupled by his assumption of office* and his *continuous exercise of the functions* thereof *from start to finish of the term, should legally be taken as service for a full term in contemplation of the three-term rule.***
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> The absurdity and the deleterious effect of a contrary view is not hard to discern. Such contrary view would mean that Alegre would — under the three-term rule - be *considered as having served a*

term by virtue of a veritably meaningless electoral protest ruling, when another actually served such term pursuant to a proclamation made in due course after an election.[51] (Emphasis supplied.)

The Court did not apply the ruling in *Lonzanida* and ruled that the case of Ong was *different*, to wit:

> The difference between the case at bench and Lonzanida is at once apparent. For one, in *Lonzanida, the result of the mayoralty election was declared a nullity for the stated reason of "failure of election,"* and, as a consequence thereof, the proclamation of Lonzanida as mayor-elect was nullified, followed by an order for him to vacate the office of mayor. For another, *Lonzanida did not fully serve the 1995-1998 mayoral term, there being an involuntary severance from office as a result of legal processe*s. In fine, there was an effective interruption of the continuity of service.[52] (Emphasis supplied.)

Ong's slight departure from *Lonzanida* would later find reinforcement in the consolidated cases of *Rivera III v. Commission on Elections*[53] and *Dee v. Morales*.[54] Therein, Morales was elected mayor of Mabalacat, Pampanga for the following consecutive terms: 1995-1998, 1998-2001 and 2001-2004. In relation to the 2004 elections, Morales again ran as mayor of the same town, emerged as garnering the majority votes and was proclaimed elective mayor for term commencing July 1, 2004 to June 30, 2007. A petition for *quo warranto* was later filed against Morales predicated on the ground that he is ineligible to run for a "fourth" term, having served as mayor for three consecutive terms. In his answer, Morales averred that his supposed 1998-2001 term cannot be considered against him, for, although he was proclaimed by the Mabalacat board of canvassers as elected mayor *vis-à-vis* the 1998 elections and discharged the duties of mayor until June 30, 2001, his proclamation was later nullified by the RTC of Angeles City

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[51] *Id.*

[52] *Id.*

[53] *Supra* note 47.

[54] *Id.*

and his closest rival, Anthony Dee, proclaimed the duly elected mayor. Pursuing his point, Morales parlayed the idea that he only served as a mere caretaker.

The Court found Morales' posture untenable and held that the case of Morales presents a factual milieu similar with *Ong*, not with *Lonzanida*. For ease of reference, the proclamation of Francis Ong, in *Ong*, was nullified, but after he, like Morales, had served the three-year term from the start to the end of the term. Hence, the Court concluded that Morales exceeded the three-term limit rule, *to wit*:

> Here, respondent Morales was elected for the term July 1, 1998 to June 30, 2001. He assumed the position. He served as mayor until June 30, 2001. **He was mayor for the entire period notwithstanding the Decision of the RTC in the electoral protest case filed by petitioner Dee ousting him (respondent) as mayor.** To reiterate, as held in *Ong v. Alegre*, such circumstance does not constitute an interruption in serving the full term.
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> x x x x x x x x x
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> Respondent Morales is now serving his fourth term. He has been mayor of Mabalacat continuously without any break since July 1, 1995. *In just over a month, by June 30, 2007, he will have been mayor of Mabalacat for twelve (12) continuous years*.[55] (Emphasis supplied.)

The Court ruled in *Rivera* that *the fact of being belatedly ousted, i.e., after the expiry of the term, cannot constitute an interruption* in Morales' service of the full term; neither can Morales, as he argued, be considered merely a "caretaker of the office" or a mere "de facto officer" for purposes of applying the three-term limit rule.

In a related 2009 case of *Dizon v. Commission on Elections*,[56] the Court would again find the same Mayor Morales as respondent in a disqualification proceeding when he ran again as a mayoralty candidate during the 2007 elections for a term ending June 30,

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[55] *Id.*

[56] *Supra* note 48.

2010. Having been unseated from his post by virtue of this Court's ruling in *Rivera*, Morales would argue this time around that the three-term limit rule was no longer applicable as to his 2007 mayoralty bid. This time, the Court ruled in his favor, holding that for purposes of the 2007 elections, the three-term limit rule was no longer a disqualifying factor as against Morales. The Court wrote:

> **Our ruling in the *Rivera* case served as Morales' involuntary severance from office with respect to the 2004-2007 term.** Involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service. Our decision in the *Rivera* case was promulgated on 9 May 2007 and was effective immediately. The next day, Morales notified the vice mayor's office of our decision. The vice mayor assumed the office of the mayor from 17 May 2007 up to 30 June 2007. **The assumption by the vice mayor of the office of the mayor, no matter how short it may seem to Dizon, interrupted Morales' continuity of service.** *Thus, Morales did not hold office for the full term of 1 July 2004 to 30 June 2007*.[57] (Emphasis supplied)

To summarize, hereunder are the prevailing jurisprudence on issues affecting consecutiveness of terms and/or involuntary interruption, *viz*:

1. When a permanent vacancy occurs in an elective position and the official merely assumed the position pursuant to the rules on succession under the LGC, then his service for the unexpired portion of the term of the replaced official cannot be treated as one full term as contemplated under the subject constitutional and statutory provision that service cannot be counted in the application of any term limit (*Borja, Jr.*). If the official runs again for the same position he held prior to his assumption of the higher office, then his succession to said position is by operation of law and is considered an involuntary severance or interruption (*Montebon*).

2. An elective official, who has served for three consecutive terms and who did not seek the elective position for what could

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[57] *Id.*

be his fourth term, but later won in a recall election, had an interruption in the continuity of the official's service. For, he had become in the *interim*, *i.e.*, from the end of the 3rd term up to the recall election, a private citizen (*Adormeo* and *Socrates*).

3. The abolition of an elective local office due to the conversion of a municipality to a city does not, by itself, work to interrupt the incumbent official's continuity of service (*Latasa*).

4. Preventive suspension is not a term-interrupting event as the elective officer's continued stay and entitlement to the office remain unaffected during the period of suspension, although he is barred from exercising the functions of his office during this period (*Aldovino, Jr.*).

5. When a candidate is proclaimed as winner for an elective position and assumes office, his term is interrupted when he loses in an election protest and is ousted from office, thus disenabling him from serving what would otherwise be the unexpired portion of his term of office had the protest been dismissed (*Lonzanida* and *Dizon*). The break or interruption need not be for a full term of three years or for the major part of the 3-year term; an interruption for any length of time, provided the cause is involuntary, is sufficient to break the continuity of service (*Socrates*, citing *Lonzanida*).

6. When an official is defeated in an election protest and said decision becomes final after said official had served the full term for said office, then his loss in the election contest *does not* constitute an interruption since he has managed to serve the term from start to finish. His full service, despite the defeat, should be counted in the application of term limits because the nullification of his proclamation came after the expiration of the term (*Ong* and *Rivera*).

The Case of Abundo

Abundo argues that the RTC and the COMELEC erred in uniformly ruling that he had already served three consecutive terms and is, thus, barred by the constitutional three-term limit rule to run for the current 2010-2013 term. In gist, Abundo arguments run thusly:

1. *Aldovino, Jr.* is not on all fours with the present case as the former dealt with preventive suspension which does not interrupt the continuity of service of a term;

2. *Aldovino, Jr.* recognizes that the term of an elected official can be interrupted so as to remove him from the reach of the constitutional three-term limitation;

3. The COMELEC misinterpreted the meaning of "term" in *Aldovino, Jr.* by its reliance on a mere portion of the Decision and not on the unified logic in the disquisition;

4. Of appropriate governance in this case is the holding in *Lonzanida*[58] and *Rivera III v. Commission on Elections.*[59]

5. The COMELEC missed the point when it ruled that there was no interruption in the service of Abundo since what he considered as an "interruption" of his 2004-2007 term occurred before his term started; and

6. To rule that the term of the protestee (Torres) whose proclamation was adjudged invalid was interrupted while that of the protestant (Abundo) who was eventually proclaimed winner was not so interrupted is at once absurd as it is illogical.

Both respondents Vega and the COMELEC counter that the *ratio decidendi* of *Aldovino, Jr.* finds application in the instant case. The COMELEC ruled that Abundo did not lose title to the office as his victory in the protest case confirmed his entitlement to said office and he was only unable to temporarily discharge the functions of the office during the pendency of the election protest.

We note that this present case of Abundo deals with the effects of an election protest, for which the rulings in *Lonzanida, Ong, Rivera* and *Dizon* appear to be more attuned than the case of *Aldovino, Jr.*, the interrupting effects of the imposition of a preventive suspension being the very *lis mota* in the *Aldovino,*

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[58] *Supra* note 31.

[59] *Supra* note 47.

Jr. case. But just the same, We find that ***Abundo's case presents a different factual backdrop.***

Unlike in the abovementioned election protest cases wherein the individuals subject of disqualification were *candidates who lost* in the election protest and each declared loser during the elections, ***Abundo was the winner during the election protest and was declared the rightful holder of the mayoralty post.*** Unlike Mayor Lonzanida and Mayor Morales, who were both unseated toward the end of their respective terms, ***Abundo was the protestant who ousted his opponent and had assumed the remainder of the term.***

Notwithstanding, We still find this Court's pronouncements in the past as instructive, and consider several doctrines established from the 1998 case of *Borja, Jr.* up to the most recent case of *Aldovino Jr.* in 2009, as potent aids in arriving at this Court's conclusion.

The intention behind the three-term limit rule was not only to *abrogate the "monopolization of political power"* and *prevent elected officials from breeding "proprietary interest in their position"*[60] but also to *"enhance the people's freedom of choice."*[61] In the words of Justice Vicente V. Mendoza, "while people should be protected from the evils that a monopoly of power may bring about, care should be taken that their freedom of choice is not unduly curtailed."[62]

In the present case, the Court finds Abundo's case meritorious and declares that ***the two-year period during which his opponent, Torres, was serving as mayor should be considered as an interruption, which effectively removed Abundo's case from the ambit of the three-term limit rule.***

It bears to stress at this juncture that Abundo, for the 2004 election for the term starting July 1, 2004 to June 30, 2007,

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[60] *Borja, Jr., supra* note 35, quoting *Commissioner Blas F. Ople, RECORD OF THE CONSTITUTIONAL COMMISSION*, 236-243, Session of July 25, 1986.

[61] *Borja, Jr., supra* note 35.

[62] *Id.*

was the duly elected mayor. Otherwise how explain his victory in his election protest against Torres and his consequent proclamation as duly elected mayor. Accordingly, the first requisite for the application of the disqualification rule based on the three-term limit that the official has been elected is satisfied.

This thus brings us to the second requisite of whether or not Abundo had served for "three consecutive terms," as the phrase is juridically understood, as mayor of Viga, Catanduanes immediately before the 2010 national and local elections. Subsumed to this issue is of course the question of whether or not there was an effective involuntary interruption during the three three-year periods, resulting in the disruption of the continuity of Abundo's mayoralty.

The facts of the case clearly point to an involuntary interruption during the July 2004-June 2007 term.

There can be no quibbling that, during the term 2004-2007, and with the enforcement of the decision of the election protest in his favor, Abundo assumed the mayoralty post only on May 9, 2006 and served the term until June 30, 2007 or for a period of a little over **one year and one month**. Consequently, unlike Mayor Ong in *Ong* and Mayor Morales in *Rivera*, it cannot be said that Mayor Abundo was able to serve *fully* the entire 2004-2007 term to which he was otherwise entitled.

A "term," as defined in *Appari v. Court of Appeals*,[63] means, in a legal sense, "a fixed and definite period of time which the law describes that an officer may hold an office."[64] It also 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."[65] It is the period of time during which a duly elected official has title to and can serve

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[63] No. L-30057, January 31, 1984, 127 SCRA 231; cited in *Aldovino, Jr.*

[64] *Id.* at 240 (citations omitted).

[65] *Gaminde v. Commission on Audit*, G.R. No. 140335, December 13, 2000, 347 SCRA 655, 663; cited in *Aldovino, Jr.*, *supra* note 10.

the functions of an elective office. From paragraph (a) of Sec. 43, RA 7160,[66] the term for local elected officials is three (3) years starting from noon of June 30 of the first year of said term.

In the present case, *during the period of one year and ten months*, or from June 30, 2004 until May 8, 2006, **Abundo cannot plausibly claim, even if he wanted to, that he could hold office of the mayor as a matter of right. Neither can he assert title to the same nor serve the functions of the said elective office.** The reason is simple: during that period, title to hold such office and the corresponding right to assume the functions thereof still belonged to his opponent, as proclaimed election winner. Accordingly, Abundo actually held the office and exercised the functions as mayor only upon his declaration, following the resolution of the protest, as duly elected candidate in the May 2004 elections or for only a little over one year and one month. Consequently, since the legally contemplated full term for local elected officials is three (3) years, it cannot be said that Abundo fully served the term 2004-2007. The reality on the ground is that Abundo actually served less.

Needless to stress, the almost two-year period during which Abundo's opponent actually served as Mayor is and ought to be considered an involuntary interruption of Abundo's continuity of service. An involuntary interrupted term, cannot, in the context of the disqualification rule, be considered as **one term** for purposes of counting the three-term threshold.[67]

The notion of **full service of three consecutive terms** is related to the concepts of **interruption of service** and **voluntary renunciation of service**. The word **interruption** means temporary cessation, intermission or suspension.[68] To interrupt is to obstruct,

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[66] Sec. 43. *Term of Office*. —

(a) The term of office of all local elective officials elected after the effectivity of this Code shall be three (3) years, starting from noon of June 30, 1992 or such date as may be provided for by law x x x.

[67] *Socrates, supra* note 33.

[68] *WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED* 1192 (1981).

thwart or prevent.[69] When the Constitution and the LGC of 1991 speak of **interruption,** the reference is to the obstruction to the continuance of the service by the concerned elected official by effectively cutting short the service of a term or giving a hiatus in the occupation of the elective office. On the other hand, the word "renunciation" connotes the idea of waiver or abandonment of a known right. To renounce is to *give up, abandon, decline or resign*.[70] Voluntary renunciation of the office by an elective local official would thus mean to give up or abandon the title to the office and to cut short the service of the term the concerned elected official is entitled to.

In its assailed Resolution, the COMELEC e*n banc*, applying *Aldovino, Jr.*,[71] held:

> It must be stressed that involuntary interruption of service which jurisprudence deems an exception to the three-term limit rule, implies that the service of the **term has begun before it was interrupted**. Here, the respondent did not lose title to the office. As the assailed Resolution states:
>
> > In the case at bar, respondent cannot be said to have lost his title to the office. On the contrary, he actively sought entitlement to the office when he lodged the election protest case. And respondent-appellant's victory in the said case is a final confirmation that he was validly elected for the mayoralty post of Viga, Catanduanes in 2004-2007. At most, respondent-appellant was only **unable to temporarily discharge the functions of the office to which he was validly elected** during the pendency of the election protest, but he never lost title to the said office.[72] (Emphasis added.)

The COMELEC's Second Division, on the other hand, pronounced that the actual length of service by the public official

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[69] *Id.*

[70] *Aldovino, Jr., supra* note 10, at 251; citing *WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY* 1992 (1993).

[71] *Id.* at 259.

[72] *Rollo*, p. 45.

in a given term is immaterial by reckoning said service for the term in the application of the three-term limit rule, thus:

> As emphasized in the case of Aldovino, "this formulation—no more than three consecutive terms—is a clear command suggesting the existence of an inflexible rule." Therefore we cannot subscribe to the argument that since respondent Abundo served only a portion of the term, his 2004-2007 "term" should not be considered for purposes of the application of the three term limit rule. When the framers of the Constitution drafted and incorporated the three term limit rule, it is clear that reference is to the term, not the actual length of the service the public official may render. Therefore, one's actual service of term no matter how long or how short is immaterial.[73]

In fine, the COMELEC ruled against Abundo on the theory that the length of the actual service of the term is immaterial in his case as he *was only temporarily unable to discharge his functions as mayor.*

The COMELEC's case disposition and its heavy reliance on *Aldovino, Jr.* do not commend themselves for concurrence. The Court cannot simply find its way clear to understand the poll body's determination *that Abundo was only temporarily unable to discharge his functions as mayor during the pendency of the election protest.*

As previously stated, the declaration of being the winner in an election protest grants the local elected official the right to serve the unexpired portion of the term. Verily, while he was declared winner in the protest for the mayoralty seat for the 2004-2007 term, Abundo's full term has been substantially reduced by the actual service rendered by his opponent (Torres). Hence, there was actual involuntary interruption in the term of Abundo and he cannot be considered to have served the full 2004-2007 term.

This is what happened in the instant case. It cannot be overemphasized that pending the favorable resolution of his

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[73] *Id.* at 54-55.

election protest, **Abundo was relegated to being an *ordinary constituent*** since his opponent, as presumptive victor in the 2004 elections, was occupying the mayoralty seat. In other words, for almost two years or from July 1, 2004—the start of the term—until May 9, 2006 or during which his opponent actually assumed the mayoralty office, **Abundo was a private citizen warming his heels while awaiting the outcome of his protest.** Hence, even if declared later as having the right to serve the elective position from July 1, 2004, such declaration would not erase the fact that prior to the finality of the election protest, Abundo did not serve in the mayor's office and, in fact, had no legal right to said position.

Aldovino, Jr. cannot possibly lend support to respondent's cause of action, or to COMELEC's resolution against Abundo. In *Aldovino, Jr.*, the Court succinctly defines what temporary inability or disqualification to exercise the functions of an elective office means, thus:

> On the other hand, temporary inability or disqualification to exercise the functions of an elective post, even if involuntary, should not be considered an effective interruption of a term because it does not involve the **loss of title to office** or **at least an effective break from holding office**; the *office holder, while retaining title, is simply barred from exercising the functions of his office for a reason provided by law.*[74]

We rule that **the above pronouncement on preventive suspension does not apply to the instant case.** Verily, it is erroneous to say that Abundo merely was temporarily unable or disqualified to exercise the functions of an elective post. For one, during the intervening period of almost two years, reckoned from the start of the 2004-2007 term, **Abundo cannot be said to have retained title to the mayoralty office as he was at that time not the duly proclaimed winner** who would have the legal right to assume and serve such elective office. For another, not having been declared winner yet, **Abundo cannot be said to have lost title to the office since one cannot plausibly**

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[74] *Aldovino, Jr., supra* note 10, at 260.

lose a title which, in the first place, he did not have. Thus, for all intents and purposes, even if the belated declaration in the election protest accords him title to the elective office from the start of the term, Abundo was not entitled to the elective office until the election protest was finally resolved in his favor.

Consequently, ***there was a hiatus of almost two years***, consisting of a break and effective interruption of his service, until he assumed the office and served barely over a year of the remaining term. At this juncture, We observe the apparent similarities of Mayor Abundo's case with the cases of Mayor Talaga in *Adormeo* and Mayor Hagedorn in *Socrates* as Mayors Talaga and Hagedorn were not proclaimed winners since they were non-candidates in the regular elections. They were proclaimed winners during the recall elections and clearly were not able to fully serve the terms of the deposed incumbent officials. Similar to their cases where the Court deemed their terms as involuntarily interrupted, *Abundo also became or was a private citizen during the period over which his opponent was serving as mayor*. If in *Lonzanida*, the Court ruled that there was interruption in Lonzanida's service because of his subsequent defeat in the election protest, then with more reason, Abundo's term for 2004-2007 should be declared interrupted since he was not proclaimed winner after the 2004 elections and was able to assume the office and serve only for a little more than a year after winning the protest.

As aptly stated in *Latasa*, to be considered as interruption of service, the "law contemplates a rest period during which *the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit*."[75] Applying the said principle in the present case, there is no question that during the pendency of the election protest, **Abundo ceased from exercising power or authority** over the good people of Viga, Catanduanes. Consequently, the period during which Abundo was not serving as mayor should be considered as a

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[75] *Latasa, supra* note 43.

rest period or break in his service because, as earlier stated, prior to the judgment in the election protest, it was Abundo's opponent, Torres, who was exercising such powers by virtue of the still then valid proclamation.

As a final note, We reiterate that Abundo's case differs from other cases involving the effects of an election protest because while Abundo was, in the final reckoning, *the winning candidate*, **he was the one deprived of his right and opportunity to serve his constituents.** To a certain extent, Abundo was a victim of an imperfect election system. While admittedly the Court does not possess the mandate to remedy such imperfections, the Constitution has clothed it with enough authority to establish a fortress against the injustices it may bring.

In this regard, We find that **a contrary ruling would work damage and cause grave injustice to Abundo**—an elected official who was belatedly declared as the winner and assumed office for only a short period of the term. If in the cases of *Lonzanida* and *Dizon*, this Court ruled in favor of a losing candidate—*or* the person who was adjudged not legally entitled to hold the contested public office but held it anyway—We find more reason to rule in favor of a winning candidate-protestant who, by popular vote, deserves title to the public office but whose opportunity to hold the same was halted by an invalid proclamation.

Also, more than the injustice that may be committed against Abundo is the injustice that may likewise be committed against the people of Viga, Catanduanes by depriving them of their right to choose their leaders. Like the framers of the Constitution, We bear in mind that We "*cannot arrogate unto ourselves the right to decide what the people want*"[76] and hence, should, as much as possible, "*allow the people to exercise their own sense of proportion and rely on their own strength to curtail the*

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[76] *Borja, Jr., supra* note 35, quoting *Commmissioner Yusup R. Abubakar*, RECORD OF THE CONSTITUTIONAL COMMISSION, 242, Session of July 25, 1986.

power when it overreaches itself."[77] For democracy draws strength from the choice the people make which is the same choice We are likewise bound to protect.

WHEREFORE, the instant petition is **PARTLY GRANTED.** Accordingly, the assailed February 8, 2012 Resolution of the Commission on Elections Second Division and May 10, 2012 Resolution of the Commission on Elections e*n banc* in EAC (AE) No. A-25-2010 and the Decision of the Regional Trial Court (RTC) of Virac, Catanduanes, Branch 43, dated August 9, 2010, in Election Case No. 55, are hereby **REVERSED** and **SET ASIDE.**

Petitioner Abelardo Abundo, Sr. is **DECLARED ELIGIBLE** for the position of Mayor of Viga, Catanduanes to which he was duly elected in the May 2010 elections and is accordingly ordered **IMMEDIATELY REINSTATED** to said position. Withal, Emeterio M. Tarin and Cesar O. Cervantes are ordered to immediately vacate the positions of Mayor and Vice-Mayor of Viga, Catanduanes, respectively, and shall revert to their original positions of Vice-Mayor and First Councilor, respectively, upon receipt of this Decision.

The TRO issued by the Court on July 3, 2012 is hereby **LIFTED.**

This Decision is immediately executory.

SO ORDERED.

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

Leonardo-de Castro, J., joins the majority opinion subject to the classification in the separate opinion of Justice Brion.

Brion, J., see separate opinion.

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[77] *Id.*, quoting *Commmissioner Felicitas S. Aquino*, RECORD OF THE CONSTITUTIONAL COMMISSION, 242, Session of July 25, 1986.

SEPARATE OPINION

BRION, *J.*:

I agree with Justice Presbitero J. Velasco, Jr.'s conclusion that the proclamation of Jose Torres, as the "*apparent winner*" in the 2004 elections, effectively interrupted what could have been Abelardo Abundo, Sr.'s full term. I write this Opinion to briefly expound on the Court's ruling in *Aldovino, Jr. v. Commission on Elections*[1] which the Commission on Elections (*COMELEC*) erroneously relied upon in affirming the grant of the *quo warranto* petition against Abundo, and to express my own views on how our present Decision should be read in light of other three-term limit cases that have been decided under a protest case scenario.

The Aldovino ruling

The issue in *Aldovino* was whether the *preventive suspension* of a local elective official amounted to an interruption in the continuity of his term for the purpose of applying the three-term limit rule. The issue arose because an elective local official who is preventively suspended is prevented, under legal compulsion, from exercising the functions of his office; thus, the question — is there then an interruption of his term of office for purposes of the three-term limit rule of the Constitution?

After analyzing the first clause of the three-term limit rule (Section 8, Article X of the 1987 Constitution) which provides:

> The term of office of elective local officials, except *barangay* officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms.

the Court observed that the limitation specifically refers to the term (or the period of time an official has title to office and can serve), not to the service of a term.

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[1] G.R. No. 184836, December 23, 2009, 609 SCRA 234.

Complementing the term limitation is the second clause of the same provision on voluntary renunciation stating that:

[V]oluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

The Court construed "voluntary renunciation" as "a loss of title to office by conscious choice."[2]

Based on its analysis of the provision and after a survey of jurisprudence on the three-term limit rule, the Court concluded that the interruption of a term that would prevent the operation of the rule involves "no less than the involuntary loss of title to office" or "at least an effective break from holding office[.]"[3]

> An interruption occurs when the term is broken because the office holder lost the right to hold on to his office, and cannot be equated with the failure to render service. The latter occurs during an office holder's term when he retains title to the office but cannot exercise his functions for reasons established by law. x x x.
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> To put it differently although at the risk of repetition, Section 8, Article X – both by structure and substance – fixes an elective official's term of office and limits his stay in office to three consecutive terms as an inflexible rule that is stressed, no less, by citing voluntary renunciation as an example of a circumvention. The provision should be read in the context of *interruption of term*, not in the context of interrupting the *full continuity of the exercise of the powers* of the elective position. The "voluntary renunciation" it speaks of refers only to the elective official's voluntary relinquishment of office and loss of title to this office. It does not speak of the temporary "cessation of the exercise of power or authority" that may occur for various reasons, with preventive suspension being only one of them. To quote *Latasa v. Comelec*:
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> > Indeed, [T]he law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial

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[2] *Id*. at 252.

[3] *Id*. at 259-260.

> jurisdiction of a particular local government unit.[4] (italics supplied; citation omitted)

The Court further concluded that while preventive suspension is involuntary in nature, its imposition on an elective local official cannot amount to an interruption of a term "because the suspended official *continues x x x in office* although he is barred from exercising the functions and prerogatives of the office within the suspension period."[5]

Based on these clear rulings, I consider it a grave error for the Comelec to equate the situation of a *preventively suspended elective local official* with the situation of a *non-proclaimed candidate who was later found to have actually won the election.* With its conclusion, the Comelec thereby grossly disregarded the nature and effects of a preventive suspension, and at the same time glossed over the legal and factual realities that obtain in a protested election situation where one candidate is proclaimed, only to lose out later during the term to the winner in the protest case. To state the obvious, election protests are quite common and it is best for the Court to already provide guidance on how a reversal decision in a protest case affects the three-term limit rule.

The proclamation alone of an *apparent winner* (*i.e.*, the candidate immediately proclaimed but whose election is protested) entitles him to take his oath of office and to perform his duties as a newly-elected local official. That he may be characterized merely as a "presumptive winner"[6] during the pendency of a protest against him does not make him any less of a duly elected local official; for the time being, he possesses all the rights and is burdened with all the duties of his office under the law. In stark contrast with his situation, the non-proclaimed candidate cannot but be considered a private citizen while prosecuting

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[4] *Id*. at 260-261.

[5] *Id*. at 264.

[6] *Lonzanida v. Commission on Elections*, G.R. No. 135150, July 28, 1999, 311 SCRA 602, 612.

his election protest;[7] he carries no title to office and is denied the exercise of the rights and the performance of the duties and functions of an elected official.

It is from these perspectives that *Aldovino* cannot be used as basis for the conclusion that there had been no interruption in the case of Abundo — the eventual election winner who is so recognized only after winning his protest case. Notably in *Aldovino,* while a preventive suspension is an involuntary imposition, what it affects is merely the authority to discharge the functions of an office that the suspended local official continues to hold. As already mentioned above, the local elective official continuous to possess title to his office while under preventive suspension, so that no interruption of his term ensues.

In the present case, Torres (instead of Abundo) was immediately proclaimed the winner in the 2004 elections and effectively held title to the office until he was unseated. This circumstance necessarily implied that Abundo had no **title to the office of Mayor** in the meanwhile or, at least, **had an effective break in the continuity of his term as mayor**; from his first (2001-2004) term, he did not immediately continue into his second (2004-2007) term and for a time during this term completely ceased to exercise authority in the local government unit. It was not a mere cessation of the *authority to exercise* the rights and prerogatives of the office of Mayor as in the case of *Aldovino*; he was not the Mayor and had no title to this office in the meanwhile. No better proof of his loss of title exists than the need to file an election protest to claim the seat Torres already occupied after his proclamation. From this perspective, the *Aldovino* ruling cannot be used as basis for the conclusion that Abundo enjoyed an uninterrupted 2001-2004 term.

Election to office

In *Borja, Jr. v. Commission on Elections*,[8] reiterated in *Lonzanida v. Commission on Elections*,[9] the Court ruled that

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[7] *Socrates v. COMELEC*, 440 Phil. 106, 129 (2002).

[8] G.R. No. 133495, September 3, 1998, 295 SCRA 157, 169.

[9] *Supra* note 6, at 611.

a local elective official can seek reelection in the same local government position unless two requisites concur: the official has been ***elected for three consecutive terms*** to the same local government post, *and* that he ***fully served the three consecutive terms***. It is from the prism of these requisites that the three-term limit rule must be viewed; in Abundo's case, the continuity of his first and third terms are not at issue; the issue is confined to his second term.

That Abundo has been elected to the position of Mayor in the 2004 elections is a matter that is now beyond dispute based on the legal reality that he was *eventually* found, in his election protest, to be the true choice of the electorate. This legal reality, however, is complicated by an intervening development – the wrongful proclamation of another candidate (Torres) — so that he (Abundo) could only take his oath of office and discharge the duties of a Mayor very much later into the 2004-2007 mayoralty term. As I have argued above to contradict the use of the *Aldovino* ruling, the factual reality that he had no title to office and did not serve as Mayor while he was a protestant cannot simply be glossed over, and cannot likewise be brushed aside by trying to draw a conclusion from a combined reading of *Ong v. Alegre*[10] and *Lonzanida v. Commission on Elections.*[11] The Court cannot avoid considering the attendant factual and legal realities, based on the requirements that *Borja Jr.* established, and has no choice but to adjust its appreciation of these realities, as may be necessary, as it had done in *Ong*. This, I believe, is the approach and appreciation that should be made, not the drawing of a forced conclusion from a combined reading of *Ong* and *Lonzanida*.

In *Lonzanida* (where Lonzanida was the protestee), the Court considered **both the requisites** for the application of the three-term limit rule **absent** where a local official's (Lonzanida's) proclamation, supposedly for his third consecutive term in office, was later invalidated ***prior*** to the expiration of this third term,

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[10] G.R. Nos. 163295 and 163354, January 23, 2006, 479 SCRA 473.

[11] *Supra* note 6.

i.e., from 1995 to 1998. With the invalidation, Lonzanida could not really be considered as having been ***elected*** to the office since he was found not to be the real choice of the electorate — this is the legal reality for Lonzanida. Too, he did not fully serve his (supposedly third) term because of the intervening ruling ordering him to vacate his post. This ruling, no less equivalent to involuntary renunciation, is the factual reality in Lonzanida's case. Thus, an interruption of the three consecutive terms took place.

Ong v. Alegre[12] involved facts close, but not completely similar, to *Lonzanida*. For in *Ong*, the ruling ordering the apparent winner and *protestee* (Francis Ong) to vacate his post came ***after*** the expiration of the contested term, *i.e.*, after Ong's second term from 1998 to 2001. In holding that **both requisites were present** (so that there was effectively no interruption), the Court again took the attendant legal and factual realities into account. Its appreciation of these realities, however, came with a twist to allow for the attendant factual situation. The Court ruled that while Joseph Alegre was later adjudged the "winner" in the 1998 elections and, "therefore, was the legally elected mayor," this legal conclusion "was *without practical and legal use* and value[.]"[13]

> [Ong's] contention that he was only a presumptive winner in the 1998 mayoralty derby as his proclamation was under protest did not make him less than a duly elected mayor. His proclamation by the Municipal Board of Canvassers of San Vicente as the duly elected mayor in the 1998 mayoralty election coupled by his assumption of office and his continuous exercise of the functions thereof from start to finish of the term, should legally be taken as service for a full term in contemplation of the three-term rule.[14]

Effectively, while the Court defined the legalities arising from the given factual situation, it recognized that the given facts

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[12] *Supra* note 10.

[13] *Id.* at 482.

[14] *Id.* at 428-483.

rendered its legal conclusion moot and academic or, in short, useless and irrelevant; while Ong effectively lost the election, he had served the full term that should belong to the winning candidate. Based on this recognition, the Court ruled that no effective interruption took place for purposes of the three-term limit rule.

From these perspectives, *Ong* did **not** "supersede" or "supplant" *Lonzanida*. Neither *Ong* nor the subsequent case of *Rivera III v. Commission on Elections*[15] says so. The evident factual variance in *Ong* simply called for an adjusted appreciation of the element of "election" under the three-term limit rule. This is what a sensible reading of these two cases yields.

In considering the case of *Abundo* with *Lonzanida* and *Ong*, a noticeable distinction that sets Abundo apart is his situation as *protestant*, as against Lonzanida and Ong who were both *protestees* — the presumptive winners whose election and proclamation were protested. Both protestees lost in the protest and effectively were not "elected," although this was appreciated by the Court with twist in *Ong*, as mentioned above. Abundo, on the other hand, successfully prosecuted his protest and was thus recognized as the candidate whom the people voted for, subject only to the question raised in the present case – whether this recognition or declaration rendered him "elected" from the start of his term.

The differing factual situations of the cited cases and *Abundo* that necessarily gave rise to different perspectives in appreciating the same legal question, immediately suggest that the Court's rulings in the cited cases cannot simply be combined nor wholly be bodily lifted and applied to Abundo. At the simplest, both Lonzanida and Ong were protestees who faced the same legal reality of losing the election, although Ong fully served the elected term; for Abundo, the legal reality is his recognized and declared election victory. In terms of factual reality, Lonzanida and Abundo may be the same since they only partially served their term, but this similarity is fully negated by their differing legal realities

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[15] G.R. Nos. 167591 and 170577, May 9, 2007, 523 SCRA 41.

with respect to the element of "election." Ong and Abundo, on the other hand, have differing legal and factual realities; aside from their differing election results, Ong served the full term, while Abundo only enjoyed an abbreviated term.

If at all, the parallelism that can be drawn from *Ong,* that can fully serve the resolution of Abundo's case, is the practical and purposive approach that the Court used in *Ong* when it implicitly recognized that dwelling on and giving full stress to the "election" element of the three-term limit rule (as established in *Borja, Jr.*) is irrelevant and pointless, given that Ong had served the full contested term.

Under this same approach, Abundo should not be considered to have been elected for the full term for purposes of the three-term limit rule, despite the legal reality that he won the election; as in *Ong,* the factual reality should prevail, and that reality is that he served for less than this full term. Thus, where less than a full term is served by a winning protestant, no continuous and uninterrupted term should be recognized. This is the view that best serves the purposes of the three-term limit rule.

SECOND DIVISION

[G.R. No. 155113. January 9, 2013]

PHILIPPINE BANK OF COMMUNICATIONS, *petitioner, vs.* **PRIDISONS REALTY CORPORATION, ANTONIO GONZALES, BORMACHECO, INC., NAZARIO F. SANTOS, TERESITA CHUA TEK, CHARITO ONG LEE, and ERNESTO SIBAL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE (PD 957); HOUSING AND LAND USE REGULATORY BOARD (HLURB) JURISDICTION OVER MORTGAGEE BANKS. — Section 1 of PD No. 957 limits the HLURB's jurisdiction to three kinds of cases: (a) Unsound real estate business practices; (b) Claims involving refund and any other claims filed by subdivision lot or condominium unit buyers against the project owner, developer, dealer, broker or salesman; and (c) Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, dealer, broker or salesman. While paragraphs (b) and (c) limit the HLURB cases to those between the buyer and the subdivision or condominium owner, developer, dealer, broker or salesman, paragraph (a) is broad enough to include third parties to the sales contract.

2. ID.; ID.; ID.; ID.; ID.; INCLUDES COMPLAINTS FOR ANNULMENT OF MORTGAGES OF CONDOMINIUM OR SUBDIVISION UNITS. — Jurisprudence consistently recognizes the rationale behind the enactment of PD No. 957 — to protect innocent lot buyers from scheming developers. For this reason, the Court has broadly construed the jurisdiction of the HLURB to include complaints for annulment of mortgages of condominium or subdivision units. Indeed, in *Manila Banking Corporation v. Spouses Rabina*, even if the mortgagee bank was under receivership/liquidation, the Court declared that the HLURB retains jurisdiction over an action for the annulment of the mortgage.

3. ID.; ID.; ID.; THAT SECTION 18 OF P.D. 957 APPLIES TO MORTGAGES CONSTITUTED OVER EXISTING CONDOMINIUM OR SUBDIVISION PROJECTS; MADE APPLICABLE IN CASE AT BAR AS MORTGAGEE PBCOM WAS AWARE OF THE PROPOSED CONVERSION OF THE LAND INTO CONDOMINIUM PROJECT. — Section 18 of PD No. 957 applies to mortgages constituted over *existing* condominium or subdivision projects, while Section 4 of the same law applies to mortgages of *raw lands* that are to be developed as condominium or subdivision

> projects. x x x [T]he Court believes that the surrounding circumstances show that PBComm was aware of the proposed conversion of the land into a condominium project, thus, meriting the application of Section 18 of PD No. 957 to the case. PBComm has not categorically denied prior knowledge of the condominium project and relies mainly on the fact that the mortgage was executed seven months before Pridisons and/or Ivory Crest applied for the registration and license to sell condominium units with the HLURB. The prior execution of the mortgage alone, however, does not discount the possibility that PBComm may have had "foreknowledge and possible complicity" in the development plans of the condominium project; the factual findings of HLURB, as affirmed by both the OP and the CA, indicate that this was indeed the case. x x x Additionally, there was a finding of "several annotations and renewal notes concerning the loans [PBComm] extended to [Pridisons], during the period when the project was under development, suggesting the existence of progressive releases for project development." It is also unlikely to have the master deed and 12 condominium certificates of title issued without PBComm releasing the certificate of title over the land, which it held on account of the mortgage.

APPEARANCES OF COUNSEL

Legislador-Lopez Avila-Ocampo and Umali for petitioner.
Ronald Sandoval for Teresita Chua Tek and Charito Ong Lee.
Raul Corralde for Nazario Santos.
Platon Martinez Flores San Pedro & Leaño for the Heirs of Jesus Ernesto Sibal.
Tolentino Tercero Law Offices for Bormacheco, Inc.

D E C I S I O N

BRION, *J.*:

The petitioner Philippine Bank of Communications (*PBComm*) seeks the reversal of the decision[1] dated April 26, 2002 and the

[1] Penned by Associate Justice Eliezer R. de los Santos, and concurred in by Acting Presiding Justice Cancio C. Garcia (now a retired member of this Court) and Associate Justice Marina L. Buzon; *rollo*, pp. 42-57.

resolution[2] dated September 5, 2002 of the Court of Appeals (*CA*) in CA-G.R. SP No. 62576 through a petition for review on *certiorari*[3] filed under Rule 45 of the Rules of Court.

THE ANTECEDENT FACTS

Respondent Pridisons Realty Corporation (*Pridisons*) is the owner of a 1,988-square meter land located in New Manila, Quezon City, covered by Transfer Certificate of Title No. (276613) RT-1160. On November 23, 1989, Pridisons executed in favor of PBComm a deed of real estate mortgage over the land and the improvements existing or to be erected thereon to secure the ₱7,000,000.00 loan it acquired from the bank. The deed of real estate mortgage was registered and annotated on Pridison's title on the same day it was executed.[4] Pridisons thereafter transferred all its rights over the land to its sister company, Ivory Crest Realty and Development Corporation (*Ivory Crest*).[5] Respondent Antonio Gonzales is the President of both corporations.

Sometime in June 1990, Ivory Crest applied for permits and licenses to construct and sell condominium units on the land with the Housing and Land Use Regulatory Board (*HLURB*). The HLURB issued the certificate of registration and the license to sell on June 23, 1991. Among the buyers of the condominium units were respondents Bormacheco, Inc., Nazario F. Santos, Teresita Chua Tek, Charito Ong Lee, and Ernesto Sibal (collectively referred to as *respondent buyers*).

When Pridisons defaulted in paying its loan obligations, PBComm extrajudicially foreclosed the mortgage. The public auction of the land, however, was forestalled by a preliminary injunction issued by the HLURB in conjunction with the action

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[2] *Id*. at 59.

[3] *Id*. at 11-36.

[4] The mortgage was annotated on the title as Entry No. PE-5620; *id*. at 43.

[5] The transfer of rights occurred on March 18, 1990; *id*. at 137.

for specific performance with damages instituted by Bormacheco, Inc. against Pridisons and/or Ivory Crest and PBComm.[6] Bormacheco, Inc. demanded that Pridisons and/or Ivory Crest transfer in its favor the titles of the condominium units already paid for in full, free from all liens and encumbrances, including the mortgage in favor of PBComm. The other respondent buyers followed suit, each filing an action against Pridisons and/or Ivory Crest and PBComm.[7] Answering the complaints, PBComm claimed that the mortgage in its favor was superior to the claims of the respondent buyers, since it was executed long before their purchase of the condominium units. PBComm also assailed the HLURB's jurisdiction over it, contending that it was not engaged in the real estate business as to bring it under the HLURB's jurisdiction.

No tribunal, however, found PBComm's contentions meritorious, as all decisions — from that of the HLURB up to that of the CA — were adverse to it. The HLURB *en banc*[8] upheld its jurisdiction over mortgagee banks when the subject matter involves a condominium or subdivision project.[9] It also ruled against the validity of the mortgage, pointing out that the mortgage was executed without the approval of the HLURB as required under Section 18 of Presidential Decree (*PD*) No. 957 or *The Subdivision and Condominium Buyers' Protective Decree*. On appeal, the Office of the President (*OP*) agreed with the HLURB's ruling.[10]

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[6] Docketed as OAALA No. REM-013092-5035 (HLURB Case No. REM-A-1284); *id*. at 135.

[7] Respondent Tek instituted OAALA No. REM-101091-4943 (HLURB Case No. REM-A-1303); respondent Ong Lee instituted OAALA No. REM-10191-4944 (HLURB Case No. REM-A-1304); respondent Sibal instituted OAALA No. REM-021492-5053; and respondent Santos intervened in the Bormacheco, Inc. case; *id*. at 135-136.

[8] Decision dated August 10, 1994 which affirmed, among others, the HLURB Arbiter's decision (HLURB Case No. REM-013092-5035) dated October 8, 1992; *id*. at 135-175.

[9] *Id*. at 151.

[10] Decision dated December 14, 2000; *id*. at 110-134.

THE ASSAILED CA RULING

PBComm elevated the case to the CA by filing a petition for review (under Rule 43 of the Rules of Court) against the OP decision. In the assailed decision dated April 26, 2002, the CA dismissed the petition and affirmed the ruling of the tribunals below.

The CA declared that the HLURB's power to regulate real estate trade is "broad enough to include jurisdiction over complaints for specific performance of the sale, or annulment of the mortgage, of a condominium unit, with damages[.]"[11] The CA also agreed with the finding that the mortgage in favor of PBComm was executed without the approval of the HLURB. Although the mortgage was executed before the condominium project was started, the surrounding circumstances indicate that the "mortgagee [PBComm] was aware of the proposed conversion of the property or the development plans of the owner [Pridisons and/or Ivory Crest]. x x x [W]e believe that the clearance requirement of Section 18 [of PD No. 957] may be imposed, even if what is being mortgaged is raw land."[12] Section 18 of PD No. 957 provides that —

Section 18. *Mortgages*. **No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority.**[13] Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to

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[11] *Id*. at 49-50.

[12] *Id*. at 52.

[13] Referring to the National Housing Authority, the predecessor of the HLURB.

obtain title over the lot or unit promptly after full payment thereto[.] [emphasis ours; italics supplied]

In light of the mandatory nature of the provision, the CA ruled that the failure to secure the HLURB's approval resulted in the nullity of the mortgage. Despite the mortgage's nullity, the CA declared that it may be considered as a contract of indebtedness.[14]

THE PARTIES' ARGUMENTS

PBComm alleges that the CA erred in upholding the HLURB's jurisdiction and nullifying the mortgage executed in its favor.

Section 1 of PD No. 1344[15] limits the scope of the HLURB's jurisdiction over the following cases:

> Section 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:
>
> (a) Unsound real estate business practices;
>
> (b) Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
>
> (c) Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

PBComm argues that it is not engaged in the real estate business and may thus not be considered as a "project owner, developer, dealer, broker, or salesman" of a condominium or subdivision against whom cases may be filed with the HLURB. It had nothing

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[14] *Rollo*, p. 57.

[15] Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decision under Presidential Decree No. 957, April 2, 1978.

to do with the condominium project of Pridisons and/or Ivory Crest that would bring it under the HLURB's authority.[16]

PBComm also claims that it was error for the CA to apply Section 18 of PD No. 957 to the case. It argues that the requirement of Section 18 of the HLURB's approval of the mortgage applies only if the mortgage covers an *existing* condominium or subdivision project, and does not apply to raw lands. In this case, the mortgage was executed and registered on November 23, 1989 when the subject property was still a raw land unclothed of any improvements. Pridisons and/or Ivory Crest applied for registration and license before the HLURB only in June 1990, and these were issued in June 1991 — more than a year after the mortgage was executed.[17]

PBComm alleges that the HLURB was fully aware of the existence of the mortgage, since it was annotated on the title of the land. As there was already an existing mortgage on the land, the HLURB should have applied Section 4 of PD No. 957, instead of Section 18 of the same decree. Section 4 of PD No. 957 requires the mortgagee to release the mortgage on the condominium unit as soon as the full purchase price is paid by the buyer:

> Section 4. *Registration of Projects.* The registered owner of a parcel of land who wishes to convert the same into a subdivision project shall submit his subdivision plan to the Authority which shall act upon and approve the same, upon a finding that the plan complies with the Subdivision Standards' and Regulations enforceable at the time the plan is submitted. The same procedure shall be followed in the case of a plan for a condominium project x x x.
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> x x x x x x x x x
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> The following documents shall be attached to the registration statement:
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> x x x x x x x x x

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[16] *Rollo*, pp. 34-35.

[17] *Id*. at 24-28.

(d) A title to the property which is free from all liens and encumbrances: Provided, however, that **in case any subdivision lot or condominium unit is mortgaged, it is sufficient if the instrument of mortgage contains a stipulation that the mortgagee shall release the mortgage on any subdivision lot or condominium unit as soon as the full purchase price for the same is paid by the buyer**. [emphasis ours; italics supplied]

In fact, in a letter dated November 27, 1990, the HLURB notified Pridisons and/or Ivory Crest of its deficiency in the requirements submitted, particularly, the affidavit of undertaking by PBComm as compliance with the requirement of Section 4 of PD No. 957. Pridisons and/or Ivory Crest, however, failed to submit or request one from PBComm. Notwithstanding Pridison's and/or Ivory Crest's failure, the HLURB granted the registration and issued a license in June 1991. PBComm asserts that its rights as a mortgagee cannot be prejudiced by the HLURB's error. It also claims that its rights are superior to those of the respondent buyers, as its mortgage was even annotated on the master deed and the 12 condominium certificates of title.

PBComm additionally alleges that it was erroneous to apply Section 18 of PD No. 957 on the basis of the finding that "the mortgagee is aware of the proposed conversion of the property";[18] it claims that the finding is unsupported by the evidence on record.

The respondent buyers, on the other hand, consider PBComm's petition unmeritorious. They claim that all factual and legal issues raised in the petition have been authoritatively considered and passed upon. The CA and the lower tribunals were consistent in upholding the rights of the buyers, as the policy behind PD No. 957 is to protect innocent buyers from scheming subdivision developers. They thus pray for the affirmance of the rulings below and the denial of the petition.

THE COURT'S RULING

The Court does not find the petition meritorious.

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[18] *Id*. at 26.

On the HLURB's jurisdiction over mortgagee banks

Section 1 of PD No. 957 limits the HLURB's jurisdiction to three kinds of cases:

(a) Unsound real estate business practices;

(b) Claims involving refund and any other claims filed by subdivision lot or condominium unit buyers against the project owner, developer, dealer, broker or salesman; and

(c) Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, dealer, broker or salesman.

While paragraphs (b) and (c) limit the HLURB cases to those between the buyer and the subdivision or condominium owner, developer, dealer, broker or salesman, paragraph (a) is broad enough to include third parties to the sales contract. It appears that the complaints filed before the HLURB were precisely for the unsound real estate business practices of Pridisons and/or Ivory Crest, which not only failed to secure and submit an affidavit of undertaking by PBComm, but also sold the same condominium units to more than one buyer. PBComm was impleaded on the basis of the allegation that the mortgage failed to meet the requirements of PD No. 957.

Jurisprudence consistently recognizes the rationale behind the enactment of PD No. 957 — to protect innocent lot buyers from scheming developers. For this reason, the Court has broadly construed the jurisdiction of the HLURB to include complaints for annulment of mortgages of condominium or subdivision units.[19] Indeed, in *Manila Banking Corporation v. Spouses Rabina*,[20] even if the mortgagee bank was under receivership/

[19] See *Union Bank of the Philippines v. Housing and Land Use Regulatory Board*, G.R. No. 95364, June 29, 1992, 210 SCRA 558, 564; *Manila Banking Corporation v. Rabina*, G.R. No. 145941, December 16, 2008, 574 SCRA 16, 23; and *Government Service Insurance System v. Board of Commissioners (Second Division), HLURB*, G.R. No. 180062, May 5, 2010, 620 SCRA 249, 257.

[20] *Supra*, at 23.

liquidation, the Court declared that the HLURB retains jurisdiction over an action for the annulment of the mortgage:

> The jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for annulment of mortgage. To disassociate the issue of nullity of mortgage and lodge it separately with the liquidation court would only cause inconvenience to the parties and would not serve the ends of speedy and inexpensive administration of justice as mandated by the laws vesting quasi-judicial powers in the agency. [citations omitted]

The Court thus upholds the HLURB's jurisdiction over the action to annul the mortgage constituted in favor of PBComm.

On the validity of the mortgage in favor of PBComm

The Court, in general, agrees with PBComm's allegation that Section 18 of PD No. 957 applies to mortgages constituted over *existing* condominium or subdivision projects, while Section 4 of the same law applies to mortgages of *raw lands* that are to be developed as condominium or subdivision projects. This conclusion can be inferred from a reading of both provisions, which state that —

> Section 4. *Registration of Projects.* **The registered owner of a parcel of land who wishes *to convert* the same into a subdivision project** shall submit his subdivision plan to the Authority which shall act upon and approve the same, upon a finding that the plan complies with the Subdivision Standards' and Regulations enforceable at the time the plan is submitted. The same procedure shall be followed in the case of a plan for a condominium project x x x.
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> x x x x x x x x x
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> The following documents shall be attached to the registration statement:
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> x x x x x x x x x
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> (d) A title to the property which is free from all liens and encumbrances: Provided, however, that ***in case any subdivision lot or condominium unit is mortgaged*, it is sufficient if the instrument of mortgage contains a stipulation that the mortgagee shall release the mortgage on any subdivision lot or condominium unit as soon**

as the full purchase price for the same is paid by the buyer.

x x x x x x x x x

Section 18. *Mortgages*. **No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that *the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision projec*t** and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto[.] [emphases and italics ours]

Like the HLURB, the OP and the CA, however, the Court believes that the surrounding circumstances show that PBComm was aware of the proposed conversion of the land into a condominium project, thus, meriting the application of Section 18 of PD No. 957 to the case.

PBComm has not categorically denied prior knowledge of the condominium project and relies mainly on the fact that the mortgage was executed seven months before Pridisons and/or Ivory Crest applied for the registration and license to sell condominium units with the HLURB.[21] The prior execution of the mortgage alone, however, does not discount the possibility that PBComm may have had "foreknowledge and possible complicity"[22] in the development plans of the condominium project; the factual findings of HLURB, as affirmed by both the OP and the CA, indicate that this was indeed the case. As the HLURB declared,

the standard industry practice for banks [is] to require loan applicants to disclose the nature and purpose of the loan, and

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[21] *Rollo*, p. 53.

[22] *Id*. at 55.

present supporting documents such as project feasibility studies in support thereof. With more reasons, we feel that **the disclosure of loan purpose and presentation of loan documents is expected in this case, considering that the applicant for loan was a realty company**[.] x x x banks are familiar with the nature of realty companies, and are expected to anticipate them to apply for and use bank loans for developmental purposes. x x x.

x x x in the light of the principles or regularity in the performance of functions and of observance of normal course of business transactions, we presume that the standard banking and industry practice and procedures were observed prior to the execution of the mortgage contract, and that **there was due disclosure of loan purpose and submission of plans to the bank.**[23] (emphases supplied)

Additionally, there was a finding of "several annotations and renewal notes concerning the loans [PBComm] extended to [Pridisons], during the period when the project was under development, suggesting the existence of progressive releases for project development."[24] It is also unlikely to have the master deed and 12 condominium certificates of title issued without PBComm releasing the certificate of title over the land, which it held on account of the mortgage. From these, the Court can reasonably conclude that PBComm had actual, not only constructive, knowledge of the condominium project. The earlier execution of the mortgage was more likely made in order to skirt the requirements of Section 18 of PD No. 957. On account of the failure to comply with the mandatory requirement of the law,[25] the Court affirms the nullification of the mortgage constituted in favor of PBComm and upholds the rights and interests of the respondent buyers over the condominium units, as settled by the courts below.

In so ruling, PBComm is not thereby made to bear the consequences of the combined errors and mistakes of the other

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[23] *Id.* at 54-55.

[24] *Id*. at 55.

[25] See *Home Bankers Savings & Trust Co. v. Court of Appeals*, 496 Phil. 637, 651-652 (2005); and *Far East Bank & Trust Co. v. Marquez*, 465 Phil. 276, 287 (2004).

parties. As mentioned, PD No. 957 is a social justice measure designed to protect innocent lot buyers:[26]

> **As between these small lot buyers and the gigantic financial institutions which the developers deal with, it is obvious that the law — as an instrument of social justice — must favor the weak.** Indeed, the petitioner Bank had at its disposal vast resources with which it could adequately protect its loan activities, and therefore is presumed to have conducted the usual "due diligence" checking and ascertained x x x the actual status, condition, utilization and occupancy of the property offered as collateral. x x x On the other hand, private respondents obviously were powerless to discover the attempt of the land developer to hypothecate the property being sold to them. It was precisely in order to deal with this kind of situation that P.D. 957 was enacted, its very essence and intendment being to provide a protective mantle over helpless citizens who may fall prey to the razzmatazz of what P.D. 957 termed "unscrupulous subdivision and condominium sellers."[27] (emphasis ours)

Also, as the CA declared, the mortgage – although voided – still stands as evidence of a contract of indebtedness which PBComm may demand payment for from Pridisons, subject to claims and defenses they have against each other that have not been settled in this Decision.

WHEREFORE, we hereby **DENY** the petition and **AFFIRM** the decision dated April 26, 2002[28] and the resolution dated September 5, 2002[29] of the Court of Appeals in CA-G.R. SP No. 62576. Costs against the petitioner.

SO ORDERED.

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

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[26] *Philippine National Bank v. Office of the President,* 252 Phil. 5 (1996).

[27] *Id*. at 10-11.

[28] *Supra* note 1.

[29] *Supra* note 2.

SECOND DIVISION

[G.R. No. 170022. January 9, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **CESAR ENCELAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; VOID AND VOIDABLE MARRIAGES; PSYCHOLOGICAL INCAPACITY; ELUCIDATED. — Article 36 of the Family Code governs psychological incapacity as a ground for declaration of nullity of marriage. It provides that "[a] marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization." In interpreting this provision, we have repeatedly stressed that psychological incapacity contemplates "**downright incapacity or inability to take cognizance of and to assume the basic marital obligations**"; not merely the refusal, neglect or difficulty, much less ill will, on the part of the errant spouse. The plaintiff bears the burden of proving the juridical antecedence (*i.e.*, the existence at the time of the celebration of marriage), gravity and incurability of the condition of the errant spouse.

2. ID.; ID.; ID.; ID.; ID.; SEXUAL INFIDELITY AND ABANDONMENT OF CONJUGAL DWELLING AS GROUNDS THEREOF. — Sexual infidelity and abandonment of the conjugal dwelling, even if true, do not necessarily constitute psychological incapacity; these are simply grounds for legal separation. To constitute psychological incapacity, it must be shown that the unfaithfulness and abandonment are manifestations of a disordered personality that completely prevented the erring spouse from discharging the essential marital obligations.

3. ID.; ID.; ID.; ID.; ID.; INTERPERSONAL PROBLEMS WITH CO-WORKERS NOT EQUATED WITH PSYCHOLOGICAL INCAPACITY. — Dr. Flores' observation on Lolita's interpersonal problems with co-workers, to our mind, does

not suffice as a consideration for the conclusion that she was — *at the time of her marriage* – psychologically incapacitated to enter into a marital union with Cesar. Aside from the time element involved, a wife's psychological fitness as a spouse cannot simply be equated with her professional/work relationship; workplace obligations and responsibilities are poles apart from their marital counterparts. While both spring from human relationship, their relatedness and relevance to one another should be fully established for them to be compared or to serve as measures of comparison with one another. To be sure, the evaluation report Dr. Flores prepared and submitted cannot serve this purpose. Dr. Flores' further belief that Lolita's refusal to go with Cesar abroad signified a reluctance to work out a good marital relationship is a mere generalization *unsupported by facts* and is, in fact, a rash conclusion that this Court cannot support.

4. ID.; ID.; ID.; SANCTITY THEREOF, EMPHASIZED. — Marriage is an inviolable social institution protected by the State. Any doubt should be resolved in favor of its existence and continuation and against its dissolution and nullity. It cannot be dissolved at the whim of the parties nor by transgressions made by one party to the other during the marriage.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Pablito A. Carpio for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner Republic of the Philippines challenging the October 7, 2005 amended decision[2] of the Court of Appeals *(CA)* that

[1] Under Rule 45 of the 1997 Rules of Civil Procedure; *rollo*, pp. 9-37.

[2] Penned by Associate Justice Elvi John S. Asuncion, and concurred in by Associate Justices Godardo A. Jacinto and Lucas P. Bersamin (now a member of this Court); *id.* at 39-42.

reconsidered its March 22, 2004 decision[3] *(original decision)* in CA-G.R. CV No. 75583. In its original decision, the CA set aside the June 5, 2002 decision[4] of the Regional Trial Court (*RTC*) of Manila, Branch 47, in Civil Case No. 95-74257, which declared the marriage of respondent Cesar Encelan to Lolita Castillo-Encelan null and void on the ground of the latter's psychological incapacity.

The Factual Antecedents

On August 25, 1979, Cesar married Lolita[5] and the union bore two children, Maricar and Manny.[6] To support his family, Cesar went to work in Saudi Arabia on May 15, 1984. On June 12, 1986, Cesar, while still in Saudi Arabia, learned that Lolita had been having an illicit affair with Alvin Perez. Sometime in 1991,[7] Lolita allegedly left the conjugal home with her children and lived with Alvin. Since then, Cesar and Lolita had been separated. On June 16, 1995, Cesar filed with the RTC a petition against Lolita for the declaration of the nullity of his marriage based on Lolita's psychological incapacity.[8]

Lolita denied that she had an affair with Alvin; she contended that Alvin used to be an associate in her promotions business. She insisted that she is not psychologically incapacitated and that she left their home because of irreconcilable differences with her mother-in-law.[9]

At the trial, Cesar affirmed his allegations of Lolita's infidelity and subsequent abandonment of the family home.[10] He testified

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[3] *Id.* at 43-50.

[4] Records, pp. 436-438; penned by Judge Nimfa Cuesta-Vilches.

[5] *Id.* at 6.

[6] *Id.* at 7-8.

[7] *Id.* at 2 and 73. Also stated as "1989" and "1990" in other parts of the record and the TSN; *rollo,* pp. 44 and 92; TSN, August 22, 1996, p. 36; records, p. 119.

[8] Records, pp. 1-4.

[9] *Id.* at 165-167 and 313-318.

[10] *Id.* at 115-119.

that he continued to provide financial support for Lolita and their children even after he learned of her illicit affair with Alvin.[11]

Cesar presented the psychological evaluation report[12] on Lolita prepared by Dr. Fareda Fatima Flores of the National Center for Mental Health. Dr. Flores found that Lolita was ***"not suffering from any form of major psychiatric illness[,]"***[13] but had been "unable to provide the expectations expected of her for a good and lasting marital relationship";[14] her "transferring from one job to the other depicts some interpersonal problems with co-workers as well as her impatience in attaining her ambitions";[15] and "her refusal to go with her husband abroad signifies her reluctance to work out a good marital and family relationship."[16]

The RTC Ruling

In its June 5, 2002 decision,[17] the RTC declared Cesar's marriage to Lolita void, finding sufficient basis to declare Lolita psychologically incapacitated to comply with the essential marital obligations.

The petitioner, through the Office of the Solicitor General *(OSG)*, appealed to the CA.

The CA Ruling

The CA originally[18] set aside the RTC's verdict, finding that Lolita's abandonment of the conjugal dwelling and infidelity were not serious cases of personality disorder/psychological

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[11] *Id.* at 104-114.

[12] *Id.* at 243-245.

[13] *Id.* at 245.

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*

[17] *Supra* note 4.

[18] *Supra* note 2.

illness. Lolita merely refused to comply with her marital obligations which she was capable of doing. The CA significantly observed that infidelity is only a ground for legal separation, not for the declaration of the nullity of a marriage.

Cesar sought reconsideration[19] of the CA's decision and, in due course, attained his objective. The CA set aside its original decision and entered another, which affirmed the RTC's decision. In its amended decision,[20] the CA found two circumstances indicative of Lolita's serious psychological incapacity that resulted in her gross infidelity: (1) Lolita's unwarranted refusal to perform her marital obligations to Cesar; and (2) Lolita's willful and deliberate act of abandoning the conjugal dwelling.

The OSG then filed the present petition.

The Petition

The OSG argues that Dr. Flores' psychological evaluation report did not disclose that Lolita had been suffering from a psychological illness nor did it establish its juridical antecedence, gravity and incurability; infidelity and abandonment do not constitute psychological incapacity, but are merely grounds for legal separation.

The Case for the Respondent

Cesar submits that Lolita's infidelity and refusal to perform her marital obligations established her grave and incurable psychological incapacity.

The Issue

The case presents to us the legal issue of whether there exists sufficient basis to nullify Cesar's marriage to Lolita on the ground of psychological incapacity.

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[19] CA *rollo*, pp. 87-93.

[20] *Supra* note 2.

The Court's Ruling

We grant the petition. No sufficient basis exists to annul Cesar's marriage to Lolita on the ground of psychological incapacity.

Applicable Law and Jurisprudence on Psychological Incapacity

Article 36 of the Family Code governs psychological incapacity as a ground for declaration of nullity of marriage. It provides that "[a] marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization."

In interpreting this provision, we have repeatedly stressed that psychological incapacity contemplates "**downright incapacity or inability to take cognizance of and to assume the basic marital obligations**";[21] not merely the refusal, neglect or difficulty, much less ill will, on the part of the errant spouse.[22] The plaintiff bears the burden of proving the juridical antecedence (*i.e.*, the existence at the time of the celebration of marriage), gravity and incurability of the condition of the errant spouse.[23]

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[21] *Kalaw v. Fernandez,* G.R. No. 166357, September 19, 2011, 657 SCRA 822, 836-837.

[22] *Agraviador v. Amparo-Agraviador,* G.R. No. 170729, December 8, 2010, 637 SCRA 519, 538; *Toring v. Toring*, G.R. No. 165321, August 3, 2010, 626 SCRA 389, 405; *Paz v. Paz*, G.R. No. 166579, February 18, 2010, 613 SCRA 195, 205; *Navales v. Navales*, G.R. No. 167523, June 27, 2008, 556 SCRA 272, 288; *Paras v. Paras*, G.R. No. 147824, August 2, 2007, 529 SCRA 81, 106; *Republic of the Phils. v. Iyoy*, 507 Phil. 485, 502 (2005); and *Rep. of the Phils. v. Court of Appeals*, 335 Phil. 664, 678 (1997).

[23] *Kalaw v. Fernandez*, *supra* note 21, at 823; *Republic v. Galang*, G.R. No. 168335, June 6, 2011, 650 SCRA 524, 544; *Dimayuga-Laurena v. Court of Appeals*, G.R. No. 159220, September 22, 2008, 566 SCRA 154, 161-162*; Republic v. Cabantug-Baguio,* G.R. No. 171042, June 30, 2008, 556 SCRA 711, 725; *Hernandez v. Court of Appeals*, 377 Phil. 919, 932 (1999); and *Rep. of the Phils. v. Court of Appeals*, *supra,* at 676.

Cesar failed to prove Lolita's psychological incapacity

In this case, Cesar's testimony failed to prove Lolita's alleged psychological incapacity. Cesar testified on the dates when he learned of Lolita's alleged affair and her subsequent abandonment of their home,[24] as well as his continued financial support to her and their children even after he learned of the affair,[25] but he merely mentioned in passing Lolita's alleged affair with Alvin and her abandonment of the conjugal dwelling.

In any event, sexual infidelity and abandonment of the conjugal dwelling, even if true, do not necessarily constitute psychological incapacity; these are simply grounds for legal separation.[26] To constitute psychological incapacity, it must be shown that the unfaithfulness and abandonment are manifestations of a disordered personality that completely prevented the erring spouse from discharging the essential marital obligations.[27] No evidence on record exists to support Cesar's allegation that Lolita's infidelity and abandonment were manifestations of any psychological illness.

Cesar mistakenly relied on Dr. Flores' psychological evaluation report on Lolita to prove her alleged psychological incapacity. The psychological evaluation, in fact, established that *Lolita did not suffer from any major psychiatric illness*.[28] Dr. Flores' observation on Lolita's interpersonal problems with co-workers,[29]

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[24] *Supra* note 10.

[25] *Supra* note 11.

[26] The Family Code, Art. 55. A petition for legal separation may be filed on any of the following grounds:

x x x x x x x x x

(8) Sexual infidelity or perversion;

x x x x x x x x x

(10) Abandonment of petitioner by respondent without justifiable cause for more than one year.

[27] *Toring v. Toring, supra* note 22, at 406.

[28] *Supra* note 13.

[29] *Supra* note 15.

to our mind, does not suffice as a consideration for the conclusion that she was — *at the time of her marriage* — psychologically incapacitated to enter into a marital union with Cesar. Aside from the time element involved, a wife's psychological fitness as a spouse cannot simply be equated with her professional/work relationship; workplace obligations and responsibilities are poles apart from their marital counterparts. While both spring from human relationship, their relatedness and relevance to one another should be fully established for them to be compared or to serve as measures of comparison with one another. To be sure, the evaluation report Dr. Flores prepared and submitted cannot serve this purpose. Dr. Flores' further belief that Lolita's refusal to go with Cesar abroad signified a reluctance to work out a good marital relationship[30] is a mere generalization *unsupported by facts* and is, in fact, a rash conclusion that this Court cannot support.

In sum, we find that Cesar failed to prove the existence of Lolita's psychological incapacity; thus, the CA committed a reversible error when it reconsidered its original decision.

Once again, we stress that marriage is an inviolable social institution[31] protected by the State. Any doubt should be resolved in favor of its existence and continuation and against its dissolution and nullity.[32] It cannot be dissolved at the whim of the parties nor by transgressions made by one party to the other during the marriage.

WHEREFORE, we **GRANT** the petition and **SET ASIDE** the October 7, 2005 amended decision of the Court of Appeals in CA-G.R. CV No. 75583. Accordingly, we **DISMISS** respondent Cesar Encelan's petition for declaration of nullity of his marriage to Lolita Castillo-Encelan.

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[30] *Supra* note 16.

[31] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010, 634 SCRA 429, 439; and *Camacho-Reyes v. Reyes*, G.R. No. 185286, August 18, 2010, 628 SCRA 461, 464.

[32] *Ochosa v. Alano*, G.R. No. 167459, January 26, 2011, 640 SCRA 517, 524; *Republic v. Cabantug-Baguio*, *supra* note 23, at 727; and *Rep. of the Phils. v. Court of Appeals*, *supra* note 23, at 676.

Costs against the respondent.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 170498. January 9, 2013]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **ABSOLUTE MANAGEMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; CONTENTS OF PETITION; FAILURE TO APPEND RELEVANT PLEADINGS SUBMITTED TO THE RTC AND TO THE CA IS NOT SUFFICIENT GROUND TO DISMISS THE PETITION.— AMC posits that Metrobank's failure to append relevant AMC pleadings submitted to the RTC and to the CA violated Section 4, Rule 45 of the Rules of Court, and is a sufficient ground to dismiss the petition under Section 5, Rule 45 of the Rules of Court. We disagree with AMC's position. x x x [T]he requirement in Section 4, Rule 45 of the Rules of Court is not meant to be an absolute rule whose violation would automatically lead to the petition's dismissal. The Rules of Court has not been intended to be totally rigid. In fact, the Rules of Court provides that the Supreme Court "may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate"; and "[i]f the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice." These provisions are in

keeping with the overriding standard that procedural rules should be liberally construed to promote their objective and to assist the parties in obtaining a just, speedy and inexpensive determination of every action or proceeding.

2. ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; CLAIMS AGAINST ESTATE; INCLUDES QUASI-CONTRACTS.— [T]he term "implied contracts," as used in our remedial law, originated from the common law where obligations derived from quasi-contracts and from law are both considered as implied contracts. Thus, the term quasi-contract is included in the concept "implied contracts" as used in the Rules of Court. Accordingly, liabilities of the deceased arising from quasi-contracts should be filed as claims in the settlement of his estate, as provided in Section 5, Rule 86 of the Rules of Court.

3. ID.; ID.; ID.; ID.; ID.; FOURTH-PARTY COMPLAINT AS CONTINGENT CLAIM, FALLS UNDER QUASI-CONTRACTS, ART. 2154 OF THE CIVIL CODE, WHICH EMBODIES THE CONCEPT OF *SOLUTIO INDEBITI*; DISCUSSED.— A quasi-contract involves a juridical relation that the law creates on the basis of certain voluntary, unilateral and lawful acts of a person, to avoid unjust enrichment. The Civil Code provides an enumeration of quasi-contracts, but the list is not exhaustive and merely provides examples. According to the CA, Metrobank's fourth-party complaint falls under the quasi-contracts enunciated in Article 2154 of the Civil Code. Article 2154 embodies the concept "*solutio indebiti*" which arises when something is delivered through mistake to a person who has no right to demand it. It obligates the latter to return what has been received through mistake. x x x In its fourth-party complaint, Metrobank claims that Chua's estate should reimburse it if it becomes liable on the checks that it deposited to Ayala Lumber and Hardware's account upon Chua's instructions. x x x A distinctive character of Metrobank's fourth-party complaint is its contingent nature — the claim depends on the possibility that Metrobank would be adjudged liable to AMC, a future event that may or may not happen. This characteristic unmistakably marks the complaint as a contingent one that must be included in the claims falling under the terms of Section 5, Rule 86 of the Rules of Court.

4. ID.; ID.; ID.; ID.; FOR CLAIMS AGAINST THE DECEASED, SPECIFIC PROVISIONS THEREIN PREVAIL AGAINST GENERAL PROVISIONS FOR ORDINARY CLAIMS.— Metrobank argues that Section 11, Rule 6 of the Rules of Court should apply because it impleaded Chua's estate for reimbursement in the same transaction upon which it has been sued by AMC. x x x We read with approval the CA's use of the statutory construction principle of *lex specialis derogat generali*, leading to the conclusion that the specific provisions of Section 5, Rule 86 of the Rules of Court should prevail over the general provisions of Section 11, Rule 6 of the Rules of Court; the settlement of the estate of deceased persons (where claims against the deceased should be filed) is primarily governed by the rules on special proceedings, while the rules provided for ordinary claims, including Section 11, Rule 6 of the Rules of Court, merely apply suppletorily.

APPEARANCES OF COUNSEL

Sedigo & Associates for petitioner.
Rondain & Mendiola Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

We resolve petitioner Metropolitan Bank & Trust Company's (*Metrobank's*) petition for review on *certiorari*[1] seeking the reversal of the decision[2] dated August 25, 2005 and the resolution[3] dated November 17, 2005 of the Court of Appeals (*CA*) in CA-G.R. SP No. 86336. The assailed decision affirmed the order[4] dated May 7, 2004 of the Regional Trial Court (*RTC*) of Quezon

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

[2] *Id.* at 24-32. Penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Ruben T. Reyes (now a retired member of this Court) and Josefina Guevara-Salonga.

[3] *Id.* at 34-35.

[4] *Id.* at 121-123. Penned by Judge Agustin S. Dizon.

City, Branch 80. The RTC had denied the admission of Metrobank's Fourth-Party Complaint[5] against the Estate of Jose L. Chua for being a money claim that falls under Section 5, Rule 86 of the Rules of Court; the claim should have been filed in the pending judicial settlement of Chua's estate before the RTC of Pasay City. The CA affirmed the RTC's order based on the same ground.

Factual Antecedents

On October 5, 2000, Sherwood Holdings Corporation, Inc. (*SHCI*) filed a complaint for sum of money against Absolute Management Corporation (*AMC*). The complaint was docketed as Civil Case No. Q-00-42105 and was assigned to the RTC of Quezon City, Branch 80.[6]

SHCI alleged in its complaint that it made advance payments to AMC for the purchase of 27,000 pieces of plywood and 16,500 plyboards in the sum of ₱12,277,500.00, covered by Metrobank Check Nos. 1407668502, 140768507, 140768530, 140768531, 140768532, 140768533 and 140768534. These checks were *all crossed*, and were *all made payable to AMC*. They were given to Chua, AMC's General Manager, in 1998.[7]

Chua died in 1999,[8] and a special proceeding for the settlement of his estate was commenced before the RTC of Pasay City. This proceeding was pending at the time AMC filed its answer with counterclaims and third-party complaint.[9]

SHCI made demands on AMC, after Chua's death, for allegedly undelivered items worth ₱8,331,700.00. According to AMC, these transactions could not be found in its records. Upon investigation, AMC discovered that in 1998, Chua received from

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[5] *Id.* at 110-113.

[6] *Id.* at 25.

[7] *Id.* at 232-233.

[8] *Id.* at 233.

[9] *Id.* at 11.

SHCI 18 Metrobank checks worth ₱31,807,500.00. These were all payable to AMC and were crossed or "for payee's account only[.]"[10]

In its answer with counterclaims and third-party complaint,[11] AMC averred that it had no knowledge of Chua's transactions with SHCI and it did not receive any money from the latter. AMC also asked the RTC to hold Metrobank liable for the subject checks in case it is adjudged liable to SHCI.

Metrobank filed a motion for bill of particulars,[12] seeking to clarify certain ambiguous statements in AMC's answer. The RTC granted the motion but AMC failed to submit the required bill of particulars. Hence, Metrobank filed a motion to strike out the third-party complaint.[13]

In the meantime, Metrobank filed a motion to dismiss[14] against AMC on the ground that the latter engaged in prohibited forum shopping. According to Metrobank, AMC's claim against it is the same claim that it raised against Chua's estate in Special Proceedings No. 99-0023 before the RTC of Pasay City, Branch 112. The RTC subsequently denied this motion.[15]

The RTC of Quezon City opted to defer consideration[16] of Metrobank's motion to strike out third-party complaint[17] and it instead granted AMC's motion for leave to serve written interrogatories on the third-party defendant.[18] While Metrobank filed its answer to the written interrogatories, AMC was again

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[10] *Id.* at 233.

[11] *Id.* at 147-156.

[12] *Id.* at 48-50.

[13] *Id.* at 76-77.

[14] *Id.* at 51-60.

[15] Order dated May 23, 2001; *id.* at 68-70.

[16] Order dated June 4, 2002; *id.* at 78.

[17] *Id.* at 11.

[18] *Id.* at 72-75.

directed by the RTC, in an order[19] dated August 13, 2003, to submit its bill of particulars. Instead, AMC filed a motion for reconsideration[20] which was denied in an order[21] dated October 28, 2003. AMC still did not file its bill of particulars. The RTC, on the other hand, did not act on Metrobank's motion to strike out AMC's third-party complaint.[22]

In its answer[23] dated December 1, 2003, Metrobank admitted that it deposited the checks in question to the account of Ayala Lumber and Hardware, a sole proprietorship Chua owned and managed. The deposit was allegedly done with the knowledge and consent of AMC. According to Metrobank, Chua then gave the assurance that the arrangement for the handling of the checks carried AMC's consent. Chua also submitted documents showing his position and interest in AMC. These documents, as well as AMC's admission in its answer that it allowed Chua to manage AMC with a relative free hand, show that it knew of Chua's arrangement with Metrobank. Further, Chua's records show that the proceeds of the checks were remitted to AMC which cannot therefore now claim that it did not receive these proceeds.

Metrobank also raised the defense of estoppel. According to Metrobank, AMC had knowledge of its arrangements with Chua for several years. Despite this arrangement, AMC did not object to nor did it call the attention of Metrobank about Chua's alleged lack of authority to deposit the checks in Ayala Lumber and Hardware's account. At this point, AMC is already estopped from questioning Chua's authority to deposit these checks in Ayala Lumber and Hardware's account.

Lastly, Metrobank asserted that AMC gave Chua unbridled control in managing AMC's affairs. This measure of control

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

[20] *Id.* at 88-93.

[21] *Id.* at 94.

[22] *Id.* at 12.

[23] *Id.* at 95-101.

amounted to gross negligence that was the proximate cause of the loss that AMC must now bear.

Subsequently, Metrobank filed a motion for leave to admit fourth-party complaint[24] against Chua's estate. It alleged that Chua's estate should reimburse Metrobank in case it would be held liable in the third-party complaint filed against it by AMC.

The RTC's Ruling

In an order[25] dated May 7, 2004, the RTC denied Metrobank's motion. It likewise denied Metrobank's motion for reconsideration in an order[26] dated July 7, 2004.

The RTC categorized Metrobank's allegation in the fourth-party complaint as a "*cobro de lo indebido*"[27] — a kind of quasi-contract that mandates recovery of what has been improperly paid. Quasi-contracts fall within the concept of implied contracts that must be included in the claims required to be filed with the judicial settlement of the deceased's estate under Section 5, Rule 86 of the Rules of Court. As such claim, it should have been filed in Special Proceedings No. 99-0023, not before the RTC as a fourth-party complaint. The RTC, acting in the exercise of its general jurisdiction, does not have the authority to adjudicate the fourth-party complaint. As a trial court hearing an ordinary action, it cannot resolve matters pertaining to special proceedings because the latter is subject to specific rules.

Metrobank responded to the RTC ruling by filing a petition for *certiorari*[28] under Rule 65 before the CA.

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[24] *Supra* note 5.

[25] *Supra* note 4.

[26] *Rollo*, pp. 128-129.

[27] *Id.* at 122.

[28] *Id.* at 130-141.

The CA's Ruling

The CA affirmed the RTC's ruling that Metrobank's fourth-party complaint should have been filed in Special Proceedings No. 99-0023.[29] According to the CA, the relief that Metrobank prayed for was based on a quasi-contract and was a money claim categorized as an implied contract that should be filed under Section 5, Rule 86 of the Rules of Court.

Based on the statutory construction principle of *lex specialis derogat generali*, the CA held that Section 5, Rule 86 of the Rules of Court is a special provision that should prevail over the general provisions of Section 11, Rule 6 of the Rules of Court. The latter applies to money claims in ordinary actions while a money claim against a person already deceased falls under the settlement of his estate that is governed by the rules on special proceedings. If at all, rules for ordinary actions only apply suppletorily to special proceedings.

The Present Petition

In its present petition for review on *certiorari*,[30] Metrobank asserts that it should be allowed to file a fourth-party complaint against Chua's estate in the proceedings before the RTC; its fourth-party complaint was filed merely to enforce its right to be reimbursed by Chua's estate in case Metrobank is held liable to AMC. Hence, Section 11, Rule 6 of the Rules of Court should apply.

AMC, in its comment,[31] maintains the line that the CA and the RTC rulings should be followed, *i.e.*, that Metrobank's claim is a quasi-contract that should be filed as a claim under Section 5, Rule 86 of the Rules of Court.

AMC also challenges the form of Metrobank's petition for failure to comply with Section 4, Rule 45 of the Rules of Court. This provision requires petitions filed before the Supreme Court

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[29] *Supra* notes 2 and 3.

[30] *Supra* note 1.

[31] *Supra* note 7.

to be accompanied by "such material portions of the record as would support the petition[.]" According to AMC, the petition's annexes are mostly Metrobank's pleadings and court issuances. It did not append all relevant AMC pleadings before the RTC and the CA. For this reason, the petition should have been dismissed outright.

Issues

The parties' arguments, properly joined, present to us the following issues:

1) Whether the petition for review on *certiorari* filed by Metrobank before the Supreme Court complies with Section 4, Rule 45 of the Rules of Court; and
2) Whether Metrobank's fourth-party complaint against Chua's estate should be allowed.

The Court's Ruling

The Present Petition Complies With Section 4, Rule 45 of the Rules of Court

AMC posits that Metrobank's failure to append relevant AMC pleadings submitted to the RTC and to the CA violated Section 4, Rule 45 of the Rules of Court,[32] and is a sufficient ground to

[32] Sec. 4. Contents of petition. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, *and such material portions of the record as would support the petition*; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. [italics ours]

dismiss the petition under Section 5, Rule 45 of the Rules of Court.[33]

We disagree with AMC's position.

In *F.A.T. Kee Computer Systems, Inc. v. Online Networks International, Inc.*,[34] Online Networks International, Inc. similarly assailed F.A.T. Kee Computer Systems, Inc.'s failure to attach the transcript of stenographic notes (*TSN*) of the RTC proceedings, and claimed this omission to be a violation of Section 4, Rule 45 of the Rules of Court that warranted the petition's dismissal. The Court held that the defect was not fatal, as the TSN of the proceedings before the RTC forms part of the records of the case. Thus, there was no incurable omission that warranted the outright dismissal of the petition.

The Court significantly pointed out in *F.A.T. Kee* that the requirement in Section 4, Rule 45 of the Rules of Court is not meant to be an absolute rule whose violation would automatically lead to the petition's dismissal.[35] The Rules of Court has not been intended to be totally rigid. In fact, the Rules of Court provides that the Supreme Court "may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate";[36] and "[i]f the petition is given

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[33] Sec. 5. Dismissal or denial of petition. — The *failure of the petitioner to comply with any of the foregoing requirements* regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition *shall be sufficient ground for the dismissal* thereof. [italics ours]

[34] G.R. No. 171238, February 2, 2011, 641 SCRA 390.

[35] *Id.* at 401.

[36] Section 7, Rule 45 of the Rules of Court provides:

"Pleadings and documents that may be required; sanctions. — For purposes of determining whether the petition should be dismissed or denied pursuant to Section 5 of this Rule, or where the petition is given due course under Section 8 hereof, the *Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary*

due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice."[37] These provisions are in keeping with the overriding standard that procedural rules should be liberally construed to promote their objective and to assist the parties in obtaining a just, speedy and inexpensive determination of every action or proceeding.[38]

Under this guiding principle, we do not see Metrobank's omission to be a fatal one that should warrant the petition's outright dismissal. To be sure, the omission to submit the adverse party's pleadings in a petition before the Court is not a commendable practice as it may lead to an unduly biased narration of facts and arguments that masks the real issues before the Court. Such skewed presentation could lead to the waste of the Court's time in sifting through the maze of the parties' narrations of facts and arguments and is a danger the Rules of Court seeks to avoid.

Our examination of Metrobank's petition shows that it contains AMC's opposition to its motion to admit fourth-party complaint among its annexes. The rest of the pleadings have been subsequently submitted as attachments in Metrobank's Reply. A reading of these pleadings shows that their arguments are the same as those stated in the orders of the trial court and the Court of Appeals. Thus, even if Metrobank's petition did not contain some of AMC's pleadings, the Court still had the benefit of a clear narration of facts and arguments according to both

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within such periods and under such conditions as it may consider appropriate, and impose the corresponding sanctions in case of non-filing or unauthorized filing of such pleadings and documents or noncompliance with the conditions thereof." (italics ours)

[37] Section 8, Rule 45 of the Rules of Court provides:

"Due course; elevation of records. — If the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice."

[38] *F.A.T. Kee Computer Systems, Inc. v. Online Networks International, Inc.*, *supra* note 34, at 401-402.

parties' perspectives. In this broader view, the mischief that the Rules of Court seeks to avoid has not really been present. If at all, the omission is not a grievous one that the spirit of liberality cannot address.

The Merits of the Main Issue

The main issue poses to us two essential points that must be addressed. *First*, are quasi-contracts included in claims that should be filed pursuant to Rule 86, Section 5 of the Rules of Court? *Second*, if so, is Metrobank's claim against the Estate of Jose Chua based on a quasi-contract?

Quasi-contracts are included in claims that should be filed under Rule 86, Section 5 of the Rules of Court

In *Maclan v. Garcia*,[39] Gabriel Maclan filed a civil case to recover from Ruben Garcia the necessary expenses he spent as possessor of a piece of land. Garcia acquired the land as an heir of its previous owner. He set up the defense that this claim should have been filed in the special proceedings to settle the estate of his predecessor. Maclan, on the other hand, contended that his claim arises from law and not from contract, express or implied. Thus, it need not be filed in the settlement of the estate of Garcia's predecessor, as mandated by Section 5, Rule 87 of the Rules of Court (now Section 5, Rule 86).

The Court held under these facts that a claim for necessary expenses spent as previous possessor of the land is a kind of quasi-contract. Citing *Leung Ben v. O'Brien*,[40] it explained that the term "implied contracts," as used in our remedial law, originated from the common law where obligations derived from quasi-contracts and from law are both considered as implied contracts. Thus, the term quasi-contract is included in the concept "implied contracts" as used in the Rules of Court. Accordingly,

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[39] 97 Phil. 119 (1955).

[40] 38 Phil. 182, 189-194 (1918).

liabilities of the deceased arising from quasi-contracts should be filed as claims in the settlement of his estate, as provided in Section 5, Rule 86 of the Rules of Court.[41]

Metrobank's fourth-party complaint is based on quasi-contract

Both the RTC and the CA described Metrobank's claim against Chua's estate as one based on quasi-contract. A quasi-contract involves a juridical relation that the law creates on the basis of certain voluntary, unilateral and lawful acts of a person, to avoid unjust enrichment.[42] The Civil Code provides an enumeration of quasi-contracts,[43] but the list is not exhaustive and merely provides examples.[44]

According to the CA, Metrobank's fourth-party complaint falls under the quasi-contracts enunciated in Article 2154 of the Civil Code.[45] Article 2154 embodies the concept "*solutio indebiti*" which arises when something is delivered through

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[41] *Maclan v. Garcia*, *supra* note 39, at 123-124.

[42] *Cruz v. J.M. Tuason Company, Inc.*, 167 Phil. 261, 276-277 (1977).

[43] *See* CIVIL CODE, Articles 2144, 2154, 2164-2175.

[44] Article 2143 of the Civil Code provides:

"The provisions for quasi-contracts in this Chapter do not exclude other quasi-contracts which may come within the purview of the preceding article."

The number of the quasi-contracts may be indefinite as may be the number of lawful facts, the generations of the said obligations; but the Code, just as we shall see further on, in the impracticableness of enumerating or including them all in a methodical and orderly classification, has concerned itself with two only — namely, the management of the affairs of other persons and the recovery of things improperly paid — without attempting by this to exclude the others. (Manresa, 2d ed., Vol. 12, p. 549, as cited in *Leung Ben v. O'Brien*, *supra* note 40, at 195.)

[45] *Rollo*, p. 30.

mistake to a person who has no right to demand it. It obligates the latter to return what has been received through mistake.[46]

Solutio indebiti, as defined in Article 2154 of the Civil Code, has two indispensable requisites: *first*, that something has been unduly delivered through mistake; and *second*, that something was received when there was no right to demand it.[47]

In its fourth-party complaint, Metrobank claims that Chua's estate should reimburse it if it becomes liable on the checks that it deposited to Ayala Lumber and Hardware's account upon Chua's instructions.

This fulfills the requisites of *solutio indebiti*. First, Metrobank acted in a manner akin to a mistake when it deposited the AMC checks to Ayala Lumber and Hardware's account; because of Chua's control over AMC's operations, Metrobank assumed that the checks payable to AMC could be deposited to Ayala Lumber and Hardware's account. Second, Ayala Lumber and Hardware had no right to demand and receive the checks that were deposited to its account; despite Chua's control over AMC and Ayala Lumber and Hardware, the two entities are distinct, and checks exclusively and expressly payable to one cannot be deposited in the account of the other. This disjunct created an obligation on the part of Ayala Lumber and Hardware, through its sole proprietor, Chua, to return the amount of these checks to Metrobank.

The Court notes, however, that its description of Metrobank's fourth-party complaint as a claim closely analogous to *solutio indebiti* is only to determine the validity of the lower courts' orders denying it. It is not an adjudication determining the liability of Chua's estate against Metrobank. The appropriate trial court should still determine whether Metrobank has a lawful claim against Chua's estate based on quasi-contract.

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[46] *Andres v. Manufacturers Hanover & Trust Corporation*, G.R. No. 82670, September 15, 1989, 177 SCRA 618, 622, citing *Velez v. Balzarza*, 73 Phil. 630 (1942); and *City of Cebu v. Piccio*, 110 Phil. 558, 563 (1960).

[47] *Philippine National Bank v. Court of Appeals*, G.R. No. 97995, January 21, 1993, 217 SCRA 347, 355.

Metrobank's fourth-party complaint, as a contingent claim, falls within the claims that should be filed under Section 5, Rule 86 of the Rules of Court

A distinctive character of Metrobank's fourth-party complaint is its contingent nature — the claim depends on the possibility that Metrobank would be adjudged liable to AMC, a future event that may or may not happen. This characteristic unmistakably marks the complaint as a contingent one that must be included in the claims falling under the terms of Section 5, Rule 86 of the Rules of Court:

> Sec. 5. Claims which must be filed under the notice. If not filed, barred; exceptions. — All claims for money against the decedent, arising from contract, express or *implied*, whether the same be due, not due, or *contingent*, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice[.] [italics ours]

Specific provisions of Section 5, Rule 86 of the Rules of Court prevail over general provisions of Section 11, Rule 6 of the Rules of Court

Metrobank argues that Section 11, Rule 6 of the Rules of Court should apply because it impleaded Chua's estate for reimbursement in the same transaction upon which it has been sued by AMC. On this point, the Court supports the conclusion of the CA, to wit:

> Notably, a comparison of the respective provisions of Section 11, Rule 6 and Section 5, Rule 86 of the Rules of Court readily shows that Section 11, Rule 6 applies to ordinary civil actions while Section 5, Rule 86 specifically applies to money claims against the estate. The specific provisions of Section 5, Rule 86 x x x must therefore prevail over the general provisions of Section 11, Rule 6[.][48]

[48] *Rollo*, p. 28.

We read with approval the CA's use of the statutory construction principle of *lex specialis derogat generali*, leading to the conclusion that the specific provisions of Section 5, Rule 86 of the Rules of Court should prevail over the general provisions of Section 11, Rule 6 of the Rules of Court; the settlement of the estate of deceased persons (where claims against the deceased should be filed) is primarily governed by the rules on special proceedings, while the rules provided for ordinary claims, including Section 11, Rule 6 of the Rules of Court, merely apply suppletorily.[49]

In sum, on all counts in the considerations material to the issues posed, the resolution points to the affirmation of the assailed CA decision and resolution. Metrobank's claim in its fourth-party complaint against Chua's estate is based on quasi-contract. It is also a contingent claim that depends on another event. Both belong to the category of claims against a deceased person that should be filed under Section 5, Rule 86 of the Rules of Court and, as such, should have been so filed in Special Proceedings No. 99-0023.

WHEREFORE, premises considered, we hereby **DENY** the petition for lack of merit. The decision of the Court of Appeals dated August 25, 2005, holding that the Regional Trial Court of Quezon City, Branch 80, did not commit grave abuse of discretion in denying Metropolitan Bank & Trust Company's motion for leave to admit fourth-party complaint is **AFFIRMED.** Costs against Metropolitan Bank & Trust Company.

SO ORDERED.

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

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

SECOND DIVISION

[G.R. No. 170770. January 9, 2013]

VITALIANO N. AGUIRRE II and FIDEL N. AGUIRRE, *petitioners, vs.* **FQB+7, INC., NATHANIEL D. BOCOBO, PRISCILA BOCOBO and ANTONIO DE VILLA,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; DISSOLUTION; CORPORATE LIQUIDATION; A DISSOLVED CORPORATION IS ALLOWED TO CONTINUE WITH LIMITED PERSONALITY TO SETTLE AND CLOSE ITS AFFAIRS, INCLUDING ITS COMPLETE LIQUIDATION.—** Section 122 of the Corporation Code prohibits a dissolved corporation from continuing its business, but allows it to continue with a limited personality in order to settle and close its affairs, including its complete liquidation x x x.

2. **ID.; ID.; ID.; BOARD OF DIRECTORS; NOT RENDERED *FUNCTUS OFFICIO* BY THE CORPORATION'S DISSOLUTION.—** A corporation's board of directors is not rendered *functus officio* by its dissolution. Since Section 122 allows a corporation to continue its existence for a limited purpose, necessarily there must be a board that will continue acting for and on behalf of the dissolved corporation for that purpose. In fact, Section 122 authorizes the dissolved corporation's board of directors to conduct its liquidation within three years from its dissolution. Jurisprudence has even recognized the board's authority to act as trustee for persons in interest beyond the said three-year period. Thus, the determination of which group is the *bona fide* or rightful board of the dissolved corporation will still provide practical relief to the parties involved.

3. **ID.; ID.; ID.; STOCKS AND STOCKHOLDERS; A PARTY'S STOCKHOLDINGS IN A CORPORATION, WHETHER EXISTING OR DISSOLVED, IS A PROPERTY RIGHT.—** A party's stockholdings in a corporation, whether existing or

dissolved, is a property right which he may vindicate against another party who has deprived him thereof. The corporation's dissolution does not extinguish such property right. Section 145 of the Corporation Code ensures the protection of this right x x x.

4. ID.; REPUBLIC ACT NO. 8799 (THE SECURITIES REGULATION CODE); CONFERS JURISDICTION OVER INTRA-CORPORATE CONTROVERSIES ON COURTS OF GENERAL JURISDICTION OR REGIONAL TRIAL COURTS, TO BE DESIGNATED BY THE SUPREME COURT.— Jurisdiction over the subject matter is conferred by law. R.A. No. 8799 conferred jurisdiction over intra-corporate controversies on courts of general jurisdiction or RTCs, to be designated by the Supreme Court. Thus, as long as the nature of the controversy is intra-corporate, the designated RTCs have the authority to exercise jurisdiction over such cases.

5. ID.; CORPORATION CODE; PRIVATE CORPORATIONS; INTRA-CORPORATE DISPUTE; ELEMENTS.— [T]o be considered as an intra-corporate dispute, the case: (a) must arise out of intra-corporate or partnership relations, and (b) the nature of the question subject of the controversy must be such that it is intrinsically connected with the regulation of the corporation or the enforcement of the parties' rights and obligations under the Corporation Code and the internal regulatory rules of the corporation. So long as these two criteria are satisfied, the dispute is intra-corporate and the RTC, acting as a special commercial court, has jurisdiction over it.

6. ID.; ID.; ID.; ID.; A CAUSE OF ACTION INVOLVING AN INTRA-CORPORATE CONTROVERSY REMAINS AND MUST BE FILED AS AN INTRA-CORPORATE DISPUTE DESPITE THE SUBSEQUENT DISSOLUTION OF THE CORPORATION.— [T]he nature of the case as an intra-corporate dispute was not affected by the subsequent dissolution of the corporation. It bears reiterating that Section 145 of the Corporation Code protects, among others, the rights and remedies of corporate actors against other corporate actors. The statutory provision assures an aggrieved party that the corporation's dissolution will not impair, much less remove, his/her rights or remedies against the corporation, its stockholders, directors or officers. It also states that corporate

dissolution will not extinguish any liability already incurred by the corporation, its stockholders, directors, or officers. In short, Section 145 preserves a corporate actor's cause of action and remedy against another corporate actor. In so doing, Section 145 also preserves the nature of the controversy between the parties as an intra-corporate dispute. The dissolution of the corporation simply prohibits it from continuing its business. However, despite such dissolution, the parties involved in the litigation are still corporate actors. The dissolution does not automatically convert the parties into total strangers or change their intra-corporate relationships. Neither does it change or terminate existing causes of action, which arose because of the corporate ties between the parties. Thus, a cause of action involving an intra-corporate controversy remains and must be filed as an intra-corporate dispute despite the subsequent dissolution of the corporation.

APPEARANCES OF COUNSEL

Aguirre and Aguirre Law Firm for petitioners.
Francisco T. Mamauag for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Pursuant to Section 145 of the Corporation Code, an existing intra-corporate dispute, which does not constitute a continuation of corporate business, is not affected by the subsequent dissolution of the corporation.

Before the Court is a Petition for Review on *Certiorari* of the June 29, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 87293, which nullified the trial court's writ of preliminary injunction and dismissed petitioner Vitaliano N. Aguirre's (Vitaliano) Complaint before the Regional Trial Court (RTC) for lack of jurisdiction. The dispositive portion of the assailed Decision reads:

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[1] *Rollo,* pp. 71-99.

WHEREFORE, the assailed October 15, 2004 Order, as well as the October 27, 2004 Writ of Preliminary Injunction, are SET ASIDE. With FQB+7, Inc.'s dissolution on September 29, 2003 and Case No. 04111077's ceasing to become an intra-corporate dispute, said case is hereby ordered **DISMISSED** for want of jurisdiction.

SO ORDERED.[2]

Likewise assailed in this Petition is the appellate court's December 16, 2005 Resolution,[3] which denied a reconsideration of the assailed Decision.

Factual Antecedents

On October 5, 2004, Vitaliano filed, in his individual capacity and on behalf of FQB+7, Inc. (FQB+7), a Complaint[4] for intra-corporate dispute, injunction, inspection of corporate books and records, and damages, against respondents Nathaniel D. Bocobo (Nathaniel), Priscila D. Bocobo (Priscila), and Antonio De Villa (Antonio). The Complaint alleged that FQB+7 was established in 1985 with the following directors and subscribers, as reflected in its Articles of Incorporation:

Directors	Subscribers
1. Francisco Q. Bocobo	1. Francisco Q. Bocobo
2. Fidel N. Aguirre	2. Fidel N. Aguirre
3. Alfredo Torres	3. Alfredo Torres
4. Victoriano Santos	4. Victoriano Santos
5. Victorino Santos[5]	5. Victorino Santos
	6. Vitaliano N. Aguirre II
	7. Alberto Galang
	8. Rolando B. Bechayda[6]

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[2] *Id.* at 98. Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

[3] *Id.* at 101-109.

[4] *Id.* at 148-161.

[5] *Id.* at 150.

[6] *Id.* at 152.

To Vitaliano's knowledge, except for the death of Francisco Q. Bocobo and Alfredo Torres, there has been no other change in the above listings.

The Complaint further alleged that, sometime in April 2004, Vitaliano discovered a General Information Sheet (GIS) of FQB+7, dated September 6, 2002, in the Securities and Exchange Commission (SEC) records. This GIS was filed by Francisco Q. Bocobo's heirs, Nathaniel and Priscila, as FQB+7's president and secretary/treasurer, respectively. It also stated FQB+7's directors and subscribers, as follows:

Directors	Subscribers
1. Nathaniel D. Bocobo	1. Nathaniel D. Bocobo
2. Priscila D. Bocobo	2. Priscila D. Bocobo
3. Fidel N. Aguirre	3. Fidel N. Aguirre
4. Victoriano Santos	4. Victorino[7] Santos
5. Victorino Santos	5. Victorino Santos
6. Consolacion Santos[8]	6. Consolacion Santos[9]

Further, the GIS reported that FQB+7's stockholders held their annual meeting on September 3, 2002.[10]

The substantive changes found in the GIS, respecting the composition of directors and subscribers of FQB+7, prompted Vitaliano to write to the "real" Board of Directors (the directors reflected in the Articles of Incorporation), represented by Fidel N. Aguirre (Fidel). In this letter[11] dated April 29, 2004, Vitaliano questioned the validity and truthfulness of the alleged stockholders meeting held on September 3, 2002. He asked the "real" Board to rectify what he perceived as erroneous entries in the GIS, and to allow him to inspect the corporate books and records. The "real" Board allegedly ignored Vitaliano's request.

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[7] Should be Victoriano.

[8] CA *rollo*, Vol. 1, p. 131.

[9] *Id.* at 132.

[10] *Id.* at 129.

[11] *Id.* at 135-136.

On September 27, 2004, Nathaniel, in the exercise of his power as FQB+7's president, appointed Antonio as the corporation's attorney-in-fact, with power of administration over the corporation's farm in Quezon Province.[12] Pursuant thereto, Antonio attempted to take over the farm, but was allegedly prevented by Fidel and his men.[13]

Characterizing Nathaniel's, Priscila's, and Antonio's continuous representation of the corporation as a usurpation of the management powers and prerogatives of the "real" Board of Directors, the Complaint asked for an injunction against them and for the nullification of all their previous actions as purported directors, including the GIS they had filed with the SEC. The Complaint also sought damages for the plaintiffs and a declaration of Vitaliano's right to inspect the corporate records.

The case, docketed as SEC Case No. 04-111077, was assigned to Branch 24 of the RTC of Manila (Manila RTC), which was a designated special commercial court, pursuant to A.M. No. 03-03-03-SC.[14]

The respondents failed, despite notice, to attend the hearing on Vitaliano's application for preliminary injunction.[15] Thus, in an Order[16] dated October 15, 2004, the trial court granted the application based only on Vitaliano's testimonial and documentary evidence, consisting of the corporation's articles of incorporation, by-laws, the GIS, demand letter on the "real" Board of Directors, and police blotter of the incident between Fidel's and Antonio's groups. On October 27, 2004, the trial court issued the writ of preliminary injunction[17] after Vitaliano filed an injunction bond.

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[12] *Id.* at 137.

[13] *Id.* at 138, 144-145.

[14] *Re*: Consolidation of Intellectual Property Courts with Commercial Courts. Effective July 1, 2003.

[15] CA *rollo*, Vol. 1, p. 151.

[16] *Id.* at 151-154; penned by Judge Antonio M. Eugenio, Jr.

[17] *Id.* at 155-157.

The respondents filed a motion for an extension of 10 days to file the "pleadings warranted in response to the complaint," which they received on October 6, 2004.[18] The trial court denied this motion for being a prohibited pleading under Section 8, Rule 1 of the Interim Rules of Procedure Governing Intra-corporate Controversies under Republic Act (R.A.) No. 8799.[19]

The respondents filed a Petition for *Certiorari* and Prohibition,[20] docketed as CA-G.R. SP No. 87293, before the CA. They later amended their Petition by impleading Fidel, who allegedly shares Vitaliano's interest in keeping them out of the corporation, as a private respondent therein.[21]

The respondents sought, in their *certiorari* petition, the annulment of all the proceedings and issuances in SEC Case No. 04-111077[22] on the ground that Branch 24 of the Manila RTC has no jurisdiction over the subject matter, which they defined as being an agrarian dispute.[23] They theorized that Vitaliano's real goal in filing the Complaint was to maintain custody of the corporate farm in Quezon Province. Since this land is agricultural in nature, they claimed that jurisdiction belongs to the Department of Agrarian Reform (DAR), not to the Manila RTC.[24] They also raised the grounds of improper venue (alleging that the real corporate address is different from that stated in the Articles of Incorporation)[25] and forum-shopping[26] (there being a pending case between the parties before the DAR regarding the inclusion of the corporate property in the agrarian reform

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[18] *Id.* at 372.

[19] *Id.* at 376.

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

[21] *Id.* at 167-169.

[22] *Rollo*, pp. 286-287.

[23] *Id.* at 271-274.

[24] CA *rollo*, Vol. 1, pp. 503-504.

[25] *Id.* at 484-486.

[26] *Id.* at 498-503.

program).[27] Respondents also raised their defenses to Vitaliano's suit, particularly the alleged disloyalty and fraud committed by the "real" Board of Directors,[28] and respondents' "preferential right to possess the corporate property" as the heirs of the majority stockholder Francisco Q. Bocobo.[29]

The respondents further informed the CA that the SEC had already revoked FQB+7's Certificate of Registration on September 29, 2003 for its failure to comply with the SEC reportorial requirements.[30] The CA determined that the corporation's dissolution was a conclusive fact after petitioners Vitaliano and Fidel failed to dispute this factual assertion.[31]

Ruling of the Court of Appeals

The CA determined that the issues of the case are the following: (1) whether the trial court's issuance of the writ of preliminary injunction, in its October 15, 2004 Order, was attended by grave abuse of discretion amounting to lack of jurisdiction; and (2) whether the corporation's dissolution affected the trial court's jurisdiction to hear the intracorporate dispute in SEC Case No. 04-111077.[32]

On the first issue, the CA determined that the trial court committed a grave abuse of discretion when it issued the writ of preliminary injunction to remove the respondents from their positions in the Board of Directors based only on Vitaliano's self-serving and empty assertions. Such assertions cannot outweigh the entries in the GIS, which are documented facts on

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[27] The DAR case involves the cancellation of Certificate of Land Ownership Awards to certain beneficiaries, the exercise of FQB+7's retention rights, and exclusion of certain portions of the corporate farm from the coverage of the Comprehensive Agrarian Reform Program.

[28] CA *rollo*, Vol. 1, pp. 487-493.

[29] *Id.* at 493-498.

[30] *Id.* at 572.

[31] *Rollo*, pp. 93-94.

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

record, which state that respondents are stockholders and were duly elected corporate directors and officers of FQB+7, Inc. The CA held that Vitaliano only proved a future right in case he wins the suit. Since an injunction is not a remedy to protect future, contingent or abstract rights, then Vitaliano is not entitled to a writ.[33]

Further, the CA disapproved the discrepancy between the trial court's October 15, 2004 Order, which granted the application for preliminary injunction, and its writ dated October 27, 2004. The Order enjoined all the respondents "from entering, occupying, or taking over possession of the farm owned ***by Atty. Vitaliano Aguirre II***," while the writ states that the subject farm is "owned by plaintiff corporation located in Mulanay, Quezon Province." The CA held that this discrepancy imbued the October 15, 2004 Order with jurisdictional infirmity.[34]

On the second issue, the CA postulated that Section 122 of the Corporation Code allows a dissolved corporation to continue as a body corporate for the limited purpose of liquidating the corporate assets and distributing them to its creditors, stockholders, and others in interest. It does not allow the dissolved corporation to continue its business. That being the state of the law, the CA determined that Vitaliano's Complaint, being geared towards the continuation of FQB+7, Inc.'s business, should be dismissed because the corporation has lost its juridical personality.[35] Moreover, the CA held that the trial court does not have jurisdiction to entertain an intra-corporate dispute when the corporation is already dissolved.[36]

After dismissing the Complaint, the CA reminded the parties that they should proceed with the liquidation of the dissolved corporation based on the existing GIS, thus:

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[33] *Id.* at 86-92.

[34] *Id.* at 91.

[35] *Id.* at 93-97.

[36] *Id.* at 96 and 98.

With SEC's revocation of its certificate of registration on September 29, 2004 [sic], FQB+7, Inc. will be obligated to wind up its affairs. The Corporation will have to be liquidated within the 3-year period mandated by Sec. 122 of the Corporation Code.

Regardless of the method it will opt to liquidate itself, the Corporation will have to reckon with the members of the board as duly listed in the General Information Sheet last filed with SEC. Necessarily, and as admitted in the complaint below, the following as listed in the Corporation's General Information Sheet dated September 6, 2002, will have to continue acting as Members of the Board of FQB+7, Inc. *viz*:

x x x x x x x x x[37]

Herein petitioners filed a Motion for Reconsideration.[38] They argued that the CA erred in ruling that the October 15, 2004 Order was inconsistent with the writ. They explained that pages 2 and 3 of the said Order were interchanged in the CA's records, which then misled the CA to its erroneous conclusion. They also posited that the original sentence in the correct Order reads: "All defendants are further enjoined from entering, occupying or taking over possession of the farm owned ***by plaintiff corporation*** located in Mulanay, Quezon." This sentence is in accord with what is ordered in the writ, hence the CA erred in nullifying the Order.

On the second issue, herein petitioners maintained that the CA erred in characterizing the reliefs they sought as a continuance of the dissolved corporation's business, which is prohibited under Section 122 of the Corporation Code. Instead, they argued, the relief they seek is only to determine the real Board of Directors that can represent the dissolved corporation.

The CA denied the Motion for Reconsideration in its December 16, 2005 Resolution.[39] It determined that the crucial issue is the trial court's jurisdiction over an intra-corporate

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[37] *Id.* at 97.

[38] *Id.* at 110-146.

[39] *Id.* at 101-109.

dispute involving a dissolved corporation.[40] Based on the prayers in the Complaint, petitioners seek a determination of the real Board that can take over the management of the corporation's farm, not to sit as a liquidation Board. Thus, contrary to petitioners' claims, their Complaint is not geared towards liquidation but a continuance of the corporation's business.

Issues

1. Whether the CA erred in annulling the October 15, 2004 Order based on interchanged pages.

2. Whether the Complaint seeks to continue the dissolved corporation's business.

3. Whether the RTC has jurisdiction over an intra-corporate dispute involving a dissolved corporation.

Our Ruling

The Petition is partly meritorious.

On the nullification of the Order of preliminary injunction.

Petitioners reiterate their argument that the CA was misled by the interchanged pages in the October 15, 2004 Order. They posit that had the CA read the Order in its correct sequence, it would not have nullified the Order on the ground that it was issued with grave abuse of discretion amounting to lack of jurisdiction.[41]

Petitioners' argument fails to impress. The CA did not nullify the October 15, 2004 Order merely because of the interchanged pages. Instead, the CA determined that the applicant, Vitaliano, was not able to show that he had an actual and existing right that had to be protected by a preliminary injunction. The most that Vitaliano was able to prove was a future right based on his victory in the suit. Contrasting this future right of Vitaliano

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[40] *Id.* at 104.

[41] *Id.* at 1012-1015.

with respondents' existing right under the GIS, the CA determined that the trial court should not have disturbed the status quo. The CA's discussion regarding the interchanged pages was made only in addition to its above ratiocination. Thus, whether the pages were interchanged or not will not affect the CA's main finding that the trial court issued the Order despite the absence of a clear and existing right in favor of the applicant, which is tantamount to grave abuse of discretion. We cannot disturb the CA's finding on this score without any showing by petitioners of strong basis to warrant the reversal.

Is the Complaint a continuation of business?

Section 122 of the Corporation Code prohibits a dissolved corporation from continuing its business, but allows it to continue with a limited personality in order to settle and close its affairs, including its complete liquidation, thus:

> Sec. 122. ***Corporate liquidation.*** — Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, ***but not for the purpose of continuing the business for which it was established.***
>
> x x x x x x x x x

Upon learning of the corporation's dissolution by revocation of its corporate franchise, the CA held that the intra-corporate Complaint, which aims to continue the corporation's business, must now be dismissed under Section 122.

Petitioners concede that a dissolved corporation can no longer continue its business. They argue, however, that Section 122 allows a dissolved corporation to wind up its affairs within 3 years from its dissolution. Petitioners then maintain that the Complaint, which seeks only a declaration that respondents are

strangers to the corporation and have no right to sit in the board or act as officers thereof, and a return of Vitaliano's stockholdings, intends only to resolve remaining corporate issues. The resolution of these issues is allegedly part of corporate winding up.

Does the Complaint seek a continuation of business or is it a settlement of corporate affairs? The answer lies in the prayers of the Complaint, which state:

P R A Y E R

WHEREFORE, it is most respectfully prayed of this Honorable Court that judgment be rendered in favor of the plaintiffs and against the defendants, in the following wise:

I. ON THE PRAYER OF TRO/STATUS QUO ORDER AND WRIT OF PRELIMINARY INJUNCTION:

1. Forthwith and pending the resolution of plaintiffs' prayer for issuance of writ of preliminary injunction, in order to maintain the *status quo*, a *status quo* order or temporary restraining order (TRO) be issued enjoining the defendants, their officers, employees, and agents from exercising the powers and authority as members of the Board of Directors of plaintiff FQB as well as officers thereof and from misrepresenting and conducting themselves as such, and enjoining defendant Antonio de Villa from taking over the farm of the plaintiff FQB and from exercising any power and authority by reason of his appointment emanating from his co-defendant Bocobos.

2. After due notice and hearing and during the pendency of this action, to issue writ of preliminary injunction prohibiting the defendants from committing the acts complained of herein, more particularly those enumerated in the immediately pr[e]ceeding paragraph, and making the injunction permanent after trial on the merits.

II. ON THE MERITS

After trial, judgment be rendered in favor of the plaintiffs and against the defendants, as follows:

1. Declaring defendant Bocobos as without any power and authority to represent or conduct themselves as members

of the Board of Directors of plaintiff FQB, or as officers thereof.

2. Declaring that Vitaliano N. Aguirre II is a stockholder of plaintiff FQB owning fifty (50) shares of stock thereof.

3. Allowing Vitaliano N. Aguirre II to inspect books and records of the company.

4. Annulling the GIS, Annex "C" of the Complaint as fraudulent and illegally executed and filed.

5. Ordering the defendants to pay jointly and solidarily the sum of at least ₱200,000.00 as moral damages; at least ₱100,000.00 as exemplary damages; and at least ₱100,000.00 as and for attorney's fees and other litigation expenses.

Plaintiffs further pray for costs and such other relief just and equitable under the premises.[42]

The Court fails to find in the prayers above any intention to continue the corporate business of FQB+7. The Complaint does not seek to enter into contracts, issue new stocks, acquire properties, execute business transactions, *etc*. Its aim is not to continue the corporate business, but to determine and vindicate an alleged stockholder's right to the return of his stockholdings and to participate in the election of directors, and a corporation's right to remove usurpers and strangers from its affairs. The Court fails to see how the resolution of these issues can be said to continue the business of FQB+7.

Neither are these issues mooted by the dissolution of the corporation. A corporation's board of directors is not rendered *functus officio* by its dissolution. Since Section 122 allows a corporation to continue its existence for a limited purpose, necessarily there must be a board that will continue acting for and on behalf of the dissolved corporation for that purpose. In fact, Section 122 authorizes the dissolved corporation's board of directors to conduct its liquidation within three years from its dissolution. Jurisprudence has even recognized the board's

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[42] *Id.* at 158-160.

authority to act as trustee for persons in interest beyond the said three-year period.[43] Thus, the determination of which group is the *bona fide* or rightful board of the dissolved corporation will still provide practical relief to the parties involved.

The same is true with regard to Vitaliano's shareholdings in the dissolved corporation. A party's stockholdings in a corporation, whether existing or dissolved, is a property right[44] which he may vindicate against another party who has deprived him thereof. The corporation's dissolution does not extinguish such property right. Section 145 of the Corporation Code ensures the protection of this right, thus:

> Sec. 145. *Amendment or repeal.* — No right or remedy in ***favor of or against*** any corporation, its stockholders, members, directors, trustees, or officers, nor any liability ***incurred by*** any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this Code or of any part thereof. (Emphases supplied.)

On the dismissal of the Complaint for lack of jurisdiction.

The CA held that the trial court does not have jurisdiction over an intra-corporate dispute involving a dissolved corporation. It further held that due to the corporation's dissolution, the qualifications of the respondents can no longer be questioned and that the dissolved corporation must now commence liquidation proceedings with the respondents as its directors and officers.

The CA's ruling is founded on the assumptions that intra-corporate controversies continue only in existing corporations;

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[43] *Clemente v. Court of Appeals,* 312 Phil. 823, 829-830 (1995); *Gelano v. Court of Appeals,* 190 Phil. 814, 825 (1981).

[44] *Gamboa v. Teves,* (Separate Dissenting Opinion of J. Velasco), G.R. No. 176579, June 28, 2011, 652 SCRA 690, 773; *National Development Co. v. Court of Appeals,* G.R. No. 98467, July 10, 1992, 211 SCRA 422, 433-434; *Rural Bank of Salinas, Inc. v. Court of Appeals,* G.R. No. 96674, June 26, 1992, 210 SCRA 510, 515.

that when the corporation is dissolved, these controversies cease to be intra-corporate and need no longer be resolved; and that the *status quo* in the corporation at the time of its dissolution must be maintained. The Court finds no basis for the said assumptions.

Intra-corporate disputes remain even when the corporation is dissolved.

Jurisdiction over the subject matter is conferred by law. R.A. No. 8799[45] conferred jurisdiction over intra-corporate controversies on courts of general jurisdiction or RTCs,[46] to be designated by the Supreme Court. Thus, as long as the nature of the controversy is intra-corporate, the designated RTCs have the authority to exercise jurisdiction over such cases.

So what are intra-corporate controversies? R.A. No. 8799 refers to Section 5 of Presidential Decree (P.D.) No. 902-A (or The SEC Reorganization Act) for a description of such controversies:

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association

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[45] THE SECURITIES REGULATION CODE.

[46] SECTION 5. *Powers and Functions of the Commission.* — 5.1 x x x

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. x x x

and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

The Court reproduced the above jurisdiction in Rule 1 of the Interim Rules of Procedure Governing Intra-corporate Controversies under R.A. No. 8799:

SECTION 1. (a) *Cases Covered* — These Rules shall govern the procedure to be observed in civil cases involving the following:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

(4) Derivative suits; and

(5) Inspection of corporate books.

Meanwhile, jurisprudence has elaborated on the above definitions by providing tests in determining whether a controversy is intra-corporate. *Reyes v. Regional Trial Court of Makati, Br. 142*[47] contains a comprehensive discussion of these two tests, thus:

A review of relevant jurisprudence shows a development in the Court's approach in classifying what constitutes an intra-corporate controversy. Initially, the main consideration in determining whether a dispute constitutes an intra-corporate controversy was limited to

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[47] G.R. No. 165744, August 11, 2008, 561 SCRA 593, 609-612.

a consideration of the intra-corporate relationship existing between or among the parties. The types of relationships embraced under Section 5(b) x x x were as follows:

a) between the corporation, partnership, or association and the public;

b) between the corporation, partnership, or association and its stockholders, partners, members, or officers;

c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and

d) among the stockholders, partners or associates themselves. x x x

The existence of any of the above intra-corporate relations was sufficient to confer jurisdiction to the SEC [now the RTC], regardless of the subject matter of the dispute. This came to be known as **the relationship test**.

However, in the 1984 case of *DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc.*, the Court introduced **the nature of the controversy test**. We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. We saw that there is no legal sense in disregarding or minimizing the value of the nature of the transactions which gives rise to the dispute.

Under the nature of the controversy test, the incidents of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. **The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.** If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.

The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status or relationship of the parties, but also the nature of the question under controversy. This two-tier test was adopted in the recent case of *Speed Distribution, Inc. v. Court of Appeals*:

'To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, **two elements must concur: (a) the status or relationship of the parties, and [b] the nature of the question that is the subject of their controversy.**

The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are stockholders, members or associates, between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership, or association and the State insofar as it concerns the individual franchises. **The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation.** If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.' (Citations and some emphases omitted; emphases supplied.)

Thus, to be considered as an intra-corporate dispute, the case: (a) must arise out of intra-corporate or partnership relations, and (b) the nature of the question subject of the controversy must be such that it is intrinsically connected with the regulation of the corporation or the enforcement of the parties' rights and obligations under the Corporation Code and the internal regulatory rules of the corporation. So long as these two criteria are satisfied, the dispute is intra-corporate and the RTC, acting as a special commercial court, has jurisdiction over it.

Examining the case before us in relation to these two criteria, the Court finds and so holds that the case is essentially an intra-corporate dispute. It obviously arose from the intra-corporate relations between the parties, and the questions involved pertain to their rights and obligations under the Corporation Code and matters relating to the regulation of the corporation. We further

hold that the nature of the case as an intra-corporate dispute was not affected by the subsequent dissolution of the corporation.

It bears reiterating that Section 145 of the Corporation Code protects, among others, the rights and remedies of corporate actors against other corporate actors. The statutory provision assures an aggrieved party that the corporation's dissolution will not impair, much less remove, his/her rights or remedies against the corporation, its stockholders, directors or officers. It also states that corporate dissolution will not extinguish any liability already incurred by the corporation, its stockholders, directors, or officers. In short, Section 145 preserves a corporate actor's cause of action and remedy against another corporate actor. In so doing, Section 145 also preserves the nature of the controversy between the parties as an intra-corporate dispute.

The dissolution of the corporation simply prohibits it from continuing its business. However, despite such dissolution, the parties involved in the litigation are still corporate actors. The dissolution does not automatically convert the parties into total strangers or change their intra-corporate relationships. Neither does it change or terminate existing causes of action, which arose because of the corporate ties between the parties. Thus, a cause of action involving an intra-corporate controversy remains and must be filed as an intra-corporate dispute despite the subsequent dissolution of the corporation.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **PARTIALLY GRANTED.** The assailed June 29, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 87293, as well as its December 16, 2005 Resolution, are **ANNULLED** with respect to their dismissal of SEC Case No. 04-111077 on the ground of lack of jurisdiction. The said case is ordered **REINSTATED** before Branch 24 of the Regional Trial Court of Manila. The rest of the assailed issuances are **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 179003. January 9, 2013]

ANTONIO L. TAN, JR., *petitioner, vs.* **YOSHITSUGU MATSUURA and CAROLINA TANJUTCO,** *respondents.*

[G.R. No. 195816. January 9, 2013]

ANTONIO L. TAN, JR., *petitioner, vs.* **JULIE O. CUA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; COURTS HAVE THE POWER TO REVIEW FINDINGS OF PROSECUTORS IN PRELIMINARY INVESTIGATIONS IN EXCEPTIONAL CASES SHOWING GRAVE ABUSE OF DISCRETION.— The Court remains mindful of the established principle that the determination of probable cause is essentially an executive function that is lodged with the public prosecutor and the Secretary of Justice. However, equally settled is the rule that courts retain the power to review findings of prosecutors in preliminary investigations, although in a mere few exceptional cases showing grave abuse of discretion. Judicial power under Section 1, Article VIII of the 1987 Constitution covers the courts' power to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction committed by any branch or instrumentality of the government in the discharge of its functions. Although policy considerations call for the widest latitude of deference to the prosecutors' findings, courts should not shirk from exercising their power, when the circumstances warrant, to determine whether the prosecutors' findings are supported by the facts or by the law. In so doing, courts do not act as prosecutors but as organs of the judiciary that are exercising their mandate under the Constitution, relevant statutes, and remedial rules to settle cases and controversies. Indeed, the exercise of the courts' review power ensures that, on the one hand, probable criminals are prosecuted and, on

the other hand, the innocent are spared from baseless prosecution. We then ruled in *Tan v. Ballena* that while the findings of prosecutors are reviewable by the DOJ, this does not preclude courts from intervening and exercising our own powers of review with respect to the DOJ's findings. In the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored, the CA may take cognizance of the case *via* a petition under Rule 65 of the Rules of Court.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; ELUCIDATED.— We emphasize the nature, purpose and amount of evidence that is required to support a finding of probable cause in preliminary investigations. Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof. It is 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 is to be prosecuted. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. x x x True, a finding of probable cause need not be based on clear and convincing evidence, or on evidence beyond reasonable doubt. It does not require that the evidence would justify conviction. Nonetheless, although the determination of probable cause requires less than evidence which would justify conviction, it should at least be more than mere suspicion. And while probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges. It is, therefore, imperative for the prosecutor to relieve the accused from the pain and inconvenience of going through a trial once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused.

3. ID.; ID.; ID.; ID.; CAN ONLY FIND SUPPORT IN FACTS AND CIRCUMSTANCES THAT WOULD LEAD A REASONABLE MIND TO BELIEVE THAT THE PERSON BEING CHARGED WARRANTS A PROSECUTION.— In **the first information**, the charge was under Article 172 (2), in relation to Article 171 (6), for the alleged insertions in the deed of trust on its number of covered shares, its date and the witnesses to the instrument's execution. In *Garcia v. Court of Appeals*, we identified the elements of falsification under Article 171 (6) of the RPC, to wit: (1) that there be an alteration (change) or intercalation (insertion) on a document; (2) that it was made on a genuine document; (3) that the alteration or intercalation has changed the meaning of the document; and (4) that the changes made the document speak something false. When these are committed by a private individual on a private document, the violation would fall under paragraph 2, Article 172 of the same code, but there must be, in addition to the aforesaid elements, independent evidence of damage or intention to cause the same to a third person. Logically, affidavits and evidence presented during a preliminary investigation must at least show these elements of the crime and the particular participation of each of the respondents in its commission. Otherwise, there would be no basis for a well-founded belief that a crime has been committed, and that the persons being charged are probably guilty thereof. Probable cause can only find support in facts and circumstances that would lead a reasonable mind to believe that the person being charged warrants a prosecution. Upon the Court's review, we affirm the ruling that Tan had failed to adequately show during the preliminary investigation all the aforementioned elements of the offense.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION; WHEN PRESENT.— There is grave abuse of discretion when the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment, as when the assailed order is bereft of any factual and legal justification.x x x [J]urisprudence provides that grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It also refers to cases in which, for various reasons, there has been a gross misapprehension of facts.

5. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; PRIVATE INDIVIDUALS MAY BE INDICTED FOR VIOLATION OF ARTICLE 171(2) OF THE REVISED PENAL CODE ONLY IF IT IS SHOWN THAT THEY CONSPIRED WITH A PUBLIC OFFICER, EMPLOYEE OR NOTARY PUBLIC IN THE COMMISSION THEREOF.— The Secretary of Justice's directive upon the prosecutor to file **the second information** against Matsuura and Tanjutco also lacked basis. It was premised on an alleged violation of Article 171(2) of the RPC, by making it appear that Tan participated in an act or proceeding when as he claimed, he did not in fact so participate. The elements of this crime are as follows: (1) that the offender is a public officer, employee or notary public; (2) that he takes advantage of his official position; (3) that he falsifies a document by causing it to appear that a person or persons have participated in any act or proceeding when they did not in fact so participate. Since Matsuura and Tanjutco are both private individuals, they can be indicted for the offense only if it is shown that they conspired with Cua, as a notary public, in the commission thereof. Contrary to this requirement, however, the Secretary of Justice ordered in its Resolution dated April 4, 2005 the filing of the second information against Matsuura and Tanjutco, notwithstanding the order in the same resolution to exclude Cua in the case. Such ruling evidently amounts to a grave abuse of discretion x x x.

APPEARANCES OF COUNSEL

Del Prado Diaz and Associates Law Offices for petitioner.

D E C I S I O N

REYES, *J.*:

Before the Court are two consolidated Petitions for Review on *Certiorari* filed by petitioner Antonio L. Tan, Jr. (Tan) and docketed as:

(1) G.R. No. 179003 which assails the Court of Appeals' (CA) Decision[1] dated February 6, 2007 and Resolution[2] dated July 24, 2007 in CA-G.R. SP No. 89346, entitled *Yoshitsugu Matsuura & Carolina Tanjutco v. Hon. Raul Gonzales, in his capacity as Acting Secretary of the Department of Justice and Antonio L. Tan, Jr.*; and

(2) G.R. No. 195816 which assails the CA's Decision[3] dated August 17, 2010 and Resolution[4] dated February 23, 2011 in CA-G.R. SP No. 95263, entitled *Julie O. Cua v. Antonio L. Tan, Jr., Hon. Raul M. Gonzales, in his capacity as Secretary of the Department of Justice and Hon. Ernesto L. Pineda, in his capacity as Undersecretary of the Department of Justice.*

The Factual Antecedents

On March 31, 1998, Tan filed with the Office of the City Prosecutor (OCP) of Makati City a Complaint-Affidavit[5] charging the respondents Yoshitsugu Matsuura (Matsuura), Atty. Carolina Tanjutco (Tanjutco) and Atty. Julie Cua (Cua) of the crime of falsification under the Revised Penal Code (RPC), allegedly committed as follows:

2. On or about the period from 21 December 1996 to 09 January 1997, Mr. YOSHITSUGU MATSUURA, Ms. HIROKO MATSUURA and Mr. RUBEN JACINTO have had stolen company's properties and my personal belongings which were kept **"under lock and key."**

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Ruben T. Reyes (now retired) and Mariano C. Del Castillo (now a member of this Court), concurring; *rollo* (G.R. No. 179003), pp. 49-62.

[2] *Id.* at 63.

[3] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Vicente S.E. Veloso and Michael P. Elbinias, concurring; *rollo* (G.R. No. 195816), pp. 43-54.

[4] *Id.* at 55-56.

[5] Docketed as I.S. No. 98-C15857-58; *rollo* (G.R. No. 179003), pp. 65-66.

Among those stolen was my pre-signed DEED OF TRUST, whose date and number of shares, and the item witness were all in BLANK. As a result, Criminal Case No. 98-040 for Qualified Theft was filed against Mr. & Ms. Matsuura and Mr. Jacinto, and now pending before the Regional Trial Court (*of Makati City*) Branch 132;

3. In the said "blank" Deed of Trust, the **entries** as to the number of shares and the date of the instrument were then inserted, that is, **28,500** as shares and **20**th day of January, and the **signatures** of Hiroko Matsuura and Lani C. Camba appeared in the item WITNESS, all without my participation whatsoever, or without my consent and authority. A copy of the "filled in" Deed of Trust is attached as Annex "A" and made part hereof;

4. Sometime on 19 June 1997, the said Deed of Trust, was made to be notarized by JULIE O. CUA, a Notary Public for and in the City of Makati, and entered in her Notarial Register as Doc[.] No. 2; Page No. 1; Book No. 1 and Series of 1997, *WHEN IN TRUTH AND IN FACT I HAVE NEVER* ***APPEARED, SIGNED*** *OR* ***TOOK*** [*sic*] *MY OATH BEFORE THE SAID NOTARY PUBLIC AND ON THE SAID DATE OF NOTARIZATION* because the document (*Deed of Trust*) was stolen as earlier stated, and the relation between us (*Mr. and Ms. Matsuura, or Mr. Jacinto, and the undersigned*) had become hostile and irreconcilable. A copy of the notarized Deed of Trust is attached as Annex "B" and made part hereof.

5. Both documents (*Annexes "A" and "B")* were/are in the possessions of Mr. Matsuura and/or his lawyer, CAROLINA TANJUTCO, who **used** these false documents in the cases involving us;

6. Without prejudice to the filing of other charges in the proper venues, I am executing this affidavit for the purpose of charging Mr. YOSHITSUGU MATSUURA and ATTY. CAROLINA TANJUTCO for violation of Art. 172 (2) in relation to Art. 171 (6) of the Revised Penal Code with regard to Annex "A", and likewise charging MR. YOSHITSUGU MATSUURA and ATTYS. CAROLINA TANJUTCO and JULIE O. CUA for violation of Art. 172 (1) in relation to Art. 171 (2) of the Revised Penal Code, when through their concerted actions they FALSELY made it appeared [*sic*] that the undersigned had participated in notarization of the Deed of Trust (*Annex "B")* on 19 June 1997, and in both instances causing prejudice and damages to the undersigned.[6]

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[6] *Id.*

The respondents filed their respective counter-affidavits.

Matsuura vehemently denied Tan's charges. He countered that the filing of the complaint was merely a scheme resorted to by Tan following their dispute in TF Ventures, Inc., and after he had obtained a favorable resolution in a complaint for estafa against Tan. Matsuura further explained that the transfer of the shareholdings covered by the subject Deed of Trust[7] was a result of Tan's offer to compromise the intra-corporate dispute. He insisted that it was Tan who caused the notarization of the deed, as this was a condition for Matsuura's acceptance of the compromise.[8]

For her defense, Tanjutco argued that Tan's admission of having pre-signed the subject deed only proved that he had willingly assigned his shares in TF Ventures, Inc. to Matsuura. She also argued that Tan failed to present any proof of her participation in the deed's falsification, and explained that she had not yet known Matsuura at the time of the supposed notarization.[9]

For her part, Cua narrated that on June 19, 1997, a group that included a person who represented himself as Antonio Tan, Jr. approached her law office for the notarization of the subject deed. Tan presented his community tax certificate (CTC) as indicated in the subject deed of trust, then was sworn in by Cua as a notary public. Cua claimed to have conducted her duty in utmost good faith, with duplicate copies of the notarized deed reported to the Clerk of Court of Makati City. She denied having any business or interest whatsoever with the law offices of Tanjutco.[10]

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[7] *Id.* at 84.

[8] *Id.* at 71-78.

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

[10] *Rollo* (G.R. No. 195816), pp. 61-62.

The Ruling of the City Prosecutor

On July 13, 1998, the OCP issued a Resolution[11] dismissing for lack of probable cause the complaint against Matsuura and Tanjutco. It considered the fact that Tan had voluntarily signed the subject deed, and further noted that "[w]hether or not the same document is notarized, the [d]eed has the effect of a binding contract between the parties. The element of damage has not been sufficiently shown."[12]

The complaint against Cua was also dismissed. For the OCP, Tan failed to overturn the presumption of regularity attached to the notary public's performance of her official duty. Any irregularity attending the execution of the deed of trust required more than mere denial from Tan.[13]

Tan's motion for reconsideration was denied, prompting him to file a petition for review[14] with the Department of Justice (DOJ).

The Ruling of the Secretary of Justice

On April 4, 2003, then Secretary of Justice Simeon A. Datumanong issued a resolution[15] denying the petition. He ruled that no evidence was presented to show that the date, the number of shares and the witnesses' signatures appearing on the subject deed were merely inserted therein by the respondents. Tan's bare averments were insufficient to show the actual participation of the respondents in the alleged falsification.

Undaunted, Tan filed a motion for reconsideration, which was granted by then Acting Secretary of Justice Ma. Merceditas N. Gutierrez in a Resolution[16] dated July 1, 2004. In finding

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[11] *Id.* at 73-77.

[12] *Id.* at 76.

[13] *Id.*

[14] *Id.* at 80-99.

[15] *Id.* at 100-106.

[16] *Id.* at 107-111.

probable cause to indict the respondents for the crime of falsification, the DOJ noted that a copy of the deed of trust attached by Matsuura and Tanjutco to Matsuura's Answer dated October 30, 1997 in an intra-corporate dispute before the SEC was not yet notarized. Furthermore, the print and font of the deed's entries on its covered shares and date remarkably differed from the other portions of the document. The Secretary then held:

> [I]t would appear that the subject deed of trust was indeed never notarized. If the said document was purportedly notarized on June 19, 1997, the same notarized copy should have been presented by respondent Matsuura. After all, his Answer filed before the SEC was made with the assistance of respondent Atty. Tanjutco. There being none, it may be concluded that the notarization of the subject deed of trust was indeed made under doubtful circumstances.[17]

The Secretary also held that Cua should have been alerted by the variance in the deed's print styles, and the fact that the document was presented for notarization almost five months from the date of its purported execution. The dispositive portion of the Secretary's resolution then reads:

> WHEREFORE, the motion for reconsideration is hereby GRANTED. Resolution No. 189 (Series of 2003) is hereby SET ASIDE. The City Prosecutor of Makati City is directed to file an information against respondents Yoshitsugu Matsuura and Atty. Carolina Tanjutco for violation of Art. 172 (2) in relation to Art. 171 (6), RPC; and another information for violation of Art. 171 (2), RPC against respondents Yoshitsugu Matsuura, Atty. Carolina Tanjutco and Atty. Julie Cua.
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> SO ORDERED.[18]

The respondents moved for reconsideration. On April 4, 2005, then DOJ Undersecretary Ernesto L. Pineda, signing on behalf of the Secretary of Justice, issued a resolution[19] affirming the

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[17] *Id.* at 109-110.

[18] *Id.* at 110.

[19] *Id.* at 120-122.

presence of probable cause against Matsuura and Tanjutco, but ordering the exclusion of Cua from the filing of information. He ruled that Cua had exercised due diligence as a notary public by requiring from the person who appeared before her a proof of his identification. The resolution's decretal portion provides:

> Premises considered, the Resolution dated July 1, 2004 is hereby **MODIFIED** accordingly. The City Prosecutor of Makati City is directed to move for the exclusion of respondent Julie Cua from the information for violation of Art. 171 (2), Revised Penal Code, if any has been filed, and to report the action taken within ten (10) days from receipt hereof. The motion for reconsideration filed by respondents Yoshitsugu Matsuura and Atty. Carolina Tanjutco is hereby **DENIED**.
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> SO ORDERED.[20]

At this point, Matsuura and Tanjutco filed with the CA the petition for *certiorari* docketed as CA-G.R. SP No. 89346. The DOJ's review of its resolution on Cua's case continued with Tan's filing of a motion for partial reconsideration. Finding merit in the motion, the DOJ again reversed itself and issued on December 12, 2005 a Resolution[21] with dispositive portion that reads:

> WHEREFORE, in view of the foregoing, the motion for partial reconsideration is **GRANTED** and resolution dated April 4, 2005 is **SET ASIDE**. The City Prosecutor of Makati City is hereby directed to include Atty. Julie O. [Cua] in the information for violation of Article 171 (2) of the Revised Penal Code filed against respondents Yoshitsugu Matsuura and Atty. Carolina Tanjutco and report to this Office the action taken within ten (10) days from receipt hereof.
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> SO ORDERED.[22]

Cua's motion for reconsideration was denied, prompting her to file with the CA the petition for *certiorari* docketed as CA-G.R. SP No. 95263.

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[20] *Id.* at 121.

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

[22] *Id.* 139-140.

The Ruling of the CA

The CA granted both petitions questioning the Secretary of Justice's resolutions.

In CA-G.R. SP No. 89346, the CA held that given the elements of the crime, the actual participation of respondents Matsuura and Tanjutco was not sufficiently alleged, and the element of damage was not sufficiently shown. The dispositive portion of its Decision[23] dated February 6, 2007 reads:

WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The Resolution of the DOJ dated April 4, 2005 and July 1, 2004 are **SET ASIDE**. The Resolution of the City Prosecutor, Makati City dated July 13, 1998 in I.S. No. 98-C-15857-58 affirmed by the DOJ through Secretary Datumanong on April 4, 2003 **STANDS**.

SO ORDERED.[24]

Tan's motion for reconsideration was denied.

In CA-G.R. SP No. 95263, the CA held that Tan also failed to discharge the burden of proving probable cause against Cua. For the appellate court, there was nothing on record that was sufficient to overcome the presumption of regularity ascribed to both the subject deed as a public document and to Cua's discharge of her official functions as a notary public. The dispositive portion of its Decision[25] dated August 17, 2010 reads:

WHEREFORE, the instant Petition is **GRANTED**. The assailed Resolutions of the Secretary of Justice dated 12 December 2005 and 8 May 2006 are REVERSED and SET ASIDE. The Resolution of the Secretary of Justice dated 4 April 2003 affirming the findings of the City Prosecutor is hereby UPHELD.

SO ORDERED.[26]

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[23] *Supra* note 1.

[24] *Id.* at 61.

[25] *Supra* note 3.

[26] *Id.* at 53.

Tan's motion for reconsideration was denied in a Resolution[27] dated February 23, 2011.

The Present Petitions

Unsatisfied, Tan separately filed with this Court two petitions for review. G.R. No. 179003 assails the CA's disposition of Matsuura and Tanjutco's petition, while G.R. No. 195816 assails the CA's decision in the petition filed by Cua. From these petitions are two main issues for this Court's resolution:

(a) whether or not the CA erred in taking cognizance of the two petitions filed before it, assuming the role of a reviewing authority of the Secretary of Justice; and

(b) whether or not the CA erred in upholding the finding of the OCP that there exists no probable cause to indict Matsuura, Tanjutco and Cua for the crime of falsification.

This Court's Ruling

We emphasize that on February 13, 2012, this Court had already issued in G.R. No. 195816 a resolution[28] **denying** the petition, on the following bases:

> Considering the allegations, issues and arguments adduced in the petition for review on *certiorari* assailing the Decision dated 17 August 2010 and Resolution dated 23 February 2011 of the Court of Appeals, Manila, in CA-G.R. SP No. 95263, the Court resolves to **DENY** the petition for raising substantially factual issues and for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of this Court's discretionary appellate jurisdiction.[29] (Underscoring supplied, emphasis in the original)

Thus, the only pending incident in G.R. No. 195816 is Tan's motion for reconsideration of the Court's denial of his petition. In his motion, Tan reiterates the arguments he presented in the

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[27] *Supra* note 4.

[28] *Id.* at 174.

[29] *Id.*

petition, yet argues for the first time that the CA erred in granting Cua's motion for an additional period of thirty (30) days within which to file her petition in CA-G.R. SP No. 95263. This allegedly violated the provisions of A.M. 00-2-03-SC that amended Section 4, Rule 65[30] of the Rules of Court.

Tan also moved to consolidate G.R. No. 1958156 with G.R. No. 179003, which motion was allowed by the Court.

Before ruling on the main issues, we address Tan's argument that the CA erred in granting Cua's motion for extension of time to file her petition in CA-G.R. SP No. 95263.

In *Vallejo v. Court of Appeals*,[31] we emphasized that the Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that the strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and more prudent cause

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[30] Section 4, Rule 65 of the Rules of Court previously read:

Sec. 4. *When and where petition filed*. — The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding 15 days. (Emphasis ours)

[31] 471 Phil. 670 (2004).

of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties.[32] Thus, we allowed the petition in *Vallejo* to proceed even if it was filed almost four (4) months beyond the prescribed reglementary period under the rules.

Pursuant to the foregoing doctrine, in the interest of substantial justice, and given the merit that was ascribed by the CA to Cua's petition, we sustain the appellate court's ruling on Cua's motion for extension of time to file her petition for *certiorari*.

Courts possess the power to review findings of prosecutors in preliminary investigations.

On the first main issue, the petitioner contends that the CA should not have taken cognizance of the petitions for *certiorari* filed before it because criminal proceedings shall not be restrained once probable cause has been determined and the corresponding information has been filed in courts. Citing jurisprudence, Tan argues that the institution of a criminal action in court depends upon the sound discretion of the prosecutor.

The Court remains mindful of the established principle that the determination of probable cause is essentially an executive function that is lodged with the public prosecutor and the Secretary of Justice. However, equally settled is the rule that courts retain the power to review findings of prosecutors in preliminary investigations, although in a mere few exceptional cases showing grave abuse of discretion.

Judicial power under Section 1, Article VIII of the 1987 Constitution covers the courts' power to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction committed by any branch or instrumentality of the government in the discharge of its functions. Although policy considerations call for the widest latitude of deference to the

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[32] *Id.* at 684.

prosecutors' findings, courts should not shirk from exercising their power, when the circumstances warrant, to determine whether the prosecutors' findings are supported by the facts or by the law. In so doing, courts do not act as prosecutors but as organs of the judiciary that are exercising their mandate under the Constitution, relevant statutes, and remedial rules to settle cases and controversies. Indeed, the exercise of the courts' review power ensures that, on the one hand, probable criminals are prosecuted and, on the other hand, the innocent are spared from baseless prosecution.[33]

We then ruled in *Tan v. Ballena*[34] that while the findings of prosecutors are reviewable by the DOJ, this does not preclude courts from intervening and exercising our own powers of review with respect to the DOJ's findings. In the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored, the CA may take cognizance of the case *via* a petition under Rule 65 of the Rules of Court.[35]

Based on the grounds raised by the respondents in their petitions with the CA, the appellate court's exercise of its power to review was also the proper and most prudent course to take after the Secretary had successively issued several resolutions with varying findings of fact and conclusions of law on the existence of probable cause, even contrary to the own findings of the OCP that conducted the preliminary investigation. Although by itself, such circumstance was not indicative of grave abuse of discretion, there was a clear issue on the Secretary of Justice's appreciation of facts, which commanded a review by the court to determine if grave abuse of discretion attended the discharge of his functions.

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[33] *Social Security System v. Department of Justice*, G.R. No. 158131, August 8, 2007, 529 SCRA 426, 442; see also *Miller v. Perez*, G.R. No. 165412, May 30, 2011, 649 SCRA 158.

[34] G.R. No. 168111, July 4, 2008, 557 SCRA 229.

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

There is no probable cause for falsification against Matsuura, Tanjutco and Cua.

The Court agrees with the CA that the Secretary of Justice committed grave abuse of discretion when the latter ruled in favor of Tan, in his complaint against the respondents. Again, while the courts generally accord respect upon the prosecutor's or the DOJ's discretion in the determination of probable cause in preliminary investigations, the courts may, as an exception, set aside the prosecutor's or DOJ's conclusions to prevent the misuse of the strong arm of the law or to protect the orderly administration of justice.[36]

We emphasize the nature, purpose and amount of evidence that is required to support a finding of probable cause in preliminary investigations. Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof. It is 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 is to be prosecuted. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused.[37]

While probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges.[38]

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[36] *Borlongan, Jr. v. Peña*, G.R. No. 143591, November 23, 2007, 538 SCRA 221, 237.

[37] *Id.* at 236.

[38] *Ching v. The Secretary of Justice*, 517 Phil. 151, 171 (2006).

G.R. No. 179003

The Court affirms the CA's finding of grave abuse of discretion on the part of the Secretary of Justice in reversing the rulings of the OCP that favored Matsuura and Tanjutco.

In the Resolutions dated July 1, 2004 and April 4, 2005, the Secretary of Justice directed the filing in court of **two informations** against Matsuura and Tanjutco: one information for the crime of falsification under Article 172 (2), in relation to Article 171 (6) of the RPC, and another information for a violation of Article 171 (2) of the RPC. These penal provisions read:

Art. 171. ***Falsification by public officer, employee or notary or ecclesiastic minister***. — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

(2) Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.

x x x x x x x x x

(6) Making any alteration or intercalation in a genuine document which changes its meaning.

x x x x x x x x x

Art. 172. ***Falsification by private individuals and use of falsified documents***. — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

x x x x x x x x x

(2) Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

x x x x x x x x x

In **the first information**, the charge was under Article 172 (2), in relation to Article 171 (6), for the alleged insertions in the deed of trust on its number of covered shares, its date and the witnesses to the instrument's execution. In *Garcia v. Court of Appeals*,[39] we identified the elements of falsification under Article 171 (6) of the RPC, to wit:

(1) that there be an alteration (change) or intercalation (insertion) on a document;

(2) that it was made on a genuine document;

(3) that the alteration or intercalation has changed the meaning of the document; and

(4) that the changes made the document speak something false.[40]

When these are committed by a private individual on a private document, the violation would fall under paragraph 2, Article 172 of the same code, but there must be, in addition to the aforesaid elements, independent evidence of damage or intention to cause the same to a third person.[41]

Logically, affidavits and evidence presented during a preliminary investigation must at least show these elements of the crime and the particular participation of each of the respondents in its commission. Otherwise, there would be no basis for a well-founded belief that a crime has been committed, and that the persons being charged are probably guilty thereof. Probable cause can only find support in facts and circumstances that would lead a reasonable mind to believe that the person being charged warrants a prosecution. Upon the Court's review, we affirm the ruling that Tan had failed to adequately show during the preliminary investigation all the aforementioned elements of the offense.

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[39] 513 Phil. 547 (2005).

[40] *Id.* at 555.

[41] *Id.*

Petitioner Tan was not able to establish when and how the alleged unauthorized insertions in the subject document were effected, and that Matsuura and Tanjutco should be held liable therefor. To warrant an indictment for falsification, it is necessary to show during the preliminary investigation that the persons to be charged are responsible for the acts that define the crime. Contrary to this, however, there were no sufficient allegations and evidence presented on the specific acts attributed to Matsuura and Tanjutco that would show their respective actual participation in the alleged alteration or intercalation. Tan's broad statement that the deed was falsified after it was stolen by Matsuura merits no consideration in finding probable cause, especially after the following findings of the OCP in his Resolution dated July 13, 1998:

> Any alleged irregularity attending the execution of such a voluntary Deed requires more than mere denial. Criminal Case [N]o. [9]8-040 (I.S. No. 97-20720) concerning Qualified Theft of Condominium Certificate of Title, pre[-]signed checks and other personal belongings of complainant [herein petitioner], has already been recommended for dismissal by the Department of Justice on May 25, 1998, directing the withdrawal of the information in the aforesaid Criminal Case No. 98-040. In said recommendation, the principal subject matter is the alleged loss of condominium titles, and it appears that after the implementation of the search warrant, only title[s] and the pre[-]signed checks were not recovered. There is no mention of a missing Deed of Trust as claimed by complainant.[42]

Tan also sought to support his falsification charge by the alleged intercalations on the covered number of shares and date of the deed, asking the OCP and Secretary of Justice to take notice that the print, font style and size of these entries differed from the other portions of the document. However, it is not unusual, as it is as a common practice, for parties to prepare and print instruments or contractual agreements with specific details that are yet to be filled up upon the deed's execution. We are bound to believe that such was the situation in Tan's

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[42] *Rollo* (G.R. No. 179003), p. 88.

case, *i.e.*, the document had blanks when printed but was already complete in details at the time Tan signed it to give effect thereto, especially with the legal presumption that a person takes ordinary care of his concerns. Otherwise, Tan would not have voluntarily affixed his signature in the subject deed. In *Allied Banking Corporation v. Court of Appeals*,[43] we ruled:

> Under Section 3 (d), Rule 131 of the Rules of Court, **it is presumed that a person takes ordinary care of his concerns. Hence, the natural presumption is that one does not sign a document without first informing himself of its contents and consequences**. Said presumption acquires greater force in the case at bar where not only one document but several documents were executed at different times and at different places by the herein respondent guarantors and sureties.[44] (Citation omitted and emphasis supplied)

While the presumption can be disputed by sufficient evidence, Tan failed in this respect. We even find no merit in his claim that the incomplete document was merely intended to convince Japanese friends of Matsuura to extend credit to TF Ventures, Inc., as he failed to establish any connection between the deed of trust and the credit sought.

It is then the Court's view that the petitioner had voluntarily executed the subject Deed of Trust, with the intention of giving effect thereto. Even granting that there were insertions in the deed after it was signed by the petitioner, no sufficient allegation indicates that the alleged insertions had changed the meaning of the document, or that their details differed from those intended by the petitioner at the time that he signed it. The petitioner's bare allegation that "the change was without [his] consent and authority"[45] does not equate with the necessary allegation that the insertions were false or had changed the intended meaning of the document. Again, a violation of Article 172 (2), in relation

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[43] 527 Phil. 46 (2006).

[44] *Id.* at 56.

[45] *Rollo* (G.R. No. 179003), p. 65.

to Article 171 (6), of the RPC requires, as one of its elements, that "the alteration or intercalation has changed the meaning of the document.[46]

Neither was there sufficient evidence to support the element of damage that was purportedly suffered by Tan by reason of the alleged falsification. As correctly observed by the OCP:

> By his voluntary act of signing the Deed of Trust in favor of Matsuura, it can be safely inferred that the document speaks for itself. Whether or not the same document is notarized, the Deed has the effect of a binding contract between the parties. The element of damage has not been sufficiently shown.[47]

The Court emphasizes that the element of damage is crucial in the charge because the Secretary of Justice directed the filing of the first information for an alleged falsification of a private document.

From the foregoing, it is clear that the Secretary of Justice's finding of probable cause against Matsuura and Tanjutco was based solely on surmises and conjectures, wholly unsupported by legal and factual bases. The CA then correctly nullified, on the ground of grave abuse of discretion, the resolutions that were assailed before it. There is grave abuse of discretion when the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment, as when the assailed order is bereft of any factual and legal justification.[48]

True, a finding of probable cause need not be based on clear and convincing evidence, or on evidence beyond reasonable doubt. It does not require that the evidence would justify conviction. Nonetheless, although the determination of probable cause requires less than evidence which would justify conviction, it should at least be more than mere suspicion. And while probable

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[46] *Supra* note 39, at 555.

[47] *Rollo* (G.R. No. 195816), p. 76.

[48] *The Senate Blue Ribbon Committee v. Hon. Majaducon*, 455 Phil. 61, 71 (2003), citing *Flores v. Office of the Ombudsman*, 437 Phil. 684, 691 (2002).

cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges. It is, therefore, imperative for the prosecutor to relieve the accused from the pain and inconvenience of going through a trial once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused.[49]

The Secretary of Justice's directive upon the prosecutor to file **the second information** against Matsuura and Tanjutco also lacked basis. It was premised on an alleged violation of Article 171(2) of the RPC, by making it appear that Tan participated in an act or proceeding when as he claimed, he did not in fact so participate. The elements of this crime are as follows:

(1) that the offender is a public officer, employee or notary public;

(2) that he takes advantage of his official position;

(3) that he falsifies a document by causing it to appear that a person or persons have participated in any act or proceeding when they did not in fact so participate.[50]

Since Matsuura and Tanjutco are both private individuals, they can be indicted for the offense only if it is shown that they conspired with Cua, as a notary public, in the commission thereof.

Contrary to this requirement, however, the Secretary of Justice ordered in its Resolution dated April 4, 2005 the filing of the second information against Matsuura and Tanjutco, notwithstanding the order in the same resolution to exclude Cua in the case. Such ruling evidently amounts to a grave abuse of discretion because as correctly held by the CA:

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[49] *Supra* note 36, at 240.

[50] *Bernardino v. People*, 536 Phil. 961, 970 (2006).

Article 171, RPC refers to falsification committed by a public officer, employee, notary or ecclesiastical minister who[,] taking advantage of his official position[,] shall falsify a document, in this case, by causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate. **Herein petitioners [herein respondents Matsuura and Tanjutco], not being included in said enumeration cannot, on their own, be held liable for aforesaid violation. They can be held liable therefor only in conspiracy with one who is a public officer, employee, notary or ecclesiastical minister who, taking advantage of his official position, falsified a document.** On account of the exclusion of Atty. Julie Cua from said charge, herein petitioners cannot be held liable for the charge**. It is settled that there is grave abuse of discretion when an act is done contrary to the Constitution, the law or jurisprudence, or when executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.** x x x.[51] (Emphasis ours)

The subsequent resolution of the Secretary of Justice to include Cua in the information, following a separate motion for reconsideration by Tan and, we emphasize, only after CA-G.R. SP No. 89346 had already been filed, was inconsequential to the grave abuse of discretion already committed by the Secretary of Justice in its final disposition of the case against Matsuura and Tanjutco. The CA was tasked in CA-G.R. SP No. 89346 to determine the issue of whether or not the Secretary of Justice had committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions, in light of the rulings, findings and the bases used by the Secretary. In addition, even the CA later declared in CA-G.R. SP No. 96263 that the Secretary of Justice's order to pursue the case against Cua amounted to a grave abuse of discretion.

G.R. No. 195816

We now rule on the petitioner's motion for reconsideration of the Court's denial of the petition docketed as G.R. No. 195816. After review, the Court affirms its earlier denial of the petition,

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[51] *Rollo* (G.R. No. 179003), pp. 60-61.

given Tan's failure to show any reversible error committed by the CA. As correctly held by the appellate court, no probable cause was established to support a falsification case against Cua.

We are bound to adhere to the presumption of regularity in Cua's performance of her official duty, and to the presumption of regularity that is attached to the subject deed of trust as a public document. As held by the OCP, even "[t]he records of the Notarial Division of the Clerk of Court, Makati City faithfully reflects the duplicate copy of the subject Deed of Trust 'made and entered on June 19, 1997 executed by Antonio L. Tan, Jr.', as certified by Atty. Corazon Cecilia Pineda."[52] It needed more than a bare denial from Tan to overthrow these presumptions. Adequate supporting evidence should have been presented to support his assertions.

Tan's denial that he personally appeared before Cua on June 19, 1997 deserved no weight in the determination of probable cause. He failed to present any plausible explanation as to why it was impossible for him to be at the notary public's office on said date. Neither did he deny that the CTC indicated in the deed's jurat as evidence of identity actually belonged to him. The mere circumstance that his relationship with Matsuura was already strained at the time of the deed's notarization miserably failed to substantiate the claim that he could not have appeared before Cua. Matsuura had precisely explained that the transfer of the shares of stock was part of an attempt to compromise a dispute that existed between them. In addition, we have explained that the alleged theft of the document by Matsuura was sufficiently rebutted during the preliminary investigation.

On the basis of the foregoing, the reasonable probability of the respondents' participation in the commission of the crime of falsification was not sufficiently established during the preliminary investigation. Even the failure of Matsuura and Tanjutco to attach a notarized copy of the deed to their pleading filed with the SEC fails to support a finding of probable cause.

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[52] *Rollo* (G.R. No. 195816), p. 75.

On the contrary, the circumstance that an unnotarized copy of the deed was submitted to the SEC weakens the argument that the alleged falsification and wrongful notarization was resorted to by the respondents to suit their interests. It showed that the respondents believed in the value of the deed to their case even if it was not notarized. We then affirm the CA's ruling in CA-G.R. SP No. 96263 that the Secretary of Justice committed grave abuse of discretion, by gross misapprehension of facts, when it ordered the filing of the information against Cua. Although Tan assails the CA's grant of the petition on such basis, jurisprudence provides that grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It also refers to cases in which, for various reasons, there has been a gross misapprehension of facts.[53]

WHEREFORE, the Court rules as follows:

(1) In **G.R. No. 179003**, the petition for review is **DENIED.** The Court of Appeals' Decision dated February 6, 2007 and Resolution dated July 24, 2007 in CA-G.R. SP No. 89346 are **AFFIRMED.**

(2) In **G.R. No. 195816**, petitioner Tan's motion for reconsideration is **DENIED.**

SO ORDERED.

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

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[53] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331.

SECOND DIVISION

[G.R. No. 180919. January 9, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MELBA L. ESPIRITU, PRIMITIVA M. SERASPE, SIMPRESUETA M. SERASPE**, ***a.k.a.*** **"Aileen,"** *accused,* **SIMPRESUETA M. SERASPE**, ***a.k.a.*** **"Aileen,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 6425 (THE DANGEROUS DRUGS ACT OF 1972), AS AMENDED; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— In the prosecution of illegal sale of dangerous drugs, the two essential elements are: "(1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor." Hence, evidence that establishes both elements by the required quantum of proof, *i.e.*, guilt beyond reasonable doubt, must be presented. Here, the said elements were duly proved by the prosecution. Carla and P/Chief Insp. Dandan positively identified appellant and her co-accused as the sellers of the contraband who sold the same in exchange for the marked money. The item was seized, marked and upon examination was identified as *shabu*, a dangerous drug. The same was subsequently presented in evidence. Moreover, Carla provided a detailed testimony as to the delivery and sale of *shabu* x x x.

2. ID.; CONSPIRACY; MAY BE PROVED BY DIRECT OR CIRCUMSTANTIAL EVIDENCE CONSISTING OF ACTS, WORDS, OR CONDUCT OF THE ALLEGED CONSPIRATORS BEFORE, DURING AND AFTER THE COMMISSION OF THE FELONY TO ACHIEVE A COMMON PURPOSE.— There is conspiracy if two or more persons agree to commit a felony and decide to commit it. "Conspiracy must be proven on the same quantum of evidence as the felony subject of the agreement of the parties. Conspiracy may be proved by direct or circumstantial evidence consisting

of acts, words, or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose." The existence of conspiracy in this case was clearly established not only by the prosecution's evidence but also by appellant's very own testimony x x x.

3. ID.; ID.; TO BE A CONSPIRATOR, ONE NEED NOT TAKE PART IN EVERY ACT OR NEED NOT EVEN KNOW THE EXACT PART TO BE PERFORMED BY THE OTHERS IN THE EXECUTION OF THE CONSPIRACY.— "An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part and another performing another so as to complete it with a view to the attainment of the same object, and their acts though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments." As can be gleaned from appellant's x x x testimony as well as from the testimony of Carla as to what transpired during the actual buy-bust operation, appellant acted in common concert with her co-accused in the illegal sale of *shabu*. She cannot therefore isolate her act of merely accompanying Espiritu to the RFC Food Court or carrying the *shabu* since in conspiracy the act of one is the act of all. "To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy."

4. ID.; INSTIGATION AND ENTRAPMENT, DISTINGUISHED.— "Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him." It differs from entrapment which is the employment of ways and means in order to trap or capture a criminal. In instigation, the criminal intent to commit an offense originates from the inducer and not from the accused who had no intention to commit and would not have committed it were it not for the prodding of the inducer. In entrapment, the criminal intent or design originates from the accused and the law enforcers merely facilitate the apprehension of the criminal by using ruses and schemes. Instigation results in the acquittal of the accused, while entrapment may lead to prosecution and conviction.

5. ID.; REPUBLIC ACT NO. 6425 (THE DANGEROUS DRUGS ACT OF 1972), AS AMENDED; ILLEGAL SALE OF DANGEROUS DRUGS; A POLICE OFFICER'S ACT OF SOLICITING DRUGS FROM THE ACCUSED DURING THE BUY-BUST OPERATION IS NOT PROHIBITED BY LAW.— [A] police officer's act of soliciting drugs from appellant during the buy-bust operation, or what is known as the "decoy solicitation," is not prohibited by law and does not invalidate the buy-bust operation. In *People v. Legaspi*, this Court pronounced that in a prosecution for sale of illicit drugs, any of the following will not exculpate the accused: "(1) that facilities for the commission of the crime were intentionally placed in his way; or (2) that the criminal act was done at the solicitation of the decoy or poseur-buyer seeking to expose his criminal act; or (3) that the police authorities feigning complicity in the act were present and apparently assisted in its commission." Hence, even assuming that the PAOCTF operatives repeatedly asked her to sell them *shabu*, appellant's defense of instigation will not prosper. This is "especially true in that class of cases where the offense is the kind that is habitually committed, and the solicitation merely furnished evidence of a course of conduct. Mere deception by the police officer will not shield the perpetrator, if the offense was committed by him free from the influence or instigation of the police officer."

6. ID.; ID.; ID.; PENALTY IN CASE AT BAR.— The total weight of the *shabu* confiscated in this case is 983.5 grams. Hence, the proper penalty should be *reclusion perpetua* to death. But since the penalty of *reclusion perpetua* to death consists of two indivisible penalties, appellant was correctly meted the lesser penalty of *reclusion perpetua*, conformably with Article 63(2) of the Revised Penal Code which provides that when there are no mitigating or aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. Considering the quantity of *shabu* sold, we likewise find reasonable the fine of ₱500,000.00 imposed by the trial court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Appellant Simpresueta M. Seraspe (appellant) assails the July 25, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02045 which affirmed her conviction for illegal sale of dangerous drugs by the Regional Trial Court (RTC) of Las Piñas City, Branch 275 in Criminal Case No. 99-1127.[2]

Factual Antecedents

Appellant, together with her mother, Primitiva M. Seraspe (Seraspe), and Melba L. Espiritu (Espiritu) were charged with violation of Section 15, Article II of Republic Act (R.A.) No. 6425 (The Dangerous Drugs Act of 1972), as amended, in an Amended Information,[3] the accusatory portion of which reads as follows:

> That on or about June 1, 1999 in Las Piñas City and within the jurisdiction of this Honorable Court, [the] above-named accused, **conspiring, conniving, confederating, and helping one another**, did, then and there willfully, unlawfully, feloniously and knowingly sell, dispense, transport, deal in, administer, deliver, negotiate and distribute 983.5 grams of methamphetamine hydrochloride (*shabu*), a regulated drug, to Ms. Criselda Manila, who acted as poseur buyer, said accused, selling, dispensing, transporting, administering and distributing the aforementioned regulated drug without any license, permit or authority from the government to do so, in consideration of an amount of money which accused demanded and received from the poseur buyer.
>
> CONTRARY TO LAW.[4]

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[1] CA *rollo*, pp. 147-159; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo.

[2] *Id.* at 92-101.

[3] Records, pp. 42-43.

[4] *Id.* Emphasis in the original.

The three entered separate pleas of "not guilty" to the crime charged during their arraignment on December 1, 1999.[5] Thereafter, trial ensued.

Version of the Prosecution

The key witnesses presented by the prosecution were Police Chief Inspector Ricardo Dandan (P/Chief Insp. Dandan), a member of the now defunct Presidential Anti-Organized Crime Task Force (PAOCTF), and Criselda Manila, *a.k.a.*, Carla (Carla), liaison officer of PAOCTF. From their testimonies,[6] the following facts emerge:

On May 15, 1999, P/Chief Insp. Dandan received a telephone call from a confidential informant who told him about the drug trafficking activities of Espiritu in Cainta and in the Cities of Las Piñas, Muntinlupa, Taguig and Parañaque. He immediately reported this information to Senior Police Superintendent Cesar Mancao, who, in turn, instructed him to create a police team to conduct an operation relative thereto. P/Chief Insp. Dandan thus formed Team Golf composed of SPO4 Bahadi (also referred to as SPO4 Bajade), SPO4 Tuanggang, SPO2 Roberto O. Agbalog, PO3 Osmundo B. Cariño (PO3 Cariño), SPO1 Leopoldo Platilla, SPO2 Laroga (also referred to as SPO2 Laruga), PO3 Olaya and Carla. Carla was to act as the poseur-buyer and PO3 Cariño as her husband.

On the same day, Team Golf proceeded to SM Southmall in Las Piñas City and met the confidential informant. Thereafter Carla, PO3 Cariño and the civilian informant headed to Espiritu's house and presented themselves to Espiritu. After the introductions, negotiation for the sale of *shabu* followed. Carla ordered two kilos of *shabu* for a discounted price of ₱750,000.00. Espiritu, in turn, took Carla's cellphone number and promised to call once the *shabu* becomes available.

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[5] *Id.* at 45-46.

[6] TSN, May 17, 2000 and July 31, 2000 for Carla; TSN, August 23, 2000 and September 13, 2000 for P/Chief Insp. Dandan.

On May 27, 1999, Espiritu called Carla and asked the latter to wait. She again called two days later and arranged for a meeting at noon of the next day in SM Bacoor. Hence, on May 30, 1999, Carla proceeded to the agreed place while Espiritu arrived thereat together with appellant. Espiritu directed appellant to give a sample of the *shabu* to Carla inside the rest room so the latter could examine it. Appellant obliged. After they parted ways, Carla gave the sample to P/Chief Insp. Dandan, who readily knew that the same was *shabu* because of his familiarity with the drug.

At around 7:00 p.m. of the same day, Espiritu again called Carla and told her that she already has two kilos of *shabu* but would deliver only one kilo. She would deliver the rest after receipt of the payment for the first. The two then agreed to meet in the food court of RFC Manuela (RFC Food Court), Las Piñas City for the delivery of the drugs.

Upon learning this, P/Chief Insp. Dandan immediately gathered the buy-bust team, gave them instructions and prepared **four marked 500 peso bills and boodle money**. The team then repaired to the meeting place on June 1, 1999. At about 3:00 p.m., Carla and PO3 Cariño occupied one of the tables in the RFC Food Court while the rest of the team positioned themselves nearby. Espiritu and appellant arrived at around 5:00 p.m. After ascertaining from Carla if she brought the money, Espiritu ordered appellant to get the *shabu*. Appellant left and returned 30 minutes later with her mother, Seraspe, who was then carrying a bag. Appellant took the said bag and handed it to Espiritu, who, together with Carla, proceeded to the restroom to examine the contents thereof. When Carla emerged from the restroom, she made the pre-arranged signal by scratching her head. Whereupon, the buy-bust team arrested Espiritu, Seraspe and appellant. The marked money was recovered from Espiritu while the plastic bag containing the substance subject of the buy-bust operation was marked by PO3 Cariño with the Visayan word "*tigulang*." Upon laboratory examination, the seized specimen weighing 983.5

grams was found positive for methamphetamine hydrochloride or *shabu*.[7]

Version of the Defense

Espiritu, Seraspe and appellant claimed that they were merely induced by the PAOCTF operatives to sell the dangerous drug. Their testimonies[8] revealed the following circumstances:

Espiritu first met Carla when the latter went to her house together with the civilian informant in the second week of April 1999. Carla wanted to talk to Espiritu's husband, who is a lawyer and a casino financier, in the hope of getting his help in purchasing *shabu* from his Chinese clients. When Espiritu told Carla that her husband does not want to get involved in that kind of business, Carla instead sought her help. Carla promised to pay ₱750,00.00 for a kilo of *shabu*. Fearing that her husband would get mad about it, Espiritu declined the offer.

After a couple of days, Carla returned to Espiritu's house, this time with PO3 Cariño whom she introduced as her husband. Again, they sought her assistance in purchasing *shabu* and showed her an attaché case containing ₱1.5 million. Espiritu again declined. But as Carla and PO3 Cariño returned four more times with the same request and showing her the money each time, Espiritu finally told them that she would see what she can do. At that time, she was in need of money for the tuition fees of her grandchildren and the medicines of her son. Espiritu thus introduced Carla and PO3 Cariño to appellant, an employee of her husband in the casino.

Appellant claimed that during her first meeting with Carla and PO3 Cariño, the two asked her to help them look for *shabu* and showed her money in an attaché case. She initially refused but changed her mind when the couple kept on returning to her

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[7] Physical Science Report No. D-2615-99, Exhibit "K", records, p. 313.

[8] TSN, June 29, 2001, July 6, 2001, July 25, 2001 and August 8, 2001 for Espiritu; TSN, September 24, 2001 for Seraspe; and TSN, October 1, 2001 for appellant.

place to convince her. Thinking that she would be able to pay her debts and provide for the needs of her children with the money being offered by Carla and PO3 Cariño, she acceded and told them that she would try to look for *shabu*.

On May 30, 1999, appellant and Espiritu went to the house of a certain Aida Go (Aida) to get the *shabu*. Appellant then kept the *shabu* in her house as instructed by Espiritu. On June 1, 1999, she and Espiritu went to RFC Food Court to meet with Carla and PO3 Cariño. Appellant handed the *shabu* to Espiritu, who entered the restroom with Carla. However, when they came out, they were already surrounded by policemen and were arrested.

Seraspe, for her part, claimed that she had no knowledge of the transaction as she just accompanied her daughter, appellant, to the RFC Food Court.

Ruling of the Regional Trial Court

In its Decision[9] of July 29, 2002, the trial court found that all the accused conspired to deliver and sell *shabu*.[10] And contrary to accused's claim that they were merely instigated by the authorities to commit the crime charged, it found that their arrest was the result of a valid entrapment operation.[11] It thus disposed:

> WHEREFORE, judgment is hereby rendered finding accused MELBA L. ESPIRITU, PRIMITIVA M. SERASPE and SIMPRESUETA M. SERASPE guilty beyond reasonable doubt and sentenced to suffer each the penalty of *Reclusion Perpetua* and pay a fine of ₱500,000.00 and costs.
>
> SO ORDERED.[12]

Espiritu, Seraspe and appellant filed a Notice of Appeal,[13] which was given due course by the trial court in an Order dated

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[9] Records, pp. 457-466; penned by Judge Bonifacio Sanz Maceda.

[10] *Id.* at 464.

[11] *Id.* at 465.

[12] *Id.* at 466.

[13] *Id.* at 470.

August 5, 2002.[14] Pursuant thereto, the records of the case were elevated to this Court.

However, on October 15, 2004, Espiritu filed a Manifestation with Motion to Withdraw Appeal[15] because she intends to apply for executive clemency in view of her old age and illness. The Court granted the motion in a Resolution[16] dated December 1, 2004 and the case was declared closed and terminated with respect to her. An Entry of Judgment[17] relative thereto was accordingly issued and entered in the Book of Entries of Judgment.

In the Court's Resolution[18] dated November 9, 2005, the case was transferred to the CA for appropriate action and disposition in view of the ruling in *People v. Mateo*[19] allowing an intermediate review by the said court of cases where the penalty imposed is death, life imprisonment or *reclusion perpetua*, as in this case.

Subsequently, Seraspe likewise filed a Manifestation with Motion to Withdraw Appeal[20] since she also intends to apply for executive clemency in view of her old age. The CA granted the same in a Resolution[21] dated August 7, 2006 and the case was likewise declared closed and terminated insofar as she was concerned. A Partial Entry of Judgment[22] was likewise issued and entered in the Book of Entries of Judgment on even date.

Thus, appellant was the only one left pursuing the appeal.

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[14] *Id.* at 473.

[15] CA *rollo*, pp. 50-51.

[16] *Id.* at 53.

[17] *Id.* at 58.

[18] *Id.* at 67-68.

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

[20] CA *rollo*, pp. 71-73.

[21] *Id.* at 139-140.

[22] *Id.* at 141.

Ruling of the Court of Appeals

In a Decision[23] dated July 25, 2007, the CA upheld the RTC's finding of a valid entrapment[24] and accorded respect and finality upon the trial court's assessment of the credibility of witnesses.[25] The dispositive portion of its Decision reads:

> WHEREFORE, the Decision appealed from is AFFIRMED.
>
> SO ORDERED.[26]

Hence, this appeal.

Assignment of Errors

The errors raised in the Accused-Appellant's Brief[27] and Supplemental Brief[28] are as follows:

> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 15, ARTICLE II, IN RELATION TO SECTION 21, ARTICLE IV, AS AMENDED BY R.A. 7659, WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[29]
>
> THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE LAME EVIDENCE OF THE PROSECUTION TO WARRANT A FINDING OF CONSPIRACY BEYOND REASONABLE DOUBT.[30]

Our Ruling

The petition has no merit.

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[23] *Id.* at 147-159.

[24] *Id.* at 156-158.

[25] *Id.* at 158.

[26] *Id.* at 158-159.

[27] *Id.* at 78-91.

[28] *Rollo*, pp. 28-34.

[29] CA *rollo*, p. 80.

[30] *Rollo*, p. 28.

The two essential elements of the crime of illegal sale of dangerous drugs were duly established by the prosecution; appellant conspired with her co-accused in the commission of the crime charged.

Appellant faults the trial court in convicting her of the crime of illegal sale of dangerous drugs.

In the prosecution of illegal sale of dangerous drugs, the two essential elements are: "(1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor."[31] Hence, evidence that establishes both elements by the required quantum of proof, *i.e.*, guilt beyond reasonable doubt,[32] must be presented. Here, the said elements were duly proved by the prosecution. Carla and P/Chief Insp. Dandan positively identified appellant and her co-accused as the sellers of the contraband who sold the same in exchange for the marked money. The item was seized, marked and upon examination was identified as *shabu*, a dangerous drug. The same was subsequently presented in evidence. Moreover, Carla provided a detailed testimony as to the delivery and sale of *shabu, viz*:

Q What time did you [reach] the area?
A About 3:00 in the afternoon.

Q After reaching the area at Manuela Food Court, what happened next?
A And then the group positioned themselves inside the Food Court.

Q How about x x x you and Cariño?
A And we positioned ourselves [at] the next table.

Q What happened after you positioned yourselves at the table?
A And then Melba Espiritu and Aileen Seraspe arrived at around 5:00 in the afternoon.

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[31] *People v. Legaspi*, G.R. No. 173485, November 23, 2011, 661 SCRA 171, 185.

[32] *Id.*

Q And what happened after Melba Espiritu and Aileen Seraspe arrived?
A She asked me if I have already the money.

Q What was your answer if any?
A I answered yes.

Q What happened next after you answered yes that you have money?
A And she asked Aileen Seraspe to go out.

Q For what reason?
A To get the *shabu*.

Q So what happened after Melba Espiritu directed Aileen to go out and get the *shabu*?
A When Aileen returned she was with her mother Primitiva Seraspe.

Q And what happened after Aileen came back together with her mother Primitiva Seraspe?
A And Primitiva Seraspe is carrying a gray envelope clutch bag which look[s] like [an] envelope.

Q And what happened after Aileen came back together with Primitiva Seraspe who was then carrying a gray clutch type bag?
A And then she left her mother in one of the table[s] and she took a gray bag and opened it and took another plastic pink bag containing *shabu* and gave it to Melba.

Q So what happened after Aileen Seraspe [took off] the pink bag inside the gray bag and hand[ed] it over to Melba Espiritu?
A And then I was invited by Melba Espiritu [to] the comfort room.

Q What happened after she [went with you inside] the comfort room?
A She showed me that sir and asked me to look at it.

Q She showed you what?
A *Shabu* sir.

Q What happened next?
A After looking [inside] the plastic bag containing *shabu*, I gave her the money.

Q And how did you [give] her the money?
A After I gave her the money, I went out of the C.R.

Q What happened to the *shabu*?
A It is still [in] my possession sir.

Q And what happened after you went out of the CR carrying the *shabu*?

A After getting out of the CR I made a signal.
Q And what [was] the signal?

A I scratched my hair using my right hand.

Q At this juncture Your Honor [witness] is demonstrating by scratching her hair. What happened next after you scratched your hair?
A And they arrested Melba carrying the money.[33]

The Court has no reason to doubt the above testimony of Carla. Aside from the fundamental rule that findings of the trial court regarding the credibility of prosecution witnesses are accorded respect considering that it is the trial court that had the opportunity to observe their conduct and demeanor,[34] the Court notes that appellant herself corroborated the prosecution's account of the crime, *viz*.:

Q How many kilos did you sell to the buyer, if you sold anything?
A We first brought one (1) kilo.

Q When you say "we," you are referring to you and to Melba Espiritu, is that correct?
A Yes, Sir.

x x x x x x x x x

Q And what happened while at RFC?
A While we were in RFC, I hand[ed] the *shabu* to Melba Espiritu and then they entered the CR and when they went out of the CR there were already many policemen.[35]

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[33] TSN, May 17, 2000, pp. 27-30.

[34] *People v. Bautista*, G.R. No. 191266, June 6, 2011, 650 SCRA 689, 700-701, citing *People v. Gabrino*, G.R. No. 189981, March 9, 2011, 645 SCRA 187, 193-195.

[35] TSN, October 1, 2001, p. 9.

Moreover, appellant questions the lower courts' finding of conspiracy between her and her co-accused. She claims that she merely accompanied Espiritu in going to the RFC Food Court and had nothing to do with the transaction. As a matter of fact, the *shabu* was not even found in or recovered from her possession. It just so happened that she was in the area during the delivery of the drugs.

The Court is not persuaded.

There is conspiracy if two or more persons agree to commit a felony and decide to commit it.[36] "Conspiracy must be proven on the same quantum of evidence as the felony subject of the agreement of the parties. Conspiracy may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose."[37]

The existence of conspiracy in this case was clearly established not only by the prosecution's evidence but also by appellant's very own testimony, *viz*:

Q So, it was your own decision to go with Melba Espiritu to get that *shabu* from [A]ida Go?
A Yes, sir.

Q And in going there, your intention was to earn money?
A Yes, sir.

Q And who entered into this transaction of getting *shabu* from Aida Go, was it you or Melba Espiritu?
A The two (2) of them. They were the ones who made the deal.

Q And what was your participation while Melba Espiritu and Aida Go were transacting about that *shabu*?
A My only participation would only be to carry that *shabu* from where we will get it up to the buyer.

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[36] REVISED PENAL CODE, Article 8.

[37] *Preferred Home Specialties, Inc. v. Court of Appeals (Seventh Div.),* 514 Phil. 574, 601 (2005).

Q And did you pay any amount of money to Aida Go in order to get that two (2) kilos of *shabu*?
A No, sir. It was given to us on a consignment basis.

Q And do you know the meaning of "consignment basis"?
A It will be paid after the deal.

Q And you mentioned that your participation would be to bring that *shabu* from where?
A Get it from Baclaran then go to RFC.

FISCAL VILLANUEVA:

Q Where in Baclaran?
A I don't know the exact address but I can go there. I mean, I will be able to go there. It is near 7-Eleven.

Q Along Roxas Boulevard or Quirino Avenue?
A You can pass through Quirino Avenue and Baclaran.

Q And when did you get that *shabu* in Baclaran?
A I think it was [at] the end of May. End of May.

Q And from whom did you get the *shabu* in Baclaran?
A From the house of [A]ida Go.

Q And who handed the *shabu* to you?
A It was not handed to me only. They only instructed me to carry it. It was placed in a bag.

Q So, how were you able to know that that box contains that *shabu* if nobody handed it to you?
A Because I know that we will be getting *shabu*. So, when Melba Espiritu told me to carry it, that box, I was thinking that it was already the *shabu*.

Q So, Melba Espiritu was with you when you went to Baclaran when you picked [up] that *shabu*?
A Yes, sir.

Q So, the two of you were together in picking [up] that *shabu*?
A Yes, sir.

Q When was that?
A May 30.

Q And what happened after you [picked up] that *shabu* in Baclaran together with Melba Espiritu?
A She instructed me to keep first the *shabu* in my house.

Q So, it was Melba Espiritu who was dealing … who was telling you what to do?
A Yes, sir.

Q So, what happened after you kept that *shabu* in your house?
A I don't know what happened because it was Melba and the [PAOCTF] who were the ones dealing.

Q So, you voluntarily and knowingly carried that *shabu* for Melba Espiritu?
A Yes. sir.[38]

"An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part and another performing another so as to complete it with a view to the attainment of the same object, and their acts though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments."[39] As can be gleaned from appellant's above-quoted testimony as well as from the testimony of Carla as to what transpired during the actual buy-bust operation, appellant acted in common concert with her co-accused in the illegal sale of *shabu*. She cannot therefore isolate her act of merely accompanying Espiritu to the RFC Food Court or carrying the *shabu* since in conspiracy the act of one is the act of all.[40] "To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy."[41]

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[38] TSN, October 1, 2001, pp. 13-15.

[39] *People v. Serrano*, G.R. No. 179038, May 6, 2010, 620 SCRA 327, 336-337, citing *People v. Medina*, 354 Phil. 447, 458 (1998).

[40] *People v. Ebet*, G.R. No. 181635, November 15, 2010, 634 SCRA 689, 706.

[41] *Id.*

Appellant's defense of instigation is unworthy of belief.

Appellant raises the defense of instigation to gain her acquittal. She argues that the government, through the PAOCTF operatives, induced her to commit the offense when they repeatedly approached and asked her to sell them *shabu*.

The Court is unswayed.

"Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him."[42] It differs from entrapment which is the employment of ways and means in order to trap or capture a criminal.[43] In instigation, the criminal intent to commit an offense originates from the inducer and not from the accused who had no intention to commit and would not have committed it were it not for the prodding of the inducer.[44] In entrapment, the criminal intent or design originates from the accused and the law enforcers merely facilitate the apprehension of the criminal by using ruses and schemes.[45] Instigation results in the acquittal of the accused, while entrapment may lead to prosecution and conviction.[46]

Here, the evidence clearly established that the police operatives employed entrapment, not instigation, to capture appellant and her cohorts in the act of selling *shabu*. It must be recalled that it was only upon receipt of a report of the drug trafficking activities of Espiritu from the confidential informant that a buy-bust team was formed and negotiations for the sale of *shabu* were made. Also, appellant testified that she agreed to the transaction of her own free will when she saw the same as an opportunity to earn money. Notably too, appellant was able to quickly produce

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[42] *People v. Dansico*, G.R. No. 178060, February 23, 2011, 644 SCRA 151, 160.

[43] *Id.*

[44] *Id.*

[45] *Id.* at 160-161.

[46] *Id.* at 161.

a sample. This confirms that she had a ready supply of the illegal drugs. Clearly, she was never forced, coerced or induced through incessant entreaties to source the prohibited drug for Carla and PO3 Cariño and this she even categorically admitted during her testimony.[47]

Moreover, a police officer's act of soliciting drugs from appellant during the buy-bust operation, or what is known as the "decoy solicitation," is not prohibited by law and does not invalidate the buy-bust operation.[48] In *People v. Legaspi*,[49] this Court pronounced that in a prosecution for sale of illicit drugs, any of the following will not exculpate the accused: "(1) that facilities for the commission of the crime were intentionally placed in his way; or (2) that the criminal act was done at the solicitation of the decoy or poseur-buyer seeking to expose his criminal act; or (3) that the police authorities feigning complicity in the act were present and apparently assisted in its commission."[50] Hence, even assuming that the PAOCTF operatives repeatedly asked her to sell them *shabu*, appellant's defense of instigation will not prosper. This is "especially true in that class of cases where the offense is the kind that is habitually committed, and the solicitation merely furnished evidence of a course of conduct. Mere deception by the police officer will not shield the perpetrator, if the offense was committed by him free from the influence or instigation of the police officer."[51]

All told, we find no reason to disturb the findings of the trial court as affirmed by the appellate court, and thus sustain the conviction of appellant for illegal sale of dangerous drugs.

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[47] TSN, October 1, 2001, p. 12.

[48] *People v. Pagkalinawan*, G.R. No. 184805, March 3, 2010, 614 SCRA 202, 214.

[49] G.R. No. 173485, November 23, 2011, 661 SCRA 171.

[50] *Id.* at 181.

[51] *Id.*

The Penalty

Under Section 15, Article III, in relation to Section 20, Article IV, of the Dangerous Drugs Act of 1972, as amended by R.A. No. 7659, the unauthorized sale of 200 grams or more of *shabu* or methamphetamine hydrochloride is punishable by *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos.[52]

The total weight of the *shabu* confiscated in this case is 983.5 grams. Hence, the proper penalty should be *reclusion perpetua* to death. But since the penalty of *reclusion perpetua* to death consists of two indivisible penalties, appellant was correctly meted the lesser penalty of *reclusion perpetua*, conformably with Article 63(2) of the Revised Penal Code which provides that when there are no mitigating or aggravating circumstances in the commission of the deed, the lesser penalty shall be applied. Considering the quantity of *shabu* sold, we likewise find reasonable the fine of ₱500,000.00 imposed by the trial court.[53]

WHEREFORE, the assailed Decision dated July 25, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 02045 is **AFFIRMED.**

SO ORDERED.

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

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[52] *Ching v. People*, G.R. No. 177237, October 17, 2008, 569 SCRA 711, 736.

[53] *Id.* at 736-737.

THIRD DIVISION

[G.R. No. 181826. January 9, 2013]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **HONG YEN E and TSIEN TSIEN CHUA,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 6425 (THE DANGEROUS DRUGS ACT OF 1972), AS AMENDED; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— To prove the crime of illegal sale of dangerous drugs, the prosecution's evidence should establish the following elements: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment. Absent any of these two elements, the prosecution's case must fail.

2. ID.; ID.; ID.; RECEIPT OF THE MARKED MONEY, WHETHER DONE BEFORE DELIVERY OF THE DRUGS OR AFTER, IS REQUIRED.— It is material in illegal sale of dangerous drugs that the sale actually took place. What consummates the buy-bust transaction is the delivery of the drugs to the poseur-buyer and, in turn, the seller's receipt of the marked money. While the parties may have agreed on the selling price of the *shabu* and delivery of payment was intended, these do not prove consummated sale. Receipt of the marked money, whether done before delivery of the drugs or after, is required.

3. ID.; ID.; ILLEGAL POSSESSION OF PROHIBITED DRUGS; ELEMENTS.— The elements of illegal possession of prohibited drugs are as follows: (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the prohibited drug.

4. REMEDIAL LAW; EVIDENCE; FRAME-UP; REQUIRES STRONG PROOF WHEN OFFERED AS A DEFENSE.— The evidence on record clearly established that appellant Chua was in possession of the plastic bags containing prohibited drugs without the requisite authority. Applying Section 3(j), Rule 131 of the Rules of Court, a disputable presumption arises

that she is the owner of the bag and its contents. It may be rebutted by contrary proof that the accused did not in fact exercise power and control over the thing in question, and did not intend to do so. The burden of evidence is thus shifted to the possessor to explain absence of *animus possidendi*. Here, Chua failed to present evidence to rebut the presumption. She claims that she was a victim of frame-up and extortion by the narcotics agents of the NBI. This defense is viewed with disfavor for it can be easily concocted. The defense of frame-up, often imputed to police officers, requires strong proof when offered as a defense, because of the presumption that public officers acted in the regular performance of their official duties.

5. **CRIMINAL LAW; CONSPIRACY; NEED NOT BE PROVED BY DIRECT EVIDENCE AS IT CAN BE CLEARLY DEDUCED FROM THE ACTS OF THE ACCUSED.—** Although the plastic bags containing *shabu* were found solely in the possession of Chua, it was evident that Yen E had knowledge of its existence. As the records would show, Yen E negotiated for the sale of dangerous drugs. When Chua arrived in the vicinity, she approached Yen E before delivering the *shabu* to Suñega. These acts of the accused indubitably demonstrate a coordinated plan on their part to actively engage in the illegal business of drugs. When conspiracy is shown, the act of one is the act of all conspirators. Direct evidence of conspiracy is not necessary as it can be clearly deduced from the acts of the accused.

6. **ID.; REPUBLIC ACT NO. 6425 (THE DANGEROUS DRUGS ACT OF 1972), AS AMENDED; CHAIN OF CUSTODY RULE; NOT VIOLATED AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS HAD BEEN PRESERVED.—** The alleged failure of the apprehending team to inventory and photograph the confiscated items immediately after the operation, is not fatal to the prosecution's cause. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be used in the determination of the guilt or innocence of the accused. Here, the integrity and evidentiary value of the seized drugs had been preserved as there is evidence to account for the crucial links in the chain of custody of the seized *shabu*, starting from its confiscation to its presentation as evidence in the RTC.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.

Soo Gutierrez Leogardo & Lee and *Kapunan Imperial Panaguiton & Bongolan* for Hong Yen E.

Cabrera & Associates Law Offices for Tsien Tsien Chua.

D E C I S I O N

ABAD, *J.*:

This is about the duty of the prosecution to prove beyond reasonable doubt that the illegal sale of drugs was consummated. Absence of proof of consummation, the accused may be acquitted for illegal sale of drugs. Nonetheless, accused may be convicted for "illegal possession of prohibited drugs"—penalized in Section 8 of Republic Act (R.A.) 6425, as amended—as possession is necessarily included in the crime charged in the Information.

The Facts and the Case

The City Prosecutor of Manila separately charged the accused Hong Yen E @ "Benjie Ong" (Yen E), Tsien Tsien Chua (Chua), and Gun Jie Ang (Ang) before the Regional Trial Court (RTC) of that city for violation of Section 15, Article III in relation to Section 2(e), (f), (m), and (o), Article I in relation to Article 21 of R.A. 6425, as amended by Presidential Decree 7659.[1]

The National Bureau of Investigation (NBI) Special Investigator (SI) Roy Rufino C. Suñega (Suñega) testified that Atty. Ruel Lasala, Chief of the Narcotics Division, ordered him to place accused Yen E under surveillance and arrange a possible buy-bust involving him. Subsequently, Suñega went to Jollibee, Masangkay Branch, together with SI Noel C. Bocaling for a pre-arranged meeting with Yen E. At that meeting, Yen E agreed to sell two kilograms of *shabu* to Suñega for ₱600,000.00

[1] Records, Vol. I, pp. 3-4.

per kilogram. He was to deliver the *shabu* in the evening of the following day at the same place.

Suñega caused the preparation of boodle money, consisting of 24 bundles of 100 10-peso bills with four 500-peso bills to cover the top and the bottom of each bundle. He had the 500-peso bills marked with "RS-1," "RS-2," "RS-3" and "RS-4" at the right top portion.[2] As agreed, the NBI agents met with Yen E again on the evening of September 5, 2001. Yen E arrived but requested the police buyers to meet him at Lai-Lai Restaurant. Before he left, Yen E took a peek at the money.

At the Lai-Lai Restaurant, Chua and Ang arrived and approached Yen E. Upon the latter's instruction, Chua handed over the plastic bags she had to Suñega. Convinced that these contained *shabu*, Suñega lit his cigarette, the signal that the buy-bust had been completed. After the arrest of the three, Suñega placed the *shabu* in plastic bags and marked these with "H. YEN-1" and "H.YEN-2" with the date "9-06-2001."[3] The police then submitted the suspected *shabu* for laboratory examination. Yvette Ylao, an NBI forensic analyst testified that, upon examination, the contents of the plastic bags proved to be methamphetamine hydrochloride.

Accused Chua denied the charges and testified that it was a case of "*hulidap*" and they tortured her. They divested her of her jewelry and demanded ₱2 million for her release. Yen E also denied the charges and complained of being a victim of "*hulidap*." He testified that the arresting officers demanded ₱2 million for his release. Ang, on the other hand, jumped bail and thus waived his right to adduce evidence.

On April 29, 2004 the RTC found the three accused guilty beyond reasonable doubt of the crime charged and sentenced them to suffer the penalty of *reclusion perpetua* and to pay a fine of ₱500,000.00 each without subsidiary imprisonment in case of insolvency.

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[2] TSN, August 27, 2002, pp. 11-13.

[3] *Id.* at 29.

On appeal to the Court of Appeals (CA) in CA-G.R. CR-H.C. 02168,[4] the latter affirmed *in toto* the RTC Decision. It also denied the accused's motion for reconsideration on August 6, 2007, hence, this appeal.

The Issue Presented

The sole issue in this case is whether or not the CA erred in finding that the prosecution succeeded in proving beyond reasonable doubt the consummation of the illegal sale of prohibited drugs.

The Ruling of the Court

One. To prove the crime of illegal sale of dangerous drugs, the prosecution's evidence should establish the following elements: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment. Absent any of these two elements, the prosecution's case must fail.

Here, while SI Suñega claimed that Yen E offered to sell to him two kilograms of *shabu* for ₱1.2 million and that he agreed to buy the same, the sale was not consummated. He thus narrated:

Q: What happened when this Chinese lady handed to you the plastic bag?
A: Well, I immediately inspected the contents of the said bag and I noticed the bag has two transparent plastic bags and crumpled newspapers covered it.

Q: And what was the content of this?
A: Based on my initial examination, I am convinced that it is *shabu*. Based on its appearance.

Q: What happened, Mr. Witness, when this Chinese lady handed to you the plastic bag?
A: Well, I immediately lighted a cigarette. And the lighting of the cigarette is a pre-arranged signal to our back-up team that the drugs are there already and that is a signal to conduct the arrest. (*sic*)

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[4] Penned by Justice Conrado M. Vasquez, Jr. and concurred in by Justices Fernanda Lampas-Peralta and Celia C. Librea-Leagogo.

x x x x x x x x x

Q: What happened, Mr. Witness, when you testified that you gave a pre-arranged signal?

A: After that, I already saw my back-up team approaching our position and **then before I could hand over the money to Mr. Benjie Ong, the arrest was already made**.[5] (Emphasis supplied)

During the re-cross examination, SI Suñega admitted that the back-up team immediately arrested the appellants before he could deliver the buy-bust money to the appellants, thus:

Q: Okay, there was no payment whatsoever?

A: I have the money with me to pay but before I can do so, the back-up team already assisted me in conducting the arrest.

Q: In other words, you did not actually pay for what you claim you have received? *Hindi mo binayaran ang sinasabi mong inabot sa iyo*. Is that correct?

A: That's correct, sir.[6]

It is material in illegal sale of dangerous drugs that the sale actually took place. What consummates the buy-bust transaction is the delivery of the drugs to the poseur-buyer and, in turn, the seller's receipt of the marked money.[7] While the parties may have agreed on the selling price of the *shabu* and delivery of payment was intended, these do not prove consummated sale. Receipt of the marked money, whether done before delivery of the drugs or after,[8] is required.

In an attempt to prove a consummated sale, the prosecution heavily relied on the testimony of SI Suñega that Yen E took a peek at the money before they went to the restaurant for the swap with *shabu*. But looking at a thing does not transfer

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[5] TSN, August 27, 2002, pp. 24-29.

[6] TSN, September 12, 2002, p. 11.

[7] *People v. Dela Cruz*, G.R. No. 177324, March 30, 2011, 646 SCRA 707, 718, citing *People v. Mala*, 458 Phil. 180, 190 (2003).

[8] *People v. Aspiras*, 427 Phil. 27, 37-38 (2002).

possession of it to the beholder. Such a tenet would make window shoppers liable for theft.

Two. Appellant's exoneration from the sale of prohibited drugs does not spell freedom from all criminal liability as they may be convicted for illegal possession of prohibited drugs under Section 8[9] of R.A. 6425. This Court has consistently ruled that possession is necessarily included in the sale of illegal drugs.

Given that illegal possession is an element of and is necessarily included in the illegal sale of prohibited drugs, the Court will now determine appellants culpability under Section 8.

The elements of illegal possession of prohibited drugs are as follows: (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the prohibited drug.[10]

The evidence on record clearly established that appellant Chua was in possession of the plastic bags containing prohibited drugs without the requisite authority. Applying Section 3(j), Rule 131 of the Rules of Court,[11] a disputable presumption arises that she is the owner of the bag and its contents. It may be rebutted by contrary proof that the accused did not in fact exercise power and control over the thing in question, and did not intend to do so. The burden of evidence is thus shifted to the possessor to explain absence of *animus possidendi*.[12] Here, Chua failed to

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[9] **Section 8.** *Possession or Use of Prohibited Drugs.* The penalty of imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug, except Indian hemp as to which the next following paragraph shall apply.

[10] *People v. Lacerna*, 344 Phil. 100, 121 (1997).

[11] Rule 131, Section 3(j): That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him.

[12] *Cupcupin v. People*, 440 Phil. 712, 731 (2002).

present evidence to rebut the presumption. She claims that she was a victim of frame-up and extortion by the narcotics agents of the NBI. This defense is viewed with disfavor for it can be easily concocted.[13] The defense of frame-up, often imputed to police officers, requires strong proof when offered as a defense, because of the presumption that public officers acted in the regular performance of their official duties.[14]

Although the plastic bags containing *shabu* were found solely in the possession of Chua, it was evident that Yen E had knowledge of its existence. As the records would show, Yen E negotiated for the sale of dangerous drugs. When Chua arrived in the vicinity, she approached Yen E before delivering the *shabu* to Suñega. These acts of the accused indubitably demonstrate a coordinated plan on their part to actively engage in the illegal business of drugs. When conspiracy is shown, the act of one is the act of all conspirators. Direct evidence of conspiracy is not necessary as it can be clearly deduced from the acts of the accused.

Three. As to the accused's argument that the NBI operatives failed to observe the chain of custody rule in dangerous drugs cases, we do not agree. The alleged failure of the apprehending team to inventory and photograph the confiscated items immediately after the operation, is not fatal to the prosecution's cause. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be used in the determination of the guilt or innocence of the accused.[15] Here, the integrity and evidentiary value of the seized drugs had been preserved as there is evidence to account for the crucial links in the chain of custody of the seized *shabu*, starting from its confiscation to its presentation as evidence in the RTC.

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[13] *People v. Laylo*, G.R. No. 192235, July 6, 2011, 653 SCRA 660, 671.

[14] *People v. Carlos Boco*, 368 Phil. 341, 367 (1999).

[15] *People v. Soriaga*, G.R. No. 191392, March 14, 2011, 645 SCRA 300, 306.

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR-H.C. 02168 dated March 30, 2007 is hereby **MODIFIED.** The Court **FINDS** Hong Yen E @ "Agi/Benjie Ong" and Tsien Tsien Chua guilty of illegal possession of prohibited drugs under Section 8 of Republic Act 6425; **IMPOSES** on them, in accordance with the Indeterminate Sentence Law, imprisonment for 8 years as minimum to 12 years as maximum; and **ORDERS** them to pay a fine of ₱12,000.00. Costs *de oficio*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 183035. January 9, 2013]

OPTIMA REALTY CORPORATION, *petitioner, vs.* **HERTZ PHIL. EXCLUSIVE CARS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; JURISDICTION OVER THE PERSON OF THE DEFENDANT IN CASE AT BAR IS ACQUIRED BY ITS VOLUNTARY APPEARANCE IN COURT.— In civil cases, jurisdiction over the person of the defendant may be acquired either by service of summons or by the defendant's voluntary appearance in court and submission to its authority. In this case, the MeTC acquired jurisdiction over the person of respondent Hertz by reason of the latter's voluntary appearance in court. x x x [T]he Answer with Counterclaim filed by Hertz never raised the defense of improper service of summons. The defenses that it pleaded were limited to *litis pendentia*, *pari*

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[*] Designated additional member, in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated December 10, 2012.

delicto, performance of its obligations and lack of cause of action. Finally, it even asserted its own counterclaim against Optima. Measured against the standards in *Philippine Commercial International Bank*, these actions lead to no other conclusion than that Hertz voluntarily appeared before the court *a quo*. We therefore rule that, by virtue of the voluntary appearance of respondent Hertz before the MeTC, the trial court acquired jurisdiction over respondent.

2. ID.; ID.; *LITIS PENDENTIA*; ELEMENTS; NOT PRESENT IN CASE AT BAR.— *Litis pendentia* requires the concurrence of the following elements: (1) Identity of parties, or at least their representation of the same interests in both actions; (2) Identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (3) Identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. Here, while there is identity of parties in both cases, we find that the rights asserted and the reliefs prayed for under the Complaint for Specific Performance and those under the present Unlawful Detainer Complaint are different. x x x As the rights asserted and the reliefs sought in the two cases are different, we find that the pendency of the Complaint for Specific Performance is not a bar to the institution of the present case for ejectment.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LEASE; THE LESSOR MAY JUDICIALLY EJECT THE LESSEE FOR FAILURE TO PAY TIMELY RENTALS AND UTILITY CHARGES; CASE AT BAR.— [T]he records show that Hertz failed to pay rental arrearages and utility bills to Optima. Failure to pay timely rentals and utility charges is an event of default under the Contract of Lease, entitling the lessor to terminate the lease. Moreover, the failure of Hertz to pay timely rentals and utility charges entitles the lessor to judicially eject it under the provisions of the Civil Code.

4. ID.; ID.; ID.; THE EXPIRY OF THE PERIOD AGREED UPON BY THE PARTIES IS A GROUND FOR JUDICIAL EJECTMENT; CASE AT BAR.— [T]he records likewise show that the lease had already expired on 28 February 2006 because of Hertz's failure to request a renegotiation at least 90 days prior to the termination of the lease period. x x x As

the lease was set to expire on 28 February 2006, Hertz had until 30 November 2005 within which to express its interest in negotiating an extension of the lease with Optima. However, Hertz failed to communicate its intention to negotiate for an extension of the lease within the time agreed upon by the parties. Thus, by its own provisions, the Contract of Lease expired on 28 February 2006. Under the Civil Code, the expiry of the period agreed upon by the parties is likewise a ground for judicial ejectment.

5. ID.; DAMAGES; AWARD OF MONTHLY COMPENSATION, ATTORNEY'S FEES AND JUDICIAL COSTS, PROPER IN CASE AT BAR.— As to the award of monthly compensation, we find that Hertz should pay adequate compensation to Optima, since the former continued to occupy the leased premises even after the expiration of the lease contract. As the lease price during the effectivity of the lease contract was 54,200 per month, we find it to be a reasonable award. Finally, we uphold the award of attorney's fees in the amount of 30,000 and judicial costs in the light of Hertz's unjustifiable and unlawful retention of the leased premises, thus forcing Optima to file the instant case in order to protect its rights and interest.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Jesus Christopher PB. Belandres for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before us is a Rule 45 Petition assailing the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-GR SP

[1] *Rollo*, pp. 39-48; CA Decision dated 17 March 2008, penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

[2] *Id.* at 38; CA Resolution dated 20 May 2008, penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

No. 99890, which reversed the Decision[3] and Resolution[4] of the Regional Trial Court (RTC), Branch 137, Makati City in Civil Case No. 06-672. The RTC had affirmed *in toto* the 22 May 2006 Decision[5] of the Metropolitan Trial Court (MeTC), Branch 64, Makati City in Civil Case No. 90842 evicting respondent Hertz Phil. Exclusive Cars, Inc. (Hertz) and ordering it to pay back rentals and other arrearages to petitioner Optima Realty Corporation (Optima).

Optima is engaged in the business of leasing and renting out commercial spaces and buildings to its tenants. On 12 December 2002, it entered into a Contract of Lease with respondent over a 131-square-meter office unit and a parking slot in the Optima Building for a period of three years commencing on 1 March 2003 and ending on 28 February 2006.[6] On 9 March 2004, the parties amended their lease agreement by shortening the lease period to two years and five months, commencing on 1 October 2003 and ending on 28 February 2006.[7]

Renovations in the Optima Building commenced in January and ended in November 2005.[8] As a result, Hertz alleged that it experienced a 50% drop in monthly sales and a significant decrease in its personnel's productivity. It then requested a 50% discount on its rent for the months of May, June, July and August 2005.[9]

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[3] *Id.* at 49-61; RTC Decision dated 16 March 2007, penned by Presiding Judge Jenny Lind R. Aldecoa-Delorino.

[4] CA *rollo*, pp. 47-49; RTC Resolution dated 18 June 2007, penned by Presiding Judge Jenny Lind R. Aldecoa-Delorino.

[5] *Id.* at 205-209; MeTC Decision dated 22 May 2006, penned by Judge Dina Pestaño Teves.

[6] *Id.* at 84-85; Contract of Lease dated 12 December 2002.

[7] *Id.* at 153-154; Amendment to the Contract of Lease dated 9 March 2004.

[8] *Id.* at 68; Complaint of Exclusive Cars, Inc. dated 30 January 2006.

[9] *Id.* at 97.

On 8 December 2005, Optima granted the request of Hertz.[10] However, the latter still failed to pay its rentals for the months of August to December of 2005 and January to February 2006,[11] or a total of seven months. In addition, Hertz likewise failed to pay its utility bills for the months of November and December of 2005 and January and February of 2006,[12] or a total of four months.

On 8 December 2005, Optima wrote another letter to Hertz,[13] reminding the latter that the Contract of Lease could be renewed only by a new negotiation between the parties and upon written notice by the lessee to the lessor at least 90 days prior to the termination of the lease period.[14] As no letter was received from Hertz regarding its intention to seek negotiation and extension of the lease contract within the 90-day period, Optima informed it that the lease would expire on 28 February 2006 and would not be renewed.[15]

On 21 December 2005, Hertz wrote a letter belatedly advising Optima of the former's desire to negotiate and extend the lease.[16] However, as the Contract of Lease provided that the notice to negotiate its renewal must be given by the lessee at least 90 days prior to the expiration of the contract, petitioner no longer entertained respondent's notice.

On 30 January 2006, Hertz filed a Complaint for Specific Performance, Injunction and Damages and/or Sum of Money with prayer for the issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (Complaint for Specific

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[10] *Id.* at 105; letter of Optima dated 8 December 2005.

[11] *Id.* at 114; Complaint (With Application for Temporary Restraining Order and/or Preliminary Mandatory Injunction) dated 10 March 2006.

[12] *Id.*

[13] *Id.* at 103; letter of Optima dated 8 December 2005.

[14] *Id.* at 86; Contract of Lease dated 12 December 2002.

[15] *Id.* at 103; letter of Optima dated 8 December 2005.

[16] *Id.* at 104; letter of Hertz dated 21 December 2005.

Performance) against Optima. In that Complaint, Hertz prayed for the issuance of a TRO to enjoin petitioner from committing acts that would tend to disrupt respondent's peaceful use and possession of the leased premises; for a Writ of Preliminary Injunction ordering petitioner to reconnect its utilities; for petitioner to be ordered to renegotiate a renewal of the Contract of Lease; and for actual, moral and exemplary damages, as well as attorney's fees and costs.

On 1 March 2006, Optima, through counsel, wrote Hertz a letter requiring the latter to surrender and vacate the leased premises in view of the expiration of the Contract of Lease on 28 February 2006.[17] It likewise demanded payment of the sum of ₱420,967.28 in rental arrearages, unpaid utility bills and other charges.[18] Hertz, however, refused to vacate the leased premises.[19] As a result, Optima was constrained to file before the MeTC a Complaint for Unlawful Detainer and Damages with Prayer for the Issuance of a TRO and/or Preliminary Mandatory Injunction (Unlawful Detainer Complaint) against Hertz.[20]

On 14 March 2006, Summons for the Unlawful Detainer Complaint was served on Henry Bobiles, quality control supervisor of Hertz, who complied with the telephone instruction of manager Rudy Tirador to receive the Summons.[21]

On 28 March 2006, or 14 days after service of the Summons, Hertz filed a Motion for Leave of Court to file Answer with Counterclaim and to Admit Answer with Counterclaim (Motion for Leave to File Answer).[22] In that Motion, Hertz stated that, "in spite of the defective service of summons, [it] opted to file

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[17] *Id.* at 159-160; letter of Picazo Buyco Tan Fider & Santos dated 1 March 2006.

[18] *Id.* at 160.

[19] *Id.* at 117; Complaint (With Application for Temporary Restraining Order and/or Preliminary Mandatory Injunction) dated 10 March 2006.

[20] *Id.* at 111-122.

[21] *Id.* at 352; Sheriff's Return dated 15 March 2006.

[22] *Id.* at 175-177.

the instant Answer with Counterclaim with Leave of Court."[23] In the same Motion, it likewise prayed that, in the interest of substantial justice, the Answer with Counterclaim attached to the Motion for Leave to File Answer should be admitted regardless of its belated filing, since the service of summons was defective.[24]

On 22 May 2006, the MeTC rendered a Decision,[25] ruling that petitioner Optima had established its right to evict Hertz from the subject premises due to nonpayment of rentals and the expiration of the period of lease.[26] The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Court hereby renders judgment for the plaintiff and against the defendant, ordering:

1. the defendant corporation and all persons claiming rights from it to immediately vacate the leased premises and to surrender possession thereof to the plaintiff;

2. the defendant corporation to pay the plaintiff the amount of Four Hundred Twenty Thousand Nine Hundred Sixty Seven Pesos and 28/100 (₱420,967.28) representing its rentals arrearages and utility charges for the period of August 2005 to February 2006, deducting therefrom defendant's security deposit;

3. the defendant corporation to pay the amount of Fifty Four Thousand Two Hundred Pesos (₱54,200.00) as a reasonable monthly compensation for the use and occupancy of the premises starting from March 2006 until possession thereof is restored to the plaintiff; and

4. the defendant corporation to pay the amount of Thirty Thousand Pesos (₱30,000.00) as and for attorney's fees; and

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[23] *Id.* at 176; Motion for Leave of Court to file Answer with Counterclaim and to Admit Answer with Counterclaim.

[24] *Id.*

[25] *Id.* at 205-209.

[26] *Id.* at 208.

5. the cost of suit.

SO ORDERED.[27]

Hertz appealed the MeTC's Decision to the RTC.[28]

Finding no compelling reason to warrant the reversal of the MeTC's Decision, the RTC affirmed it by dismissing the appeal in a Decision[29] dated 16 March 2007.

On 18 June 2007, the RTC denied respondent's Motion for Reconsideration of its assailed Decision.[30]

Hertz thereafter filed a verified Rule 42 Petition for Review on *Certiorari* with the CA.[31]

On appeal, the CA ruled that, due to the improper service of summons, the MeTC failed to acquire jurisdiction over the person of respondent Hertz. The appellate court thereafter reversed the RTC and remanded the case to the MeTC to ensure the proper service of summons. Accordingly, the CA issued its 17 March 2008 Decision, the *fallo* of which reads:

WHEREFORE, premises considered, the May 22, 2006 Decision of the Metropolitan Trial Court of Makati City, Branch 64, in Civil Case No. 90842, and both the March 16, 2007 Decision, as well as the June 18, 2007 Resolution, of the Regional Trial Court of Makati City, Branch 137, in Civil Case No. 06-672, are hereby **REVERSED, ANNULLED and SET ASIDE** — due to lack of jurisdiction over the person of the defendant corporation HERTZ. This case is hereby **REMANDED** to the Metropolitan Trial Court of Makati City, Branch 64, in Civil Case No. 90842, which is **DIRECTED** to ensure that its Sheriff properly serve summons to only those persons listed in Sec. 11, Rule 14 of the Rules of Civil Procedure in order that the MTC could acquire jurisdiction over the person of the defendant corporation HERTZ.

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[27] *Id.* at 208-209.

[28] *Id.* at 210; Notice of Appeal dated 20 June 2006.

[29] *Id.* at 33-45.

[30] *Id.* at 47-49; Resolution dated 18 June 2007.

[31] *Id.* at 2-29; Petition dated 25 July 2007.

SO ORDERED.[32]

Petitioner's Motion for Reconsideration of the CA's Decision was denied in a Resolution dated 20 May 2008.[33]

Aggrieved by the ruling of the appellate court, petitioner then filed the instant Rule 45 Petition for Review on *Certiorari* with this Court.[34]

THE ISSUES

As culled from the records, the following issues are submitted for resolution by this Court:

1. Whether the MeTC properly acquired jurisdiction over the person of respondent Hertz;

2. Whether the unlawful detainer case is barred by *litis pendentia*; and

3. Whether the ejectment of Hertz and the award of damages, attorneys fees and costs are proper.

THE COURT'S RULING

We grant the Petition and reverse the assailed Decision and Resolution of the appellate court.

I

The MeTC acquired jurisdiction over the person of respondent Hertz.

In civil cases, jurisdiction over the person of the defendant may be acquired either by service of summons or by the defendant's voluntary appearance in court and submission to its authority.[35]

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[32] *Rollo*, pp. 47-48.

[33] *Id.* at 38.

[34] *Id.* at 13-32; Petition for Review on *Certiorari* (Under Rule 45 of the Rules of Court) dated 27 June 2008.

[35] *Santos v. NLRC*, 325 Phil. 145 (1996).

In this case, the MeTC acquired jurisdiction over the person of respondent Hertz by reason of the latter's voluntary appearance in court.

In *Philippine Commercial International Bank v. Spouses Dy*,[36] we had occasion to state:

> Preliminarily, jurisdiction over the defendant in a civil case is acquired either by the coercive power of legal processes exerted over his person, or his voluntary appearance in court. As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that **the filing of motions to admit answer**, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is considered voluntary submission to the court's jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.
>
> Prescinding from the foregoing, it is thus clear that:
>
> (1) Special appearance operates as an exception to the general rule on voluntary appearance;
>
> (2) Accordingly, **objections to the jurisdiction of the court over the person of the defendant must be explicitly made**, *i.e.*, set forth in an unequivocal manner; and
>
> **(3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.** (Emphases supplied)

In this case, the records show that the following statement appeared in respondent's Motion for Leave to File Answer:

> **[I]n spite of the defective service of summons, the defendant opted to file the instant Answer with Counterclaim with Leave of Court**, upon inquiring from the office of the clerk of court of this Honorable Court and due to its notice of hearing on March 29, 2005 application

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[36] G.R. No. 171137, 5 June 2009, 588 SCRA 612, 627-628.

for TRO/Preliminary Mandatory Injunction was received on March 26, 2006. (Emphasis supplied)[37]

Furthermore, the Answer with Counterclaim filed by Hertz never raised the defense of improper service of summons. The defenses that it pleaded were limited to *litis pendentia*, *pari delicto*, performance of its obligations and lack of cause of action.[38] Finally, it even asserted its own counterclaim against Optima.[39]

Measured against the standards in *Philippine Commercial International Bank*, these actions lead to no other conclusion than that Hertz voluntarily appeared before the court *a quo*.

We therefore rule that, by virtue of the voluntary appearance of respondent Hertz before the MeTC, the trial court acquired jurisdiction over respondent's.

II

The instant ejectment case is not barred by *litis pendentia*.

Hertz contends that the instant case is barred by *litis pendentia* because of the pendency of its Complaint for Specific Performance against Optima before the RTC.

We disagree.

Litis pendentia requires the concurrence of the following elements:

(1) Identity of parties, or at least their representation of the same interests in both actions;

(2) Identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and

(3) Identity with respect to the two preceding particulars in the two cases, such that any judgment that may be

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[37] CA *rollo*, p. 176.

[38] *Id.* at 178-185.

[39] *Id.* at 185-186.

> rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[40]

Here, while there is identity of parties in both cases, we find that the rights asserted and the reliefs prayed for under the Complaint for Specific Performance and those under the present Unlawful Detainer Complaint are different. As aptly found by the trial court:

> [T]he Complaint for Specific Performance] seeks to compel plaintiff-appellee Optima to: (1) renegotiate the contract of lease; (2) reconnect the utilities at the leased premises; and (3) pay damages. On the other hand, the unlawful detainer case sought the ejectment of defendant-appellant Hertz from the leased premises and to collect arrears in rentals and utility bills.[41]

As the rights asserted and the reliefs sought in the two cases are different, we find that the pendency of the Complaint for Specific Performance is not a bar to the institution of the present case for ejectment.

III

The eviction of respondent and the award of damages, attorney's fees and costs were proper.

We find that the RTC's ruling upholding the ejectment of Hertz from the building premises was proper. *First*, respondent failed to pay rental arrearages and utility bills to Optima; and, *second*, the Contract of Lease expired without any request from Hertz for a renegotiation thereof at least 90 days prior to its expiration.

On the first ground, the records show that Hertz failed to pay rental arrearages and utility bills to Optima. Failure to pay timely rentals and utility charges is an event of default under

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[40] *Ssangyong Corp. v. Unimarine Shipping Lines, Inc.*, 512 Phil. 171 (2005).

[41] CA *rollo*, p. 43; RTC Decision dated 16 March 2007.

the Contract of Lease,[42] entitling the lessor to terminate the lease.

Moreover, the failure of Hertz to pay timely rentals and utility charges entitles the lessor to judicially eject it under the provisions of the Civil Code.[43]

On the second ground, the records likewise show that the lease had already expired on 28 February 2006 because of Hertz's failure to request a renegotiation at least 90 days prior to the termination of the lease period.

The pertinent provision of the Contract of Lease reads:

> x x x. The lease can be renewed only by a new negotiation between the parties upon written notice by the LESSEE to be given to the LESSOR at least 90 days prior to termination of the above lease period.[44]

As the lease was set to expire on 28 February 2006, Hertz had until 30 November 2005 within which to express its interest in negotiating an extension of the lease with Optima. However, Hertz failed to communicate its intention to negotiate for an extension of the lease within the time agreed upon by the parties. Thus, by its own provisions, the Contract of Lease expired on 28 February 2006.

Under the Civil Code, the expiry of the period agreed upon by the parties is likewise a ground for judicial ejectment.[45]

As to the award of monthly compensation, we find that Hertz should pay adequate compensation to Optima, since the former continued to occupy the leased premises even after the expiration of the lease contract. As the lease price during the effectivity of the lease contract was ₱54,200 per month, we find it to be a reasonable award.

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[42] *Id.* at 93; Contract of Lease dated 12 December 2002.

[43] CIVIL CODE, Art. 1673 (2).

[44] CA *rollo*, p. 86; Contract of Lease dated 12 December 2002.

[45] CIVIL CODE, Art. 1673 (1).

Finally, we uphold the award of attorney's fees in the amount of ₱30,000 and judicial costs in the light of Hertz's unjustifiable and unlawful retention of the leased premises, thus forcing Optima to file the instant case in order to protect its rights and interest.

From the foregoing, we find that the MeTC committed no reversible error in its 22 May 2006 Decision, and that the RTC committed no reversible error either in affirming the MeTC's Decision.

WHEREFORE, in view of the foregoing, the instant Rule 45 Petition for Review is **GRANTED.** The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 99890 are hereby **REVERSED** and **SET ASIDE.** The Decision of the Regional Trial Court, Branch 137, Makati City in Civil Case No. 06-672 affirming *in toto* the Decision of the Metropolitan Trial Court, Branch 64, Makati City in Civil Case No. 90842 is hereby REINSTATED and **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 185595. January 9, 2013]

MA. CARMINIA C. CALDERON, represented by her Attorney-In-Fact, Marycris V. Baldevia, *petitioner, vs.* **JOSE ANTONIO F. ROXAS and COURT OF APPEALS,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; SUPPORT *PENDENTE LITE*; THE ASSAILED ORDERS RELATIVE

TO THE INCIDENT OF SUPPORT *PENDENTE LITE* IN CASE AT BAR ARE INTERLOCUTORY.— The assailed orders relative to the incident of support *pendente lite* and support in arrears, as the term suggests, were issued pending the rendition of the decision on the main action for declaration of nullity of marriage, and are therefore interlocutory. They did not finally dispose of the case nor did they consist of a final adjudication of the merits of petitioner's claims as to the ground of psychological incapacity and other incidents as child custody, support and conjugal assets. The Rules of Court provide for the provisional remedy of support *pendente lite* which may be availed of at the commencement of the proper action or proceeding, or at any time prior to the judgment or final order. On March 4, 2003, this Court promulgated the Rule on Provisional Orders which shall govern the issuance of provisional orders during the pendency of cases for the declaration of nullity of marriage, annulment of voidable marriage and legal separation. These include orders for spousal support, child support, child custody, visitation rights, hold departure, protection and administration of common property.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; INTERLOCUTORY AND FINAL ORDERS; DISTINGUISHED.— The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy. An interlocutory order merely resolves incidental matters and leaves something more to be done to resolve the merits of the case. In contrast, a judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action. Clearly, whether an order or resolution is final or interlocutory is not dependent on compliance or non-compliance by a party to its directive x x x.

3. ID.; PROVISIONAL REMEDIES; NATURE.— Provisional remedies are writs and processes available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case. They are provisional because they constitute temporary measures availed of during the pendency of the action, and they are ancillary because they are mere incidents in and are dependent upon the result of the main action. The subject

orders on the matter of support *pendente lite* are but an incident to the main action for declaration of nullity of marriage.

4. ID.; CIVIL PROCEDURE; APPEALS; APPEAL FROM INTERLOCUTORY ORDERS IS NOT ALLOWED; REMEDY.— Under Section 1, Rule 41 of the 1997 Revised Rules of Civil Procedure, as amended, appeal from interlocutory orders is not allowed. x x x The remedy against an interlocutory order not subject of an appeal is an appropriate special civil action under Rule 65 provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion.

APPEARANCES OF COUNSEL

M.B. Tomacruz & Associates Law Offices for petitioner.
MCP Law Office and *Libra Law Office* for private respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 assailing the Decision[1] dated September 9, 2008 and Resolution[2] dated December 15, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 85384. The CA affirmed the Orders dated March 7, 2005 and May 4, 2005 of the Regional Trial Court (RTC) of Parañaque City, Branch 260 in Civil Case No. 97-0608.

Petitioner Ma. Carminia C. Calderon and private respondent Jose Antonio F. Roxas, were married on December 4, 1985 and their union produced four children. On January 16, 1998, petitioner filed an Amended Complaint[3] for the declaration of

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[1] *Rollo*, pp. 40-47. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican.

[2] *Id.* at 49-50. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican.

[3] Records, pp. 30-38.

nullity of their marriage on the ground of psychological incapacity under Art. 36 of the Family Code of the Philippines.

On May 19, 1998, the trial court issued an Order[4] granting petitioner's application for support *pendente lite*. Said order states in part:

> …Accordingly, the defendant is hereby ordered to contribute to the support of the above-named minors, (aside from 50% of their school tuition fees which the defendant has agreed to defray, plus expenses for books and other school supplies), the sum of ₱42,292.50 per month, effective May 1, 1998, as his share in the monthly support of the children, until further orders from this Court. The first monthly contribution, *i.e.*, for the month of May 1998, shall be given by the defendant to the plaintiff within five (5) days from receipt of a copy of this Order. The succeeding monthly contributions of ₱42,292.50 shall be directly given by the defendant to the plaintiff without need of any demand, within the first five (5) days of each month beginning June 1998. All expenses for books and other school supplies shall be shouldered by the plaintiff and the defendant, share and share alike. Finally, it is understood that any claim for support-in-arrears prior to May 1, 1998, may be taken up later in the course of the proceedings proper.
>
> x x x x x x x x x
>
> SO ORDERED.[5]

The aforesaid order and subsequent orders for support *pendente lite* were the subject of G.R. No. 139337 entitled "*Ma. Carminia C. Roxas v. Court of Appeals and Jose Antonio F. Roxas*" decided by this Court on August 15, 2001.[6] The Decision in said case declared that "the proceedings and orders issued by the trial court in the application for support *pendente lite* (and the main complaint for annulment of marriage) in the re-filed case, that is, in Civil Case No. 97-0608 were not rendered null

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[4] *Rollo*, pp. 85-87. Penned by Judge Helen Bautista-Ricafort.

[5] *Id.* at 87.

[6] *Roxas v. Court of Appeals*, G.R. No. 139337, August 15, 2001, 363 SCRA 207, 211.

and void by the omission of a statement in the certificate of non-forum shopping regarding the prior filing and dismissal without prejudice of Civil Case No. 97-0523 which involves the same parties." The assailed orders for support *pendente lite* were thus reinstated and the trial court resumed hearing the main case.

On motion of petitioner's counsel, the trial court issued an Order dated October 11, 2002 directing private respondent to give support in the amount of ₱42,292.50 per month starting April 1, 1999 pursuant to the May 19, 1998 Order.[7]

On February 11, 2003, private respondent filed a Motion to Reduce Support citing, among other grounds, that the ₱42,292.50 monthly support for the children as fixed by the court was even higher than his then ₱20,800.00 monthly salary as city councilor.[8]

After hearing, the trial court issued an Order[9] dated March 7, 2005 granting the motion to reduce support and denying petitioner's motion for spousal support, increase of the children's monthly support *pendente lite* and support-in-arrears. The trial court considered the following circumstances well-supported by documentary and testimonial evidence: (1) the spouses' eldest child, Jose Antonio, Jr. is a *Sangguniang Kabataan* Chairman and is already earning a monthly salary; (2) all the children stay with private respondent on weekends in their house in Pasay City; (3) private respondent has no source of income except his salary and benefits as City Councilor; (4) the voluminous documents consisting of official receipts in payment of various billings including school tuition fees, private tutorials and purchases of children's school supplies, personal checks issued by private respondent, as well as his own testimony in court, all of which substantiated his claim that he is fulfilling his obligation of supporting his minor children during the pendency of the action; (5) there is no proof presented by petitioner that

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[7] Records, p. 10058.

[8] *Id.* at 10075-10084.

[9] *Id.* at 1582-1586.

she is not gainfully employed, the spouses being both medical doctors; (6) the unrebutted allegation of private respondent that petitioner is already in the United States; and (7) the alleged arrearages of private respondent was not substantiated by petitioner with any evidence while private respondent had duly complied with his obligation as ordered by the court through his overpayments in other aspects such as the children's school tuition fees, real estate taxes and other necessities.

Petitioner's motion for partial reconsideration of the March 7, 2005 Order was denied on May 4, 2005.[10]

On May 16, 2005, the trial court rendered its Decision[11] in Civil Case No. 97-0608 decreeing thus:

WHEREFORE, judgment is hereby rendered declaring (*sic*):

1. Declaring null and void the marriage between plaintiff [Ma.] Carmina C. Roxas and defendant Jose Antonio Roxas solemnized on December 4, 1985 at San Agustin Convent, in Manila. The Local Civil Registrar of Manila is hereby ordered to cancel the marriage contract of the parties as appearing in the Registry of Marriage as the same is void;

2. Awarding the custody of the parties' minor children Maria Antoinette Roxas, Julian Roxas and Richard Roxas to their mother herein petitioner, with the respondent hereby given his visitorial and or custodial rights at *[sic]* the express conformity of petitioner.

3. Ordering the respondent Jose Antonio Roxas to provide support to the children in the amount of ₱30,000.00 a month, which support shall be given directly to petitioner whenever the children are in her custody, otherwise, if the children are in the provisional custody of respondent, said amount of support shall be recorded properly as the amounts are being spent. For that purpose the respondent shall then render a periodic report to petitioner and to the Court to show compliance and for monitoring. In addition, the respondent is ordered to support the proper schooling of the children providing for the

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[10] *Id.* at 1593-1639. See RTC Order dated June 23, 2005 noting the typographical error in the Order dated "May 4, 2004", and correcting the year as 2005. *Id.* at 1664.

[11] *Rollo*, pp. 89-100. Penned by Judge Fortunito L. Madrona.

payment of the tuition fees and other school fees and charges including transportation expenses and allowances needed by the children for their studies.

4. Dissolving the community property or conjugal partnership property of the parties as the case may be, in accordance with law.

Let copies of this decision be furnished the Office of the Solicitor General, the Office of the City Prosecutor, Paranaque City, and the City Civil Registrar of Paranaque City and Manila.

SO ORDERED.[12]

On June 14, 2005, petitioner through counsel filed a Notice of Appeal from the Orders dated March 7, 2005 and May 4, 2005.

In her appeal brief, petitioner emphasized that she is not appealing the Decision dated May 16, 2005 which had become final as no appeal therefrom had been brought by the parties or the City Prosecutor or the Solicitor General. Petitioner pointed out that her appeal is "from the RTC Order dated March 7, 2005, issued *prior* to the rendition of the decision in the main case," as well as the May 4, 2005 Order denying her motion for partial reconsideration.[13]

By Decision dated September 9, 2008, the CA dismissed the appeal on the ground that granting the appeal would disturb the RTC Decision of May 16, 2005 which had long become final and executory. The CA further noted that petitioner failed to avail of the proper remedy to question an interlocutory order.

Petitioner's motion for reconsideration was likewise denied by the CA.

Hence, this petition raising the following issues:

A. DID THE CA COMMIT A GRAVE ABUSE OF DISCRETION and/or REVERSIBLE ERROR WHEN IT RULED THAT THE RTC ORDERS DATED MARCH 7, 2005 AND MAY 4, 2005 ARE MERELY INTERLOCUTORY?

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[12] *Id.* at 99-100.

[13] CA *rollo*, pp. 126-127.

B. DID THE CA COMMIT A GRAVE ABUSE OF DISCRETION and/or REVERSIBLE ERROR WHEN IT DISMISSED OUTRIGHT THE APPEAL FROM SAID RTC ORDERS, WHEN IT SHOULD HAVE DECIDED THE APPEAL ON THE MERITS?[14]

The core issue presented is whether the March 7, 2005 and May 4, 2005 Orders on the matter of support *pendente lite* are interlocutory or final.

This Court has laid down the distinction between interlocutory and final orders, as follows:

x x x **A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto**, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory."

x x x x x x x x x

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory" *e.g.*, an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, *etc.* **Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal**

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[14] *Rollo,* p. 572.

except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.[15] [Emphasis supplied]

The assailed orders relative to the incident of support *pendente lite* and support in arrears, as the term suggests, were issued pending the rendition of the decision on the main action for declaration of nullity of marriage, and are therefore interlocutory. They did not finally dispose of the case nor did they consist of a final adjudication of the merits of petitioner's claims as to the ground of psychological incapacity and other incidents as child custody, support and conjugal assets.

The Rules of Court provide for the provisional remedy of support *pendente lite* which may be availed of at the commencement of the proper action or proceeding, or at any time prior to the judgment or final order.[16] On March 4, 2003, this Court promulgated the Rule on Provisional Orders[17] which shall govern the issuance of provisional orders during the pendency of cases for the declaration of nullity of marriage, annulment of voidable marriage and legal separation. These include orders for spousal support, child support, child custody, visitation rights, hold departure, protection and administration of common property.

Petitioner contends that the CA failed to recognize that the interlocutory aspect of the assailed orders pertains only to private respondent's motion to reduce support which was granted, and to her own motion to increase support, which was denied. Petitioner points out that the ruling on support in arrears which have remained unpaid, as well as her prayer for reimbursement/ payment under the May 19, 1998 Order and related orders were in the nature of final orders assailable by ordinary appeal considering that the orders referred to under Sections 1 and 4 of Rule 61 of the Rules of Court can apply only prospectively. Thus, from the moment the accrued amounts became due and

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[15] *Investments, Inc. v. Court of Appeals*, G.R. No. 60036, January 27, 1987, 147 SCRA 334, 339-341.

[16] Rule 61, 1997 Rules of Civil Procedure, as amended.

[17] A.M. No. 02-11-12-SC which took effect on March 15, 2003.

demandable, the orders under which the amounts were made payable by private respondent have ceased to be provisional and have become final.

We disagree.

The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy.[18] An interlocutory order merely resolves incidental matters and leaves something more to be done to resolve the merits of the case. In contrast, a judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action.[19] Clearly, whether an order or resolution is final or interlocutory is not dependent on compliance or non-compliance by a party to its directive, as what petitioner suggests. It is also important to emphasize the temporary or provisional nature of the assailed orders.

Provisional remedies are writs and processes available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case. They are provisional because they constitute temporary measures availed of during the pendency of the action, and they are ancillary because they are mere incidents in and are dependent upon the result of the main action.[20] The subject orders on the matter of support *pendente lite* are but an incident to the main action for declaration of nullity of marriage.

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[18] *United Overseas Bank (formerly Westmont Bank) v. Ros*, G.R. No. 171532, August 7, 2007, 529 SCRA 334, 343-344, citing *Ramiscal, Jr. v. Sandiganbayan*, G.R. Nos. 140576-99, December 13, 2004, 446 SCRA 166, 177.

[19] *Republic v. Sandiganbayan,(Fourth Division)*, G.R. No. 152375, December 13, 2011, 662 SCRA 152, 177.

[20] Florenz D. Regalado, *REMEDIAL LAW COMPENDIUM*, Vol. I, 2005 Ed. p. 671.

Moreover, private respondent's obligation to give monthly support in the amount fixed by the RTC in the assailed orders may be enforced by the court itself, as what transpired in the early stage of the proceedings when the court cited the private respondent in contempt of court and ordered him arrested for his refusal/failure to comply with the order granting support *pendente lite*.[21] A few years later, private respondent filed a motion to reduce support while petitioner filed her own motion to increase the same, and in addition sought spousal support and support in arrears. This fact underscores the provisional character of the order granting support *pendente lite.* Petitioner's theory that the assailed orders have ceased to be provisional due to the arrearages incurred by private respondent is therefore untenable.

Under Section 1, Rule 41 of the 1997 Revised Rules of Civil Procedure, as amended, appeal from interlocutory orders is not allowed. Said provision reads:

> SECTION 1. Subject of appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> (a) An order denying a motion for new trial or reconsideration;
>
> (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> **(c) An interlocutory order;**
>
> (d) An order disallowing or dismissing an appeal;
>
> (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
>
> (f) An order of execution;

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[21] Records, pp. 439-440.

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice;

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (Emphasis supplied.)

The remedy against an interlocutory order not subject of an appeal is an appropriate special civil action under Rule 65 provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion. Having chosen the wrong remedy in questioning the subject interlocutory orders of the RTC, petitioner's appeal was correctly dismissed by the CA.

WHEREFORE, the petition for review on *certiorari* is **DENIED,** for lack of merit. The Decision dated September 9, 2008 and Resolution dated December 15, 2008 of the Court of Appeals in CA-G.R. CV No. 85384 are **AFFIRMED.**

With costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192050. January 9, 2013]

NELSON VALLENO *y* LUCITO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE APPELLATE COURT AFFIRMING THOSE OF THE TRIAL COURT ARE GENERALLY BINDING ON THE SUPREME COURT.— [T]he factual findings of the appellate court affirming those of the trial court are binding on this Court unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error. After an exhaustive review of the records of this case, we see no sufficient reason for resort to the exception to the rule.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF A DANGEROUS DRUG; ELEMENTS.— In order for prosecution for illegal possession of a dangerous drug to prosper, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.

3. ID.; ID.; ID.; MERE POSSESSION OF A REGULATED DRUG *PER SE* CONSTITUTES *PRIMA FACIE* EVIDENCE OF KNOWLEDGE OR *ANIMUS POSSIDENDI* SUFFICIENT TO CONVICT AN ACCUSED ABSENT A SATISFACTORY EXPLANATION OF SUCH POSSESSION.— Although the *shabu* was not found by the searching team on petitioner's person, it was found inside a bag which was hidden on top of a cabinet in the house of petitioner. Thus, petitioner is deemed in possession thereof. Petitioner was not lawfully authorized to possess the same. It can also be inferred that petitioner was privy to the existence of the *shabu*. Mere possession of a regulated drug *per se*

constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession — the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*. With the burden of evidence shifted to the petitioner, it was his duty to explain his innocence about the regulated drug seized from his possession. This, petitioner failed to do.

4. ID.; ID.; TO SUSTAIN A CONVICTION, THE EVIDENCE MUST DEFINITELY SHOW THAT THE ILLEGAL DRUG PRESENTED IN COURT IS THE SAME ILLEGAL DRUG ACTUALLY RECOVERED FROM THE ACCUSED.— The dangerous drug itself 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. In other words, the evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused. Section 21 of Republic Act No. 9165 provides the procedure to be followed in the seizure and custody of prohibited drugs x x x. The Implementing Rules of Republic Act No. 9165 offer some flexibility when a proviso added that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." In *People v. Concepcion,* this Court ruled that the failure to submit in evidence the required physical inventory of the seized drugs and the photograph, as well as the absence of a member of media or the DOJ, pursuant to Section 21, Article II of Republic Act No. 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF WITNESSES NEED ONLY CORROBORATE EACH OTHER ON IMPORTANT AND RELEVANT DETAILS CONCERNING THE

PRINCIPAL OCCURRENCE.— This Court notes the inconsistencies in the testimonies of prosecution witnesses, particularly that of *barangay tanod* Reynaldo Brito and PO3 Molina, relating to the place where one of the plastic sachets was found and to the person who brought the illegal drugs to the crime laboratory, respectively. We however brush aside these inconsistencies as inconsequential. Indeed, one can hardly expect their testimonies to be in perfect agreement. As held in the past, it is perhaps too much to hope that different eyewitnesses shall give, at all times, testimonies that are in all fours with the realities on the ground. Minor discrepancies in their testimonies are, in fact, to be expected; they neither vitiate the essential integrity of the evidence in its material entirety nor reflect adversely on the credibility of witnesses. For a successful appeal, the inconsistencies brought up should pertain to that crucial moment when the accused was caught selling *shabu*, not to peripheral matters. Testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence.

6. **ID.; ID.; PRESUMPTIONS; THE TESTIMONIES OF POLICE OFFICERS IN DANGEROUS DRUGS CASES CARRY WITH IT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS.—** The inconsistent testimony of Reynaldo Brito deserves little weight in light of the consonant testimonies of all the police officers who testified in court. It is well-settled that the testimonies of the police officers in dangerous drugs cases carry with it the presumption of regularity in the performance of official functions. Absent any clear showing that the arresting officers had ill-motive to falsely testify against the petitioner, their testimonies must be respected and the presumption of regularity in the performance of their duties must be upheld. Petitioner himself testified that he never had any personal encounter with the police prior to his arrest, thus negating any ill-motive on the part of the police officers.

7. **ID.; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; A SEARCH MAY BE CONDUCTED EVEN IN THE ABSENCE OF THE LAWFUL OCCUPANT PROVIDED THAT TWO WITNESSES ARE PRESENT.—** [T]here was nothing irregular in the conduct of search of petitioner's house. There were variations in the witnesses' testimonies as to whether

petitioner was inside the house during the search. One witness testified that petitioner was coming in and out of the house during the search while the other witnesses claimed that petitioner was waiting just outside the house. Assuming that petitioner was indeed outside the house, it does not taint the regularity of the search. Section 8, Rule 126 of the Rules of Court allows the absence of the lawful occupant provided that two witnesses are present. x x x The presence of the two *barangay* officials was not disputed by petitioner.

APPEARANCES OF COUNSEL

Sonny H. Manlangit for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

Subject of this petition for review is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 03433, dated 29 October 2009, affirming the Judgment[2] of the Regional Trial Court of Naga City (RTC), in Criminal Case No. 2004-0308. The trial court found petitioner Nelson Valleno *y* Lucito[3] guilty of violation of Section 11 of Article II, Republic Act No. 9165 and sentenced him to suffer the penalty of life imprisonment and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00)

The Information charged petitioner of illegal possession of *shabu*. It reads:

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[1] Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison, concurring. *Rollo*, pp. 35-50.

[2] Presided by Judge Jaime E. Contreras. *Id*. at 53-60.

[3] For uniformity purposes, the accused Nelson Valleno *y* Lucito shall be referred to as petitioner, considering that the appeal was filed in the form of a petition for review.

That on or about the 12th day of March, 2004, in *Barangay* San Antonio, Milaor, Camarines Sur, and within the jurisdiction of this Honorable Court, the said accused, without any authority of law, did then and there, wilfully, unlawfully, and feloniously possess, control and have in custody nine (9) transparent plastic sachets, containing Methamphetamine Hydrochloride, locally known as "*SHABU*," a prohibited drug, weighing no less than 34.7011 grams, with an estimated cost or market value of ₱69,402.20, to the great damage and prejudice of the Republic of the Philippines.[4]

Upon arraignment, petitioner pleaded not guilty. Trial ensued.

Five police officers, two *barangay* officials and one forensic chemist testified for the prosecution.

P/Insp. Perfecto De Lima (P/Insp. De Lima) was the group director of the 504th Provincial Mobile Group located at Camarines Sur Police Provincial Office in Naga City. He ordered PO3 Jaime Villano (PO3 Villano) to conduct a surveillance in connection with the illegal drug trade of petitioner. PO3 Villano was tasked to conduct a test-buy operation. The specimen he obtained from petitioner was submitted to the Philippine National Police (PNP) Crime Laboratory, which, in turn, was tested positive for the presence of *shabu*. Subsequently, P/Insp. De Lima ordered SPO4 Romulo Fabiano (SPO4 Fabiano) to apply for a search warrant. Branch 24 of the RTC of Naga City issued Search Warrant No. 2004-006.[5]

In the early morning of 12 March 2004, P/Insp. De Lima organized two (2) teams to enforce the search warrant. SPO4 Feliciano was in charge of the security team, which was tasked to secure the area to be searched, while the search team composed of PO3 Villano, PO3 Emilio Edrano (PO3 Edrano) and PO2 Sergio Valenzuela (PO2 Valenzuela), were designated to search the target house in LRV Village, *Barangay* San Antonio, Milaor, Camarines Sur.[6]

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[4] Records, p. 37.

[5] TSN, 27 June 2005, pp. 4-6.

[6] TSN, 15 August 2006, pp. 7-8.

At around 4:30 a.m., the group left the police station and proceeded to petitioner's house. They arrived at 5:00 a.m. P/Insp. De Lima instructed PO3 Villano to coordinate with the *barangay* officials.[7] At 6:00 a.m. and upon arrival of the two (2) *barangay* officials, SPO4 Fabiano knocked on the door of petitioner's house. Petitioner opened the door located at the back of the house. PO3 Villano, who was armed with the search warrant, informed petitioner that his group would conduct a search inside the house.[8]

Before entering petitioner's house, P/Insp. De Lima instructed the search team to raise their hands and shirts to show that they have nothing in their possession. P/Insp. De Lima explained that his purpose was to prevent any speculation that they intend to plant evidence.[9]

The search team, together with the *barangay* officials, went inside the house, while P/Insp. De Lima, petitioner and his wife were waiting just outside the house. PO3 Edrano and PO2 Valenzuela started searching a cabinet located in the kitchen. PO3 Edrano stood up on a chair to look at the top portion of the cabinet while PO2 Valenzuela was searching the bottom part. PO3 Edrano saw a black Natel bag with a red stripe on it on top of the cabinet. He passed it to PO2 Valenzuela, who handed the bag over to PO3 Villano. PO3 Villano unzipped the bag and uncovered 3 different sizes of white plastic bags containing white granules. The bag also contained a weighing scale and a bamboo stick. Thereafter, he closed the bag and brought it outside to P/Insp. De Lima.[10]

PO3 Villano put his markings "JV" on the plastic sachets, the weighing scale and bamboo stick in the presence of the *barangay* officials. He likewise prepared the Inventory Receipt,

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[7] *Id.* at 8.

[8] TSN, 27 June 2005, p. 10.

[9] TSN, 15 August 2006, p. 13.

[10] TSN, 27 April 2006, pp. 10-12; TSN, 26 June 2006, pp. 11-16; TSN, 27 June 2005, pp. 13-15.

which was signed by the *barangay* officials. Petitioner, however, refused to sign the Inventory Receipt.[11]

After the search, petitioner was handcuffed and brought to the police station. PO3 Villano turned over the seized items to a certain PO3 Molina.[12] While in the police station, PO3 Villano prepared the return of the search warrant. He then brought the Return of the Search Warrant, accompanied by the seized items, to the RTC of Naga City. The court ordered him to bring them to the PNP Crime Laboratory for examination.[13]

Reynaldo Brito, a *barangay tanod*, testified that the police officers found one plastic sachet containing *shabu* underneath the bed of petitioner.[14] Wilfredo Brito, another *barangay tanod*, corroborated the statements of the police officers that a black bag was taken from the top of the cabinet and that the black bag contained the seized items.[15]

Josephine Macura Clemen (Clemen), a forensic chemist, was presented as an expert witness. She related that after taking a representative sample from the nine (9) plastic sachets seized from petitioner, they were tested positive for the presence of *Methamphetamine Hydrochloride* or *shabu*.[16] Her findings were reflected in Chemistry Report No. D-052-04.[17]

Petitioner interposed denial. He countered that around 6:00 a.m. of 12 March 2004, he heard a knock at the bedroom door.[18] He opened the door and the policemen introduced themselves, showed him the search warrant and asked him to come out of

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[11] TSN, 27 June 2005, p. 19, 25; TSN, 26 June 2006, pp. 17-18.

[12] TSN, 27 April 2006, p. 22.

[13] TSN, 27 June 2005, p. 26.

[14] TSN, 1 April 2005, p. 8.

[15] TSN, 29 January 2007, pp. 6-7.

[16] TSN, 9 November 2004, p. 10.

[17] Records, p. 5.

[18] TSN, 1 October 2007, p. 12.

the house while they searched it. After a while, the police officers emerged from the house and told him that they have found a *tawas*-like substance.[19] He refused to sign the inventory receipt because he did not understand the contents of the document. He was then brought to the police station.[20]

On 13 June 2008, the trial court rendered judgment finding petitioner guilty beyond reasonable doubt for illegal possession of *shabu*. The dispositive portion reads:

> WHEREFORE, judgment is hereby rendered finding the accused guilty beyond reasonable doubt for illegal possession of methamphetamine Hydrochloride or *shabu*, a dangerous drug, defined and penalized under Sec. 11(1)(1), Art. II of R.A. 9165, otherwise known as The Comprehensive Drugs Act of 2002, and hereby sentences him to suffer the penalty of life imprisonment and a fine of Four Hundred Thousand pesos (₱400,000.00).
>
> The bail bond posted for the provisional liberty of the accused is hereby CANCELLED.[21]

In convicting petitioner, the trial court lent credence to the straightforward testimonies of the police officers over the mere denial of the accused. The trial court ruled that the chain of custody over the illegal drugs seized was properly established.

On appeal, the Court of Appeals affirmed petitioner's conviction on 29 October 2009 and denied petitioner's motion for reconsideration on 13 April 2010. Petitioner now seeks relief before this Court *via* a petition for review. On 11 August 2010, this Court treated the petition as a notice of appeal and required the parties to file their respective supplemental briefs, if they so desire, within thirty days from notice.[22] The Office of the Solicitor General manifested that it would no longer file a supplemental brief.[23] Petitioner filed his supplemental brief

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[19] *Id*. at 6.

[20] *Id*. at 7-8.

[21] *Rollo*, p. 60.

[22] *Id*. at 146.

[23] *Id*. at 149-151.

and harped on the inconsistencies of the testimonies of prosecution witnesses.

In his petition for review, petitioner ascribes upon the Court of Appeals the following errors:

(A)

THE COURT OF APPEALS ERRED IN NOT FINDING THAT THE PROSECUTION WAS NOT ABLE TO DISCHARGE ITS BURDEN OF PROVING BY PROOF BEYOND REASONABLE DOUBT THAT PETITIONER HAS COMMITTED THE CRIME OF VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

(B)

THE COURT OF APPEALS ERRED IN INTERPRETING THAT THE REQUIREMENTS PROVIDED FOR UNDER SECTION 21 OF REPUBLIC ACT NO. 9165 ARE NOT MANDATORY AND THAT NON-COMPLIANCE THEREOF IS NOT FATAL TO THE CAUSE OF THE PROSECUTION.

(C)

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THE ALLEGED PROHIBITED DRUGS SUBJECT OF THE CASE WERE A PRODUCT OF AN IRREGULAR SEARCH AND SEIZURE.[24]

The primordial issue here, as in any criminal case, is whether the guilt of the accused has been established beyond reasonable doubt.

It is hornbook doctrine that the factual findings of the appellate court affirming those of the trial court are binding on this Court unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[25] After an exhaustive review of the records of this case, we see no sufficient reason for resort to the exception to the rule.

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[24] *Id*. at 18-19.

[25] *Asiatico v. People*, G.R. No. 195005, 12 September 2011, 657 SCRA 443, 450; *People v. Castro*, G.R. No. 194836, 15 June 2011, 652 SCRA 393, 407 citing *Fuentes v. Court of Appeals*, G.R. No. 109849, 26 February 1997, 268 SCRA 703, 708-709; *People v. Belo*, G.R. No. 187075, 5 July 2010, 623 SCRA 527, 535-536.

In order for prosecution for illegal possession of a dangerous drug to prosper, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.[26]

All these elements were duly established by the prosecution. During the search, PO3 Edrano found a bag on top of a cabinet inside the house of petitioner. He handed the same to PO3 Villano, who in turn opened it, and found nine (9) plastic sachets of *shabu*, thus:

Q Where did you start searching the house?

A We started at the cabinet.

Q Where is that cabinet located?

A Inside his house in front of the dining table.

Q While you were starting to search the cabinet, do you know where your companions were at that time?

A Yes sir.

Q Where were they?

A The house of the accused was just a small house, so we were just back to back with each other.

Q While you were searching the cabinet, at what particular part of the cabinet did you start?

A I started at the lower portion of the cabinet.

Q What did you find at the lower portion of the cabinet?

ATTY. GENERAL:

Leading, it is presumed that something was found.

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[26] *Fajardo v. People*, G.R. No. 185460, 25 July 2012; *People v. Sabadlab*, G.R. No. 186392, 18 January 2012; *David v. People*, G.R. No. 181861, 17 October 2011, 659 SCRA 150, 157.

COURT:

Reform.

PROS. ABONAL:

Q What happened when you started to look at the lower portion of the cabinet?

A I saw different kitchen utensils.

Q After searching the lower portion of the cabinet, what happened next?

A I took a chair which I could use in order to see the top portion of the cabinet.

Q What happened after you took a chair?

A I stood at the chair and I saw a natel bag colored black with red stripe on it.

Q After finding that black bag, what happened next?

A I gave the bag to PO3 Villano.

Q When you handed over the bag to Villano, where were you at that time?

A I was still standing by the chair and looking for other things.

Q After giving the bag to Villano, what happened?

A I went down from the chair and told our team leader to check the bag.

Q Did your team leader accede to your request?

A Yes sir.

Q What happened after checking the bag?

A In front of the 2 barangay officials, our team leader opened the bag and we saw different sizes of plastic bag containing white granules. Our team leader told us that those things are what we are looking for, then he closed the bag.[27]

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[27] TSN, 27 April 2006, pp. 10-12.

PO3 Villano confirmed receiving the bag and finding white plastic sachets inside:

PROS. TADEO:

Q Why, according to you, you proceeded to search the premises of the accused. Now, what happened to your search?

A We were able to recover inside his house the nine (9) pieces transparent plastic sachets containing *shabu* and several pieces of "PP Bags: which we believed they used in repacking of the *shabu*, and a weighing scale. And others I [can not] recall, sir.

Q Now, we will go to the specifics. You said that there was actually nine (9) pieces sachets of *shabu* recovered from the place, who actually recovered these items?

A PO2 (sic) Edrano and PO1 Valenzuela, sir.

PROS. TADEO:

Q How about you?

A I was only informed that they recovered *shabu* inside the black bag, sir.

Q When you were informed that these items, these *shabu* were recovered by Edrano and Valenzuela?

A Yes, sir.

Q What was your distance from them?

A More or less one (1) arm length, sir.

Q By the way, tell us, how were you able to, because according to you, you heard, in what manner this information reached you during the conduct of the search?

A I heard from them that they saw plastic sachets containing *shabu*, sir.

Q Meaning to say, they uttered words?

A Yes, sir. They uttered words.

Q When you heard them uttered that words, what exactly the words?

A In Bicol dialect they said: "*Yaon digdi an shabu sa bag*." (The *shabu* is in the bag.)

Q Upon hearing this matter, what was your reaction?

A I was surprised, sir. But I already expected that we will be able to recover *shabu* because that is the subject of our search warrant, sir.

PROS. TADEO:

Q According to you, you heard somebody uttered the words, "here is the *shabu* inside the bag?"

A Yes, sir.

Q When for the first time did you see the bag?

A It was placed on top of the cabinet and it was placed on the table, sir.

Q Who was responsible for the placing of this item from the cabinet down to the table?

A PO2 (sic) Edrano and PO1 Valenzuela, including the two (2) *barangay* officials, sir.

Q So, if that bag will be shown to you, will you be able to identify it?

A Yes, sir.

x x x x x x x x x

Q Did you see any bag that was recovered?

A Yes, your honor.

Q And were you able to find out what were the contents of that bag?

A Yes, your honor, when it was scrutinized in my presence, I saw the other plastic sachets containing the *shabu* itself.

x x x x x x x x x

PROS. TADEO:

Q When the contents were put out from this bag, were you present?

A Yes, sir.

Q And what were those contents?

A The nine (9) pieces of transparent plastic sachets containing *shabu*.[28]

Although the *shabu* was not found by the searching team on petitioner's person, it was found inside a bag which was hidden on top of a cabinet in the house of petitioner. Thus, petitioner is deemed in possession thereof. Petitioner was not lawfully authorized to possess the same. It can also be inferred that petitioner was privy to the existence of the *shabu.* Mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession — the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*. With the burden of evidence shifted to the petitioner, it was his duty to explain his innocence about the regulated drug seized from his possession.[29] This, petitioner failed to do.

The petitioner's proposition that the prosecution failed to prove his guilt beyond reasonable doubt is anchored on his claim that the prosecution failed to prove and establish the chain of custody of the subject prohibited drugs allegedly seized from his house.

The dangerous drug itself 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. In other words, the evidence must definitely show that the illegal drug presented

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[28] TSN, 27 June 2005, pp. 12-16.

[29] *People v. Noque,* G.R. No. 175319, 15 January 2010, 610 SCRA 195, 206 citing *People v. Tee,* 443 Phil. 521, 551 (2003).

in court is the same illegal drug actually recovered from the accused.[30]

Section 21 of Republic Act No. 9165 provides the procedure to be followed in the seizure and custody of prohibited 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;
>
> x x x x x x x x x
>
> The provisions of Article II, Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 provide:
>
> x x x x x x x x x
>
> (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

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[30] *People v. Alcuizar*, G.R. No. 189980, 6 April 2011, 647 SCRA 431, 437.

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[.]

Petitioner highlights the following acts of non-compliance with the aforementioned rule: 1) there was failure to present the alleged photographs of the seized substance in court; 2) there were no representatives from the media and the Department of Justice (DOJ) during the conduct of the inventory of the seized items; 3) there was a major contradiction from among prosecution witnesses on who actually brought the seized items to the PNP Crime Laboratory; and 4) the manner of conducting the physical inventory of the alleged drugs taken from petitioner's house appeared to be irregular as the seized items were allowed to be handled by persons not authorized to do so.

The Implementing Rules of Republic Act No. 9165 offer some flexibility when a proviso added that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items."[31]

In *People v. Concepcion*,[32] this Court ruled that the failure to submit in evidence the required physical inventory of the seized drugs and the photograph, as well as the absence of a member of media or the DOJ, pursuant to Section 21, Article II of Republic Act No. 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.

What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would

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[31] *People v. Almodiel*, G.R. No. 200951, 5 September 2012.

[32] G.R. No. 178876, 27 June 2008, 556 SCRA 421.

be utilized in the determination of the guilt or innocence of the accused.[33]

In the instant case, the chain of custody of the seized illegal drugs was not broken. The prosecution established that PO3 Edrano recovered the white plastic sachets, later on confirmed positive for traces of *shabu*. PO3 Edrano handed them over to PO3 Villano, who made markings on the seized items and prepared an inventory of the same while inside petitioner's house. It was also shown that PO3 Villano brought the seized illegal drugs to the police station where he himself prepared the inventory. While he presented the same to a certain PO3 Molina, it was still PO3 Villano and SPO4 Fabiano who first brought the seized illegal drugs to the court, who in turn ordered him to bring it to the PNP Crime Laboratory. In the letter request addressed to the forensic chemist, it was PO3 Villano who signed as the requesting party. Clearly therefore, the recovery and handling of the seized illegal drugs were more than satisfactorily established in this case.

This Court notes the inconsistencies in the testimonies of prosecution witnesses, particularly that of *barangay tanod* Reynaldo Brito and PO3 Molina, relating to the place where one of the plastic sachets was found and to the person who brought the illegal drugs to the crime laboratory, respectively. We however brush aside these inconsistencies as inconsequential. Indeed, one can hardly expect their testimonies to be in perfect agreement. As held in the past, it is perhaps too much to hope that different eyewitnesses shall give, at all times, testimonies that are in all fours with the realities on the ground. Minor discrepancies in their testimonies are, in fact, to be expected; they neither vitiate the essential integrity of the evidence in its material entirety nor reflect adversely on the credibility of witnesses. For a successful appeal, the inconsistencies brought up should pertain to that crucial moment when the accused was caught selling *shabu*, not to peripheral matters. Testimonies of

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[33] *People v. Lazaro, Jr.*, G.R. No. 186418, 16 October 2009, 604 SCRA 250, 274-275.

witnesses need only corroborate each other on important and relevant details concerning the principal occurrence.[34]

The inconsistent testimony of Reynaldo Brito deserves little weight in light of the consonant testimonies of all the police officers who testified in court. It is well-settled that the testimonies of the police officers in dangerous drugs cases carry with it the presumption of regularity in the performance of official functions. Absent any clear showing that the arresting officers had ill-motive to falsely testify against the petitioner, their testimonies must be respected and the presumption of regularity in the performance of their duties must be upheld. Petitioner himself testified that he never had any personal encounter with the police prior to his arrest, thus negating any ill-motive on the part of the police officers.[35]

Finally, there was nothing irregular in the conduct of search of petitioner's house. There were variations in the witnesses' testimonies as to whether petitioner was inside the house during the search. One witness testified that petitioner was coming in and out of the house during the search while the other witnesses claimed that petitioner was waiting just outside the house. Assuming that petitioner was indeed outside the house, it does not taint the regularity of the search. Section 8, Rule 126 of the Rules of Court allows the absence of the lawful occupant provided that two witnesses are present.

Section 8. *Search of house, room, or premises to be made in presence of two witnesses.* — No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

The presence of the two *barangay* officials was not disputed by petitioner. As elucidated by the appellate court:

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[34] *People v. Sobangee*, G.R. No. 186120, 31 January 2011, 641 SCRA 164, 172-173.

[35] *People v. Duque*, G.R. No. 184606, 5 September 2012.

As correctly found by the trial court, accused-appellant and his wife were not prevented from entering their house to observe the search conducted therein. This is bolstered by the testimonies of police officers. Thus, PO3 Villano testified on cross-examination that the wife of the accused was inside, watching x x x. Likewise, P/C Insp. Perfecto de Lima, Jr. Testified that the accused-appellant and his wife went in and out of their house while the team was conducting a search inside said house; that Valleno and his wife stood outside and sometimes, came in while the search was being conducted; and that before the search the Valleno spouses were requested not to go inside the house but during the search they kept going in and out of said house. In addition, the search was conducted in the presence of two witnesses of sufficient age and discretion residing in the same locality, in the persons of Brgy. Kgd. Reynaldo Brito and Chief Tanod Wilfredo Brito. Resultantly, the seized items cannot, therefore, be considered as "fruits of the poisonous tree."[36]

WHEREFORE, the petition is **DENIED.** The assailed 29 October 2009 Decision and the 13 April 2010 Resolution of the Court of Appeals in CA-G.R. CR-H.C. No. 03433 are hereby **AFFIRMED.**

SO ORDERED.

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

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[36] *Rollo,* p. 46.

FIRST DIVISION

[G.R. No. 192727. January 9, 2013]

RAUL B. ESCALANTE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and THE HONORABLE COURT OF APPEALS, FORMER SPECIAL TWENTIETH DIVISION and EIGHTEENTH DIVISION, COURT OF APPEALS, CEBU CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE PERFECTION OF AN APPEAL IN THE MANNER AND WITHIN THE PERIOD PRESCRIBED BY LAW IS MANDATORY.— Decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review under Rule 45, which would be but a continuation of the appellate process over the original case. The period to file a petition for review on *certiorari* is 15 days from notice of the decision appealed from or of the denial of the petitioner's motion for reconsideration. Here, the petitioner received a copy of the CA's May 5, 2010 Resolution, which denied his second motion for reconsideration, on May 20, 2010, thus, he only had until June 4, 2010 to file a petition for review on *certiorari* with this Court. This he failed to do. "The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and, hence, unappealable." Thus, the petitioner's failure to file a petition for review under Rule 45 within the reglementary period rendered the CA's June 24, 2008 Decision, as modified by its March 4, 2009 Resolution, final and executory.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL NOT LIE AS A SUBSTITUTE FOR THE LOST REMEDY OF APPEAL.— It is at once evident that the instant *certiorari* action is merely being used by the petitioner to make up for his failure to promptly interpose an appeal from the CA's June 24, 2008 Decision and March 4, 2009 Resolution. "However, a special civil action under Rule 65 cannot cure

petitioner's failure to timely file a petition for review on *Certiorari* under Rule 45 of the Rules of Court." It is settled that a special civil action for *certiorari* will not lie as a substitute for the lost remedy of appeal, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.

3. ID.; ID.; ID.; QUESTIONS OF FACT CANNOT BE RAISED THEREIN.— The petitioner claimed that the CA gravely abused its discretion when it affirmed his conviction for violation of election gun ban considering that the fact of his possession of the firearm was not sufficiently established. He averred that the firearm, alleged to be possessed by him during the incident, was in fact in the possession of PO3 Unajan and that it was only when he wrestled the firearm away from the latter that he was able to possess it. His possession of the firearm, the petitioner contends, is merely incidental and would not suffice to convict him for violation of election gun ban. Basically, the petitioner asks this Court to overturn the factual findings of the RTC and the CA for alleged misapprehension of evidence. However, "it is settled that questions of fact cannot be raised in an original action for *certiorari*." Only established or admitted facts can be considered. That the petitioner was in possession of a firearm with live ammunition outside of his residence within the period of the election gun ban imposed by the COMELEC *sans* authority therefor is a finding of fact by the RTC and the CA which cannot be disturbed by this Court in this original action for *certiorari*.

4. ID.; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ITS ASSESSMENT OF THE CREDIBILITY OF WITNESSES AND THE PROBATIVE WEIGHT OF THEIR TESTIMONIES ARE TO BE GIVEN THE HIGHEST RESPECT.— "[I]t has been held time and again that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings are to be given the highest respect. As a rule, the Court will not weigh anew the evidence already passed on by the trial court and affirmed by the CA." Here, the Court sees no compelling reason to depart from this rule.

5. ID.; ID.; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENT; A DECISION THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE, AND MAY NO LONGER BE MODIFIED IN ANY RESPECT; CASE AT BAR.— Applying the Indeterminate Sentence Law, the imposable penalty for violation of the election gun ban should have a maximum period, which shall not exceed six (6) years, and a minimum period which shall not be less than one (1) year. Accordingly, the RTC and the CA erred in imposing a straight penalty of one (1) year imprisonment against the petitioner. Nevertheless, considering that the CA's June 24, 2008 Decision and March 4, 2009 Resolution had already attained finality on account of the petitioner's failure to timely file a petition for review on *Certiorari* under Rule 45, the Court may no longer modify the penalty imposed by the lower courts no matter how obvious the error may be. "Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."

APPEARANCES OF COUNSEL

Siegfried M. Zosa for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

REYES, *J.*:

Nature of the Petition

Before this Court is a Petition for *Certiorari* under Rule 65 of the Rules of Court seeking to annul and set aside the Decision[1]

[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Francisco P. Acosta and Florito S. Macalino, concurring; *rollo*, pp. 19-33.

dated June 24, 2008 and Resolution[2] dated March 4, 2009 issued by the Court of Appeals (CA) in CA-G.R. CR No. 27673 which, *inter alia*, affirmed the conviction of Raul B. Escalante (petitioner) for violation of Section 261 (q) of Batas Pambansa Blg. 881 (BP 881), otherwise known as the "Omnibus Election Code of the Philippines."

The Antecedent Facts

The instant case stemmed from two (2) separate Informations that were filed with the Regional Trial Court (RTC) of Calbayog City, Samar against the petitioner, charging him for violation of Section 261 (q) of BP 881 (Election Gun Ban) and Section 1 of Presidential Decree (P.D.) No. 1866,[3] as amended (Illegal Possession of Firearms and Ammunitions). The first Information[4] dated August 23, 1995, docketed as Criminal Case No. 2074, reads:

> The undersigned Prosecutor II of Samar accuses MAYOR RAUL ESCALANTE for VIOLATION OF SECTION 261, PARAGRAPH (Q) OF THE OMNIBUS ELECTION CODE, AS AMENDED BY SECTION 32, REPUBLIC ACT 7166, committed as follows:
>
> That on or about the 3rd day of April, 1995, at about 11:00 o'clock in the evening, at *Barangay* Biasong, Municipality of Almagro, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, during the Election Period of the May 8, 1995 Election, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) .45 caliber pistol, without first having obtained the proper license and/or permit from the Comelec.
>
> CONTRARY TO LAW.[5]

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[2] *Id.* at 35-42.

[3] Decree Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In Acquisition or Disposition of Firearms, Ammunition or Explosives.

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

[5] *Id.* at 43.

The second Information[6] dated June 16, 2000, docketed as Criminal Case No. 3824, reads:

> The undersigned Assistant Provincial Prosecutor I of Samar accuses Raul Escalante for Illegal Possession of Firearm (P.D. 1866), as amended by Republic Act No. 8294, committed as follows:
>
> That on or about the 3rd day of April, 1995, at nighttime, at *Barangay* Biasong, Municipality of Almagro, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to possess and without being authorized by law, did then and there wilfully, unlawfully, feloniously and illegally have in his possession, custody and control one (1) caliber .45 pistol loaded with live ammunition, in a public place outside of his residence, without first securing the necessary permit to possess the same from the competent authority, as required by law.
>
> CONTRARY TO LAW.[7]

The two cases were consolidated and jointly tried by the RTC as the crimes charged against the petitioner arose from the same incident. Upon arraignment, the petitioner pleaded not guilty to both charges.[8]

During the pre-trial conference, the petitioner admitted the following facts: *first*, that he was not issued any license to possess any firearm; and *second*, that April 3, 1995 fell within the election gun ban period imposed by the Commission on Elections (COMELEC).[9]

Trial on the merits ensued thereafter.

The Prosecution's Version

The petitioner, then the Municipal Mayor of Almagro, Samar, was the guest of honor during the fiesta celebration in *Barangay*

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[6] *Id.* at 46-47.

[7] *Id.* at 46.

[8] *Id.* at 20.

[9] *Id.* at 20-21.

Biasong that was held on April 3, 1995. Towards the end of the program, the emcee called on the petitioner and Ina Rebuya to crown the fiesta queen. Thereupon, the petitioner went to fetch Ina Rebuya who was seated together with Atty. Felipe Maglana, Jr. (Atty. Maglana) and the other members of the rival political party. It was then that Atty. Maglana noticed that the petitioner had a firearm tucked on his waist.[10]

After the crowning ceremony, the petitioner delivered a speech, stating that he had never won at *Barangay* Biasong in any election. This caught the ire of a group of supporters of the rival political party who then shouted invectives at the petitioner.[11]

Shamed by the insults hurled at him, the petitioner cut short his speech and, thereafter, went back to his table. However, the mocking continued. Thereupon, the petitioner, with the loaded firearm in hand, went to the table occupied by his political rivals. He then stared at Atty. Maglana and thereafter fired a shot upwards, causing the crowd to scamper for safety. The petitioner's bodyguards immediately took hold of his hand to prevent him from firing another shot. Consequently, Ali Prudenciado, a former policeman and then, a *kagawad*, disarmed the petitioner.[12]

The following morning, the Chief of Police of Almagro, Samar entered the incident into the police blotter as an "accidental firing."[13]

The Defense's Version

The petitioner denied that he was in possession of a firearm during the April 3, 1995 fiesta celebration in *Barangay* Biasong. He claimed that, while he was delivering his speech therein, a group of people were shouting insults at him. Not wanting to aggravate the situation, the petitioner abruptly ended his speech and went to the group to ask them not to disturb the festivities.[14]

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[10] *Id.* at 21.

[11] *Id.*

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

[13] *Id.* at 22.

[14] *Id.*

The group, however, continued to mock the petitioner, prompting PO3 Conrado Unajan (PO3 Unajan) to draw his firearm from his holster to pacify the unruly crowd. When the petitioner saw this, he tried to take the firearm away from PO3 Unajan and, in the process, a shot was accidentally fired. Thereafter, the petitioner was able to take hold of the firearm and, together with PO3 Unajan, went back to his table. He then returned the firearm to PO3 Unajan.[15]

The RTC's Decision

On May 23, 2003, the RTC rendered a judgment[16] finding the petitioner guilty beyond reasonable doubt of the crimes of violation of election gun ban and illegal possession of firearms and ammunitions. The dispositive portion of the RTC's decision reads:

> WHEREFORE AND IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused, Raul Escalante, GUILTY beyond reasonable doubt of the crimes of Illegal Possession of Firearm and Ammunition and for Violation of Section 261, Par. (q) of the Omnibus Election Code for which he is hereby sentenced (1) in Criminal Case No. 3824 to an Indeterminate Penalty of imprisonment ranging from FOUR (4) YEARS and TWO (2) MONTHS, as minimum, to SIX (6) YEARS, as maximum, both of *prision correccional*, and to pay a fine of [₱]15,000.00 and to pay the costs, and (2) in Criminal Case No. 2074, he is hereby sentenced to a straight penalty of ONE (1) YEAR imprisonment and to pay the costs.
>
> IT IS SO ORDERED.[17]

The RTC found the testimonies of the prosecution witnesses as to the petitioner's possession of a firearm during the said incident to be categorical and straightforward and should thus be accorded full weight and credit. The RTC likewise disregarded the petitioner's claim that it was PO3 Unajan who was in possession of the firearm, asserting that the same is belied by

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

[16] *Id.* at 49-59.

[17] *Id.* at 59.

the respective affidavits executed by the officials of *Barangay* Biasong and the report executed by the Chief of Police of Almagro.

The petitioner appealed to the CA, asserting that the RTC erred in convicting him for the crimes charged since the prosecution failed to establish the following: (1) the existence of the firearm which is the *corpus delicti*; and (2) the absence of a license or permit for the firearm.

The CA's Decision

On June 24, 2008, the CA rendered the herein assailed decision[18] which affirmed *in toto* the May 23, 2003 Judgment of the RTC. The CA held that the prosecution was able to establish the existence of the firearm notwithstanding that it was not presented as evidence. It pointed out that the straightforward and positive testimonies of the prosecution witnesses on the petitioner's possession of a firearm during the April 3, 1995 fiesta celebration in *Barangay* Biasong and the circumstances surrounding it had amply established the *corpus delicti*. In any case, the CA asserted that in an indictment for illegal possession of firearms and ammunitions and violation of election gun ban, the production of the firearm itself is not required for conviction.

Further, the CA held that there was no necessity on the part of the prosecution to prove that the petitioner had no license or permit to possess a firearm since the same had already been admitted by the petitioner during the trial.

The petitioner sought a reconsideration of the June 24, 2008 Decision of the CA, maintaining that the prosecution failed to substantiate the elements of the crimes charged against him. Additionally, the petitioner averred that Criminal Case No. 3824 for illegal possession of firearms and ammunitions should be dismissed pursuant to the ruling of this Court in *Agote v. Judge Lorenzo*[19] which declared that an accused is not liable for illegal

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[18] *Supra* note 1.

[19] 502 Phil. 318 (2005).

possession of firearm if the firearm was used in the commission of an offense such as a violation of the election gun ban.

On March 4, 2009, the CA issued a resolution[20] which partly granted the petitioner's motion for reconsideration, the decretal portion of which reads:

> WHEREFORE, the Motion for Reconsideration dated July 18, 2008 is **PARTLY GRANTED.** Criminal Case No. 3824 is **DISMISSED** and accused-appellant's conviction in Criminal Case No. 2074 for Violation of Section 261, par. (q) of the Omnibus Election Code, **AFFIRMED.**
>
> SO ORDERED.[21]

The CA ruled that under prevailing jurisprudence there can be no separate offense of simple illegal possession of firearm if the unlicensed firearm is used in the commission of any crime. Considering that the petitioner was convicted of violation of election gun ban, the CA held that he can no longer be convicted for illegal possession of firearm. Nevertheless, the CA found no reason to reverse the conviction of the petitioner for violation of election gun ban.

On April 7, 2009, the petitioner, with leave of court, filed a "Second Partial Motion for Reconsideration of Judgment for Violation of the Omnibus Election Code only." On May 5, 2010, the CA issued a resolution denying the second partial motion for reconsideration filed by the petitioner.

Undaunted, the petitioner filed the instant petition.

Issue

The petitioner submits a lone issue for this Court's resolution:

> [WHETHER] THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RESOLVED TO DENY THE APPEAL FILED BY THE PETITIONER DESPITE THE FACT THAT ONE

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[20] *Supra* note 2.

[21] *Id.* at 42.

OF THE ESSENTIAL ELEMENTS OF THE OFFENSE OF VIOLATION OF COMELEC GUN BAN IS ABSENT.[22]

The Court's Ruling

The petition is dismissed.

The petitioner committed a serious procedural *faux pas* by filing before this Court a petition for *certiorari* under Rule 65, when the proper remedy should have been a petition for review on *certiorari* under Rule 45 of the Rules of Court.

Decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review under Rule 45, which would be but a continuation of the appellate process over the original case.[23] The period to file a petition for review on *certiorari* is 15 days from notice of the decision appealed from or of the denial of the petitioner's motion for reconsideration.[24]

Here, the petitioner received a copy of the CA's May 5, 2010 Resolution, which denied his second motion for reconsideration, on May 20, 2010, thus, he only had until June 4, 2010 to file a petition for review on *certiorari* with this Court. This he failed to do.

"The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and, hence, unappealable."[25] Thus, the petitioner's failure to file a petition for review under Rule 45 within the reglementary period rendered the CA's June 24, 2008 Decision, as modified by its March 4, 2009 Resolution, final and executory.

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[22] *Rollo*, p. 9.

[23] See *Fortune Guarantee and Ins. Corp. v. Court of Appeals*, 428 Phil. 783, 791 (2002).

[24] Rules of Court, Rule 45, Section 2.

[25] *Lapulapu Devt. & Housing Corp. v. Group Mgt. Corp.*, 437 Phil. 297, 314 (2002); citation omitted.

It is at once evident that the instant *certiorari* action is merely being used by the petitioner to make up for his failure to promptly interpose an appeal from the CA's June 24, 2008 Decision and March 4, 2009 Resolution. "However, a special civil action under Rule 65 cannot cure petitioner's failure to timely file a petition for review on *Certiorari* under Rule 45 of the Rules of Court."[26] It is settled that a special civil action for *certiorari* will not lie as a substitute for the lost remedy of appeal, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.[27]

In any case, assuming *arguendo* that a petition for *certiorari* is the proper remedy, the petition would still be dismissed.

The petitioner claimed that the CA gravely abused its discretion when it affirmed his conviction for violation of election gun ban considering that the fact of his possession of the firearm was not sufficiently established. He averred that the firearm, alleged to be possessed by him during the incident, was in fact in the possession of PO3 Unajan and that it was only when he wrestled the firearm away from the latter that he was able to possess it. His possession of the firearm, the petitioner contends, is merely incidental and would not suffice to convict him for violation of election gun ban.

Basically, the petitioner asks this Court to overturn the factual findings of the RTC and the CA for alleged misapprehension of evidence. However, "it is settled that questions of fact cannot be raised in an original action for *certiorari*."[28] Only established or admitted facts can be considered.[29]

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[26] *Talento v. Escalada, Jr.,* G.R. No. 180884, June 27, 2008, 556 SCRA 491, 498.

[27] See *China Banking Corporation v. Cebu Printing and Packaging Corporation*, G.R. No. 172880, August 11, 2010, 628 SCRA 154, 166.

[28] *Korea Technologies Co., Ltd. v. Lerma*, G.R. No. 143581, January 7, 2008, 542 SCRA 1, 33; citation omitted.

[29] *Ramcar, Inc. v. Hi-Power Marketing*, 527 Phil. 699, 708 (2006); citation omitted.

That the petitioner was in possession of a firearm with live ammunition outside of his residence within the period of the election gun ban imposed by the COMELEC *sans* authority therefor is a finding of fact by the RTC and the CA which cannot be disturbed by this Court in this original action for *certiorari*.

Moreover, "it has been held time and again that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings are to be given the highest respect. As a rule, the Court will not weigh anew the evidence already passed on by the trial court and affirmed by the CA."[30] Here, the Court sees no compelling reason to depart from this rule.

The Court notes, however, that the lower courts erred in imposing the applicable penalty against the petitioner. Finding the petitioner guilty of the offense of violation of election gun ban, the RTC imposed upon him the straight penalty of one (1) year imprisonment. The penalty imposed by the RTC was affirmed by the CA. Section 264 of BP 881, in part, reads:

> Sec. 264. *Penalties*. — Any person found guilty of any election offense under this Code shall be punished with imprisonment of **not less than one year but not more than six years** and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. x x x. (Emphasis ours)

On the other hand, Section 1 of the Indeterminate Sentence Law[31] provides:

> Sec. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending

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[30] *People v. Mamaruncas*, G.R. No. 179497, January 25, 2012, 664 SCRA 182, 199; citation omitted.

[31] Act No. 4103, as amended by Act No. 4225.

circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

Applying the Indeterminate Sentence Law, the imposable penalty for violation of the election gun ban should have a maximum period, which shall not exceed six (6) years, and a minimum period which shall not be less than one (1) year. Accordingly, the RTC and the CA erred in imposing a straight penalty of one (1) year imprisonment against the petitioner.

Nevertheless, considering that the CA's June 24, 2008 Decision and March 4, 2009 Resolution had already attained finality on account of the petitioner's failure to timely file a petition for review on *Certiorari* under Rule 45, the Court may no longer modify the penalty imposed by the lower courts no matter how obvious the error may be. "Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."[32]

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DISMISSED.** The Decision dated June 24, 2008 and Resolution dated March 4, 2009 of the Court of Appeals in CA-G.R. CR No. 27673 are hereby **AFFIRMED.**

SO ORDERED.

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

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[32] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66*, G.R. No. 161282, February 23, 2011, 644 SCRA 50, 56.

FIRST DIVISION

[G.R. No. 201447. January 9, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANASTACIO AMISTOSO *y* BROCA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; WHAT IS CONTROLLING IN AN INFORMATION IS THE DESCRIPTION OF THE CRIME CHARGED AND THE PARTICULAR FACTS THEREIN RECITED.— Amistoso was specifically charged in the Information with statutory rape under Article 266-A, paragraph (1)(d) of the Revised Penal Code, as amended. It is undisputed that AAA was over 12 years old on July 10, 2000, thus, Amistoso cannot be convicted of statutory rape. Nonetheless, it does not mean that Amistoso cannot be convicted of rape committed under any of the other circumstances described by Article 266-A, paragraph 1 of the Revised Penal Code, as amended, as long as the facts constituting the same are alleged in the Information and proved during trial. What is controlling in an Information should not be the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being, by and large, mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. In addition, the Information need not use the language of the statute in stating the acts or omissions complained of as constituting the offense. What is required is that the acts or omissions complained of as constituting the offense are stated in ordinary and concise language sufficient to enable a person of common understanding to know the offense charged. In this case, a perusal of the Information against Amistoso reveals that the allegations therein actually constitute a criminal charge for qualified rape under Article 266-A, paragraph (1)(a), in relation to Section 266-B, paragraph (1) of the Revised Penal Code, as amended.

2. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS.— The elements of rape under Article 266-A, paragraph (1)(a) of the Revised Penal Code, as amended, are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. But when the offender is the victim's father, there need not be actual force, threat, or intimidation x x x. Then to raise the crime of simple rape to qualified rape under Article 266-B, paragraph (1) of the Revised Penal Code, as amended, the twin circumstances of minority of the victim and her relationship to the offender must concur. The foregoing elements of qualified rape under Article 266-A, paragraph (1)(a), in relation to Article 266-B , paragraph (1), of the Revised Penal Code, as amended, are sufficiently alleged in the Information against Amistoso, *viz:* (1) Amistoso succeeded in having carnal knowledge of AAA against her will and without her consent; (2) AAA was 12 years old on the day of the alleged rape; and (3) Amistoso is AAA's father.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY ALLEGED MOTIVES OF FAMILY FEUDS, RESENTMENT, OR REVENGE IN RAPE CASES.— Alleged motives of family feuds, resentment, or revenge are not uncommon defenses, and have never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examinations, especially a minor as in this case.

4. ID.; ID.; ALIBI; CANNOT PROSPER AS A DEFENSE IN CASE AT BAR.— The Court rejects Amistoso's defense of denial and alibi x x x. Except for his own testimony, Amistoso presented no other evidence to corroborate his alibi that he was working at his employer's warehouse when AAA was raped. Amistoso even admitted that his employer's warehouse was only a kilometer or a 10-minute hike away from the house where AAA was raped, so it was not physically impossible for Amistoso to be present at the scene of the crime at the time it occurred.

5. CRIMINAL LAW; QUALIFIED RAPE; PENALTY.— For the qualified rape of his daughter AAA, the Court of Appeals was correct in imposing upon Amistoso the penalty of *reclusion perpetua* without the eligibility of parole, in lieu of the death penalty, pursuant to Republic Act No. 9346 x x x.

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 the Court is the appeal of accused-appellant Anastacio Amistoso *y* Broca (Amistoso) of the Decision[1] dated August 25, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04012, affirming with modification the Decision[2] dated March 23, 2006 of the Regional Trial Court (RTC) of Masbate City, Branch 48, in Criminal Case No. 10106, which found Amistoso guilty beyond reasonable doubt of the qualified rape of his daughter AAA.[3]

Amistoso was charged by the Provincial Prosecutor of Masbate in an Information[4] dated August 30, 2000,[5] which reads:

The undersigned 3rd Assistant Provincial Prosecutor upon a sworn complaint filed by private offended party, accuses ANASTACIO AMISTOSO *y* BROCA, for VIOLATION OF ANTI-RAPE LAW OF 1997 (Art. 266-A, par. 1 sub par. (d) committed as follows:

> That on or about the 10th day of July 2000, at about 8:00 o'clock in the evening thereof, at x x x Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and with intent to have carnal knowledge with [AAA], a 12-year old girl, did

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino, concurring.

[2] CA *rollo*, 47-51; penned by Judge Jacinta B. Tambago.

[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. 2.

[5] The Information is actually dated "August 30, 3000," an obvious typographical error.

then and there wilfully, unlawfully and feloniously succeed in having carnal knowledge with the victim against her will and without her consent.

With the aggravating circumstance of relationship, accused being the father of the victim.

When arraigned on July 23, 2002, Amistoso pleaded not guilty to the crime charged.[6]

Trial on the merits ensued.

The prosecution presented three witnesses: AAA,[7] the victim herself; Dr. Ulysses V. Francisco (Francisco),[8] the Municipal Health Officer who conducted the physical examination of AAA; and Senior Police Officer (SPO) 4 Restituto Lipatan (Lipatan),[9] the police investigator on duty at the police station on July 13, 2000. The prosecution also submitted as documentary evidence the Complaint[10] dated July 13, 2000 filed by BBB, AAA's mother, against Amistoso; AAA's Affidavit[11] dated July 13, 2000; Dr. Francisco's Medico-Legal Report[12] dated July 13, 2000; AAA's Certificate of Live Birth;[13] AAA's elementary school records;[14] and a photocopy of the page in the Police Blotter containing the entries for July 13, 2000.[15]

The evidence for the prosecution presented the following version of events:

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[6] Records, p. 44.

[7] TSN, September 3, 2003.

[8] TSN, February 5, 2004.

[9] TSN, September 16, 2004.

[10] Records, p. 4.

[11] *Id.* at 5.

[12] *Id.* at 56.

[13] *Id.* at 95.

[14] *Id.* at 52.

[15] *Id.* at 77.

AAA was born on June 2, 1988, the second of five children of Amistoso and BBB. Their family lived in a one-room shanty in Masbate. On July 10, 2000, AAA was exactly 12 years, one month, and eight days old.

Prior to July 10, 2000, Amistoso had often scolded AAA, maliciously pinched AAA's thighs, and even whipped AAA. At around 11:00 a.m. of July 10, 2000, Amistoso was again mad at AAA because AAA, then busy cooking rice, refused to go with her father to the forest to get a piece of wood which Amistoso would use as a handle for his bolo. Because of this, a quarrel erupted between Amistoso and BBB. In his fury, Amistoso attempted to hack AAA. BBB ran away with her other children to her mother's house in another *barangay*. AAA though stayed behind because she was afraid that Amistoso would get even madder at her.

On the night of July 10, 2000, AAA had fallen asleep while Amistoso was eating. AAA was awakened at around 8:00 p.m. when Amistoso, already naked, mounted her. Amistoso reached under AAA's skirt and removed her panties. AAA shouted, "Pa, *ayaw man*!" (Pa, please don't!), but Amistoso merely covered AAA's mouth with one hand. Amistoso then inserted his penis inside AAA's vagina. The pain AAA felt made her cry. After he had ejaculated, Amistoso stood up. AAA noticed white substance and blood coming from her vagina. Amistoso told AAA not to tell anyone what happened between them, otherwise, he would kill her.

The following day, July 11, 2000, AAA left their residence without Amistoso's consent to hide at the house of a certain Julie, a recruiter. AAA narrated to Julie her ordeal in Amistoso's hands. BBB subsequently found AAA at Julie's house. On July 13, 2000, AAA told BBB what Amistoso did to her. BBB brought AAA to the Department of Social Welfare and Development (DSWD), which in turn, brought AAA to Dr. Francisco for physical examination.

Thereafter, BBB and AAA went to the police for the execution of AAA's Affidavit and the filing of BBB's Complaint against Amistoso. A Municipal Circuit Trial Court in Masbate, after

conducting the necessary preliminary examination, issued an Order of Arrest against Amistoso on July 13, 2000. Amistoso was arrested the same day and the fact thereof was entered in the Police Blotter by SPO4 Lipatan.

Dr. Francisco's findings in his Medico-Legal Report dated July 13, 2000 were as follows:

> Hymen: Old hymenal lacerations noted at 7 and 3 o[']clock corresponding to the face of the clock.
>
> Vaginal canal: Showed less degree of resistance and admits about two of the examiner[']s fingers.
>
> REMARKS:
> Physical Virginity has been lost to [AAA][16]

Dr. Francisco explained on the witness stand that the cause of AAA's hymenal lacerations was the penetration of a blunt object, which could be a penis. He also opined that a hymenal laceration, just like any wound, would take at least a week to heal. Upon further questioning, he answered that "[i]n minimum it would heal in one week time except when there is no infection."[17]

The lone evidence for the defense was Amistoso's testimony.[18]

Amistoso recounted that on July 10, 2000, he was working, unloading diesel and kerosene, at his employer's warehouse. After finishing his work at around 8:00 p.m., Amistoso had dinner at his employer's place before going home. The distance between his employer's warehouse and his house was about a kilometer, a 10-minute hike away.

When Amistoso arrived home, he found the door and the windows to the house tied shut. The house was primarily made of nipa with bamboo flooring. It was raised a foot from the ground. Amistoso's children were inside the house with BBB and an unknown man. Although he could not see inside the house, Amistoso heard BBB and the man talking. Amistoso

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[16] *Id.* at 56.

[17] TSN, February 5, 2004, p. 10.

[18] TSN, September 20, 2005.

suspected that BBB and the man were having sexual intercourse because they did not open the door when Amistoso called out. Amistoso was told to wait so he did wait outside the house for 15 minutes. Meanwhile, BBB and the man made a hole in the floor of the house from where they slipped out, crawled under the house, and fled.

Amistoso said the children had been sleeping inside the house, but BBB woke the children up. When BBB and her lover fled, the children were left together. However, Amistoso also said that he slept alone in the house on the night of July 10, 2000.[19]

Amistoso did not take any action after catching BBB and her lover. He did not chase after BBB and her lover when the two fled on July 10, 2000; he did not report the incident to the police; and he did not file charges of adultery against BBB in the days after.

Amistoso believed that BBB, afraid she got caught with another man, manipulated AAA to falsely charge Amistoso with rape. Amistoso averred that BBB actually wanted to reconcile with him and apologized to him in May 2001 for what had happened, but he refused.[20]

On March 23, 2006, the RTC rendered its Decision finding Amistoso guilty of qualified rape, to wit:

> In view of the foregoing, this Court is convinced and so holds that the prosecution has proved the guilt of accused Anastacio Amistoso beyond reasonable doubt of qualified rape, punished under Article 266-B, par. 5, sub. Par. 1.
>
> WHEREFORE, accused **ANASTACIO AMISTOSO**, having been convicted of **Qualified Rape**, he is hereby sentenced to the capital penalty of **DEATH**; to pay the victim the sum of Seventy[-]Five Thousand Pesos (PhP75,000.00) as indemnity; to pay the said victim the sum of Fifty Thousand Pesos (PhP50,000.00) as for moral damages, and to pay the costs.[21]

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[19] *Id.* at 10-11.

[20] *Id.* at 12.

[21] CA *rollo*, p. 51.

On appeal, the Court of Appeals affirmed Amistoso's conviction for qualified rape but modified the penalties imposed. Below is the decretal portion of the Decision dated August 25, 2011 of the appellate court:

> *WHEREFORE*, the appeal is ***DISMISSED*** and the assailed Decision dated March 23, 2006 of the Regional Trial Court of Masbate City, Branch 48, in Criminal Case No. 10106 is ***AFFIRMED WITH MODIFICATION.***
>
> Accused-appellant Anastacio Amistoso is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. In addition to civil indemnity in the amount of ₱75,000.00, he is ordered to pay the victim ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages.[22]

Hence, Amistoso comes before this Court via the instant appeal with a lone assignment of error:

> THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[23]

Amistoso argues that the defense of denial and alibi should not be viewed with outright disfavor. Such defense, notwithstanding its inherent weakness, may still be a plausible excuse. Be that as it may, the prosecution cannot profit from the weakness of Amistoso's defense; it must rely on the strength of its own evidence and establish Amistoso's guilt beyond reasonable doubt. Amistoso asserts that the prosecution failed even in this regard.

Amistoso was charged in the Information with statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended. The elements of said crime are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age or is demented.

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[22] *Rollo*, p. 13.

[23] CA *rollo*, p. 35.

According to Amistoso, there is no proof beyond reasonable doubt that he had carnal knowledge of AAA. AAA's claim that Amistoso was able to insert his penis into her vagina on July 10, 2000 was contrary to the physical evidence on record. Dr. Francisco testified that hymenal lacerations would take a minimum of one week to heal; but in his Medico-Legal Report, prepared on July 13, 2000, just three days after AAA's alleged rape, he stated that AAA's hymenal lacerations were already healed. Amistoso also asserts that AAA had ulterior motive to falsely accuse him of rape. AAA admitted that Amistoso had been maltreating her and that she had already developed hatred or ill feeling against Amistoso. Such admission casts doubts on the veracity and credibility of AAA's rape charge and raises the question of whether the act complained of actually occurred.

Amistoso further claims lack of showing that AAA was below 12 years old or demented when she was supposedly raped on July 10, 2000. According to the prosecution's own evidence, AAA was precisely 12 years, one month, and eight days old on July 10, 2000; while the prosecution did not at all present any evidence of AAA's mental condition.

Amistoso's appeal is without merit.

Reproduced hereunder are the pertinent provisions of the Revised Penal Code, as amended:

ART. 266-A. *Rape; when and how committed*. — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

ART. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The **death penalty** shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) 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. (Emphases supplied.)

Amistoso was specifically charged in the Information with statutory rape under Article 266-A, paragraph (1)(d) of the Revised Penal Code, as amended. It is undisputed that AAA was over 12 years old on July 10, 2000, thus, Amistoso cannot be convicted of statutory rape. Nonetheless, it does not mean that Amistoso cannot be convicted of rape committed under any of the other circumstances described by Article 266-A, paragraph 1 of the Revised Penal Code, as amended, as long as the facts constituting the same are alleged in the Information and proved during trial. What is controlling in an Information should not be the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being, by and large, mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited.[24] In addition, the Information need not use the language of the statute in stating the acts or omissions complained of as constituting the offense. What is required is that the acts or omissions complained of as constituting the offense are stated in ordinary and concise language sufficient to enable a person of common understanding to know the offense charged.[25]

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[24] *People v. Banihit*, 393 Phil. 465, 475-476 (2000).

[25] *People v. Cadampog*, G.R. No. 148144, April 30, 2004, 428 SCRA 336, 345.

In this case, a perusal of the Information against Amistoso reveals that the allegations therein actually constitute a criminal charge for qualified rape under Article 266-A, paragraph (1)(a), in relation to Section 266-B, paragraph (1) of the Revised Penal Code, as amended.

The elements of rape under Article 266-A, paragraph (1)(a) of the Revised Penal Code, as amended, are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation.[26] But when the offender is the victim's father, there need not be actual force, threat, or intimidation, as the Court expounded in *People v. Fragante:*[27]

> It must be stressed that the gravamen of rape is sexual congress with a woman by force and without consent. In *People v. Orillosa*, we held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. When a father commits the odious crime of rape against his own daughter, his moral ascendancy or influence over the latter substitutes for violence and intimidation. The absence of violence or offer of resistance would not affect the outcome of the case because the overpowering and overbearing moral influence of the father over his daughter takes the place of violence and offer of resistance required in rape cases committed by an accused who did not have blood relationship with the victim. (Citations omitted.)

Then to raise the crime of simple rape to qualified rape under Article 266-B, paragraph (1) of the Revised Penal Code, as amended, the twin circumstances of minority of the victim and her relationship to the offender must concur.[28]

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[26] *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 337.

[27] G.R. No. 182521, February 9, 2011, 642 SCRA 566, 579-580.

[28] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 704.

The foregoing elements of qualified rape under Article 266-A, paragraph (1)(a), in relation to Article 266-B , paragraph (1), of the Revised Penal Code, as amended, are sufficiently alleged in the Information against Amistoso, *viz*: (1) Amistoso succeeded in having carnal knowledge of AAA against her will and without her consent; (2) AAA was 12 years old on the day of the alleged rape; and (3) Amistoso is AAA's father.

Amistoso cannot claim that he had been deprived of due process in any way. He adequately understood from the Information that he was being charged with the rape of his own daughter AAA to which he proffered the defense of denial and alibi, totally refuting the fact of AAA's rape regardless of how it was purportedly committed.

Now as to the truth of the charge in the Information, the RTC found, and the Court of Appeals affirmed, that the prosecution was able to prove beyond reasonable doubt all the elements and circumstances necessary for convicting Amistoso for the qualified rape of AAA. The RTC accorded credence and weight to the testimonies of the prosecution witnesses, especially the victim AAA, and disbelieved the denial and alibi of Amistoso.

In *People v. Aguilar*,[29] the Court explained that:

> Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness,

[29] G.R. No. 177749, December 17, 2007, 540 SCRA 509, 522-523.

sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals. (Citations omitted.)

There is no cogent reason herein for the Court to depart from the general rule and reverse any of the factual findings of the RTC, as affirmed by the Court of Appeals.

AAA gave a clear, consistent, and credible account of the events of July 10, 2000, in a straightforward and candid manner:

ASST. PROS. LEGASPI
continuing)

Q Now, remember where you were on July 10, 2000, at about eleven o'clock in the morning?

x x x x x x x x x

A At our house.

x x x x x x x x x

Q Do you recall if there was an incident happened on that particular day and time?

x x x x x x x x x

A My mother and my father have a quarell (sic).

Q Why did they have a quarell (sic)?

x x x x x x x x x

A My father got mad at me because I refused to go with him to get a piece of wood for a handle of our bolo.

x x x x x x x x x

Q And what happened after that?

A He attempted to hack me.

Q And what did your mother do?

A She ran away.

x x x x x x x x x

Q Did she return on that day to your house?

A No, she did not.

Q On July 10, 2000, at around eight o'clock in the evening where were you?

A At our house.

Q And who was with you in your house.

A My father.

Q What were you doing at that time?

A I was sleeping.

Q While you were sleeping, do you recall having been awakened?

A Yes, sir.

Q Why were you awakened?

A Because my father mounted on me.

Q And what did you notice from him when he mounted on you?

A That he was already naked.

Q When he mounted on top of you, what did he do?

A He removed my panty.

COURT
to the witness)

Q What about your clothes?

A No, only my panty.

x x x x x x x x x

ASST. PROS. LEGASPI
continuing)

Q What did (*sic*) you wearing at that time?

A A skirt.

x x x x x x x x x

Q What did you do when he removed your panty?

A I shouted.

COURT
to the witness)

Q What was your shouted (sic) about?

A In order to stop him.

x x x x x x x x x

ASST. PROS. LEGASPI
continuing)

Q When you shouted "*ayaw man*," what did your father do?

A He covered my mouth.

Q After he covered your mouth, what did he do next.

A He inserted his penis into my vagina.

x x x x x x x x x

Q And what did you feel?

A I felt pain.

Q Because you felt pain, did you cry?

A Yes, sir.

Q What happened after that?

A After that he stood up.

Q Did you feel if there was an ejaculation?

A Yes, there was.

Q Did you notice a white substance in your vagina?

A Yes, sir.

Q After your father had sexual intercourse with you, what did you notice after that?

A There was a blood coming from me.

Q What did your father tell you?

A That I must not tell anybody, otherwise he will kill us.[30]

AAA's aforequoted testimony already established the elements of rape under Article 266-A, paragraph (1)(a) of the Revised Penal Code, as amended. AAA had positively and categorically testified that Amistoso's penis had entered her vagina, so Amistoso succeeded in having carnal knowledge of AAA. The Court reiterates that in an incestuous rape of a minor, actual force or intimidation need not be employed where the overpowering moral influence of the father would suffice.[31]

That Dr. Francisco, during his physical examination of AAA on July 13, 2000, already found healed lacerations, does not negatively affect AAA's credibility nor disprove her rape. Worth repeating are the following pronouncements of the Court in *People v. Orilla*:[32]

> The absence of fresh lacerations in Remilyn's hymen does not prove that appellant did not rape her. A freshly broken hymen is not an essential element of rape and **healed lacerations do not negate rape**. In addition, **a medical examination and a medical certificate are merely corroborative** and are not indispensable to the prosecution of a rape case. **The credible disclosure of a minor that the accused raped her is the most important proof of the sexual abuse**. (Emphases supplied, citations omitted.)

In addition, while Dr. Francisco testified that hymenal lacerations normally heal in one week, he did not foreclose the possibility of hymenal lacerations healing in less than a week when there is no infection, to wit:

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[30] TSN, September 3, 2003, pp. 12-17.

[31] *People v. Orillosa*, G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 698.

[32] 467 Phil. 253, 274 (2004).

COURT
to the Witness)

Q In your opinion Doctor, how many days more or less would the hymenal lacerations heal?

A In most cases this laceration is the same with any wound and it would heal for one week.

x x x x x x x x x

PROS. LEGASPI
on re-direct)

Q When you made mentioned as to the period of healing of this hymenal lacerations[,] when you said within one week time, could it be possible that it heals less [than] a week?

x x x x x x x x x

A **In minimum it would heal in one week time except when there is no infection.**[33] (Emphasis supplied.)

Even the twin circumstances for qualified rape, namely, minority and relationship, were satisfactorily proved by the prosecution. That AAA was 12 years old on July 10, 2000 and that she is Amistoso's daughter were established by AAA's Certificate of Live Birth[34] and Amistoso's admission[35] before the RTC.

The Court is not persuaded by Amistoso's insinuation that AAA and BBB were only falsely accusing him of rape out of hatred and ill feeling.

Alleged motives of family feuds, resentment, or revenge are not uncommon defenses, and have never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examinations, especially a minor as in this case.[36]

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[33] TSN, February 5, 2004, pp. 8-10.

[34] Records, p. 95.

[35] TSN, September 20, 2005, p. 10.

[36] *People v. Ardon*, 407 Phil. 104, 123 (2001).

Moreover, the Court finds it difficult to believe that a young girl would fabricate a rape charge against her own father as revenge for previous maltreatment, ruling in *People v. Canoy*[37] as follows:

> We must brush aside as flimsy the appellant's insistence that the charges were merely concocted by his daughter to punish him for bringing in his illegitimate daughters to live with them and for maltreating her. It is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not have been aggrieved. Nor do we believe that the victim would fabricate a story of rape simply because she wanted to exact revenge against her father, appellant herein, for allegedly scolding and maltreating her. (Citations omitted.)

Neither is the Court convinced that BBB would use and manipulate her own daughter AAA to wrongfully accuse Amistoso, her husband and AAA's father, of rape, just to cover-up her alleged affair with another man. It is unthinkable that a mother would sacrifice her daughter's honor to satisfy her grudge, knowing fully well that such an experience would certainly damage her daughter's psyche and mar her entire life. A mother would not subject her daughter to a public trial with its accompanying stigma on her as the victim of rape, if said charges were not true.[38]

The Court rejects Amistoso's defense of denial and alibi for the very same reasons stated in *People v. Abulon:*[39]

> Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical

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[37] 459 Phil. 933, 944 (2003).

[38] *People v. Leonardo*, G.R. No. 181036, July 6, 2010, 624 SCRA 166, 199.

[39] G.R. No. 174473, August 17, 2007, 530 SCRA 675, 695-696.

testimony and identification of the complainant. Alibi is an inherently weak defense, which is viewed with suspicion because it can easily be fabricated. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non- culpability to merit credibility.

The records disclose that not a shred of evidence was adduced by appellant to corroborate his alibi. Alibi must be supported by credible corroboration from disinterested witnesses, otherwise, it is fatal to the accused. Further, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of its commission. By his own testimony, appellant clearly failed to show that it was physically impossible for him to have been present at the scene of the crime when the rapes were alleged to have occurred. Except for the first incident, appellant was within the vicinity of his home and in fact alleged that he was supposedly even sleeping therein on the occasion of the second and third incidents. (Citations omitted.)

Except for his own testimony, Amistoso presented no other evidence to corroborate his alibi that he was working at his employer's warehouse when AAA was raped. Amistoso even admitted that his employer's warehouse was only a kilometer or a 10-minute hike away from the house where AAA was raped, so it was not physically impossible for Amistoso to be present at the scene of the crime at the time it occurred.

Amistoso's version of events is also implausible and irrational. Amistoso claimed that his wife BBB was having an affair with another man, but he could not even identify the man. He did not see the man on the night of July 10, 2000, but purportedly heard BBB and the man talking inside the house and concluded that the two were having sexual intercourse. Amistoso further said he wanted to hack BBB and her lover, yet, he patiently waited outside for 15 minutes before entering the house. It appears physically impossible for BBB and her lover, both fully grown adults, to escape by crawling through the one-foot space beneath the house. And finally, Amistoso was unable to explain why he did not run after BBB and her lover nor took any legal action against the two even days after catching them having sexual intercourse; where were the children, who BBB supposedly left

behind after running away with her lover on the night of July 10, 2000, as Amistoso claimed he slept alone at the house that same night; and how would BBB, the spouse allegedly guilty of having an affair, benefit in influencing AAA to falsely charge Amistoso with rape.

For the qualified rape of his daughter AAA, the Court of Appeals was correct in imposing upon Amistoso the penalty of *reclusion perpetua* without the eligibility of parole, in lieu of the death penalty, pursuant to Republic Act No. 9346;[40] and ordering Amistoso to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The Court adds that Amistoso is liable to pay interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision.[41]

WHEREFORE, in view of the foregoing, the instant appeal of Anastacio Amistoso y Broca is **DENIED.** The Decision dated August 25, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04012 is **AFFIRMED with the MODIFICATION** that Amistoso is further **ORDERED** to pay interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision.

SO ORDERED.

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

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[40] Entitled "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*."

[41] *People v. Arpon*, G.R. No. 183563, December 14, 2011, 662 SCRA 506, 539-540.

FIRST DIVISION

[G.R. No. 160932. January 14, 2013]

SPECIAL PEOPLE, INC. FOUNDATION, REPRESENTED BY ITS CHAIRMAN, ROBERTO P. CERICOS, *petitioner, vs.* **NESTOR M. CANDA, BIENVENIDO LIPAYON, JULIAN D. AMADOR, BOHOL PROVINCIAL CHIEF, REGIONAL DIRECTOR, AND NATIONAL DIRECTOR, RESPECTIVELY, ENVIRONMENTAL MANAGEMENT BUREAU, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, and THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, ALL SUED IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45; THE PETITION SHALL RAISE ONLY QUESTIONS OF LAW WHICH MUST BE DISTINCTLY SET FORTH.— This appeal by *certiorari* is being taken under Rule 45, *Rules of Court*, whose Section 1 expressly requires that the petition shall raise only questions of law which must be distinctly set forth. Yet, the petitioner hereby raises a question of fact whose resolution is decisive in this appeal. That issue of fact concerns whether or not the petitioner established that its project was not located in an environmentally critical area. For this reason, the Court is constrained to deny due course to the petition for review.

2. ID.; ID.; ID.; ID.; THE SUPREME COURT RELIES ON THE FACTUAL FINDINGS OF THE COURT OF APPEALS OR OF THE TRIAL COURT IN THE EXERCISE OF ITS POWER OF REVIEW; EXCEPTIONS.— It is a settled rule, indeed, that in the exercise of our power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties

during the trial of the case. The Court relies on the findings of fact of the Court of Appeals or of the trial court, and accepts such findings as conclusive and binding unless any of the following exceptions obtains, namely: (*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 or the trial court 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 findings are contrary to 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; and (*k*) when the Court of Appeals or the trial court manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. However, none of the aforementioned exceptions applies herein.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; A PARTY WHO SEEKS THE INTERVENTION OF A COURT OF LAW UPON ADMINISTRATIVE CONCERN SHOULD FIRST AVAIL HIMSELF OF ALL THE REMEDIES AFFORDED BY ADMINISTRATIVE PROCESSES.— [A] party who seeks the intervention of a court of law upon an administrative concern should first avail himself of all the remedies afforded by administrative processes. The issues that an administrative agency is authorized to decide should not be summarily taken away from it and submitted to a court of law without first giving the agency the opportunity to dispose of the issues upon due deliberation. The court of law must allow the administrative agency to carry out its functions and discharge its responsibilities within the specialized areas of its competence. This rests on the theory that the administrative authority is in a better position to resolve questions addressed to its particular expertise, and that errors

committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so.

4. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS*; AVAILABLE ONLY WHEN THERE IS NO APPEAL, NOR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.— [T]he petitioner states in its pleadings that it had a pending appeal with the DENR Secretary. However, the records reveal that the subject of the appeal of the petitioner was an undated resolution of the DENR Regional Director, Region VII, denying its application for the CNC, not the decision of RD Lipayon. Nonetheless, even assuming that the pending appeal with the DENR Secretary had related to RD Lipayon's decision, the petitioner should still have waited for the DENR Secretary to resolve the appeal in line with the principle of exhaustion of administrative remedies. Its failure to do so rendered its resort to *mandamus* in the RTC premature. The omission is fatal, because *mandamus* is a remedy only when there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 1586 (THE ENVIRONMENT IMPACT SYSTEM LAW); ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC)/CERTIFICATE OF NON-COVERAGE (CNC); THE GRANT OR APPLICATION FOR ECC/CNC IS AN ACT THAT INVOLVES THE EXERCISE OF JUDGMENT AND DISCRETION BY THE ENVIRONMENTAL MANAGEMENT BUREAU DIRECTOR OR REGIONAL DIRECTOR.— The CNC is a certification issued by the EMB certifying that a project is not covered by the Environmental Impact Statement System (EIS System) and that the project proponent is not required to secure an ECC. The EIS System was established by Presidential Decree (P.D.) No. 1586 pursuant to Section 4 of P.D. No. 1151 (*Philippine Environmental Policy*) that required all entities to submit an EIS for projects that would have a significant effect on the environment x x x. P.D. No. 1586 exempted from the requirement of an EIS the projects and areas not declared by the President of the Philippines as environmentally critical x x x. On December 14, 1981, the President issued Proclamation No. 2146 declaring areas and

types of projects as environmentally critical and within the scope of the EIS System x x x. Projects not included in the x x x enumeration were considered non-critical to the environment and were entitled to the CNC. The foregoing considerations indicate that the grant or denial of an application for ECC/CNC is not an act that is purely ministerial in nature, but one that involves the exercise of judgment and discretion by the EMB Director or Regional Director, who must determine whether the project or project area is classified as critical to the environment based on the documents to be submitted by the applicant.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WILL ISSUE ONLY WHEN THE PETITIONER HAS A CLEAR LEGAL RIGHT TO THE PERFORMANCE OF THE ACT SOUGHT TO BE COMPELLED AND THE RESPONDENT HAS AN IMPERATIVE DUTY TO PERFORM THE SAME.— The writ of *mandamus* has x x x an important feature that sets it apart from the other remedial writs, *i.e.*, that it is used merely to compel action and to coerce the performance of a pre-existing duty. In fact, a doctrine well-embedded in our jurisprudence is that *mandamus* will issue only when the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same. The petitioner bears the burden to show that there is such a clear legal right to the performance of the act, and a corresponding compelling duty on the part of the respondent to perform the act.

7. ID.; ID.; ID.; LIES TO COMPEL THE PERFORMANCE OF DUTIES THAT ARE PURELY MINISTERIAL IN NATURE, NOT THOSE THAT ARE DISCRETIONARY.— A key principle to be observed in dealing with petitions for *mandamus* is that such extraordinary remedy lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary. A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when its discharge requires neither the exercise of official discretion or judgment.

APPEARANCES OF COUNSEL

Artemio P. Cabatos for petitioner.
Noel C. Empleo for Bienvenido L. Lipayon & Nestor Canda.
The Solicitor General for public respondents.

D E C I S I O N

BERSAMIN, *J.*:

The peremptory writ of *mandamus* is an extraordinary remedy that is issued only in extreme necessity, and the ordinary course of procedure is powerless to afford an adequate and speedy relief to one who has a clear legal right to the performance of the act to be compelled.

Antecedents

The petitioner was a proponent of a water-resource development and utilization project in Barangay Jimilia-an in the Municipality of Loboc, Bohol that would involve the tapping and purifying of water from the Loboc River, and the distribution of the purified water to the residents of Loboc and six other municipalities. The petitioner applied for a Certificate of Non-Coverage (CNC) with the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), Region 7, seeking to be exempt from the requirement of the Environmental Compliance Certificate (ECC) under Section 4 of Presidential Decree No. 1586 on the following justifications, to wit:

1) The whole project simply involves tapping of water from the Loboc River, filtering and purifying it, and distributing the same to the consumers in the covered towns;

2) From the source to the filtration plant, then to the purifier stations, then finally to the consumers' households, water flows through steel pipes;

3) The filtration and purifying process employs the latest technology—"electrocatalytic"—internationally accepted for safety and environment friendliness;

4) No waste is generated, as the electrocatalytic process dissolves all impurities in the water;

5) The project involves no destruction [n]or harm to the environment. On the other hand, it is environment friendly.[1]

Upon evaluating the nature and magnitude of the environmental impact of the project, respondent Nestor M. Canda, then Chief of EMB in Bohol, rendered his findings in a letter dated December 4, 2001, as follows:

1) The project is located within a critical area; **hence, Initial Environmental Examination is required**.

2) The project is socially and politically sensitive therefore proof of social acceptability should be established. Proper indorsement from the [Protected Area Management Bureau or] PAMB should be secured.[2] (Emphasis supplied)

On January 11, 2002, the petitioner appealed Canda's findings to respondent EMB Region 7 Director Bienvenido L. Lipayon (RD Lipayon), claiming that it should also be issued a CNC because the project was no different from the Loboc-Loay waterworks project of the Department of Public Works and Highways (DPWH) that had recently been issued a CNC.[3]

On April 3, 2002, RD Lipayon notified the petitioner that its documents substantially complied with the procedural aspects of the EMB's review, and that the application was assigned EMB-DENR-7 Control No. CNC-02-080 for easy reference in case of follow-up and submission of additional requirements.[4]

Later on, RD Lipayon informed the petitioner that an Initial Environmental Examination document was required for the project due to its significant impact in the area.[5]

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[1] *Rollo*, p. 35.

[2] *Id.* at 39.

[3] *Id.* at 40.

[4] *Id.* at 44.

[5] *Id.* at 45.

On August 26, 2002, RD Lipayon required the petitioner to submit the following documents to enable the EMB to determine whether the project was within an environmentally critical area or not, to wit:

1. Certification from DENR, Provincial Environment and Natural Resources Office (PENRO) that it is not within areas declared by law as national parks, watershed reserves, wildlife preservation area, sanctuaries and not within the purview of Republic Act No. 7586 or the National Integrated Protected Areas System (NIPAS) Act, and other issuances including international commitments and declarations;

2. Certification from the DENR Regional Office/ PENRO [that] the areas within the project do[ ] not constitute [the habitat] for any endangered or threatened species or indigenous wildlife (Flora and Fauna).

3. Certification from the following:

    3.1. Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA) that the area is not frequently visited or hard-hit by typhoons. This shall refer to all areas where typhoon signal no. 3 not hoisted for at least twice a year during the last five (5) years prior to the year of reckoning. Years to be considered shall be from January 1995 to December 2001.

    3.2. Philippine Institute of Volcanology and Seismology (PHIVOLCS) that the area was **not subjected to an earthquake of at least intensity VII in the Rossi-Forel scale or its equivalent and hit by tsunamis during the period of** 1638 **until the year 2001**.

    3.3. PHIVOLCS that the area was not subjected to earthquakes of at least intensity VII in the Rossi-Forel scale or its equivalent during the period of 1949 until the year 2001.

    3.4. PAGASA that the area is not storm surge-prone.

    3.5. Mines and Geosciences Bureau Region 7 (MGB 7) that the area is not located along fault lines or within fault zones and **not located in critical slope**.

3.6. City Mayor and/or City Engineers Office that the area is not flood prone.

3.7. Network of Protected Areas for Agriculture (NPAA) of the Bureau of Soils and Water Management (BSWM) that the area is not classified as Prime Agricultural Land.

4. Certification from the Provincial Tourism Office or its equivalent office that areas in your project are not set-aside as aesthetic potential tourist spot.

5. Certification from the National Water Resources Board (NWRB) that areas within your project are not recharge[d] areas of aquifer.

6. Certification from DENR regional Office and/or Environmental Management Bureau 7 (EMB 7) that Loboc River is not characterized by one or any combination of the following conditions:

   a. Tapped for domestic purposes;

   b. With controlled and/or protected areas declared by appropriate authorities; and

   c. Which support wildlife and fishery activities.

A Certificate of Non-Coverage will duly be issued to your foundation once all the above mentioned required certifications are complied with.

Projects that are covered by P.D. 1586 or the Environmental Impact System (EIS) Law should not start unless the Project Proponent should secure an Environmental Compliance Certificate (ECC), otherwise penalties shall be imposed.[6] (Emphases supplied)

On January 28, 2003, the petitioner submitted eight certifications,[7] including the certification issued by the Philippine Institute of Volcanology and Seismology (PHIVOLCS), as follows:

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[6] *Id.* at 52-53.

[7] *Id.* at 54-64.

That the project area, Loboc, Bohol was subjected to an earthquake of **Intensity VII** in the adapted Rossi-Forel scale of I-IX last **February 8, 1990**. The magnitude of the earthquake is 6.8 and the highest intensity reported was VIII, based on the Rossi-Forel Intensity Scale. During the said earthquake, the PMI Academy Building collapsed while minor cracks were sustained by the municipal hall, public school, town church and some other houses in the town. There were reports that immediately after the earthquake, the force of the incoming waves from the sea caused Alijuan River in the town of Duero to flow inland. The report also states that the waves affected 10-50 meters of the coastal beach of the towns of Jagna, Duero, Guindulman, Garcia Hernandez and Valencia.[8] (Emphases supplied)

The petitioner failed to secure a certification from the Regional Office of the Mines and Geosciences Bureau (RO-MGB) to the effect that the project area was not located along a fault line/ fault zone or a critical slope because RO-MGB did not have the data and expertise to render such finding, and thus had to forward the petitioner's request to the MGB Central Office.[9]

Upon the MGB's advice, the petitioner sought and obtained the required certification from PHIVOLCS, but the certification did not state whether the project area was within a critical slope. Instead, the certification stated that the project site was approximately 18 kilometers west of the East Bohol Fault.[10]

Given the tenor of the certification from PHIVOLCS, RD Lipayon's letter dated February 4, 2003 declared that the project was within an environmentally critical area, and that the petitioner was not entitled to the CNC, *viz*:

After thorough review of your submitted certifications, it was found out that the area was subjected to an earthquake of Intensity VII in the adapted Rossi-Forel scale wherein the magnitude of the earthquake is 6.8 with the highest intensity reported of VIII and you fail to support certification that the project area is not within critical slope. And based on the Water Usage and Classification per

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[8] *Id.* at 58.

[9] *Id.* at 59.

[10] *Id.* at 64.

Department Order (DAO) 34 Series of 1990, subject river system was officially classified as Class B intended for swimming and bathing purposes. Moreover, one component of your project involves opening of roadway connected to the *barangay* road.

Therefore, we reiterate our previous stand that your project is covered by the EIS System pursuant to P.D. 1586, the Environmental Impact Statement Law.[11]

On March 27, 2003, the petitioner filed a petition for *mandamus* and damages in the Regional Trial Court (RTC) in Loay, Bohol,[12] alleging that it was now entitled to a CNC as a matter of right after having complied with the certification requirements; and that the EMB had earlier issued a CNC to the DPWH for a similar waterworks project in the same area.

In the decision dated November 18, 2003,[13] the RTC **dismissed** the petition for *mandamus* upon the following considerations, namely: (1) PHIVOLCS certified that the project site had been subjected to an Intensity VII earthquake in 1990; (2) the CNC issued by the EMB to a similar waterworks project of the DPWH in the same area was only for the construction of a unit spring box intake and pump house, and the DENR issued a cease and desist order relative to the DPWH's additional project to put up a water filtration plant therein; (3) the determination of whether an area was environmentally critical was a task that pertained to the EMB; (4) the assignment of a control number by the EMB to the petitioner's application did not mean that the application was as good as approved; (5) the RTC would not interfere with the primary prerogative of the EMB to review the merits of the petitioner's application for the CNC; and (6) there was already a pending appeal lodged with the DENR Secretary.

Hence, this appeal brought directly to the Court *via* petition for review on *certiorari*.

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[11] *Id.* at 65.

[12] *Id.* at 16-27.

[13] *Id.* at 125-134.

Issues

The petitioner submits the following issues:

A. WHETHER OR NOT, AFTER PETITIONER'S DUE COMPLIANCE WITH THE REQUIREMENTS MANDATED BY RESPONDENTS FOR THE ISSUANCE OF THE CERTIFICATE OF NON-COVERAGE (CNC) APPLIED FOR BY PETITIONER, IT IS NOW THE RIPENED DUTY OF RESPONDENTS, THROUGH RESPONDENT EMB REGIONAL DIRECTOR, TO ISSUE SAID DOCUMENT IN FAVOR OF PETITIONER;

B. WHETHER OR NOT PETITIONER HAS EXHAUSTED AVAILABLE ADMINISTRATIVE REMEDIES THROUGH AN APPEAL TO RESPONDENT DENR SECRETARY WHO HAS SAT ON SAID APPEAL UP TO THE PRESENT;

C. WHETHER OR NOT PETITIONER IS ENTITLED TO RECOVER DAMAGES FROM RESPONDENTS IN THEIR PERSONAL CAPACITY.[14]

The petitioner insists that RD Lipayon already exercised his discretion by finding that the application substantially complied with the procedural aspects for review and by assigning Control No. CNC-02-080 to its application; that after the petitioner complied with the requirements enumerated in the August 26, 2002 letter of RD Lipayon, the EMB became duty-bound to issue the CNC to the petitioner; that the EMB issued a CNC to a similar project of the DPWH in the same area; that it filed an appeal with the DENR Secretary, but the appeal remained unresolved; and that it brought the petition for *mandamus* precisely as a speedier recourse.

In their comment, RD Lipayon and Canda aver that the act complained of against them involved an exercise of discretion that could not be compelled by *mandamus*; that the petitioner's proposed project was located within an environmentally critical area, and the activities to be done were so significant that they

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[14] *Id.* at 6.

would create massive earth movement and environmental degradation; that the petitioner violated the rule against forum shopping; and that the petitioner had no cause of action against them for failure to exhaust administrative remedies.

On his part, the DENR Secretary, through the Solicitor General, contends that the petition raises questions of fact that are not proper in a petition for review; that the petitioner should have appealed to the CA under Rule 41 of the *Rules of Court*; that the grant or denial of a CNC application is discretionary and cannot be compelled by *mandamus*; and that the petitioner failed to exhaust administrative remedies.

Accordingly, the Court is called upon to resolve, *firstly*, whether the appeal directly to this Court from the RTC was proper, and, *secondly*, whether the petition for *mandamus* was the correct recourse.

Ruling

The petition for review is denied for its lack of merit.

1.
Petitioner's appeal is improper under Rule 45, *Rules of Court*

This appeal by *certiorari* is being taken under Rule 45, *Rules of Court*, whose Section 1 expressly requires that the petition shall raise only questions of law which must be distinctly set forth. Yet, the petitioner hereby raises a question of fact whose resolution is decisive in this appeal. That issue of fact concerns whether or not the petitioner established that its project was not located in an environmentally critical area. For this reason, the Court is constrained to deny due course to the petition for review.

It is a settled rule, indeed, that in the exercise of our power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case. The Court relies

on the findings of fact of the Court of Appeals or of the trial court, and accepts such findings as conclusive and binding unless any of the following exceptions obtains, namely: (*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 or the trial court 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 findings are contrary to 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; and (*k*) when the Court of Appeals or the trial court manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[15] However, none of the aforementioned exceptions applies herein.

2.

Mandamus was an improper remedy for petitioner

We dismiss the present recourse because the petitioner failed to exhaust the available administrative remedies, and because it failed to show that it was legally entitled to demand the performance of the act by the respondents.

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[15] *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220, 229; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86; *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, G.R. No. 139437, December 8, 2000, 347 SCRA 542, 549; *Nokom v. National Labor Relations Commission*, G.R. No. 140043, July 18, 2000, 336 SCRA 97, 110; *Sta. Maria v. Court of Appeals*, G.R. No. 127549, January 28, 1998, 285 SCRA 351, 357-358.

It is axiomatic, to begin with, that a party who seeks the intervention of a court of law upon an administrative concern should first avail himself of all the remedies afforded by administrative processes. The issues that an administrative agency is authorized to decide should not be summarily taken away from it and submitted to a court of law without first giving the agency the opportunity to dispose of the issues upon due deliberation.[16] The court of law must allow the administrative agency to carry out its functions and discharge its responsibilities within the specialized areas of its competence.[17] This rests on the theory that the administrative authority is in a better position to resolve questions addressed to its particular expertise, and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so.[18]

The records show that the petitioner failed to exhaust the available administrative remedies. At the time RD Lipayon denied the petitioner's application for the CNC, Administrative Order No. 42 dated November 2, 2002[19] had just vested the authority to grant or deny applications for the ECC in the Director and Regional Directors of the EMB. Notwithstanding the lack of a specific implementing guideline to what office the ruling of the EMB Regional Director was to be appealed, the petitioner could have been easily guided in that regard by the *Administrative Code of 1987*, which provides that the Director of a line bureau,

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[16] *Republic v. Lacap,* G.R. No. 158253, March 2, 2007, 517 SCRA 255, 265.

[17] *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc.*, G.R. No. 175039, April 18, 2012, 670 SCRA 83, 89.

[18] *Sunville Timber Products, Inc. v. Abad*, G.R. No. 85502, February 24, 1992, 206 SCRA 482, 486-487.

[19] RATIONALIZING THE IMPLEMENTATION OF THE PHILIPPINE ENVIRONMENTAL IMPACT STATEMENT (EIS) SYSTEM AND GIVING AUTHORITY, IN ADDITION TO THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, TO THE DIRECTOR AND REGIONAL DIRECTORS OF THE ENVIRONMENTAL MANAGEMENT BUREAU TO GRANT OR DENY THE ISSUANCE OF ENVIRONMENTAL COMPLIANCE CERTIFICATES

such as the EMB,[20] shall have supervision and control over all division and other units, including regional offices, under the bureau.[21] Verily, supervision and control include the power to "review, approve, reverse or modify acts and decisions of subordinate officials or units."[22] Accordingly, the petitioner should have appealed the EMB Regional Director's decision to the EMB Director, who exercised supervision and control over the former.

It is relevant to mention that the DENR later promulgated Administrative Order No. 2003-30[23] in order to define where appeals should be taken, providing as follows:

Section 6. Appeal

Any party aggrieved by the final decision on the ECC/CNC applications may, within 15 days from receipt of such decision, file an appeal on the following grounds:

a. Grave abuse of discretion on the part of the deciding authority, or

b. Serious errors in the review findings.

The DENR may adopt alternative conflict/dispute resolution procedures as a means to settle grievances between proponents and aggrieved parties to avert unnecessary legal action. Frivolous appeals shall not be countenanced.

The proponent or any stakeholder may file an appeal to the following:

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[20] Republic Act No. 8749 (*Philippine Clean Air Act of 1999*) converted the Environmental Management Bureau from a staff bureau to a line bureau. Under Section 20, in conjunction with Section 41, Chapter 8, Book IV of the Administrative Code of 1987, the Director of a line bureau shall have supervision and control over all division and other units, including regional offices, under the bureau.

[21] Administrative Code of 1987, Book IV, Chapter 8, Sections 20 and 41.

[22] Administrative Code of 1987, Book IV, Chapter 7, Section 38(1).

[23] It took effect on August 4, 2003.

Deciding Authority	Where to file the appeal
EMB Regional Office Director	Office of the EMB Director
EMB Central Office Director	Office of the DENR Secretary
DENR Secretary	Office of the President

Moreover, the petitioner states in its pleadings that it had a pending appeal with the DENR Secretary. However, the records reveal that the subject of the appeal of the petitioner was an undated resolution of the DENR Regional Director, Region VII, denying its application for the CNC,[24] not the decision of RD Lipayon. Nonetheless, even assuming that the pending appeal with the DENR Secretary had related to RD Lipayon's decision, the petitioner should still have waited for the DENR Secretary to resolve the appeal in line with the principle of exhaustion of administrative remedies. Its failure to do so rendered its resort to *mandamus* in the RTC premature. The omission is fatal, because *mandamus* is a remedy only when there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[25]

Another reason for denying due course to this review is that the petitioner did not establish that the grant of its application for the CNC was a purely ministerial in nature on the part of RD Lipayon. Hence, *mandamus* was not a proper remedy.

The CNC is a certification issued by the EMB certifying that a project is not covered by the Environmental Impact Statement System (EIS System) and that the project proponent is not required to secure an ECC.[26] The EIS System was established by Presidential Decree (P.D.) No. 1586 pursuant to Section 4 of P.D. No. 1151 (*Philippine Environmental Policy*) that required all entities to submit an EIS for projects that would have a significant effect on the environment, thus:

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[24] *Rollo,* pp. 42-43.

[25] Section 3, Rule 65, *Rules of Court*.

[26] This definition is based on DENR Administrative Order No. 2003-30, Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement (EIS) System.

Section 4. *Environmental Impact Statements*. — Pursuant to the above enunciated policies and goals, all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations, firms and entities shall prepare, file and include in every action, project or undertaking which significantly affects the quality of the environment a detailed statement on—

(a) the environmental impact of the proposed action, project or undertaking

(b) any adverse environmental effect which cannot be avoided should the proposal be implemented

(c) alternative to the proposed action

(d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and

(e) whenever a proposal involve[s] the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.

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P.D. No. 1586 exempted from the requirement of an EIS the projects and areas not declared by the President of the Philippines as environmentally critical,[27] thus:

Section 5. *Environmentally Non-Critical Projects*. — All other projects, undertakings and areas not declared by the Presidents as

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[27] Section 4 of P.D. No. 1586 provides:

Section 4. *Presidential Proclamation of Environmentally Critical Areas and Projects*. — The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. For the proper management of said critical project or area, the President may by his proclamation reorganized such government offices, agencies, institutions, corporations or instrumentalities including the realignment of government personnel, and their specific functions and responsibilities.

environmentally critical shall be considered as non-critical and shall not be required to submit an environmental impact statement. The National Environmental Protection Council, thru the Ministry of Human Settlements may however require non-critical projects and undertakings to provide additional environmental safeguards as it may deem necessary.

On December 14, 1981, the President issued Proclamation No. 2146 declaring areas and types of projects as environmentally critical and within the scope of the EIS System, as follows:

A. Environmentally Critical Projects

I. Heavy Industries
   a. Non-ferrous metal industries
   b. Iron and steel mills
   c. Petroleum and petro-chemical industries including oil and gas
   d. Smelting plants

II. Resource Extractive Industries
   a. Major mining and quarrying projects
   b. Forestry projects
      1. Logging
      2. Major wood processing projects
      3. Introduction of fauna (exotic-animals) in public/private forests
      4. Forest occupancy
      5. Extraction of mangrove products
      6. Grazing
   c. Fishery Projects

      1. Dikes for fishpond development projects

III. Infrastructure Projects
   a. Major dams
   b. Major power plants (fossil-fueled, nuclear fueled, hydroelectric or geothermal)
   c. Major reclamation projects
   d. Major roads and bridges.

B. Environmentally Critical Areas

1. All areas declared by law as national parks, watershed reserves, wildlife preserves and sanctuaries;

2. Areas set aside as aesthetic potential tourist spots;
3. Areas which constitute the habitat for any endangered or threatened species of indigenous Philippine Wildlife (flora and fauna);
4. Areas of unique historic, archaeological, or scientific interests;
5. Areas which are traditionally occupied by cultural communities or tribes;
6. Areas frequently visited and/or hard-hit by natural calamities (geologic hazards, floods, typhoons, volcanic activity, *etc*.);
7. Areas with critical slopes;
8. Areas classified as prime agricultural lands;
9. Recharged areas of aquifers;
10. Water bodies characterized by one or any combination of the following conditions;
    a. tapped for domestic purposes
    b. within the controlled and/or protected areas declared by appropriate authorities
    c. which support wildlife and fishery activities
11. Mangrove areas characterized by one or any combination of the following conditions:
    a. with primary pristine and dense young growth;
    b. adjoining mouth of major river systems;
    c. near or adjacent to traditional productive fry or fishing grounds;
    d. which act as natural buffers against shore erosion, strong winds and storm floods;
    e. on which people are dependent for their livelihood.
12. Coral reef, characterized by one or any combination of the following conditions:
    a. with 50% and above live coralline cover;
    b. spawning and nursery grounds for fish;
    c. which act as natural breakwater of coastlines.

Projects not included in the foregoing enumeration were considered non-critical to the environment and were entitled to the CNC.

The foregoing considerations indicate that the grant or denial of an application for ECC/CNC is not an act that is purely ministerial in nature, but one that involves the exercise of judgment and discretion by the EMB Director or Regional Director, who

must determine whether the project or project area is classified as critical to the environment based on the documents to be submitted by the applicant.

The petitioner maintains that RD Lipayon already exercised his discretion in its case when he made his finding that the application substantially complied with the procedural requirements for review. As such, he was then obliged to issue the CNC once the petitioner had submitted the required certifications.

The petitioner errs on two grounds.

Firstly, RD Lipayon had not yet fully exercised his discretion with regard to the CNC application when he made his finding. It is clear that his finding referred to the "procedural requirements for review" only. He had still to decide on the substantive aspect of the application, *that is*, whether the project and the project area were considered critical to the environment. In fact, this was the reason why RD Lipayon required the petitioner to submit certifications from the various government agencies concerned. Surely, the required certifications were not mere formalities, because they would serve as the bases for his decision on whether to grant or deny the application.

Secondly, there is no sufficient showing that the petitioner satisfactorily complied with the requirement to submit the needed certifications. For one, it submitted no certification to the effect that the project site was not within a critical slope. Also, the PHIVOLCS's certification showed that the project site had experienced an Intensity VII earthquake in 1990, a fact that sufficed to place the site in the category of "areas frequently visited and/or hard-hit by natural calamities." Clearly, the petitioner failed to establish that it had the legal right to be issued the CNC applied for, warranting the denial of its application.

It is not amiss for us to observe, therefore, that the petitioner grossly misunderstood the nature of the remedy of *mandamus*. To avoid similar misunderstanding of the remedy hereafter, a short exposition on the nature and office of the remedy is now appropriate.

The writ of *mandamus* is of very ancient and obscure origin. It is believed that the writ was originally part of the class of writs or mandates issued by the English sovereign to direct his subjects to perform a particular act or duty.[28] The earliest writs were in the form of *letters missive*, and were mere personal commands. The command was a law in itself, from which there was no appeal. The writ of *mandamus* was not only declaratory of a duty under an existing law, but was a law in itself that imposed the duty, the performance of which it commanded.[29] The King was considered as the fountain and source of justice, and when the law did not afford a remedy by the regular forms of proceedings, the prerogative powers of the sovereign were invoked in aid of the ordinary powers of the courts.[30]

A judicial writ of *mandamus*, issued in the King's name out of the court of King's Bench that had a general supervisory power over all inferior jurisdictions and officers, gradually supplanted the old personal command of the sovereign.[31] The court of King's Bench, acting as the general guardian of public rights and in the exercise of its authority to grant the writ, rendered the writ of *mandamus* the suppletory means of substantial justice in every case where there was no other specific legal remedy for a legal right, and ensured that all official duties were fulfilled whenever the subject-matter was properly within its control.[32] Early on, the writ of *mandamus* was particularly used to compel public authorities to return the petitioners to public offices from which they had been unlawfully removed.[33]

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[28] High, *A Treatise On Extraordinary Legal Remedies*, Third Edition (1896), §2, p. 5.

[29] *In re Lauritsen,* 109 N.W. 404 (Minn. 1906).

[30] High, *op. cit.,* §3, p. 7.

[31] *Id.*

[32] *Commonwealth ex rel. Thomas v. Commissioners of Allegheny County,* 32 Pa. 218 (1858).

[33] Antieau, *The Practice Of Extraordinary Remedies*, Vol. 1, 1987 Edition, §2.00, p. 291.

Mandamus was, therefore, originally a purely prerogative writ emanating from the King himself, superintending the police and preserving the peace within the realm.[34] It was allowed only in cases affecting the sovereign, or the interest of the public at large.[35] The writ of *mandamus* grew out of the necessity to compel the inferior courts to exercise judicial and ministerial powers invested in them by restraining their excesses, preventing their negligence and restraining their denial of justice.[36]

Over time, the writ of *mandamus* has been stripped of its highly prerogative features and has been assimilated to the nature of an ordinary remedy. Nonetheless, the writ has remained to be an extraordinary remedy in the sense that it is only issued in extraordinary cases and where the usual and ordinary modes of proceeding and forms of remedy are powerless to afford redress to a party aggrieved, and where without its aid there would be a failure of justice.[37]

The writ of *mandamus* has also retained an important feature that sets it apart from the other remedial writs, *i.e.*, that it is used merely to compel action and to coerce the performance of a pre-existing duty.[38] In fact, a doctrine well-embedded in our jurisprudence is that *mandamus* will issue only when the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same.[39] The petitioner bears the burden to show that there is such a clear legal right to the performance of the act, and a

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[34] *Abueva v. Wood*, 45 Phil. 612, 625 (1924).

[35] High, *op. cit.*, §3, pp. 6-7.

[36] Ferris, *et al.*., *The Law of Extraordinary Legal Remedies*, 1926 Edition, §187, p. 218.

[37] High, *op. cit.*, §4, p. 9.

[38] *Id.* §7, p. 11.

[39] *Manila International Airport Authority v. Rivera Village Lessee Homeowners Association Incorporated*, G.R. No. 143870, September 30, 2005, 471 SCRA 358, 375.

corresponding compelling duty on the part of the respondent to perform the act.[40]

A key principle to be observed in dealing with petitions for *mandamus* is that such extraordinary remedy lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary.[41] A purely ministerial act or duty is one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. The duty is ministerial only when its discharge requires neither the exercise of official discretion or judgment.[42]

The petitioner's disregard of the foregoing fundamental requisites for *mandamus* rendered its petition in the RTC untenable and devoid of merit.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

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[40] *Wightman-Cervantes v. Mueller,* 750 F. Supp. 2d 76, 81 (D.C.2010).

[41] High, *op. cit.*, §24, pp. 31.

[42] *Philippine Coconut Authority v. Primex Coco Products, Inc.,* G.R. No. 163088, July 20, 2006, 495 SCRA 763.

SECOND DIVISION

[G.R. No. 178611. January 14, 2013]

ESTRELLA ADUAN ORPIANO, *petitioner, vs.* **SPOUSES ANTONIO C. TOMAS and MYRNA U. TOMAS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; RULE ON FORUM-SHOPPING; WILLFUL VIOLATION THEREOF IS A GROUND FOR SUMMARY DISMISSAL OF THE CASE, AND MAY ALSO CONSTITUTE DIRECT CONTEMPT; FORUM-SHOPPING, DEFINED.—** Forum shopping is defined as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. x x x It is expressly prohibited x x x because it trifles with and abuses court processes, degrades the administration of justice, and congests court dockets. A willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case, and may also constitute direct contempt."

2. **ID.; ID.; ID.; FORUM-SHOPPING; DULY ESTABLISHED IN CASE AT BAR.—** Although the Court believes that Estrella was not prompted by a desire to trifle with judicial processes, and was acting in good faith in initiating the annulment case, still the said case should be dismissed because it produces the same effect which the rule on forum shopping was fashioned to preclude. If the collection case is not dismissed and it, together with the annulment case, proceeds to finality, not only do we have a possibility of conflicting decisions being rendered; an unfair situation, as envisioned by the Tomas spouses, might arise where after having paid the balance of the price as ordered by the collection court, the cancellation of the TCT and return of the property could be decreed by the annulment court. Besides, allowing the two cases to remain pending makes litigation simply a game of

chance where parties may hedge their position by betting on both sides of the case, or by filing several cases involving the same issue, subject matter, and parties, in the hope of securing victory in at least one of them. But, as is already well known, the "[t]rek to [j]ustice is not a game of chance or skill but rather a quest for truth x x x." Moreover, allowing Estrella to proceed with the annulment case while the collection case is still pending is like saying that she may accept the deed of sale and question it at the same time. For this is the necessary import of the two pending cases: joining as plaintiff in the collection case implies approval of the deed, while suing to declare it null and void in the annulment court entails a denunciation thereof. This may not be done. "A person cannot accept and reject the same instrument" at the same time. It must be remembered that "the absence of the consent of one (spouse to a sale) renders the entire sale null and void, including the portion of the conjugal property pertaining to the spouse who contracted the sale."

3. ID.; ID.; PARTIES TO CIVIL ACTIONS; MISJOINDER AND NON-JOINDER OF PARTIES; PARTIES MAY BE DROPPED OR ADDED BY ORDER OF THE COURT ON MOTION OF ANY PARTY OR ON ITS OWN INITIATIVE AT ANY STAGE OF THE ACTION AND ON SUCH TERMS AS ARE JUST.— As plaintiff in the collection case, Estrella — though merely succeeding to Alejandro's rights — was an indispensable party, or one without whom no final determination can be had in the collection case. Strictly, she may not be dropped from the case. However, because of her dual identity, first as heir and second as owner of her conjugal share, she has been placed in the unique position where she has to succeed to her husband's rights, even as she must protect her separate conjugal share from Alejandro's perceived undue disposition. She may not seek to amend the cause of action in the collection case to one for annulment of sale, because this adversely affects the interests of her co-heirs, which is precisely to obtain payment of the supposed balance of the sale price. x x x Under the Rules, parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and *on such terms as are just*. Indeed, it would have been just for the collection court to have allowed Estrella to prosecute her annulment case by dropping her as a party plaintiff in the collection case, not only so that she could protect her conjugal share, but also to

prevent the interests of her co-plaintiffs from being adversely affected by her conflicting actions in the same case. By seeking to be dropped from the collection case, Estrella was foregoing collection of her share in the amount that may be due and owing from the sale. It does not imply a waiver in any manner that affects the rights of the other heirs.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* ISSUES ARISING FROM JOINDER OR MISJOINDER OF PARTIES ARE THE PROPER SUBJECT THEREOF.— While Estrella correctly made use of the remedies available to her – amending the Complaint and filing a motion to drop her as a party — she committed a mistake in proceeding to file the annulment case directly after these remedies were denied her by the collection court without first questioning or addressing the propriety of these denials. While she may have been frustrated by the collection court's repeated rejection of her motions and its apparent inability to appreciate her plight, her proper recourse nevertheless should have been to file a petition for *certiorari* or otherwise question the trial court's denial of her motion to be dropped as plaintiff, citing just reasons which call for a ruling to the contrary. Issues arising from joinder or misjoinder of parties are the proper subject of *certiorari*. x x x [C]onsiderations of expediency cannot justify a resort to procedural shortcuts. The end does not justify the means; a meritorious case cannot overshadow the condition that the means employed to pursue it must be in keeping with the Rules.

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioner.
Roxas Roxas and Associates Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Considerations of expediency cannot justify a resort to procedural shortcuts. The end does not justify the means; a meritorious case cannot overshadow the condition that the means employed to pursue it must be in keeping with the Rules.

Assailed in this Petition for Review on *Certiorari*[1] are the May 7, 2007 Decision[2] of the Court of Appeals (CA) which dismissed the petition in CA-G.R. SP No. 97341, and its June 28, 2007 Resolution[3] denying petitioner's motion for reconsideration.

Factual Antecedents

Petitioner Estrella Aduan Orpiano (Estrella) is the widow of Alejandro Orpiano (Alejandro). Part of their conjugal estate is an 809.5-square meter lot in Quezon City covered by Transfer Certificate of Title (TCT) No. RT-23468 (the lot).

In 1979, a Decision was rendered by the defunct Juvenile and Domestic Relations Court (JDRC) of Quezon City declaring Estrella an absent/absentee spouse and granting Alejandro the authority to sell the lot. The JDRC Decision was annotated on the back of TCT No. RT-23468.

On March 19, 1996, Alejandro sold the lot on installment basis to respondent spouses Antonio and Myrna Tomas (the Tomas spouses) for ₱12,170,283.00. That very same day, a new title — TCT No. N-152326 — was issued in the name of the Tomas spouses despite the fact that the purchase price has not been paid in full, the spouses having been given until December of that same year to complete their payment.

On October 28, 1996, Alejandro filed Civil Case No. Q-96-29261 (the collection case) in the Regional Trial Court (RTC) of Quezon City, Branch 226 (the collection court), seeking collection of the balance of the price in the amount of ₱4,314,100.00 supposedly left unpaid by the Tomas spouses, with damages.[4]

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[1] *Rollo*, pp. 10-27.

[2] *Id.* at 79-90; penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Noel G. Tijam and Sesinando E. Villon.

[3] *Id.* at 110; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Noel G. Tijam and Arcangelita Romilla-Lontok.

[4] CA *rollo*, pp. 55-59. Complaint in Civil Case No. Q-96-29261.

During the pendency of the collection case, Alejandro passed away. His heirs, Estrella included, were substituted in his stead in the collection case. Estrella moved to amend the Complaint to one for rescission/annulment of sale and cancellation of title, but the court denied her motion. She next moved to be dropped as party plaintiff but was again rebuffed.

On June 11, 2005, Estrella filed Civil Case No. Q-05-56216 (the annulment case) for annulment of the March 1996 sale and cancellation of TCT No. N-152326, with damages, against the Tomas spouses and the Register of Deeds of Quezon City which was impleaded as a nominal party.[5] The case was raffled to Branch 97 of the Quezon City RTC (the annulment court). In her Complaint, Estrella claimed that the 1979 declaration of her absence and accompanying authority to sell the lot were obtained by Alejandro through misrepresentation, fraud and deceit, adding that the May 1979 JDRC Decision was not published as required by law and by the domestic relations court. Thus, the declaration of absence and Alejandro's authority to sell the lot are null and void. Correspondingly, the ensuing sale to the Tomas spouses should be voided, and TCT No. N-152326 cancelled.

In their Answer to the annulment Complaint, the Tomas spouses prayed for the dismissal thereof on the ground of forum shopping, arguing that the filing of the annulment case was prompted by the denial of Estrella's motion initiated in the collection case to amend the Complaint to one for annulment of sale. The annulment case is Estrella's attempt at securing a remedy which she could not obtain in the collection case. The Tomas spouses added that the dismissal of the annulment case would preclude the possibility that the two courts might render conflicting decisions.

After pre-trial in the annulment case, the court proceeded to tackle the issue of forum shopping. The parties submitted their respective memoranda touching on the sole issue of whether Estrella is guilty of forum shopping.

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[5] *Id.* at 22-26. Complaint in Civil Case No. Q-05-56216.

Ruling of the Regional Trial Court

On September 25, 2006, the trial court issued an Order[6] dismissing the annulment case. It sustained the view taken by the Tomas spouses that Estrella filed the annulment case only because the collection court denied her motion to amend the case to one for annulment of the sale, and thus the annulment case was Estrella's attempt at obtaining a remedy which she could not secure in the collection case. It added that because the two cases involve the same subject matter, issues, and parties, there indeed is a possibility that conflicting decisions could be rendered by it and the collection court, the possibility made even greater because the two cases involve antithetical remedies.

Estrella moved for reconsideration but the court was unmoved.

Ruling of the Court of Appeals

On December 27, 2006, Estrella filed with the CA a Petition for *Certiorari*[7] questioning the September 25, 2006 Order of the annulment court. The appellate court, however, could not be persuaded. Finding no grave abuse of discretion in the annulment court's dismissal of the annulment case, the CA found that Estrella was indeed guilty of forum shopping in filing the annulment suit while the collection case was pending. Applying the test articulated in a multitude of decided cases — that where a final judgment in one case will amount to *res judicata* in another — it follows that there is forum shopping. The CA held that a final judgment in the collection case ordering the Tomas spouses to pay the supposed balance of the price will necessarily result in a finding that the sale between Alejandro and the Tomas spouses is a valid sale. This then would prevent a declaration of nullity of the sale in the annulment case.

Accordingly, the CA dismissed Estrella's Petition for *Certiorari*. Her Motion for Reconsideration was likewise denied, hence the present Petition.

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[6] *Id*. at 37-38; penned by Judge Bernelito R. Fernandez.

[7] *Rollo*, pp. 58-77.

Issue

The sole issue to be resolved in this case is whether there is indeed forum shopping.

Petitioner's Arguments

Estrella argues that it was Alejandro and not she who initiated the collection case, and that she, their two children, and Alejandro's four illegitimate children were merely substituted in the case as his heirs by operation of law; thus, she should not be bound by the collection case. She claims that in the first place, she was not privy to Alejandro's sale of the lot to the Tomas spouses. Having been unwillingly substituted in the collection case, she forthwith moved to amend the Complaint in order to include, as one of the remedies sought therein, annulment of the sale insofar as her conjugal share in the lot is concerned. But the court denied her motion. Next, she moved to be dropped or stricken out as plaintiff to the collection case, but again, the trial court rebuffed her.

Estrella maintains that on account of these repeated denials, she was left with no other alternative but to institute the annulment case. She claims that since the collection case does not further her interest — which is to seek annulment of the sale and recover her conjugal share — and the collection court would not grant her motions to amend and to be dropped or stricken out as party plaintiff therein, she thus has a right to maintain a suit to have the sale annulled. It is therefore erroneous for the CA to state that she initiated the annulment suit only for the purpose of obtaining a favorable ruling in said court, which she could not achieve in the collection court.

She further adds that there is obviously no identity of parties, cause of action, or reliefs prayed for between the collection and annulment cases; the two involve absolutely opposite reliefs. She stresses the fact that she is seeking annulment of the sale with respect only to her conjugal share, and not those of her co-heirs.

Respondents' Arguments

The Tomas spouses, apart from echoing the trial court and the CA, emphasize that the rule prohibiting forum shopping precisely seeks to avoid the situation where the two courts — the collection court and the annulment court — might render two separate and contradictory decisions. If the annulment case is allowed to proceed, then it could result in a judgment declaring the sale null and void, just as a decision in the collection case could be issued ordering them to pay the balance of the price, which is tantamount to a declaration that the sale is valid.

They add that Estrella could no longer question the 1979 JDRC Decision, having failed to challenge the same immediately upon obtaining notice thereof; she did not even bother to have her declaration of absence lifted. They claim that after the lapse of 26 years, prescription has finally set in. They likewise argue that if both cases are allowed to remain pending, a ridiculous situation could arise where, after having paid the balance as ordered by the collection court, they could lose not only the lot but also their payments in case a decision in the annulment court is rendered nullifying and canceling the sale and ordering the return of the lot to Alejandro's heirs, Estrella included.

Our Ruling

The petition must be denied.

"Forum shopping is defined as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. x x x It is expressly prohibited x x x because it trifles with and abuses court processes, degrades the administration of justice, and congests court dockets. A willful and deliberate violation

of the rule against forum shopping is a ground for summary dismissal of the case, and may also constitute direct contempt."[8]

Although the Court believes that Estrella was not prompted by a desire to trifle with judicial processes, and was acting in good faith in initiating the annulment case, still the said case should be dismissed because it produces the same effect which the rule on forum shopping was fashioned to preclude. If the collection case is not dismissed and it, together with the annulment case, proceeds to finality, not only do we have a possibility of conflicting decisions being rendered; an unfair situation, as envisioned by the Tomas spouses, might arise where after having paid the balance of the price as ordered by the collection court, the cancellation of the TCT and return of the property could be decreed by the annulment court. Besides, allowing the two cases to remain pending makes litigation simply a game of chance where parties may hedge their position by betting on both sides of the case, or by filing several cases involving the same issue, subject matter, and parties, in the hope of securing victory in at least one of them. But, as is already well known, the "[t]rek to [j]ustice is not a game of chance or skill but rather a quest for truth x x x."[9]

Moreover, allowing Estrella to proceed with the annulment case while the collection case is still pending is like saying that she may accept the deed of sale and question it at the same time. For this is the necessary import of the two pending cases: joining as plaintiff in the collection case implies approval of the deed, while suing to declare it null and void in the annulment court entails a denunciation thereof. This may not be done. "A person cannot accept and reject the same instrument"[10] at the same time. It must be remembered that "the absence of the consent of one (spouse to a sale) renders the entire sale null

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[8] *Sameer Overseas Placement Agency, Inc. v. Santos*, G.R. No. 152579, August 4, 2009, 595 SCRA 67, 76-77.

[9] *People v. Faustino*, 394 Phil. 236, 238 (2000).

[10] *Associated Bank v. Court of Appeals*, 353 Phil. 702, 720 (1998).

and void, including the portion of the conjugal property pertaining to the spouse who contracted the sale."[11]

The Court realizes the quandary that Estrella — motivated by the solitary desire to protect her conjugal share in the lot from what she believes was Alejandro's undue interference in disposing the same without her knowledge and consent — finds herself in. While raring to file the annulment case, she has to first cause the dismissal of the collection case because she was by necessity substituted therein by virtue of her being Alejandro's heir; but the collection court nonetheless blocked all her attempts toward such end. The collection court failed to comprehend her predicament, her need to be dropped as party to the collection case in order to pursue the annulment of the sale.

As plaintiff in the collection case, Estrella — though merely succeeding to Alejandro's rights — was an indispensable party, or one without whom no final determination can be had in the collection case.[12] Strictly, she may not be dropped from the case. However, because of her dual identity, first as heir and second as owner of her conjugal share, she has been placed in the unique position where she has to succeed to her husband's rights, even as she must protect her separate conjugal share from Alejandro's perceived undue disposition. She may not seek to amend the cause of action in the collection case to one for annulment of sale, because this adversely affects the interests of her co-heirs, which is precisely to obtain payment of the supposed balance of the sale price.

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[11] *Alinas v. Alinas*, G.R. No. 158040, April 14, 2008, 551 SCRA 154, 166, citing *Homeowners Savings & Loan Bank v. Dailo*, 493 Phil. 436, 442 (2005).

[12] RULES OF COURT, Rule 3, Secs. 2 and 7 provide:

> Sec. 2. *Parties in interest.* A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.
>
> Sec. 7. *Compulsory joinder of indispensable parties.* Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

Nor may Estrella simultaneously maintain the two actions in both capacities, as heir in the collection case and as separate owner of her conjugal share in the annulment case. This may not be done, because, as was earlier on declared, this amounts to simultaneously accepting and rejecting the same deed of sale. Nor is it possible to prosecute the annulment case simultaneously with the collection case, on the premise that what is merely being annulled is the sale by Alejandro of Estrella's conjugal share. To repeat, the absence of the consent of one spouse to a sale renders the *entire* sale null and void, *including* the portion of the conjugal property pertaining to the spouse who contracted the sale.

Undoubtedly, Estrella had the right to maintain the annulment case as a measure of protecting her conjugal share. There thus exists a just cause for her to be dropped as party plaintiff in the collection case so that she may institute and maintain the annulment case without violating the rule against forum shopping. Unless this is done, she stands to lose her share in the conjugal property. But the issue of whether the sale should be annulled is a different matter altogether.

Under the Rules, parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and *on such terms as are just*.[13] Indeed, it would have been just for the collection court to have allowed Estrella to prosecute her annulment case by dropping her as a party plaintiff in the collection case, not only so that she could protect her conjugal share, but also to prevent the interests of her co-plaintiffs from being adversely affected by her conflicting actions in the same case. By seeking to be dropped from the collection case, Estrella was foregoing collection of her share in the amount that may be due and owing from the sale. It does not imply a waiver in any manner that affects the rights of the other heirs.

While Estrella correctly made use of the remedies available to her — amending the Complaint and filing a motion to drop

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[13] RULES OF COURT, Rule 3, Section 11.

her as a party — she committed a mistake in proceeding to file the annulment case directly after these remedies were denied her by the collection court without first questioning or addressing the propriety of these denials. While she may have been frustrated by the collection court's repeated rejection of her motions and its apparent inability to appreciate her plight, her proper recourse nevertheless should have been to file a petition for *certiorari* or otherwise question the trial court's denial of her motion to be dropped as plaintiff, citing just reasons which call for a ruling to the contrary. Issues arising from joinder or misjoinder of parties are the proper subject of *certiorari*.[14]

In fine, we reiterate that considerations of expediency cannot justify a resort to procedural shortcuts. The end does not justify the means; a meritorious case cannot overshadow the condition that the means employed to pursue it must be in keeping with the Rules.

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit.

SO ORDERED.

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

[14] See *Sps. Perez v. Hermano*, 501 Phil. 397, 408 (2005).

SECOND DIVISION

[G.R. No. 179382. January 14, 2013]

SPOUSES BENJAMIN C. MAMARIL AND SONIA P. MAMARIL, *petitioners, vs.* **THE BOY SCOUT OF THE PHILIPPINES, AIB SECURITY AGENCY, INC., CESARIO PEÑA,[*] and VICENTE GADDI,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; PROXIMATE CAUSE; DEFINED.— In this case, it is undisputed that the proximate cause of the loss of Sps. Mamaril's vehicle was the negligent act of security guards Peña and Gaddi in allowing an unidentified person to drive out the subject vehicle. Proximate cause has been defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury or loss, and without which the result would not have occurred. Moreover, Peña and Gaddi failed to refute Sps. Mamaril's contention that they readily admitted being at fault during the investigation that ensued.

2. ID.; ID.; ID.; ID.; VICARIOUS LIABILITY; THE VICARIOUS LIABILITY OF AN EMPLOYER DOES NOT APPLY IN THE ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP.— Neither will the vicarious liability of an employer under Article 2180 of the Civil Code apply in this case. It is uncontested that Peña and Gaddi were assigned as security guards by AIB to BSP pursuant to the Guard Service Contract. Clearly, therefore, no employer-employee relationship existed between BSP and the security guards assigned in its premises. Consequently, the latter's negligence cannot be imputed against BSP but should be attributed to AIB, the true employer of Peña and Gaddi.

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[*] Spelled as "Pena" in some parts of the records.

3. ID.; SPECIAL CONTRACTS; AGENCY; THE BASIS FOR AGENCY IS REPRESENTATION.— Nor can it be said that a principal-agent relationship existed between BSP and the security guards Peña and Gaddi as to make the former liable for the latter's complained act. Article 1868 of the Civil Code states that "[b]y the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." The basis for agency therefore is representation, which element is absent in the instant case. Records show that BSP merely hired the services of AIB, which, in turn, assigned security guards, solely for the protection of its properties and premises. Nowhere can it be inferred in the Guard Service Contract that AIB was appointed as an agent of BSP. Instead, what the parties intended was a pure principal-client relationship whereby for a consideration, AIB rendered its security services to BSP.

4. ID.; OBLIGATIONS AND CONTRACTS; CONTRACTS; STIPULATION *POUR AUTRUI*; REQUISITES.— [I]n order that a third person benefited by the second paragraph of Article 1311, referred to as a stipulation *pour autrui*, may demand its fulfillment, the following requisites must concur: (1) There is a stipulation in favor of a third person; (2) The stipulation is a part, not the whole, of the contract; (3) The contracting parties clearly and deliberately conferred a favor to the third person — the favor is not merely incidental; (4) The favor is unconditional and uncompensated; (5) The third person communicated his or her acceptance of the favor before its revocation; and (6) The contracting parties do not represent, or are not authorized, by the third party.

5. ID.; SPECIAL CONTRACTS; LEASE; THE ACT OF PARKING A VEHICLE IN A GARAGE, UPON PAYMENT OF A FIXED AMOUNT, IS A LEASE.— [T]he contract between the parties herein was one of lease as defined under Article 1643 of the Civil Code. It has been held that the act of parking a vehicle in a garage, upon payment of a fixed amount, is a lease. Even in a majority of American cases, it has been ruled that where a customer simply pays a fee, parks his car in any available space in the lot, locks the car and takes the key with him, the possession and control of the car, necessary elements in bailment, do not pass to the parking

lot operator, hence, the contractual relationship between the parties is one of lease.

6. ID.; ID.; ID.; LESSOR-LESSEE RELATIONSHIP; OBLIGATIONS OF THE LESSOR, DULY COMPLIED WITH IN CASE AT BAR.— In the instant case, the owners parked their six (6) passenger jeepneys inside the BSP compound for a monthly fee of ₱300.00 for each unit and took the keys home with them. Hence, a lessor-lessee relationship indubitably existed between them and BSP. On this score, Article 1654 of the Civil Code provides that "[t]he lessor (BSP) is obliged: (1) to deliver the thing which is the object of the contract in such a condition as to render it fit for the use intended; (2) to make on the same during the lease all the necessary repairs in order to keep it suitable for the use to which it has been devoted, unless there is a stipulation to the contrary; and (3) to maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract." In relation thereto, Article 1664 of the same Code states that "[t]he lessor is not obliged to answer for a mere act of trespass which a third person may cause on the use of the thing leased; but the lessee shall have a direct action against the intruder." Here, BSP was not remiss in its obligation to provide Sps. Mamaril a suitable parking space for their jeepneys as it even hired security guards to secure the premises; hence, it should not be held liable for the loss suffered by Sps. Mamaril.

7. ID.; ID.; CONTRACT OF ADHESION; CONSIDERED BINDING AS ANY OTHER ORDINARY CONTRACT AND A PARTY WHO ENTERS INTO IT IS FREE TO REJECT THE STIPULATIONS IN ITS ENTIRETY.— Anent Sps. Mamaril's claim that the exculpatory clause: *"Management shall not be responsible for loss of vehicle or any of its accessories or article left therein"* contained in the BSP issued parking ticket was void for being a contract of adhesion and against public policy, suffice it to state that contracts of adhesion are not void *per se*. It is binding as any other ordinary contract and a party who enters into it is free to reject the stipulations in its entirety. If the terms thereof are accepted without objection, as in this case, where plaintiffs-appellants have been leasing BSP's parking space for more or less 20 years, then the contract serves as the law between them. Besides, the parking fee of ₱300.00 per month or ₱10.00 a day for each unit is too minimal

an amount to even create an inference that BSP undertook to be an insurer of the safety of plaintiffs-appellants' vehicles.

8. ID.; DAMAGES; ACTUAL DAMAGES; MUST BE PROVED WITH REASONABLE DEGREE OF CERTAINTY AND A PARTY IS ENTITLED ONLY TO SUCH COMPENSATION FOR THE PECUNIARY LOSS THAT WAS DULY PROVEN.— On the matter of damages, the Court noted that while Sonia P. Mamaril testified that the subject vehicle had accessories worth around ₱50,000.00, she failed to present any receipt to substantiate her claim. Neither did she submit any record or journal that would have established the purported ₱275.00 daily earnings of their jeepney. It is axiomatic that actual damages must be proved with reasonable degree of certainty and a party is entitled only to such compensation for the pecuniary loss that was duly proven. Thus, absent any competent proof of the amount of damages sustained, the CA properly deleted the said awards.

APPEARANCES OF COUNSEL

Palad Lauron Tan & Palad Law Firm for petitioners.
Chato & Vinzons-Chato for Boy Scout of the Philippines.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is a Petition for Review on *Certiorari* assailing the May 31, 2007 Decision[1] and August 16, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 75978. The dispositive portion of the said Decision reads:

WHEREFORE, the Decision dated November 28, 2001 and the Order dated June 11, 2002 rendered by the Regional Trial Court of Manila, Branch 39 is hereby **MODIFIED** to the effect that only

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[1] *Rollo*, pp. 11-22. Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Apolinario D. Bruselas, Jr., concurring.

[2] *Id.* at 24-25.

defendants AIB Security Agency, Inc., Cesario Peña and Vicente Gaddi are held jointly and severally liable to pay plaintiffs-appellees Spouses Benjamin C. Mamaril and Sonia [P.] Mamaril the amount of Two Hundred Thousand Pesos (₱200,000.00) representing the cost of the lost vehicle, and to pay the cost of suit. The other monetary awards are **DELETED** for lack of merit and/or basis.

Defendant-Appellant Boy Scout of the Philippines is absolved from any liability.

SO ORDERED.[3]

The Antecedent Facts

Spouses Benjamin C. Mamaril and Sonia P. Mamaril (Sps. Mamaril) are jeepney operators since 1971. They would park their six (6) passenger jeepneys every night at the Boy Scout of the Philippines' (BSP) compound located at 181 Concepcion Street, Malate, Manila for a fee of ₱300.00 per month for each unit. On May 26, 1995 at 8 o'clock in the evening, all these vehicles were parked inside the BSP compound. The following morning, however, one of the vehicles with Plate No. DCG 392 was missing and was never recovered.[4] According to the security guards Cesario Peña (Peña) and Vicente Gaddi (Gaddi) of AIB Security Agency, Inc. (AIB) with whom BSP had contracted[5] for its security and protection, a male person who looked familiar to them took the subject vehicle out of the compound.

On November 20, 1996, Sps. Mamaril filed a complaint[6] for damages before the Regional Trial Court (RTC) of Manila, Branch 39, against BSP, AIB, Peña and Gaddi. In support thereof, Sps. Mamaril averred that the loss of the subject vehicle was due to the gross negligence of the above-named security guards on-duty who allowed the subject vehicle to be driven out by a stranger despite their agreement that only authorized drivers

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

[4] *Id.* at 66.

[5] *Id.* at 107-110. Guard Service Contract dated September 23, 1976.

[6] *Id.* at 96-100. Docketed as Civil Case No. 96-80950.

duly endorsed by the owners could do so. Peña and Gaddi even admitted their negligence during the ensuing investigation. Notwithstanding, BSP and AIB did not heed Sps. Mamaril's demands for a conference to settle the matter. They therefore prayed that Peña and Gaddi, together with AIB and BSP, be held liable for: (a) the value of the subject vehicle and its accessories in the aggregate amount of ₱300,000.00; (b) ₱275.00 representing daily loss of income/boundary reckoned from the day the vehicle was lost; (c) exemplary damages; (d) moral damages; (e) attorney's fees; and (f) cost of suit.

In its Answer,[7] BSP denied any liability contending that not only did Sps. Mamaril directly deal with AIB with respect to the manner by which the parked vehicles would be handled, but the parking ticket[8] itself expressly stated that the *"Management shall not be responsible for loss of vehicle or any of its accessories or article left therein."* It also claimed that Sps. Mamaril erroneously relied on the Guard Service Contract. Apart from not being parties thereto, its provisions cover only the protection of BSP's properties, its officers, and employees.

In addition to the foregoing defenses, AIB alleged that it has observed due diligence in the selection, training and supervision of its security guards while Peña and Gaddi claimed that the person who drove out the lost vehicle from the BSP compound represented himself as the owners' authorized driver and had with him a key to the subject vehicle. Thus, they contended that Sps. Mamaril have no cause of action against them.

The RTC Ruling

After due proceedings, the RTC rendered a Decision[9] dated November 28, 2001 in favor of Sps. Mamaril. The dispositive portion of the RTC decision reads:

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[7] *Id.* at 117-118.

[8] *Id.* at 101.

[9] *Id.* at 60-74.

WHEREFORE, judgment is hereby rendered ordering the defendants Boy Scout of the Philippines and AIB Security Agency, with security guards Cesario Pena and Vicente Gaddi: -

1. To pay the plaintiffs jointly and severally the cost of the vehicle which is ₱250,000.00 plus accessories of ₱50,000.00;
2. To pay jointly and severally to the plaintiffs the daily [loss] of the income/boundary of the said jeepney to be reckoned [from] its loss up to the final adjudication of the case, which is ₱275.00 a day;
3. To pay jointly and severally to the plaintiffs moral damages in the amount of ₱50,000.00;
4. To pay jointly and severally to the plaintiffs exemplary damages in the amount of ₱50,000.00;
5. To pay jointly and severally the attorney's fees of ₱50,000.00 and appearances in court the amount of ₱1,500.00 per appearance; and
6. To pay cost.

SO ORDERED.[10]

The RTC found that the act of Peña and Gaddi in allowing the entry of an unidentified person and letting him drive out the subject vehicle in violation of their internal agreement with Sps. Mamaril constituted gross negligence, rendering AIB and its security guards liable for the former's loss. BSP was also adjudged liable because the Guard Service Contract it entered into with AIB offered protection to all properties inside the BSP premises, which necessarily included Sps. Mamaril's vehicles. Moreover, the said contract stipulated AIB's obligation to indemnify BSP for all losses or damages that may be caused by any act or negligence of its security guards. Accordingly, the BSP, AIB, and security guards Peña and Gaddi were held jointly and severally liable for the loss suffered by Sps. Mamaril.

On June 11, 2002, the RTC modified its decision reducing the cost of the stolen vehicle from ₱250,000.00 to ₱200,000.00.[11]

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

[11] *Id.* at 124-129.

Only BSP appealed the foregoing disquisition before the CA.

The CA Ruling

In its assailed Decision,[12] the CA affirmed the finding of negligence on the part of security guards Peña and Gaddi. However, it absolved BSP from any liability, holding that the Guard Service Contract is purely between BSP and AIB and that there was nothing therein that would indicate any obligation and/or liability on the part of BSP in favor of third persons, such as Sps. Mamaril. Nor was there evidence sufficient to establish that BSP was negligent.

It further ruled that the agreement between Sps. Mamaril and BSP was substantially a contract of lease whereby the former paid parking fees to the latter for the lease of parking slots. As such, the lessor, BSP, was not an insurer nor bound to take care and/or protect the lessees' vehicles.

On the matter of damages, the CA deleted the award of ₱50,000.00 representing the value of the accessories inside the lost vehicle and the ₱275.00 a day for loss of income in the absence of proof to support them. It also deleted the award of moral and exemplary damages and attorney's fees for lack of factual and legal bases.

Sps. Mamaril's motion for reconsideration thereof was denied in the August 16, 2007 Resolution.[13]

Issues Before the Court

Hence, the instant petition based on the following assignment of errors, to wit:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ABSOLVING RESPONDENT BOY SCOUT OF THE PHILIPPINES FROM ANY LIABILITY.

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[12] *Id.* at 11-22.

[13] *Id.* at 24-25.

II.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS MISTAKE WHEN IT RULED THAT THE GUARD SERVICE CONTRACT IS PURELY BETWEEN BOY SCOUT OF THE PHILIPPINES AND AIB SECURITY AGENCY, INC., AND IN HOLDING THAT THERE IS ABSOLUTELY NOTHING IN THE SAID CONTRACT THAT WOULD INDICATE ANY OBLIGATION AND/OR LIABILITY ON THE PART OF THE PARTIES THEREIN IN FAVOR OF THIRD PERSONS, SUCH AS PETITIONERS HEREIN.

III.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN THE INTERPRETATION OF LAW WHEN IT CONSIDERED THE AGREEMENT BETWEEN BOY SCOUT OF THE PHILIPPINES AND PETITIONERS A CONTRACT OF LEASE, WHEREBY THE BOY SCOUT IS NOT DUTY BOUND TO PROTECT OR TAKE CARE OF [PETITIONERS'] VEHICLES.

IV.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT PETITIONERS ARE NOT ENTITLED TO DAMAGES AND ATTORNEY'S FEES.[14]

In fine, Sps. Mamaril maintain that: (1) BSP should be held liable for the loss of their vehicle based on the Guard Service Contract and the parking ticket it issued; and (2) the CA erred in deleting the RTC awards of damages and attorney's fees.

The Court's Ruling

The petition lacks merit.

Article 20 of the Civil Code provides that every person, who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same. Similarly, Article 2176 of the Civil Code states:

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[14] *Id.* at 44-45.

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 preexisting contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

In this case, it is undisputed that the proximate cause of the loss of Sps. Mamaril's vehicle was the negligent act of security guards Peña and Gaddi in allowing an unidentified person to drive out the subject vehicle. Proximate cause has been defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury or loss, and without which the result would not have occurred.[15] Moreover, Peña and Gaddi failed to refute Sps. Mamaril's contention[16] that they readily admitted being at fault during the investigation that ensued.

On the other hand, the records are bereft of any finding of negligence on the part of BSP. Hence, no reversible error was committed by the CA in absolving it from any liability for the loss of the subject vehicle based on fault or negligence.

Neither will the vicarious liability of an employer under Article 2180[17] of the Civil Code apply in this case. It is uncontested that Peña and Gaddi were assigned as security guards

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[15] *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 295-296.

[16] *Rollo*, pp. 73, 97, and 144 (TSN, November 28, 1997, p. 15).

[17] Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x x x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

by AIB to BSP pursuant to the Guard Service Contract. Clearly, therefore, no employer-employee relationship existed between BSP and the security guards assigned in its premises. Consequently, the latter's negligence cannot be imputed against BSP but should be attributed to AIB, the true employer of Peña and Gaddi.[18]

In the case of *Soliman, Jr. v. Tuazon*,[19] the Court enunciated thus:

> It is settled that where the security agency, as here, recruits, hires and assigns the work of its watchmen or security guards, the agency is the employer of such guards and watchmen. Liability for illegal or harmful acts committed by the security guards attaches to the employer agency, and not to the clients or customers of such agency. As a general rule, a client or customer of a security agency has no hand in selecting who among the pool of security guards or watchmen employed by the agency shall be assigned to it; the duty to observe the diligence of a good father of a family in the selection of the guards cannot, in the ordinary course of events, be demanded from the client whose premises or property are protected by the security guards. The fact that a client company may give instructions or directions to the security guards assigned to it, does not, by itself, render the client responsible as an employer of the security guards concerned and liable for their wrongful acts or omissions. Those instructions or directions are ordinarily no more than requests commonly envisaged in the contract for services entered into with the security agency.[20]

Nor can it be said that a principal-agent relationship existed between BSP and the security guards Peña and Gaddi as to make the former liable for the latter's complained act. Article 1868 of the Civil Code states that "[b]y the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or

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[18] See *Jayme v. Apostol*, G.R. No. 163609, November 27, 2008, 572 SCRA 41, 53-54.

[19] G.R. No. 66207, May 18, 1992, 209 SCRA 47.

[20] *Id.* at 50-51. Citations omitted.

authority of the latter." The basis for agency therefore is representation,[21] which element is absent in the instant case. Records show that BSP merely hired the services of AIB, which, in turn, assigned security guards, solely for the protection of its properties and premises. Nowhere can it be inferred in the Guard Service Contract that AIB was appointed as an agent of BSP. Instead, what the parties intended was a pure principal-client relationship whereby for a consideration, AIB rendered its security services to BSP.

Notwithstanding, however, Sps. Mamaril insist that BSP should be held liable for their loss on the basis of the Guard Service Contract that the latter entered into with AIB and their parking agreement with BSP.

Such contention cannot be sustained.

Article 1311 of the Civil Code states:

> Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.
>
> If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

Thus, in order that a third person benefited by the second paragraph of Article 1311, referred to as a stipulation *pour autrui*, may demand its fulfillment, the following requisites must concur: (1) There is a stipulation in favor of a third person; (2) The stipulation is a part, not the whole, of the contract; (3) The contracting parties clearly and deliberately conferred a favor to the third person — the favor is not merely incidental;

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[21] *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corp.*, G.R. No. 179446, January 10, 2011, 639 SCRA 69, 84.

(4) The favor is unconditional and uncompensated; (5) The third person communicated his or her acceptance of the favor before its revocation; and (6) The contracting parties do not represent, or are not authorized, by the third party.[22] However, none of the foregoing elements obtains in this case.

It is undisputed that Sps. Mamaril are not parties to the Guard Service Contract. Neither did the subject agreement contain any stipulation *pour autrui.* And even if there was, Sps. Mamaril did not convey any acceptance thereof. Thus, under the principle of relativity of contracts, they cannot validly claim any rights or favor under the said agreement.[23] As correctly found by the CA:

> First, the Guard Service Contract between defendant-appellant BSP and defendant AIB Security Agency is purely between the parties therein. It may be observed that although the whereas clause of the said agreement provides that defendant-appellant desires security and protection for its compound and all properties therein, as well as for its officers and employees, while inside the premises, the same should be correlated with paragraph 3(a) thereof which provides that the security agency shall indemnify defendant-appellant for all losses and damages suffered by it attributable to any act or negligence of the former's guards.
>
> Otherwise stated, defendant-appellant sought the services of defendant AIB Security Agency for the purpose of the security and protection of its properties, as well as that of its officers and employees, so much so that in case of loss of [*sic*] damage suffered by it as a result of any act or negligence of the guards, the security agency would then be held responsible therefor. There is absolutely nothing in the said contract that would indicate any obligation and/or liability on the part of the parties therein in favor of third persons such as herein plaintiffs-appellees.[24]

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[22] *Narvaez v. Alciso,* G.R. No. 165907, July 27, 2009, 594 SCRA 60, 67.

[23] *Integrated Packaging Corp. v. CA,* G.R. No. 115117, June 8, 2000, 333 SCRA 170, 178.

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

Moreover, the Court concurs with the finding of the CA that the contract between the parties herein was one of lease[25] as defined under Article 1643[26] of the Civil Code. It has been held that the act of parking a vehicle in a garage, upon payment of a fixed amount, is a lease. [27] Even in a majority of American cases, it has been ruled that where a customer simply pays a fee, parks his car in any available space in the lot, locks the car and takes the key with him, the possession and control of the car, necessary elements in bailment, do not pass to the parking lot operator, hence, the contractual relationship between the parties is one of lease. [28]

In the instant case, the owners parked their six (6) passenger jeepneys inside the BSP compound for a monthly fee of ₱300.00 for each unit and took the keys home with them. Hence, a lessor-lessee relationship indubitably existed between them and BSP. On this score, Article 1654 of the Civil Code provides that "[t]he lessor (BSP) is obliged: (1) to deliver the thing which is the object of the contract in such a condition as to render it fit for the use intended; (2) to make on the same during the lease all the necessary repairs in order to keep it suitable for the use to which it has been devoted, unless there is a stipulation to the contrary; and (3) to maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract." In relation thereto, Article 1664 of the same Code states that "[t]he lessor is not obliged to answer for a mere act of trespass which a third person may cause on the use of the

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[25] *Id.* at 18.

[26] Art. 1643. In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid.

[27] Tolentino, *Civil Code of the Philippines*, Vol. V, Reprinted 2002, pp. 204-205.

[28] Cited in the article *Liability of Parking Lot Operators for Car Thefts*, Washington and Lee Law Review 20.2 (1963): 362. <http://scholarlycommons.law.wlu.edu/wlulr/vol20/iss2/18.> (visited January 3, 2013).

thing leased; but the lessee shall have a direct action against the intruder." Here, BSP was not remiss in its obligation to provide Sps. Mamaril a suitable parking space for their jeepneys as it even hired security guards to secure the premises; hence, it should not be held liable for the loss suffered by Sps. Mamaril.

It bears to reiterate that the subject loss was caused by the negligence of the security guards in allowing a stranger to drive out plaintiffs-appellants' vehicle despite the latter's instructions that only their authorized drivers may do so. Moreover, the agreement with respect to the ingress and egress of Sps. Mamaril's vehicles were coordinated only with AIB and its security guards,[29] without the knowledge and consent of BSP. Accordingly, the mishandling of the parked vehicles that resulted in herein complained loss should be recovered only from the tort feasors (Peña and Gaddi) and their employer, AIB; and not against the lessor, BSP. [30]

Anent Sps. Mamaril's claim that the exculpatory clause: *"Management shall not be responsible for loss of vehicle or any of its accessories or article left therein"* [31] contained in the BSP issued parking ticket was void for being a contract of adhesion and against public policy, suffice it to state that contracts of adhesion are not void *per se*. It is binding as any other ordinary contract and a party who enters into it is free to reject the stipulations in its entirety. If the terms thereof are accepted without objection, as in this case, where plaintiffs-appellants have been leasing BSP's parking space for more or less 20 years,[32] then the contract serves as the law between them.[33] Besides, the parking fee of ₱300.00 per month or ₱10.00 a day for each

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[29] *Rollo*, p. 139 (TSN, November 28, 1997, p. 10).

[30] *Goldstein v. Roces*, G.R. No. L-8697, March 30, 1916.

[31] See *supra* note 6.

[32] Sps. Mamaril parked their jeepneys inside the BSP compound since 1971. The loss of their vehicle occurred in 1995.

[33] *Ong Lim Sing, Jr. v. FEB Leasing & Finance Corp.*, G.R. No. 168115, June 8, 2007, 524 SCRA 333, 347.

unit is too minimal an amount to even create an inference that BSP undertook to be an insurer of the safety of plaintiffs-appellants' vehicles.

On the matter of damages, the Court noted that while Sonia P. Mamaril testified that the subject vehicle had accessories worth around ₱50,000.00, she failed to present any receipt to substantiate her claim.[34] Neither did she submit any record or journal that would have established the purported ₱275.00[35] daily earnings of their jeepney. It is axiomatic that actual damages must be proved with reasonable degree of certainty and a party is entitled only to such compensation for the pecuniary loss that was duly proven. Thus, absent any competent proof of the amount of damages sustained, the CA properly deleted the said awards.[36]

Similarly, the awards of moral and exemplary damages and attorney's fees were properly disallowed by the CA for lack of factual and legal bases. While the RTC granted these awards in the dispositive portion of its November 28, 2001 decision, it failed to provide sufficient justification therefor. [37]

WHEREFORE, premises considered, the instant petition is **DENIED.**The May 31, 2007 Decision and August 16, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 75978 are **AFFIRMED.**

SO ORDERED.

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

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[34] *Rollo*, p. 140 (TSN, November 28, 1997, p. 11).

[35] *Id.*

[36] *Macasaet v. R Transport Corp.*, G.R. No. 172446, October 10, 2007, 535 SCRA 503, 515.

[37] *Dutch Boy Philippines, Inc. v. Seniel*, G.R. No. 170008, January 19, 2009, 576 SCRA 231, 241; *Cipriano v. CA*, G.R. No. 107968, October 30, 1996, 263 SCRA 719-720.

FIRST DIVISION

[G.R. No. 182976. January 14, 2013]

MANILA ELECTRIC COMPANY (MERALCO), *petitioner, vs.* **ATTY. PABLITO M. CASTILLO, doing business under the trade name and style of PERMANENT LIGHT MANUFACTURING ENTERPRISES and GUIA S. CASTILLO,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 7832; ILLEGAL USE OF ELECTRICITY; TO CONSTITUTE *PRIMA FACIE* EVIDENCE THEREOF, THE DISCOVERY OF A TAMPERED ELECTRIC METER MUST BE PERSONALLY WITNESSED AND ATTESTED TO BY AN OFFICER OF THE LAW OR A DULY AUTHORIZED REPRESENTATIVE OF THE ENERGY REGULATORY BOARD.— The pertinent law relative to the immediate disconnection of electricity is Section 4, RA 7832 x x x. [I] n order for the discovery of a tampered, broken or fake seal on the meter to constitute *prima facie* evidence of illegal use of electricity by the person who benefits from such illegal use, the discovery thereof must have been personally witnessed and attested to by an officer of the law or a duly authorized representative of the ERB. x x x Absent any showing that an officer of the law or a duly authorized representative of the ERB personally witnessed and attested to the discovery of Permanent Light's tampered electric meter, such discovery did not constitute *prima facie* evidence of illegal use of electricity that justifies immediate disconnection of electric service.

2. ID.; ID.; ID.; ID.; PRIOR WRITTEN NOTICE IS REQUIRED BEFORE DISCONNECTION OF ELECTRICITY CAN BE EFFECTED.— Besides, even if there is *prima facie* evidence of illegal use of electricity, Section 4, RA 7832 requires due notice to the person benefited before disconnection of electricity can be effected. Specifically, Section 6 of RA 7832 calls for prior written notice or warning x x x. Thus, even when the consumer, or someone acting in his behalf, is caught *in flagrante delicto* or in the act of doing any of the acts enumerated in

Section 4 of RA 7832, petitioner may not immediately disconnect electricity without serving a written notice or warning to the owner of the house or establishment concerned.

3. MERCANTILE LAW; PUBLIC SERVICE ACT; PUBLIC UTILITIES; MANILA ELECTRIC COMPANY; DISCONTINUANCE OF SERVICE; FORTY EIGHT-HOUR NOTICE RULE; WHEN APPLIED.— Section 48 of ERB Resolution No. 95-21 expressly provides for the application of the 48-hour notice rule to Section 43 on Payment of Bills. However, petitioner Meralco, through its Revised Terms and Conditions of Service, adopted said notice requirement where disconnection of service is warranted because (1) the consumer failed to pay the adjusted bill after the meter stopped or failed to register the correct amount of energy consumed, (2) or for failure to comply with any of the terms and conditions, (3) or in case of or to prevent fraud upon the Company. Considering the discovery of the tampered meter by its Fully Phased Inspectors, petitioner Meralco could have disconnected electricity to Permanent Light for no other reason but to prevent fraud upon the Company. Therefore, under the Revised Terms and Conditions of Service *vis-a-vis* Section 48 of ERB Resolution No. 95-21, petitioner is obliged to furnish respondents with a 48-hour notice of disconnection. Having failed in this regard, we find basis for the award of moral and exemplary damages in favor of respondents for the unceremonious disconnection of electricity to Permanent Light.

4. CIVIL LAW; MORAL DAMAGES; REQUISITES FOR AWARD THEREOF.— Moral damages are awarded to compensate the claimant for physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Jurisprudence has established the following requisites for the award of moral damages: (1) there is an injury whether physical, mental or psychological, which was clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.

5. ID.; ID.; AWARDED IN CASES WHERE RIGHTS OF INDIVIDUALS, INCLUDING THE RIGHT AGAINST

DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW, ARE VIOLATED.— Article 32 of the Civil Code provides for the award of moral damages in cases where the rights of individuals, including the right against deprivation of property without due process of law, are violated. In *Quisumbing v. Manila Electric Company*, this Court treated the immediate disconnection of electricity without notice as a form of deprivation of property without due process of law, which entitles the subscriber aggrieved to moral damages.

6. ID.; ID.; EXEMPLARY DAMAGES; IMPOSED BY WAY OF EXAMPLE OR CORRECTION FOR THE PUBLIC GOOD.— [E]xemplary damages are imposed by way of example or correction for the public good. In this case, to serve as an example - that before disconnection of electric supply can be effected by a public utility, the requisites of law must be complied with - we sustain the award of exemplary damages to respondents.

7. CRIMINAL LAW; REPUBLIC ACT NO. 7832; DIFFERENTIAL BILLING; DEFINED.— RA 7832 assigns a specific meaning to "differential billing" and utilizes various methodologies as basis for determining the same. More particularly, Section 6 of RA 7832 defines "differential billing" as the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him. However, since RA 7832 was approved only on December 8, 1994 and introduced such concept only on said date, it would be improper to treat the term "differential billing" as used by Meralco in this case in such context. Rather, we shall treat the same as a generic term to refer to the unbilled electricity use of Permanent Light from September 20, 1993 to March 22, 1994.

8. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; AWARD THEREOF REQUIRES THAT THE AMOUNT OF LOSS BE CAPABLE OF PROOF AND MUST ACTUALLY BE PROVEN WITH REASONABLE DEGREE OF CERTAINTY.— Actual damages are compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. Except as provided by law or by stipulation, a party is entitled to adequate compensation only for such pecuniary loss as is

duly proven. Basic is the rule that to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty premised upon competent proof or the best evidence obtainable. x x x We reiterate that actual or compensatory damages cannot be presumed, but must be duly proved with a reasonable degree of certainty. The award is dependent upon competent proof of the damage suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof.

9. ID.; ID.; TEMPERATE DAMAGES; MAY BE RECOVERED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY.— [I]n the absence of competent proof on the amount of actual damages suffered, a party is entitled to temperate damages. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.

10. ID.; ID.; ATTORNEY'S FEES; THE FACTUAL, LEGAL OR EQUITABLE JUSTIFICATION FOR THE AWARD THEREOF MUST BE SET FORTH NOT ONLY IN THE *FALLO* BUT ALSO IN THE TEXT OF THE DECISION.— An award of attorney's fees has always been the exception rather than the rule. Attorney's fees are not awarded every time a party prevails in a suit. The policy of the Court is that no premium should be placed on the right to litigate. The trial court must make express findings of fact and law that bring the suit within the exception. What this demands is that factual, legal or equitable justifications for the award must be set forth not only in the *fallo* but also in the text of the decision, or else, the award should be thrown out for being speculative and conjectural.

APPEARANCES OF COUNSEL

Horatio Enrico M. Bona for petitioner.
P.M. Castillo and *Ginger Anne Castillo* for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition[1] for review on *certiorari* seeking to set aside the Decision[2] dated May 21, 2008 of the Court of Appeals in CA-G.R. CV No. 80572. The Court of Appeals had affirmed with modification the Decision[3] dated July 9, 2003 of the Regional Trial Court (RTC) of Pasig City, Branch 168, in Civil Case No. 65224. The appellate court deleted the award to petitioner Manila Electric Company (Meralco) of the amount of ₱1,138,898.86, representing overpaid electric bills, and ordered petitioner to pay temperate damages to respondents in the amount of ₱500,000.

The facts follow.

Respondents Pablito M. Castillo and Guia S. Castillo are spouses engaged in the business of manufacturing and selling fluorescent fixtures, office steel cabinets and related metal fabrications under the name and style of Permanent Light Manufacturing Enterprises (Permanent Light).

On March 2, 1994, the Board of Trustees of the Government Service Insurance System (GSIS) approved the award to Permanent Light of a contract for the supply and installation of 1,200 units of lateral steel filing cabinets worth ₱7,636,800.[4]

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[1] *Rollo*, pp. 9-27.

[2] *Id.* at 28-39. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Mario L. Guariña III and Romeo F. Barza concurring.

[3] Records, Vol. II, pp. 252-276. Penned by Judge Leticia Querubin Ulibarri.

[4] Records, Vol. I, p. 213.

Immediately, Permanent Light began production of the steel cabinets so that it can obtain the award for the supply of 500 additional units.

In the afternoon of April 19, 1994, Joselito Ignacio and Peter Legaspi, Fully Phased Inspectors of petitioner Meralco, sought permission to inspect Permanent Light's electric meter. Said inspection was carried out in the presence of Mike Malikay, an employee of respondents.

The results of the inspection, which are contained in a Special Investigation Report,[5] show that the terminal seal of Permanent Light's meter was deformed, its meter seal was covered with fake lead, and the 100th dial pointer was misaligned. On the basis of these findings, Ignacio concluded that the meter was tampered with and electric supply to Permanent Light was immediately disconnected. The questioned meter was then taken to Meralco's laboratory for verification.

By petitioner Meralco's claim, it sustained losses in the amount of ₱126,319.92 over a 24-month period,[6] on account of Permanent Light's tampered meter. The next day, in order to secure the reconnection of electricity to Permanent Light, respondents paid ₱50,000 as down payment on the differential bill to be rendered by Meralco.[7]

Thereafter, Meralco performed a Polyphase Meter Test on the disputed meter and made the following findings:

1. The ST-5 seal#A217447 padlock type was tampered by forcibly pulling out the sealing hasp while the lead cover seals (ERB#1 (1989) and Meralco#21) were found fake.

2. The meshing adjustment between the 1st driven gear and the rotating disc was found altered causing the said gear to [disengage] totally from the driving gear of the same disc. Under this condition, the meter failed to register, hence, had not been registering the energy [(KWhrs)] and kw demand used by the customer.

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[5] Records, Vol. II, p. 107.

[6] *Rollo*, p. 68.

[7] Records, Vol. II, p. 113.

3. The 100th dial pointer of the register was found out of alignment which indicates that the meter had been opened to manipulate said dial pointer and set manually to the desired reading.[8]

Petitioner Meralco billed Permanent Light the amount of ₱61,709.11, representing the latter's unregistered electric consumption for the period of September 20, 1993 to March 22, 1994. Meralco, however, credited the initial payment of ₱50,000 made by respondents. It assessed respondents a balance of ₱11,709.11, but later reduced said amount to ₱5,538.20 after petitioner allowed respondents a 10% discount on their total bill. Then, petitioner received the amount of ₱5,538.20 as full settlement of the remaining balance.

Subsequently, respondents received an electric bill in the amount of ₱38,693.53 for the period of March 22, 1994 to April 21, 1994. This was followed by another bill for ₱192,009.64 covering the period from November 19, 1993 to April 21, 1994. Respondents contested both assessments in a Letter dated October 12, 1994.[9] They likewise complained of a significant increase in their electric bills since petitioner installed the replacement meter on April 20, 1994.

In a Letter dated December 7, 1994,[10] petitioner Meralco explained that the bill for ₱38,693.53 was already a "corrected bill." According to petitioner, the bill for ₱192,009.64 was adjusted on August 25, 1994 to reflect respondents' payment of ₱61,709.11 as settlement of Permanent Light's electric bills from September 20, 1993 to March 22, 1994. It assured respondents that Permanent Light's meter has been tested on November 29, 1994 and was found to be in order. In the same letter, petitioner informed respondents that said meter was replaced anew on December 1, 1994 after it sustained a crack during testing. While respondents continued to pay, allegedly under protest, the succeeding bills of Permanent Light, they refused to pay the bill for ₱38,693.53.

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[8] *Id.* at 108.

[9] *Id.* at 402.

[10] *Id.* at 116.

On August 2, 1995, respondents filed against Meralco a Petition[11] for Injunction, Recovery of a Sum of Money and Damages with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction. The case was raffled to Branch 162 of the Pasig RTC, which was presided over by Judge Manuel S. Padolina, and docketed as Civil Case No. 65224.

Mainly, respondents prayed for the issuance of a permanent injunction to enjoin petitioner from cutting power supply to Permanent Light, refrain from charging them unrecorded electric consumption and demanding payment of ₱38,693.53, representing their bill for March 22, 1994 to April 21, 1994. Corollary to this, respondents sought reimbursement of the ₱55,538.20 that they had paid as the estimated electric bill of Permanent Light from September 20, 1993 to March 22, 1994. They likewise prayed for the reinstatement of their old meter, which respondents believe accurately records Permanent Light's electric consumption.

In an Order[12] dated August 29, 1995, the RTC directed the issuance of a TRO to restrain petitioner Meralco from disconnecting electricity to Permanent Light. Later, in an Order[13] dated September 8, 1995, the RTC directed the issuance of a writ of preliminary injunction upon the posting of a bond in the amount of ₱95,000.

While trial was pending, respondents reiterated their request for a replacement meter. According to them, the meters installed by Meralco ran faster than the one it confiscated following the disconnection on April 19, 1994.

In 1997, Judge Manuel S. Padolina retired. Thus, the case was heard by Pairing Judge Aurelio C. Trampe until the parties had presented all their witnesses. On October 30, 1998, respondents rested their case and submitted a Written Offer of

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[11] *Rollo*, pp. 46-55.

[12] Records, Vol. I, p. 18.

[13] *Id.* at 24.

Exhibits.[14] Meanwhile, petitioner filed a Formal Offer of Evidence[15] on September 22, 1999. By then, a regular presiding judge had been appointed to Branch 162 in the person of Hon. Erlinda Piñera Uy. However, on November 8, 1999, respondents filed an Urgent Motion to Inhibit *Ad Cautelam*.[16] Judge Uy voluntarily recused herself from hearing the case by Order[17] dated November 10, 1999. Eventually, the case was raffled to Branch 168 of the Pasig RTC presided by Judge Leticia Querubin Ulibarri.

On November 28, 2001, Meralco installed a new electric meter at the premises of Permanent Light. Following this, on January 29, 2002, respondents filed an Urgent Motion to Proffer and Mark the Latest Meralco Bill of ₱9,318.65 which was Reflected in the 3rd Meralco Electric Meter Recently Installed by Defendant Meralco.[18] Despite petitioner's opposition, the RTC admitted said bill into evidence.

On July 9, 2003, the Pasig RTC, Branch 168, rendered judgment in favor of respondents. The *fallo* of said Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioners and against the respondent ordering the latter to pay the former the following:
>
> 1. ₱1,138,898.86 representing overpayments made by the petitioners from May 1994 to November 2001;
>
> 2. ₱200,000.00 as and for moral damages;
>
> 3. ₱100,000.00 as and for exemplary damages;
>
> 4. ₱100,000.00 as and for attorney's fees; and
>
> 5. the costs of this suit.

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[14] *Id.* at 360-374.

[15] Records, Vol. II, pp. 97-104.

[16] *Id.* at 149-155.

[17] *Id.* at 156-157.

[18] *Id.* at 198-203.

On the other hand, petitioners are hereby ordered to pay to the respondent the amount of ₱38,693.53 representing the billing differential.

The Preliminary Injunction issued by the Court is hereby made **PERMANENT**.

SO ORDERED.[19]

The trial court ruled that petitioner failed to observe due process when it disconnected electricity to Permanent Light. It explained that under Section 4 of Republic Act No. 7832[20] (RA 7832), in order that a tampered meter may constitute *prima facie* evidence of illegal use of electricity by the person benefited thereby, the discovery thereof must have been witnessed by an officer of the law or an authorized representative of the Energy Regulatory Board (ERB). In this case, however, the RTC noted that no officer of the law or authorized ERB representative was present when the tampered meter was discovered. Moreover, the trial court found no direct evidence to prove that respondents were responsible for tampering with said meter.

On the basis of the proffered bill dated December 29, 2001,[21] the RTC concluded that the replacement meter installed by Meralco did not accurately register Permanent Light's electric consumption. Consequently, it ordered petitioner to reimburse respondents in the amount of ₱1,138,898.86, representing the supposed overpayment from April 1994 to November 2001. For failure to observe due process in disconnecting electricity to Permanent Light, the trial court likewise imposed upon petitioner Meralco moral and exemplary damages in the amount of ₱200,000 and ₱100,000, respectively.

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[19] *Id.* at 275-276.

[20] AN ACT PENALIZING THE PILFERAGE OF ELECTRICITY AND THEFT OF ELECTRIC POWER TRANSMISSION LINES/MATERIALS, RATIONALIZING SYSTEM LOSSES BY PHASING OUT PILFERAGE LOSSES AS A COMPONENT THEREOF, AND FOR OTHER PURPOSES.

[21] Records, Vol. II, p. 213.

In the assailed Decision dated May 21, 2008, the Court of Appeals affirmed with modification the Decision of the RTC. It deleted the award of ₱1,138,898.86 in favor of respondents and instead ordered petitioner to pay temperate damages in the amount of ₱500,000.

The Court of Appeals held that petitioner abused its right when it disconnected the electricity of Permanent Light. The appellate court upheld the validity of the provision in petitioner's service contract which allows the utility company to disconnect service upon a customer's failure to pay the differential billing. It however stressed that under Section 97[22] of Revised Order No. 1 of the Public Service Commission, the right of a public utility to discontinue its service to a customer is subject to the requirement of a 48-hour written notice of disconnection. Petitioner's failure in this regard, according to the appellate court, justifies the award of moral and exemplary damages to respondents.

The Court of Appeals ordered petitioner to reimburse respondents for overpayment on their electric bills. It sustained the finding of the trial court that the electric meter installed by petitioner in Permanent Light's premises on April 20, 1994 was registering a higher reading than usual. The appellate court based its conclusion on the marked difference between Permanent Light's net billing from 1985 to 2001 compared to its consumption after the new meter was installed, and the consequent decrease after

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[22] Section 97. *Payment of bills*. — A public service may require that bills for service be paid within a specified time after rendition. When the billing period covers a month or more, the minimum time allowed will be ten days and upon expiration of the specified time, service may be discontinued for the nonpayment of bills, provided that a 48 hours' written notice of such disconnection has been given the customer: *Provided, however*, That disconnections of service shall not be made on Sundays and official holidays and never after 2 p.m. of any working day: *Provided, further*, That if at the moment the disconnection is to be made the customer tenders payment of the unpaid bill to the agent or employee of the operator who is to effect the disconnection, the said agent or employee shall be obliged to accept tendered payment and issue a temporary receipt for the amount and shall desist from disconnecting the service.

said meter was replaced on November 28, 2001. However, instead of actual damages, the Court of Appeals awarded respondents temperate damages in the amount of ₱500,000.

Hence, this petition.

Petitioner submits the following assignment of errors:

I.

THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE AWARD OF MORAL AND EXEMPLARY DAMAGES IN FAVOR OF THE RESPONDENTS[;][23]

II.

THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING ₱500,000.00 FOR AND AS TEMPERATE DAMAGES IN FAVOR OF THE RESPONDENTS.[24]

Amplified, the issues for our resolution are two-fold: (1) Are respondents entitled to claim damages for petitioner's act of disconnecting electricity to Permanent Light on April 19, 1994? and (2) Are respondents entitled to actual damages for the supposed overbilling by petitioner Meralco of their electric consumption from April 20, 1994 to November 28, 2001?

Petitioner faults the Court of Appeals for affirming the award of moral and exemplary damages to respondents. It argues that respondents failed to establish how the disconnection of electricity to Permanent Light for one day compromised its production. Petitioner cites respondents' admission that soon after the power went out, they used generators to keep the operations of Permanent Light on track.

Petitioner further negates bad faith in discontinuing service to Permanent Light without notice to respondents. It contends that the 48-hour notice requirement in Section 97 of Revised

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[23] *Rollo*, p. 18.

[24] *Id.* at 22.

General Order No. 1 applies only to a customer who fails to pay the regular bill. Petitioner insists that the discovery by its Fully Phased Inspectors of Permanent Light's tampered meter justified disconnection of electricity to the latter.

Also, petitioner challenges the award of temperate damages to respondents for the alleged overbilling. It objects to the admission into evidence of Permanent Light's December 29, 2001 electric bill, which respondents proffered two years after the case was submitted for decision by the court *a quo*. Petitioner disputes the finding of the RTC and the Court of Appeals that respondents overpaid on Permanent Light's electric bill. It reasons that the volume of business of any establishment varies from season to season such that it cannot be expected to constantly register the same electric consumption. Lastly, petitioner protests the award of ₱500,000 in temperate damages as excessive and unconscionable.

In a Memorandum dated May 27, 2009, respondents denied any involvement in the tampering of Permanent Light's electric meter. Respondents reiterate that petitioner violated their right to due process when it disconnected electricity to Permanent Light without apprising them of their violation and affording them an opportunity to pay the differential bill within the 10-day grace period provided by law. Respondents claim that such disconnection imperiled the prompt completion of Permanent Light's contract with GSIS, thereby causing them anxiety. They believe that the "embarrassment, humiliation and pain" brought about by such disconnection justify the award of moral damages in their favor. Respondents invoke Article 24[25] of the Civil Code on *parens patriae* against the alleged abuse by petitioner Meralco of its monopoly as an electric service provider.

Respondents also rely on the testimony of Enrique Katipunan, Meralco Billing Expert, to prove that the sudden increase in

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[25] Art. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

Permanent Light's electric consumption was caused by the "high-speed" replacement meter installed by petitioner. They reiterate their claim for actual damages, arguing that absolute certainty as to its amount need not be shown since the loss has been established.

Upon a careful consideration of the circumstances of this case, the Court resolves to deny the petition.

The pertinent law relative to the immediate disconnection of electricity is Section 4, RA 7832, which reads:

> SEC. 4. *Prima Facie Evidence*.— (a) The presence of any of the following circumstances shall constitute *prima facie* evidence of illegal use of electricity, as defined in this Act, by the person benefitted thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, x x x
>
> (iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered, or tampered meter recording chart or graph, or computerized chart, graph, or log;
>
> x x x x x x x x x
>
> (viii) x x x *Provided, however,* That the discovery of any of the foregoing circumstances, in order to constitute *prima facie* evidence, must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).

Thus, in order for the discovery of a tampered, broken or fake seal on the meter to constitute *prima facie* evidence of illegal use of electricity by the person who benefits from such illegal use, the discovery thereof must have been personally witnessed and attested to by an officer of the law or a duly authorized representative of the ERB.

Citing *Quisumbing v. Manila Electric Company*,[26] we reiterated the significance of this requirement in *Manila Electric Company (MERALCO) v. Chua*,[27] thus:

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[26] G.R. No. 142943, April 3, 2002, 380 SCRA 195, 208.

[27] G.R. No. 160422, July 5, 2010, 623 SCRA 81, 94.

The presence of government agents who may authorize immediate disconnections go into the essence of due process. Indeed, we cannot allow respondent to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering. That would not sit well in a democratic country. After all, Meralco is a monopoly that derives its power from the government. Clothing it with unilateral authority to disconnect would be equivalent to giving it a license to tyrannize its hapless customers.

On cross-examination, Meralco's Fully Phased Inspector, Joselito M. Ignacio, recounted who were present during the inspection:

Q. Mr. Ignacio, let us reconstruct the evidence on April 19, 1994. Before you came across the Meralco meter of the plaintiffs, where did you come from?

A. We were inspecting other meters within that vicinity.

Q. So you mean to tell us that you were cruising in the vicinity of Cubao, Quezon City on April 19?

A. Yes, sir.

Q. And were you alone?

A. No, sir, we were two.

Q. Who was with you?

A. Mr. Peter Legaspi, sir.[28]

On further cross-examination by Atty. Pablito M. Castillo, Ignacio confirmed that only he and another Fully Phased Inspector were present when they discovered Permanent Light's tampered meter:

Q. Who was with you when you entered the compound of the plaintiffs?

ATTY. BONA: Already answered, Mr. Legaspi.

ATTY. CASTILLO: No. They were both on board but the question now is more particular.

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[28] TSN, January 26, 1999, p. 4.

ATTY. BONA: At what particular time?

WITNESS:

A. Mr. Legaspi.

COURT: Only?

WITNESS: Yes, sir.[29]

Absent any showing that an officer of the law or a duly authorized representative of the ERB personally witnessed and attested to the discovery of Permanent Light's tampered electric meter, such discovery did not constitute *prima facie* evidence of illegal use of electricity that justifies immediate disconnection of electric service.

Besides, even if there is *prima facie* evidence of illegal use of electricity, Section 4, RA 7832 requires due notice to the person benefited before disconnection of electricity can be effected. Specifically, Section 6 of RA 7832 calls for prior written notice or warning, thus:

SEC. 6. *Disconnection of Electric Service*. — **The private electric utility or rural electric cooperative concerned shall have the right and authority to disconnect immediately the electric service after serving a written notice or warning** to that effect, without the need of a court or administrative order, and deny restoration of the same, **when the owner of the house or establishment concerned or someone acting in his behalf shall have been caught *in flagrante delicto* doing any of the acts enumerated in Section 4(a) hereof, or when any of the circumstances so enumerated shall have been discovered for the second time**: *Provided*, That in the second case, a written notice or warning shall have been issued upon the first discovery: x x x (Emphasis supplied)

Thus, even when the consumer, or someone acting in his behalf, is caught *in flagrante delicto* or in the act of doing any of the acts enumerated in Section 4 of RA 7832, petitioner may not immediately disconnect electricity without serving a written notice or warning to the owner of the house or establishment concerned.

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[29] *Id.* at 8.

Petitioner Meralco submitted a memorandum with Control No. 6033-94[30] dated April 19, 1994 to prove that respondents were duly notified of the disconnection. Notwithstanding, petitioner maintains that the 48-hour notice of disconnection does not apply in this case since Section 97 of Revised Order No. 1 of the Public Service Commission pertains to nonpayment of bills while the cause for discontinuing service to Permanent Light was the discovery of the tampered meter.

We do not agree.

On February 9, 1987, the Bureau of Energy approved[31] the Revised Terms and Conditions of Service and Revised Standard Rules and Regulations of Meralco's Electric Service Contract. Pertinent to this case, the provision on Discontinuance of Service under the Revised Terms and Conditions of Service states:

DISCONTINUANCE OF SERVICE:

The Company reserves the right to discontinue service in case the Customer is in arrears in the payment of bills or for failure to pay the adjusted bills in those cases where the meter stopped or failed to register the correct amount of energy consumed, or for failure to comply with any of these terms and conditions, or in case of or to prevent fraud upon the Company. Before disconnection is made in case of or to prevent fraud, the Company may adjust the bill of said Customer accordingly and if the adjusted bill is not paid, the Company may disconnect the same. **In case of disconnection, the provisions of Revised Order No. 1 of the former Public Service Commission (now the Board of Energy) shall be observed.** Any such suspension of service shall not terminate the contract between the Company and the Customer.[32] (Emphasis supplied)

On August 3, 1995, the ERB passed Resolution No. 95-21 or the Standard Rules and Regulations Governing the Operation of Electrical Power Services which superseded and revoked Revised Order No. 1, which the Public Service Commission

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[30] Records, Vol. II, p. 106.

[31] *Id.* at 117-130.

[32] *Id.* at 134.

adopted on November 27, 1941. The relevant provision on disconnection of service is found in Section 48 of ERB Resolution No. 95-21, which reads:

SEC. 48. *Refusal or Discontinuance of Service*. — An electric utility shall not refuse or discontinue service to an applicant, or customer, who is not in arrears to the electric utility, even though there are unpaid charges due from the premises occupied by the applicant, or customer, on account of unpaid bill of a prior tenant, unless there is evidence of conspiracy between them to defraud the electric utility.

Service may be discontinued for the nonpayment of bills as provided for in Section 43 hereof, provided that a forty eight (48)-hour written notice of such disconnection has been given the customer; Provided, however, that disconnections of service shall not be made on Fridays, Saturdays, Sundays and official holidays; Provided, further, that if at the moment of the disconnection is to be made the customer tenders payment of the unpaid bill to the agent or employee of the electric utility who is to effect the disconnection, the said agent, or employee shall be obliged to accept tendered payment and issue a temporary receipt for the amount and shall desist from disconnecting the service.

The electric utility may discontinue service in case the customer is in arrear(s) in the payment of bill(s). Any such suspension of service shall not terminate the contract between the electric utility and the customer.

In the case of arrear(s) in the payment of bill(s), the electric utility may discontinue the service notwithstanding the existence of the customer's deposit with the electric utility which will serve as guarantee for the payment of future bill(s) after service is reconnected. (Emphasis supplied)

True, Section 48 of ERB Resolution No. 95-21 expressly provides for the application of the 48-hour notice rule to Section 43 on Payment of Bills. However, petitioner Meralco, through its Revised Terms and Conditions of Service, adopted said notice requirement where disconnection of service is warranted because (1) the consumer failed to pay the adjusted bill after the meter stopped or failed to register the correct amount

of energy consumed, (2) or for failure to comply with any of the terms and conditions, (3) or in case of or to prevent fraud upon the Company.

Considering the discovery of the tampered meter by its Fully Phased Inspectors, petitioner Meralco could have disconnected electricity to Permanent Light for no other reason but to prevent fraud upon the Company. Therefore, under the Revised Terms and Conditions of Service *vis-a-vis* Section 48 of ERB Resolution No. 95-21, petitioner is obliged to furnish respondents with a 48-hour notice of disconnection. Having failed in this regard, we find basis for the award of moral and exemplary damages in favor of respondents for the unceremonious disconnection of electricity to Permanent Light.

Moral damages are awarded to compensate the claimant for physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[33] Jurisprudence has established the following requisites for the award of moral damages: (1) there is an injury whether physical, mental or psychological, which was clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.[34]

Pertinent to the case at hand, Article 32 of the Civil Code provides for the award of moral damages in cases where the rights of individuals, including the right against deprivation of property without due process of law, are violated.[35] In *Quisumbing v. Manila Electric Company*, this Court treated the immediate disconnection of electricity without notice as a form of deprivation

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[33] *Quisumbing v. Manila Electric Company*, *supra* note 26 at 212.

[34] *Manila Electric Company (MERALCO) v. Chua*, *supra* note 27 at 111-112.

[35] *Id.* at 111.

of property without due process of law, which entitles the subscriber aggrieved to moral damages. We stressed:

> More seriously, the action of the defendant in maliciously disconnecting the electric service constitutes a breach of public policy. For public utilities, broad as their powers are, have a clear duty to see to it that they do not violate nor transgress the rights of the consumers. Any act on their part that militates against the ordinary norms of justice and fair play is considered an infraction that gives rise to an action for damages. Such is the case at bar.[36]

Here, petitioner failed to establish factual basis for the immediate disconnection of electricity to Permanent Light and to comply with the notice requirement provided by law. As the court *a quo* correctly observed, there is no direct evidence that points to respondents as the ones who tampered with Permanent Light's electric meter. Notably, the latter's meter is located outside its premises where it is readily accessible to anyone.

In addition to moral damages, exemplary damages are imposed by way of example or correction for the public good. In this case, to serve as an example - that before disconnection of electric supply can be effected by a public utility, the requisites of law must be complied with - we sustain the award of exemplary damages to respondents.

In the assailed Decision dated May 21, 2008, the Court of Appeals affirmed the award of moral damages and exemplary damages to respondents in the amount of ₱200,000 and ₱100,000, respectively. In line with prevailing jurisprudence, however, this Court deems the award of moral damages in the amount of ₱100,000[37] and exemplary damages in the amount of ₱50,000[38] appropriate in cases where Meralco has wrongfully disconnected electric service to its customer.

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[36] *Quisumbing v. Manila Electric Company*, *supra* note 26 at 213.

[37] *Manila Electric Company (MERALCO) v. Chua*, *supra* note 27 at 112-113; *Manila Electric Company v. Vda. de Santiago*, G.R. No. 170482, September 4, 2009, 598 SCRA 315, 320.

[38] *Manila Electric Company v. Vda. de Santiago*, *id.*

Nonetheless, the Court finds no reason to order the reimbursement to respondents of the ₱55,538.20, which petitioner received as full settlement of Permanent Light's "differential billing" for its unregistered consumption from September 20, 1993 to March 22, 1994. At this point, it is well to clarify that RA 7832 assigns a specific meaning to "differential billing" and utilizes various methodologies as basis for determining the same. More particularly, Section 6[39] of RA 7832 defines "differential billing" as the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him. However, since RA 7832 was approved only on December 8, 1994 and introduced such concept only on said date, it would be improper to treat the term "differential billing" as used by Meralco in this case in such context. Rather, we shall treat the same as a generic term to refer to the unbilled electricity use of Permanent Light from September 20, 1993 to March 22, 1994.

The Computation Worksheet[40] of said "differential billing" shows that the amount of ₱61,709.11 was derived based on

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[39] SEC. 6. *Disconnection of Electric Service.*— x x x

For purposes of this Act, "differential billing" shall refer to the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him as determined through the use of methodologies which utilize, among others, as basis for determining the amount of monthly electric consumption in kilowatt-hours to be billed either: (a) the highest recorded monthly consumption within the five-year billing period preceding the time of the discovery, (b) the estimated monthly consumption as per the report of load inspection conducted during the time of discovery, (c) the higher consumption between the average consumptions before or after the highest drastic drop in consumption within the five-year billing period preceding the discovery, (d) the highest recorded monthly consumption within four (4) months after the time of discovery, or (e) the result of the ERB test during the time of discovery and, as basis for determining the period to be recovered by the differential billing, either: (1) the time when the electric service of the person concerned recorded an abrupt or abnormal drop in consumption, or (2) when there was a change in his service connection such as a change of meter, change of seal or reconnection, or in the absence thereof, a maximum of sixty (60) billing months, up to the time of discovery: *Provided, however,* That such period shall, in no case, be less than one (1) year preceding the date of discovery of the illegal use of electricity.

[40] Records, Vol. II, p. 110.

Permanent Light's average KWhour consumption for the six months immediately preceding September 20, 1993. We find such method of computation in accord with the Terms of Service approved by the Bureau of Energy on February 9, 1987, thus:

PAYMENTS:

Bills will be rendered by the Company to the Customer monthly in accordance with the applicable rate schedule. Said bills are payable to collectors or at the main or branch offices of the Company or at its authorized banks within ten (10) days after the regular reading date of the electric meters. The word "month" as used herein and in the rate schedule is hereby defined to be the elapsed time between two succeeding meter readings approximately thirty (30) days apart. **In the event of the stoppage or the failure by any meter to register the full amount of energy consumed, the Customer shall be billed for such period on an estimated consumption based upon his use of energy in a similar period of like use or the registration of a check meter**.[41] (Emphasis supplied)

Spreading the ₱61,709.11 over the 6-month period covered by the "differential billing" will yield a monthly rate of ₱10,284.85 - well within Permanent Light's average net bill for the previous months. It is undisputed by respondents that from September 20, 1993 to March 22, 1994, Permanent Light continued to enjoy petitioner's services even as its electric meter stopped functioning and no monthly electric bills were issued to it. We cannot therefore allow respondents to enrich themselves unjustly at the expense of petitioner public utility.

However, we are at a loss as to how petitioner Meralco arrived at the second "differential billing" for ₱38,693.53, which represents Permanent Light's unregistered consumption from March 22, 1994 to April 21, 1994. It bears mentioning that it was not until April 19, 1994 that petitioner's Fully Phased Inspectors replaced Permanent Light's electric meter. In months prior to that, Permanent Light's electric meter had been stationary; hence, the first differential bill for its consumption from September 20, 1993 to March 22, 1994. The first differential

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[41] *Id.* at 134.

bill was computed in accordance with the Terms of Service approved by the Bureau of Energy. It is only proper that the same standard be used in estimating Permanent Light's consumption for the period of March 22, 1994 to April 21, 1994.

Considering, however, that Permanent Light's electric meter had stopped registering its consumption for months prior to April 20, 1994, we shall base our estimate on Permanent Light's use of energy in a similar period. Permanent Light's Bill History[42] shows that from March 19, 1992 to April 20, 1992, it consumed 3,648 KWhours of electricity. It last posted the same level of consumption for the period of July 20, 1993 to August 19, 1993, for which it was billed ₱10,834.58. We deem this amount a reasonable approximation of the net bill that respondents should pay for Permanent Light's use of electricity from March 22, 1994 to April 21, 1994.

We now turn to the question of whether respondents are entitled to actual damages for the supposed overbilling by petitioner Meralco of their electric consumption from April 20, 1994 to November 28, 2001.

Actual damages are compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. Except as provided by law or by stipulation, a party is entitled to adequate compensation only for such pecuniary loss as is duly proven. Basic is the rule that to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty premised upon competent proof or the best evidence obtainable.[43]

Respondents anchor their claim for actual damages on the alleged overbilling by petitioner Meralco of Permanent Light's electricity use from April 20, 1994 to November 28, 2001. In

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[42] *Id.* at 109.

[43] *Manila Electric Company v. T.E.A.M. Electronics Corporation*, G.R. No. 131723, December 13, 2007, 540 SCRA 62, 79.

support, respondents presented in evidence the Comparative Monthly Meralco Bills of Permanent Light Mfg. Enterprises from 1985-2001.[44] Said document lists the amounts which respondents supposedly paid based on Permanent Light's electric bills from the year 1985 to 2001 for a total of ₱2,466,941.22. In particular, respondents submitted "representative Meralco bills" of Permanent Light for the years 1985 to 1987, 1993 to 1997 and 2001 to 2002.

On January 29, 2002, respondents filed with the court *a quo* an Urgent Motion to Proffer and Mark the Latest Meralco Bill of ₱9,318.65 which was Reflected in the 3rd Meralco Electric Meter Recently Installed by Defendant Meralco. Attached to said pleading is a copy of Permanent Light's electric bill for the period of November 29, 2001 to December 29, 2001 for ₱9,318.65. Apparently, Meralco installed a new electric meter at the premises of Permanent Light on November 28, 2001.

Respondents claim that the bill for ₱9,318.65 more accurately reflects Permanent Light's normal consumption, consistent with the latter's electric bills before its meter was first replaced on April 20, 1994. Respondents argue that, at most, their net bill should be at par with those of Permanent Light's neighboring establishments, Eureka Steel and Asiatic Steel Manufacturing Co., (Asiatic Steel) which are purportedly engaged in the same business. For the court's reference, respondents submitted "representative Meralco bills" of Eureka Steel for 1996 to 1997 and Asiatic Steel for the years 1994 to 1998. Using the figures in the latter bills *vis-a-vis* Permanent Light's "comparative bills" from 1986 to 2001, respondents seek the refund of ₱1,138,898.86, representing their alleged overpayment to Meralco.

However, Section 34,[45] Rule 132 of the 1997 Rules of Civil Procedure, as amended, dictates that the court shall consider no evidence which has not been formally offered. In this case,

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[44] Records, Vol. II, pp. 202-203.

[45] SEC. 34. *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

respondents rely heavily on the bill for ₱9,318.65 covering the period of November 29, 2001 to December 29, 2001 to demonstrate a defect in the replacement meter installed at Permanent Light on April 20, 1994. However, said bill was not included in the Written Offer of Exhibits which respondents filed much earlier, on October 30, 1998. To be sure, it could not have been made part thereof.

Yet, even if we disregard the bill for ₱9,318.65, we cannot ignore the sudden and unexplainable increase in Permanent Light's electric consumption following the replacement of its broken meter. Normally, when a tampered electric meter is replaced, assuming the same amount of monthly rate of usage, the new electric meter will register the increased use of electricity that had previously been concealed by the tampered meter.[46] While Permanent Light's electric meter, indeed, registered a sharp increase in its electricity use after being replaced on April 20, 1994, there is no direct evidence to suggest that respondents tampered with said meter. Truth be told, respondents repeatedly sought technical assistance from Meralco after Permanent Light's electric meter stopped working on December 7, 1993,[47] *albeit*, without success. This fact remains undisputed by petitioner.

Based on Permanent Light's Meralco bills of record, its electricity use has increased by approximately 96.3% from an average of 1,672 KWhours per month in 1985 to 3,282 KWhours per month in 1993. On the other hand, the last recorded electric consumption of Permanent Light before its meter broke, that is, from August 19, 1993 to September 20, 1993, was 3,432 KWhours while it registered a reading of 11,904 KWhours from June 20, 1994 to July 20, 1994 — a 246.85% increase in consumption over a period of nine (9) months.

This inordinate surge in electric reading is inconsistent with the pattern of steady but gradual rise in Permanent Light's consumption over the years. To our mind, the fact that Permanent

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[46] *Manila Electric Company (MERALCO) v. Chua*, *supra* note 27 at 102.

[47] Records, Vol. II, p. 403.

Light registered a significant increase in its electric use after the replacement meter was installed is no reason to automatically conclude that its meter had been running tampered long before the same stopped working. From 1985 to 1993, petitioner Meralco has observed nothing irregular with Permanent Light's recorded electric use such as a drastic and unexplainable drop in its consumption to arouse suspicion that its meter has been tampered. As the appellate court correctly observed, petitioner did not even present an iota of proof to refute the claim that the replacement meter was running at an unusually high speed.[48] It must be underscored that petitioner has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein.[49]

Notably, respondents complained of a sudden spike in Permanent Light's net bill in their Letter[50] to Meralco dated December 7, 1993 - two days before Permanent Light's meter stopped working. Thus, if it is true that there was evidence of tampering found on April 19, 1994 yet Permanent Light continued to register an increased consumption even after its meter was replaced, the better view would be that the defective meter was not actually corrected after the first inspection.

Be that as it may, we cannot award actual damages to respondents.

We reiterate that actual or compensatory damages cannot be presumed, but must be duly proved with a reasonable degree of certainty. The award is dependent upon competent proof of the damage suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof.[51]

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[48] *Rollo*, p. 38.

[49] *Manila Electric Company v. T.E.A.M. Electronics Corporation*, *supra* note 43 at 77.

[50] Records, Vol. I, p. 13.

[51] *Quisumbing v. Manila Electric Company*, *supra* note 26 at 211-212.

In this case, respondents presented a summary of Permanent Light's electric bills from the years 1986 to 2001. Said list contains the amounts which respondents allegedly paid on Permanent Light's from 1986 to 2001. Curiously, respondents submitted mere "representative samples" of Permanent Light's electric bills for the years 1985 to 1987 and from 1993 to 1997. It appears, however, that respondents conveniently selected the bills which cover the period from December to mid-March - months in which demand for electricity is normally less. To our mind, respondents did this for no other reason than to magnify the disparity between Permanent Light's net bill before and after its meter was replaced on April 20, 1994 so that it can demand greater in damages.

Nonetheless, in the absence of competent proof on the amount of actual damages suffered, a party is entitled to temperate damages.[52] Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[53] The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.

In this case, we are convinced that respondents sustained damages from the abnormal increase in Permanent Light's electric bills after petitioner replaced the latter's meter on April 19, 1994. However, respondents failed to establish the exact amount thereof by competent evidence. Considering the attendant circumstances, an award of temperate damages in the amount of ₱300,000 is just and reasonable.

Finally, we delete the award of attorney's fees for lack of basis.

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[52] *Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 22.

[53] CIVIL CODE OF THE PHILIPPINES, Art. 2224.

An award of attorney's fees has always been the exception rather than the rule. Attorney's fees are not awarded every time a party prevails in a suit. The policy of the Court is that no premium should be placed on the right to litigate.[54] The trial court must make express findings of fact and law that bring the suit within the exception. What this demands is that factual, legal or equitable justifications for the award must be set forth not only in the *fallo* but also in the text of the decision, or else, the award should be thrown out for being speculative and conjectural.[55]

Here, the award of attorney's fees in favor of respondents appeared only in the *fallo* of the trial court's Decision dated July 9, 2003. Neither did the appellate court proffer any justification for sustaining said award.

WHEREFORE, the Decision dated May 21, 2008 of the Court of Appeals in CA-G.R. CV No. 80572 is **AFFIRMED with MODIFICATIONS,** as follows:

(a) Petitioner is ordered to pay respondents ₱300,000 as temperate damages, ₱100,000 as moral damages and ₱50,000 as exemplary damages;

(b) Respondents are ordered to pay petitioner ₱10,834.58, representing the estimate of its unregistered consumption for the period from March 22, 1994 to April 21, 1994; and

(c) The award of attorney's fees is **DELETED** for lack of basis.

Costs against petitioner.

SO ORDERED.

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

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[54] *National Power Corporation v. Heirs of Macabangkit Sangkay*, G.R. No. 165828, August 24, 2011, 656 SCRA 60, 92.

[55] *Id.* at 93-94.

SECOND DIVISION

[G.R. No. 197507. January 14, 2013]

RIVULET AGRO-INDUSTRIAL CORPORATION, *petitioner, vs.* **ANTHONY PARUÑGAO, NARCISO B. NIETO, in their respective capacity as Undersecretaries of Legal Affairs and Field Operations of the Department of Agrarian Reform; FELIX SERVIDAD, in his capacity as Provincial Agrarian Reform Officer II and the Officer-in-Charge of the Department of Agrarian Reform Provincial Office of Negros Occidental; and JEFFERSON DESCALLAR, in his capacity as Police Chief Inspector of the PNP-Negros Occidental Police Provincial Office,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; AN ACT MUST BE CLEARLY CONTRARY TO OR PROHIBITED BY THE ORDER OF THE COURT TO BE CONSIDERED CONTEMPTUOUS.— Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity, and signifies not only a willful disregard of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court. Thus, a person cannot be punished for contempt for disobedience of an order of the Court, unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.

2. ID.; ID.; ID.; THE POWER TO PUNISH FOR CONTEMPT SHOULD BE EXERCISED ON THE PRESERVATIVE PRINCIPLE AND ONLY WHEN NECESSARY IN THE INTEREST OF JUSTICE.— [T]he Court has stressed that the power to punish for contempt should be exercised on the preservative, not on the vindictive principle, and only when necessary in the interest of justice.

APPEARANCES OF COUNSEL

Fornier Fornier Saño & Lagumbay for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is a petition for indirect contempt arising from respondents' alleged defiance of the December 15, 2010 Temporary Restraining Order[1] (TRO) issued by the Court in G.R. No. 193585 entitled *Rivulet Agro-Industrial Corporation, petitioner v. Hon. Benedicto Ulep, in his capacity as Administrator of the Land Registration Authority and Romulo E. Gonzaga, in his capacity as Register of Deeds of Negros Occidental, respondents; Department of Agrarian Reform, intervenor.*

The Factual Antecedents

Petitioner Rivulet Agro-Industrial Corporation (Rivulet) was the registered owner of Hacienda Bacan, a 157.2992-hectare (ha.) agricultural land situated in Barangay Guintubhan, Isabela, Negros Occidental covered by Transfer Certificate of Title (TCT) No. T-105742.[2] Despite the sale in favor of Atty. Jose Miguel Arroyo (Atty. Arroyo) in a tax delinquency sale held on April 8, 1994, title to Hacienda Bacan remained in Rivulet's name.

In April 2001, the Department of Agrarian Reform (DAR) commenced the administrative process to acquire the subject property under Republic Act (R.A.) No. 6657 (Comprehensive Agrarian Reform Law of 1988) and sent Notices of Coverage (NOC) dated April 2, 2001[3] and May 4, 2001[4] to Atty. Arroyo.

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[1] *Rollo* (G.R. No. 197507), pp. 91-93.

[2] *Id.* at 20-23.

[3] *Id.* at 161.

[4] *Id.* at 162.

Thereafter, the DAR Municipal Office (DARMO) of Isabela conducted field investigation and segregation survey.

Subsequently, Rivulet through its duly authorized[5] representative, Ignacio T. Arroyo, Jr. (Mr. Ignacio) voluntarily offered for sale (VOS) to the government the subject property for the amount of ₱45,689,760.00.[6] A NOC[7] dated September 7, 2001 was likewise served to Rivulet through Mr. Ignacio. Thereafter, the DARMO screened potential agrarian reform beneficiaries and posted the list[8] of qualified beneficiaries on May 16 to 21, 2002.

During the pendency of the administrative process or in October 2005, the *Sangguniang Bayan* of Isabela, Negros Occidental enacted an ordinance reclassifying Hacienda Bacan from agricultural to agro-industrial.[9]

With this development, the Provincial Agrarian Reform Officer (PARO) sought the legal opinion of the DAR Policy, Planning and Legal Affairs Office on whether or not the CARP coverage may still proceed as well as the propriety of the NOC issued to Atty. Arroyo considering that the sale to him was not annotated on Rivulet's title. On September 27, 2007, Undersecretary Nestor R. Acosta issued DAR Opinion No. 26, S. 2007[10] finding Atty. Arroyo to be the owner of the land and declaring Rivulet's VOS through Mr. Ignacio to be ineffectual. Hence, he opined that coverage can proceed despite the reclassification of Hacienda Bacan as agro-industrial since the NOCs were served on Atty. Arroyo at the time the land was still classified as agricultural. However, the landowner is not precluded from filing an application for conversion or for retention within the bounds of law.

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[5] *Id.* at 165. Secretary's Certificate dated June 21, 2001.

[6] *Id.* at 163-164. Letter Offer dated June 11, 2001.

[7] *Id.* at 166.

[8] *Id.* at 172.

[9] *Id.* at 121.

[10] *Id.* at 173-177.

On April 14, 2008, Atty. Arroyo caused the annotation[11] of a Declaration of Trust[12] on TCT No. T-105742, declaring that he purchased the subject property as mere trustee of Rivulet and claims no interest thereon. Thereafter, Rivulet submitted to the DARMO an application for land use conversion[13] and notice of land use conversion application[14] which were forwarded to the DAR Provincial Office (DARPO) for review.[15] Meanwhile, the DARMO conducted a field investigation on the subject landholding and identified the potential farmworker-beneficiaries.[16] An updated list of agrarian reform beneficiaries[17] was subsequently posted.[18]

On June 20, 2008, the PARO sent a Notice of Land Valuation and Acquisition[19] to Rivulet, through Mr. Ignacio, informing it of the government's offer of ₱42,310,068.17 as compensation for a 131.6459-ha. portion of the subject property. The government also valued the hacienda roads and vacant portions of the same property covering 16.5760 has. at ₱691,192.68,[20] and the corresponding deposits[21] were made in Landbank in favor of Rivulet.

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[11] *Id.* at 23. Entry No. 470625.

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

[13] *Id.* at 178-190.

[14] *Id.* at 191.

[15] *Id.* at 122.

[16] *Id.* at 209-213.

[17] *Id.* at 214-215.

[18] *Id.* at 125.

[19] *Id.* at 227.

[20] *Id.* at 230.

[21] *Id.* at 235-236. Certifications of Deposit dated July 8, 2008 and August 5, 2008.

Rivulet filed administrative protests[22] against the actions of the DAR and the Landbank which culminated in the Order[23] of the DAR Secretary dated December 8, 2010 in **Adm. Case No. A-9999-06-MS-046-10** upholding the coverage of the subject landholding under the CARP against Rivulet's claim that the CARP had already expired, and that it was denied due process.

Meantime, the PARO requested[24] the Register of Deeds of Negros Occidental to issue title in the name of the Republic of the Philippines (*Republic*). However, the request was not processed because the Certifications of Deposit (CODs) were in the name of Rivulet while the title carried an annotation of Declaration of Trust in favor of Atty. Arroyo, hence, the need to correct the CODs.[25] The PARO, however, reiterated her request[26] attaching therewith a copy of the Declaration of Trust executed by Atty. Arroyo.

For its part, Rivulet demanded the Register of Deeds not to cancel TCT No. T-105742 in its name[27] and not to issue any certificates of land ownership award (CLOAs)[28] in connection with the government's impending confiscation of Hacienda Bacan. No action or reply having been received, Rivulet filed before the Regional Trial Court (RTC) of La Carlota City, Negros Occidental, Branch 63 a petition[29] for injunction with application for preliminary injunction and/or TRO seeking to enjoin the Register of Deeds of Negros Occidental and the Administrator of the Land Registration Authority (LRA

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[22] Letter dated November 21, 2008 (*rollo*, G.R. No. 193585, pp. 115-119) and DARAB Case No. R-0605-6029-08 (*id.* at 321-332) which were subsequently consolidated into Adm. Case Nos. A-0600-0146-09 and A-0600-0147-09.

[23] *Rollo* (G.R. No. 193585) at 737-752.

[24] *Rollo* (G.R. No. 197507), p. 237.

[25] *Id.* at 238.

[26] *Id.* at 239.

[27] *Rollo* (G.R. No. 193585), p. 154. Letter dated November 24, 2008.

[28] *Id.* at 226. Letter dated November 28, 2008.

[29] *Rollo* (G.R. No. 197507), pp. 24-37.

Administrator) from canceling TCT No. T-105742 in Rivulet's name; issuing a new certificate of title in the name of the *Republic;* and issuing and distributing CLOAs in favor of anyone during the pendency of the case (docketed as Civil Case No. 1148). However, the same was eventually dismissed in the Orders dated November 26, 2009[30] and June 29, 2010[31] for lack of jurisdiction. Considering the passage of R.A. No. 9700,[32] the RTC deferred to the primary jurisdiction of the DAR in the implementation of the CARP and acknowledged that its jurisdiction over agricultural lands is confined to the determination of just compensation and the prosecution of criminal offenses under Section 57 of R.A. No. 6657, as amended, which was fortified by Section 50-A inserted by R.A. No. 9700. On October 27, 2010, Rivulet filed a petition for review on *certiorari* before the Court arguing that R.A. No. 9700 did not divest the RTC of its jurisdiction over the controversy and that it has sufficiently established its entitlement to the injunctive relief sought. The case was docketed as G.R. No. 193585.

On October 26, 2010, Rivulet's TCT No. T-105742 was canceled and TCT No. T-281475[33] was issued in the name of the *Republic*. CLOA No. 00916859[34] over a portion of the subject property was likewise issued and subsequently approved by authority of *then* President Gloria Macapagal-Arroyo.

On December 15, 2010, the Court issued a TRO[35] in G.R. No. 193585 **enjoining** the Register of Deeds of Negros Occidental

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[30] *Rollo* (G.R. No. 193585), pp. 50-55.

[31] *Id.* at 56-61.

[32] 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.

[33] *Rollo* (G.R. No. 197507), pp. 314-317.

[34] *Id.* at 318.

[35] *Supra* note 1.

and the LRA Administrator and/or all persons acting upon their orders or in their place and stead from canceling TCT No. T-105742 in Rivulet's name; issuing a new certificate of title in the name of the *Republic*; and issuing and distributing CLOAs in favor of anyone during the pendency of the case.

Incidentally, Rivulet refiled its application for land use conversion on June 15, 2010 which, however, was denied by the DAR Secretary in DARCO Order No. Case-10-02789, series of 2010[36] dated December 1, 2010 on the grounds that the subject land had already been placed under CARP coverage nine (9) years prior to the application for land use conversion and that it remained economically feasible and sound for agricultural purposes.

On March 9, 2011, respondent Undersecretary Paruñgao sought advice from the Office of the Solicitor General (OSG) on the possibility of installing farmer beneficiaries in the subject property despite the TRO, citing that the acts sought to be enjoined had already been performed prior to its issuance and that the DAR was not among those enjoined.[37] Respondent Undersecretary Nieto likewise sought clarification from Undersecretary Paruñgao on the same matter.[38]

In a letter[39] dated April 5, 2011, the OSG advised Undersecretary Paruñgao that there appears no legal obstacle to the installation of farmer-beneficiaries in Hacienda Bacan. It opined that the TRO was directed only against the Register of Deeds of Negros Occidental and the LRA Administrator and that the installation of farmer-beneficiaries was not among the acts enjoined. Moreover, the CARP Law directs the DAR to proceed with the distribution of the acquired land to the farmer-beneficiaries upon the issuance of CLOAs in their favor.

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[36] *Rollo* (G.R. No. 193585), pp. 753-762.

[37] *Rollo* (G.R. No. 197507), p. 319.

[38] *Id.* at 320.

[39] *Id.* at 321-325.

Accordingly, the farmer-beneficiaries were installed in the subject landholding with the assistance of the members of the PNP.[40]

The Petition

In the instant petition, Rivulet claims that the act of respondents in installing farmer-beneficiaries in the subject landholding constitutes an open defiance and disobedience of the Court's December 15, 2010 TRO for which they should be cited for indirect contempt of court.

In their Comment,[41] respondents denied having committed any contumacious act based on the following justifications: *a*) they were not among the government officials enjoined by the subject TRO; *b*) the subject act was not included in the acts enjoined; and *c*) the acts sought to be enjoined had already been consummated prior to its issuance. They further averred that their act was in accordance with Section 24 of R.A. No. 6657, as amended by R.A. No. 9700 and Item No. IV(G)(1)[42] of DAR Administrative Order No. 2, Series of 2009.[43]

On July 30, 2012, the Court issued a Resolution[44] in G.R. No. 193585 dismissing the petition for review on *certiorari* filed by Rivulet against the Register of Deeds of Negros Occidental

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[40] *Id.* at 135.

[41] *Id.* at 116-152.

[42] G. *Installation of Agrarian Reform Beneficiaries on Awarded Lands*

1. As owners of awarded lands under CARP, the ARB/s shall take possession of the land covered by his/her/their titles from the time the same is awarded to them through a registered CLOA.

2. In case taking possession of the awarded land by the ARBs would imperil or endanger their lives, the DAR shall assume responsibility for the installation of the ARB/s on the subject land with the assistance of the police or military until they are settled and in constructive and physical control of the property.

[43] Rules and Procedures Governing the Acquisition and Distribution of Agricultural Lands Under Republic Act (R.A.) No. 6657, as Amended by R.A. No. 9700.

[44] *Rollo* (G.R. No. 193585), pp. 844-846.

and the LRA Administrator. It emphasized that the issuance of title in the name of the *Republic* is a ministerial duty on the part of the Register of Deeds after full payment of the compensation for the subject land in cash and in bond had been deposited in the landowner's name. Moreover, such duty cannot be enjoined except by the Court pursuant to Section 55[45] of R.A. No. 6657, as amended by R.A. No. 9700.

The Court's Ruling

The petition lacks merit.

Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity, and signifies not only a willful disregard of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court. Thus, a person cannot be punished for contempt for disobedience of an order of the Court, unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.[46]

In the present case, while the DAR was an intervenor in G.R. No. 193585, the December 15, 2010 TRO issued by the Court was only expressly directed against the LRA Administrator, the Register of Deeds of Negros Occidental and/or all persons

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[45] SEC. 55. *No Restraining Order or Preliminary Injunction.* — Except for the Supreme Court, no court in the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the PARC, the DAR, or any of its duly authorized or designated agencies in any case, dispute or controversy arising from, necessary to, or in connection with the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform.

[46] *Bank of the Philippine Islands v. Calanza*, G.R. No. 180699, October 13, 2010, 633 SCRA 186, 192-193, 195; *Lu Ym v. Mahinay*, G.R. No. 169476, June 16, 2006, 491 SCRA 253, 261-264.

acting upon their order or in their place and stead, and specifically for the following acts: "(a) from canceling Transfer Certificate of Title No. 105742 issued in favor of petitioner RIVULET Agro-Industrial Corporation; (b) from issuing a new certificate of title in the name of the Republic of the Philippines; (c) from issuing Certificate of Land Ownership Award in favor of anyone covering Hacienda Bacan, a 157.2992-hectare property situated in the Municipality of Isabela, Province of Negros Occidental; and (d) distributing such Certificate of Land Ownership Award that it may have heretofore issued pending trial on the merits."[47] Clearly, the DAR and its officials were not among those enjoined. Neither can they be considered agents of the LRA Administrator and the Register of Deeds of Negros Occidental. Moreover, the installation of farmer-beneficiaries was not among the acts specifically restrained, negating the claim that the performance thereof was a contumacious act.

It bears to stress that in G.R. No. 193585, the Court had already ruled that the issuance of title in the name of the *Republic* was a necessary part of the implementation of the government's Comprehensive Agrarian Reform Program. As such, it is the ministerial duty of the Register of Deeds to register the land in the name of the *Republic* after full payment has been made[48] and no injunctive relief can be issued, except by the Court, pursuant to Section 55[49] of R.A. No. 6657, as amended by R.A.

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[47] *Rollo* (G.R. No. 197507), p. 92.

[48] The second paragraph of Section 24 of Republic Act (R.A.) No. 6657, as amended by R.A. No. 9700, pertinently provides:

It is the ministerial duty of the Registry of Deeds to register the title of the land in the name of the Republic of the Philippines, after the Land Bank of the Philippines (LBP) has certified that the necessary deposit in the name of the landowner constituting full payment in cash or in bond with due notice to the landowner and the registration of the certificate of land ownership award issued to the beneficiaries, and to cancel previous titles pertaining thereto.

[49] SEC. 55. *No Restraining Order or Preliminary Injunction.* — Except for the Supreme Court, no court in the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the PARC, the DAR, or any of its duly authorized or designated agencies in

No. 9700. While the Court issued a TRO, records reveal that the acts sought to be enjoined had already been accomplished prior to its issuance, rendering the same of no practical purpose. Besides, the installation of farmer-beneficiaries on Hacienda Bacan was undertaken only after respondent Undersecretaries had sought the legal support and clearance of the OSG, notwithstanding that the first paragraph of Section 24[50] of R.A. No. 6657 as amended by R.A. No. 9700 provides that the award to beneficiaries, including their receipt of a duly registered emancipation patent or CLOA and their actual physical possession of the awarded land, shall be completed not more than one hundred eighty (180) days from the date of registration of the title in the name of the *Republic*.

Time and again, the Court has stressed that the power to punish for contempt should be exercised on the preservative, not on the vindictive principle, and only when necessary in the interest of justice.[51] Under the foregoing circumstances, the Court finds no contumacious disobedience on the part of respondents, particularly with respect to the TRO in G.R. No. 193585.

WHEREFORE, the petition to cite respondents for indirect contempt is hereby **DISMISSED.**

SO ORDERED.

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

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any case, dispute or controversy arising from, necessary to, or in connection with the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform.

[50] SEC. 24. *Award to Beneficiaries*. — The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land. Such award shall be completed in not more than one hundred eighty (180) days from the date of registration of the title in the name of the Republic of the Philippines.

[51] *Bank of the Philippine Islands v. Calanza*, *supra* note 46, at 193.

EN BANC

[A.M. OCA IPI No. 10-25-SB-J. January 15, 2013]

RE: COMPLAINT OF LEONARDO A. VELASCO AGAINST Associate Justices Francisco H. Villaruz, Jr., Alex L. Quiroz, and Samuel R. Martires OF THE SANDIGANBAYAN.

SYLLABUS

1. JUDICIAL ETHICS; JUSTICES; MISCONDUCT, DEFINED AND EXPLAINED.—"Misconduct means intentional wrongdoing or deliberate violation of a rule of law or a standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule must be established."

2. ID.; ID.; ID.; GRAVE MISCONDUCT, NOT A CASE OF.— In this case, the actions of the Sandiganbayan Justices respecting the execution of the final judgment against accused Velasco were shown to be in respectful deference to the Court's action on the various petitions filed by the former, who apparently exhausted what he perceived were valid available remedies under the law. Records are bereft of evidence showing any trace of corruption, clear intent to violate the law or flagrant disregard of the rules as to hold them administratively liable for grave misconduct.

3. ID.; ID.; ID.; FAILURE OF THE SANDIGANBAYAN JUSTICES TO IMMEDIATELY EXECUTE A FINAL JUDGMENT AMOUNTS TO LAPSE IN JUDGMENT; JUDICIAL COURTESY CANNOT BE INVOKED.— [T]he becoming modesty that the Sandiganbayan Justices have exhibited in this case cannot detract from the fact that the judgment of conviction of accused Velasco should have been immediately executed, absent any restraining order from the Court, in violation of the Court's directive in A.M. Circular

> No. 07-7-12-SC[.]x x x Thus, judicial courtesy may no longer be invoked by the Sandiganbayan Justices in the execution of the final judgment against accused Velasco. This lapse in judgment on the part of the Sandiganbayan Justices deserves admonition.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an administrative complaint filed by Leonardo A. Velasco against the respondents, Honorable Associate Justices Francisco H. Villaruz, Jr. (Justice Villaruz, Jr.), Alex L. Quiroz (Justice Quiroz), and Samuel R. Martires (Justice Martires) of the Third Division of the Sandiganbayan for grave misconduct and violation of the Code of Judicial Conduct.

The Facts

On December 10, 2008, the Third Division of the Sandiganbayan, then composed of respondent Justice Villaruz, Jr. as Chairman and Associate Justices Efren N. Dela Cruz and Norberto Y. Geraldez as Members, rendered a Decision[1] convicting accused Pacifico C. Velasco[2] (accused Velasco) in Criminal Case No. 27564 for violation of Section 3(e) of Republic Act (RA) No. 3019.[3] The *fallo* of the Decision reads:

> WHEREFORE, this court finds MAYOR PACIFICO C. VELASCO **GUILTY**, beyond reasonable doubt, for violation of Section 3 (e) of R.A. 3019, and is hereby sentenced to suffer the penalty of:
>
> (I.) Imprisonment of, after applying the Indeterminate Sentence Law, six (6) years and one (1) month as minimum, up to eight (8) years, as maximum; and,

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[1] *Rollo,* pp. 47-56.

[2] Former Municipal Mayor of Bacarra, Ilocos Norte.

[3] Otherwise known as the Anti-Graft and Corrupt Practices Act.

(II.) Perpetual Disqualification from Public Office.

SO ORDERED.

Accused Velasco sought its reconsideration, which the Sandiganbayan denied in its March 13, 2009 Resolution.[4] He, then, elevated the case before the Court *via* a petition for review on *certiorari*, docketed as G.R. No. 187277, which was denied in a minute resolution[5] dated June 3, 2009. His motion for reconsideration was also denied in the Resolution dated August 17, 2009 which further contained a directive that no further pleadings shall be entertained and that entry of judgment be made in due course.

Subsequently, accused Velasco filed a motion for leave to file and to admit a second motion for reconsideration of the Court's June 3, 2009 Resolution, which the Court merely noted without action in its January 11, 2010 Resolution.[6] The Court's June 3, 2009 Resolution became final and executory on September 25, 2009.[7]

Notwithstanding, however, the finality of accused Velasco's conviction, the execution of his sentence did not immediately take place due to the numerous motions and pleadings he subsequently filed.

On May 26, 2010,[8] in the hearing for the execution of accused Velasco's sentence before the Sandiganbayan, his counsel manifested that he was confined at the San Juan De Dios Hospital in Pasay City and was due for surgery. The hearing was reset to June 9, 2010 upon agreement of the parties, with a directive to accused Velasco's attending physician to submit a medical bulletin relative to his physical fitness. Nonetheless, a warrant

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[4] *Rollo*, pp. 57-59.

[5] *Id.* at 60.

[6] *Id.* at 61-62.

[7] *Id.* at 63.

[8] *Id.* at 64.

of arrest was issued, but as agreed by the parties, accused Velasco shall remain in the hospital until further order by the Sandiganbayan. By this time, the Third Division of the Sandiganbayan was already composed of respondents Justice Villaruz, Jr., Justice Quiroz and Justice Martires (Sandiganbayan Justices).

Thereafter or on June 9, 2010, accused Velasco filed an Urgent Motion to Recall Warrant of Arrest,[9] invoking humanitarian consideration, having allegedly just undergone a rigid and serious surgical operation. However, the Sandiganbayan Justices, on June 17, 2010, instead issued an Order of Arrest[10] which they eventually recalled[11] on June 25, 2010, conditioned on the posting of a bail bond in the amount of ₱30,000.00.

On September 30, 2010, the Sandiganbayan Justices set aside[12] their earlier order *recalling* the warrant of arrest and issued anew an Order of Arrest[13] for failure of accused Velasco to attend the hearing of even date.

Subsequently, or on November 15, 2010, accused Velasco filed a Motion to Defer Promulgation of Sentence, to Suspend Proceedings and/or Recall Warrant of Arrest[14] claiming, once again, that he had just undergone a major operation necessitating hospitalization and post-operation treatment. He also averred that he had filed, on even date, a petition for *certiorari*, prohibition and *mandamus* before the Court, docketed as G.R. No. 194263, to restrain the execution of judgment, and prayed that his motion be granted pending action on his petition.

On January 17, 2011, during the rescheduled hearing for the execution of the judgment, the Sandiganbayan Justices ordered[15]

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[9] *Id.* at 70-72.

[10] *Id.* at 65.

[11] *Id.*

[12] *Id.* at 68.

[13] *Id.* at 69.

[14] *Id.* at 73-75.

[15] *Id.* at 77.

the issuance of a warrant of arrest for failure of accused Velasco to appear despite due notice and the forfeiture of his cash bond.

On March 9, 2011, the Court dismissed the petition filed by accused Velasco in G.R. No. 194263[16] and on March 30, 2011, noted without action his second supplement to petition and urgent motion to resolve his petition for *certiorari*.[17] Accused Velasco filed a motion for reconsideration and the prosecution was given until February 6, 2012 to file its comment.[18]

Meanwhile, in another hearing before the Sandiganbayan Justices on January 18, 2012, accused Velasco was directed to post a new cash bail bond in the amount of ₱70,000.00 on the verbal motion of his counsel, and the hearing was reset once more to March 19, 2012.[19]

Hence, the instant administrative complaint[20] for grave misconduct and violation of the Code of Judicial Conduct filed by Leonardo A. Velasco (complainant Velasco) against the Sandiganbayan Justices. In his verified complaint, complainant Velasco asserts that, the conviction of accused Velasco having attained finality on September 25, 2009, the Sandiganbayan Justices should have merely performed the ministerial duty of executing his final sentence of conviction and not entertained his motions or pleadings that forestalled its execution. In doing so, they have shown evident partiality, bias and impropriety in favor of accused Velasco.

In their Comment,[21] the Sandiganbayan Justices claimed that the repeated resetting of the hearings for the execution of judgment against accused Velasco was mainly due to medical reasons and the pendency of incidents before the Court. Vehemently

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[16] *Id.* at 89.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 39-46.

[21] *Id.* at 113-123.

denying that their questioned orders were issued to unduly favor accused Velasco, they insisted that these were prompted by circumstances which were not at their instance and that the instant complaint consists of unfounded allegations and suspicions of partiality. They also argued that since accused Velasco had already been committed to the national penitentiary on May 10, 2012, this case is now moot and academic and therefore, should be dismissed.

Issue Before The Court

The sole issue to be determined by the Court is whether the respondent Sandiganbayan Justices may be held administratively liable for their actions which unduly delayed the execution of the final sentence of conviction of accused Velasco.

The Court's Ruling

After a judicious review of the records, the Court finds no grave misconduct or violation of a specific provision of the Code of Judicial Conduct to have been committed by the Sandiganbayan Justices.

"Misconduct means intentional wrongdoing or deliberate violation of a rule of law or a standard of behavior.[22] To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions of a public officer.[23] In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule must be established."[24]

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[22] *Salazar v. Barriga*, A.M. No. P-05-2016, April 19, 2007, 521 SCRA 449, 453.

[23] *Civil Service Commission v. Belagan*, 483 Phil. 601, 623 (2004).

[24] *Narvasa v. Sanchez, Jr.*, G.R. No. 169449, March 26, 2010,616 SCRA 586, 591, citing *Civil Service Commission v. Lucas*, 361 Phil. 486, 490-491 (1999).

In this case, the actions of the Sandiganbayan Justices respecting the execution of the final judgment against accused Velasco were shown to be in respectful deference to the Court's action on the various petitions filed by the former, who apparently exhausted what he perceived were valid available remedies under the law. Records are bereft of evidence showing any trace of corruption, clear intent to violate the law or flagrant disregard of the rules as to hold them administratively liable for grave misconduct.

However, the becoming modesty that the Sandiganbayan Justices have exhibited in this case cannot detract from the fact that the judgment of conviction of accused Velasco should have been immediately executed, absent any restraining order from the Court, in violation of the Court's directive in A.M. Circular No. 07-7-12-SC,[25] adopting amendments to Rule 65 of the Rules of Court, *inter alia*. Thus, Section 7 of Rule 65 now states:

> SEC. 7. *Expediting proceedings; injunctive relief.* — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.
>
> The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for certiorari with a higher court or tribunal, *absent a temporary restraining order or a preliminary injunction*, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge. (Emphasis supplied)

Thus, judicial courtesy may no longer be invoked by the Sandiganbayan Justices in the execution of the final judgment against accused Velasco. This lapse in judgment on the part of the Sandiganbayan Justices deserves admonition.

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[25] Amendments to Rules 41, 45, 58 and 65 of the Rules of Court (2007).

WHEREFORE, Honorable Associate Justices Francisco H. Villaruz, Jr., Alex L. Quiroz, and Samuel R. Martires of the Third Division of the Sandiganbayan are hereby **ADMONISHED** to be more circumspect and prudent in observing the proper rules and procedures for the execution of judgments of conviction in the absence of restraining orders or injunctive writs from the Court. They are **STERNLY WARNED** that repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be attached to respondents Justices' records with this Court.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Leonen, JJ.,* concur.

Leonardo-de Castro, J., no part as the two respondents are former colleagues in the Sandiganbayan.

Peralta, J., no part previously inhibited in the main case in the Sandiganbayan.

Brion, J., on leave.

EN BANC

[A.M. OCA IPI No. 12-202-CA-J. January 15, 2013]

RE: VERIFIED COMPLAINT OF AMA LAND, INC. AGAINST HON. DANTON Q. BUESER, HON. SESINANDO E. VILLON and HON. RICARDO R. ROSARIO, ASSOCIATE JUSTICES OF THE COURT OF APPEALS.

SYLLABUS

JUDICIAL ETHICS; JUSTICES; KNOWINGLY RENDERING UNJUST JUDGMENT AND OTHER MISCONDUCT, NOT PROVEN.— In this case, AMALI had already filed a petition for review on *certiorari* challenging the questioned order of the respondent CA Justices, which is still pending final action by the Court. Consequently, a decision on the validity of the proceedings and propriety of the orders of the respondent CA Justices in this administrative proceeding would be premature. Besides, even if the subject decision or portions thereof turn out to be erroneous, administrative liability will only attach upon proof that the actions of the respondent CA Justices were motivated by bad faith, dishonesty or hatred, or attended by fraud or corruption, which were not sufficiently shown to exist in this case. Neither was bias as well as partiality established. Acts or conduct of the judge clearly indicative of arbitrariness or prejudice must be clearly shown before he can be branded the stigma of being biased and partial. In the same vein, bad faith or malice cannot be inferred simply because the judgment or order is adverse to a party. Here, other than AMALI's bare and self-serving claim that respondent CA Justices "conspired with WWRAI's counsel in knowingly and in bad faith rendering an unjust judgment and in committing x x x other misconduct," no act clearly indicative of bias and partiality was alleged except for the claim that respondent CA Justices misapplied the law and jurisprudence. Thus, the presumption that the respondent judge has regularly performed his duties shall prevail. Moreover, the matters raised are best addressed to the evaluation of the Court in the resolution of AMALI's petition for review on *certiorari*.

D E C I S I O N

PERLAS-BERNABE, *J.*:

On October 2, 2012, AMA Land, Inc. (AMALI) filed an administrative complaint before the Office of the Court Administrator (OCA), charging respondent Honorable Court of Appeals (CA) Associate Justices Danton Q. Bueser, Sesinando

E. Villon, and Ricardo R. Rosario (respondent CA Justices) with the following violations: (a) Section 8, Rule 140 of the Rules of Court, specifically for dishonesty and violation of the Anti-Graft and Corrupt Practices Law (Republic Act No. 3019), gross misconduct constituting violations of the Code of Judicial Conduct, and knowingly rendering an unjust judgment or order; and (b) pertinent provisions of the Code of Judicial Conduct[1] and Canons of Judicial Ethics, for issuing the Decision[2] dated June 14, 2012 in CA-G.R. SP No. 118994 filed by Wack Wack Residents Association, Inc. (WWRAI) enjoining AMALI from continuing with its project construction pending the determination of its petition for declaration of right of way against WWRAI before the Regional Trial Court of Pasig City, Branch 264 (RTC-Pasig).

The Facts

The controversy started in the mid-1990s when AMALI commence the construction of a 37-floor commercial/residential building located at Epifanio Delos Santos Avenue (EDSA) corner Fordham Street, Wack Wack Village, Mandaluyong City. After securing the required licenses and permits, AMALI notified WWRAI, the owner of Fordham Street, of its intention to use the said street as an access road and staging area of the project. Not having received any response, AMALI proceeded to temporarily enclose the job site and set up a field office along Fordham Street. However, WWRAI fenced off the said street which prompted AMALI to file before the RTC-Pasig a petition[3] to enforce an easement of right of way pursuant to Article 649 in relation to Article 656 of the Civil Code. AMALI also prayed for a temporary restraining order (TRO) and a writ of preliminary mandatory injunction to enjoin WWRAI from demolishing and removing its temporary field office, fencing off Fordham Street, and preventing its access to the construction site.

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[1] *Rollo*, p. 3. Namely: Canon 1, Section 1; Canon 2, Sections 1 and 2; Canon 3, Section 1; and Canon 6, Section 3.

[2] *Id.* at 65-79.

[3] *Id.* at 138-142. Docketed as Civil Case No. 65668.

In its Answer,[4] WWRAI averred that AMALI's project violated applicable zoning ordinances; the licenses and permits secured therefor were irregular and unlawful; the project is a nuisance; and EDSA should instead be utilized as the staging area of the project. Apart from praying for the dismissal of the complaint, WWRAI interposed a *counterclaim* for actual and exemplary damages, attorney's fees and costs of suit, and prayed for a TRO and writ of preliminary mandatory injunction for AMALI to immediately cease and desist with its project construction.

After hearing AMALI's application for injunctive relief, the RTC-Pasig, in its Order[5] dated July 24, 1997, granted AMALI's prayer and directed WWRAI to allow the use of Fordham Street as a temporary easement of right of way. Apparently, WWRAI's application for TRO and/or writ of preliminary injunction in its *counterclaim* was not heard.

In 1998, however, AMALI suffered financial setbacks, forcing the suspension of its project construction. In 2002, it filed before the RTC of Muntinlupa, Branch 256 (RTC-Muntinlupa) a petition for corporate rehabilitation, which was later approved. Among the recommendations contained in the approved rehabilitation plan was the conversion of the use of the 37-floor commercial/residential tower (AMA Tower) to a 34-floor residential condominium. AMALI thus, prayed that the City of Mandaluyong be ordered to issue an amended building permit.[6]

In a bid to stop AMALI from continuing with its project construction, WWRAI sought from the RTC-Pasig in January 2010, the hearing of its application for TRO and/or writ of preliminary mandatory injunction prayed for in its *counterclaim*. After due proceedings, the court denied the application in the Order[7] dated October 28, 2010, and directed the building officials of Mandaluyong City to act on AMALI's application for permit

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[4] *Id.* at 155-172.

[5] *Id.* at 181-188. Penned by Judge Leoncio M. Janolo, Jr.

[6] *Id.* at 189.

[7] *Id.* at 125-135. Mentioned in the Order dated November 24, 2009. Penned by Acting Presiding Judge Romulo SG. Villanueva.

to construct. The concerned officials, however, denied AMALI's application for an amended building permit on November 5, 2010 due to the expiration of the previously issued building permit, non-compliance with the prescribed height and open space limitations, and failure to submit the required new locational and barangay clearance. Notwithstanding, the RTC-Pasig refused to reconsider[8] the denial of WWRAI's application for injunction.

On the other hand, the RTC-Muntinlupa, where AMALI's petition for corporate rehabilitation was pending, directed the Office of the Building Official and/or Office of the City Engineer of Mandaluyong City, in the Orders dated September 9, 2010 and November 12, 2010,[9] to issue an amended building permit. Thus, Building Permit No. 08-2011-0048[10] was issued on February 4, 2011. But even with such issuance, the Building Official and/or Mandaluyong City Engineer filed a petition for *certiorari* before the CA (docketed as CA-G.R. SP No. 117037) assailing the above Orders which, however, was denied in the Decision[11] dated June 28, 2012.

Meanwhile, WWRAI assailed the Orders of the RTC-Pasig denying its application for injunction through a petition for *certiorari*[12] before the CA. The case (docketed as CA-G.R. SP No. 118994) was raffled to the Special Former Tenth Division composed of the respondent CA Justices. WWRAI also filed a separate complaint (docketed as NBCDO Case No. 12-11-93 MAND CITY) before the Department of Public Works and Highways seeking the revocation of the amended building permit as well as the imposition of administrative sanctions against the issuing officials which, however, was denied.[13]

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[8] *Id.* at 73. Mentioned in the CA Decision dated June 14, 2012.

[9] *Id.* at 191-192.

[10] *Id.* at 193-194.

[11] *Id.* at 418-448. Penned by Associate Justice Francisco P. Acosta, with Justices Noel G. Tijam and Marlene Gonzales-Sison, concurring, and Associate Justices Antonio L. Villamor and Edwin D. Sorongon, dissenting.

[12] *Id.* at 80-122.

[13] *Id.* at 407-414. Resolution dated March 29, 2012.

On June 10, 2011, the CA granted WWRAI's application for TRO[14] and subsequently, its application for writ of preliminary injunction[15] pending resolution of the petition. On the other hand, AMALI, in its Comment,[16] prayed for the dismissal of the complaint for lack of merit and on the ground of forum shopping.

On June 14, 2012, the CA rendered a Decision[17] granting WWRAI's petition and directing the RTC-Pasig to issue the injunctive writ in favor of WWRAI pending determination of the petition for the declaration of permanent easement of right of way filed by AMALI.

The Issue

In the instant administrative complaint, AMALI questions, among others, the jurisdiction of the respondent CA Justices to act on WWRAI's petition assailing the denial of its application for injunctive relief to stop AMALI from proceeding with its project construction, claiming this issue as irrelevant to the principal action to enforce an easement of right of way pending before the RTC-Pasig. It also raises the non-payment by WWRAI of the docket fees on its *counterclaim* and the forum shopping the latter committed in filing various suits before different fora on the same issue involving the legality of the project. In any event, AMALI asserts that the respondent CA Justices acted in bad faith and knowingly rendered an unjust judgment in granting WWRAI's petition, which effectively declared the project construction illegal and granted the latter's *counterclaim* before the RTC-Pasig could have finally disposed of the case.

In their Comment,[18] the respondent CA Justices pray for the outright dismissal of the instant administrative complaint in view of the pendency of AMALI's petition for review on *certiorari*

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[14] *Id.* at 197-199. Resolution dated June 10, 2011.

[15] *Id.* at 233-236. Resolution dated July 28, 2011.

[16] *Id.* at 237-272.

[17] *Supra* note 2.

[18] *Id.* at 470-505.

before the Court based on substantially the same grounds raised herein. They likewise averred that the purported lack of jurisdiction was never raised in the proceedings before the RTC, the CA or in their petition for review on *certiorari* before the Court, but only in this administrative complaint. Finally, they denied having rendered an unjust decision citing the failure of AMALI to show that the assailed judgment is contrary to law or unsupported by evidence or that it was rendered with bad faith, malice, greed, ill-will or corruption.

The Court's Ruling

The Court finds no merit in the complaint.

A perusal of the records of the case as well as the parties' respective allegations disclosed that the acts complained of relate to the validity of the proceedings before the respondent CA Justices and the propriety of their orders in CA-G.R. SP No. 118994 which were done in the exercise of their judicial functions. Jurisprudence is replete with cases holding that errors, if any, committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through available judicial remedies.[19] Disciplinary proceedings against judges do not complement, supplement or substitute judicial remedies and, thus, cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by their erroneous orders or judgments.[20]

In *Equitable PCI Bank, Inc. v. Laviña*,[21] we ruled that resort to and exhaustion of judicial remedies and a final ruling on the matter, are prerequisites for the taking of appropriate measures against the judges concerned, whether of criminal, civil or administrative nature. If the assailed act is subsequently found

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[19] *Maylas, Jr. v. Sese*, 529 Phil. 594, 597 (2006); *Bautista v. Abdulwahid*, A.M. OCA IPI No. 06-97-CA-J, May 2, 2006, 488 SCRA 428, 434.

[20] *Monticalbo v. Maraya, Jr.*, A.M. No. RTJ-09-2197, April 13, 2011, 648 SCRA 573, 583, citing *Flores v. Abesamis*, 341 Phil. 299, 313 (1997).

[21] 530 Phil. 441, 452, 453 (2006).

and declared to be correct, there would be no occasion to proceed against him at all.

In this case, AMALI had already filed a petition for review on *certiorari*[22] challenging the questioned order of the respondent CA Justices, which is still pending final action by the Court. Consequently, a decision on the validity of the proceedings and propriety of the orders of the respondent CA Justices in this administrative proceeding would be premature.[23] Besides, even if the subject decision or portions thereof turn out to be erroneous, administrative liability will only attach upon proof that the actions of the respondent CA Justices were motivated by bad faith, dishonesty or hatred, or attended by fraud or corruption,[24] which were not sufficiently shown to exist in this case. Neither was bias as well as partiality established. Acts or conduct of the judge clearly indicative of arbitrariness or prejudice must be clearly shown before he can be branded the stigma of being biased and partial. In the same vein, bad faith or malice cannot be inferred simply because the judgment or order is adverse to a party.[25] Here, other than AMALI's bare and self-serving claim that respondent CA Justices "conspired with WWRAI's counsel in knowingly and in bad faith rendering an unjust judgment and in committing x x x other misconduct,"[26] no act clearly indicative of bias and partiality was alleged except for the claim that respondent CA Justices misapplied the law and jurisprudence. Thus, the presumption that the respondent judge has regularly performed his duties shall prevail. Moreover, the matters raised are best addressed to the evaluation of the Court in the resolution of AMALI's petition for review on *certiorari*.

Finally, resort to administrative disciplinary action prior to the final resolution of the judicial issues involved constitutes

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[22] But without filing a motion for reconsideration before the CA.

[23] *Salcedo v. Caguioa*, 467 Phil. 20, 28 (2004).

[24] *Supra* note 20, at 577.

[25] *Supra* note 20, at 577-578.

[26] *Rollo*, p. 18.

an abuse of court processes that serves to disrupt rather than promote the orderly administration of justice and further clog the courts' dockets. Those who seek relief from the courts must not be allowed to ignore basic legal rules and abuse court processes in their efforts to vindicate their rights.[27]

WHEREFORE, the Court **DISMISSES** the administrative complaint against the Honorable Court of Appeals Associate Justices DANTON Q. BUESER, SESINANDO E. VILLON AND RICARDO R. ROSARIO for utter lack of merit; and **CAUTIONS** complainant AMA Land, Inc. against the filing of similar unfounded and baseless actions in the future, **WITH STERN WARNING** that a repetition thereof shall be dealt with more severely.

SO ORDERED.

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

Brion, J., on leave.

EN BANC

[A.M. No. P-12-3099. January 15, 2013]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **LARRIZA P. BACANI, Clerk of Court IV, Municipal Trial Court in Cities, Meycauayan, Bulacan,** *respondent.*

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[27] *Oliveros v. Sison,* A.M. No. RTJ-07-2050, October 29, 2008, 570 SCRA 148, 154.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; FUNCTIONS OF CLERKS OF COURT.— Clerks of court are the chief administrative officers of their respective courts. They perform a sensitive function as designated custodians of the court's funds, revenues, records, properties, and premises. Being the custodians of court funds and revenues, clerks of court have the duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody. SC Administrative Circular No. 3-2000 mandates that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines, the authorized government depository bank. SC Circular No. 50-95 further provides that "all collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within twenty-four (24) hours by the Clerk of court concerned, upon receipt thereof, with the Land Bank of the Philippines."

2. ID.; ID.; ID.; ID.; FAILURE TO DEPOSIT CASH COLLECTIONS ON TIME AND SHORTAGES IN THE REMITTANCES OF COLLECTIONS AMOUNT TO GROSS NEGLECT OF DUTY AND DISHONESTY; CIRCUMSTANCES SHOWING UNFITNESS TO THE POSITION, PRESENT.— Bacani's failure to deposit on time her cash collections and her shortages in the remittances of collections amount to gross neglect of duty and dishonesty. Furthermore, her delegation of responsibilities to Villafuerte does not detract from her responsibility as Clerk of Court. She is an accountable officer on whom trust of the highest order is reposed, being primarily in charge of the court's funds. As chief administrative officer, she is further charged with administrative supervision over court personnel as well as with the efficient recording, filing, and management of court records. Consequently, her frequent delegation of her tasks to Villafuerte, non-compliance with the SC Circulars, and poor court management, causing cash shortages and loss of deposit slips and official receipts, show that she can no longer fulfill the heavy demands of her position.

3. ID.; ID.; ID.; ID.; ID.; EXTREME PENALTY OF DISMISSAL, IMPOSED.— Under Section 52-A , Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty and gross neglect of duty amount to grave offenses punishable by dismissal even when committed for the first time. In *Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Paguio-Bacani*, Bacani was found guilty of dishonesty for falsifying her Daily Time Records and leaving the country without the requisite travel authority. In imposing the penalty of suspension from service for one (1) year without pay, with a warning that a repetition of the same or similar offense would be dealt with more severely[.] x x x Considering that the circumstances in Bacani's earlier case are no longer present in this case, we impose the extreme administrative penalty of dismissal on Bacani.

R E S O L U T I O N

PER CURIAM:

This administrative case stemmed from a financial audit of the books of accounts of the Municipal Trial Court in Cities of Meycauayan, Bulacan (MTCC Meycauayan) conducted by the audit team from the Office of the Court Administrator (OCA) on 16 January 2012. The audit covered the accountabilities of: (1) Clerk of Court IV Larriza P. Bacani[1] (Bacani) from September 1996 to August 2008, from April 2009 to October 2009, and from September 2010 to January 2012; and (2) Cashier I Veiner P. Villafuerte (Villafuerte) from September 2008 to March 2009 and from November 2009 to August 2010.

The audit sought to reconcile the books of accounts of Bacani, who was on frequent leave of absence due to travel abroad. During the audit, Villafuerte acted as Officer-in-Charge as Bacani was on leave from 13 to 16 January 2012 due to travel abroad.

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[1] In *Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Paguio-Bacani*, A.M. No. P-06-2217, 30 July 2009, 594 SCRA 242, Bacani was referred to as Larizza Paguio-Bacani.

Thereafter, the audit team submitted the following findings:[2]

(1) During the preliminary cash count, the total cash on hand was only ₱12,441.50 when it should have been ₱23,507.00. Thus, there was a cash shortage of ₱11,065.50. As the Officer-in-Charge at that time, Villafuerte was asked to explain in writing the cash shortage. On 16, 18 and 19 January 2012, Villafuerte made piece-meal restitutions totalling ₱23,507.00.

(2) Upon inventory of used and unused official receipts, two unused booklets of official receipts, with series numbers 6242001-6242050 and 8839451-8839500, were unaccounted.

(3) On the Fiduciary Fund (FF), the audit team found a shortage of ₱2,000.00 due to double withdrawal on 5 September 2001 and 21 November 2002 of the cash bond posted for Criminal Case No. 2000-775 under O.R. No. 9890088. Furthermore, a High Yield Savings Account (HYSA) existed containing FF collections, contrary to OCA Circular No. 23-2009.[3] Upon instruction from the audit team, Bacani closed the HYSA with an amount of ₱2,959,576.09 and transferred the same to the existing FF account on 2 February 2012.

(4) On the Sheriff's Trust Fund (STF), the audit team advised Bacani to withdraw the outstanding STF collections totalling ₱61,920.00 from the FF account and to open a new separate savings account for STF collections. On 8 February 2012, Bacani complied.

(5) On the Judiciary Development Fund (JDF), Bacani incurred a shortage of ₱425.00 upon audit for the periods: September to December 1996, October to November 2004, and February 2005.

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[2] Memorandum for Court Administrator Jose Midas P. Marquez dated 3 October 2012.

[3] "4. All existing time deposit and high-yielding savings accounts of the court for the fiduciary fund shall immediately be closed and only one savings account shall be maintained."

(6) On the General Fund (Old), Bacani erroneously deposited ₱8,947.00 to this account which amount pertains to the Special Allowances for the Judiciary Fund (SAJF). Upon accounting, a shortage of ₱6.00 was noted.

(7) On SAJF, Bacani incurred a final accountability of ₱1,385.20 due to the net result of her over deposit of ₱714.80 in November 2004 and under remittance of ₱2,100.00 in January and February 2005.

(8) On the Mediation Fund (MF), the audit team found a shortage of ₱5,000.00 due to lack of deposit slips as proofs of remittances for the months of November and December 2004. Because Bacani failed to produce the deposit slips, she opted to deposit the amount on 24 February 2012.

(9) The audit team further reported that the collections for the General Fund, JDF and SAJF were not deposited on time, causing a total of ₱5,161.73 unearned interest, to wit:

For the General Fund (Old):

Month/ Year	Number of days delayed	Amount	Unearned Interest
June 2002	67	3,811	42.56
July 2002	63	8,215	86.26
August 2002	174	7,184	208.34
September 2002	173	6,610	190.59
October 2002	113	3,216	60.57
November 2002	86	2,452	35.15
December 2002	58	3,276	31.67
January 2003	41	5,570	38.06
February 2003	70	5,150	60.08
March 2003	50	5,144	42.87
April 2003	75	3,836	47.95

May 2003	87	4,574	66.32
June 2003	73	5,768	70.18
July 2003	117	3,932	76.67
August 2003	150	5,093	127.33
September 2003	120	7,724	154.48
October 2003	174	1,498	43.44
November 2003	144	545	13.08
TOTAL		83,598	1,395.58

For the JDF:

Month/ Year	Number of days delayed	Amount	Unearned Interest
June 2002	67	37,079	414.05
July 2002	63	41,581	436.60
August 2002	174	32,601	945.43
September 2002	144	36,815	883.56
October 2002	113	23,314	439.08
TOTAL		171,390	3,118.72

For SAJF:

Month/ Year	Number of days delayed	Amount	Unearned Interest
January 2004	115	5,701	109.27
February 2004	121	6,265	126.34
March 2004	118	3,386	66.59
April 2004	90	1,682	25.23
May 2004	93	4,137	64.12
June 2004	63	2,773	29.12
July 2004	40	2,984	19.89
January 2005	136	9,126.40	206.87
TOTAL		36,054.40	647.43

(10) Finally, the audit team observed that (a) there was poor filing system; (b) the prescribed Legal Fees Form was not used; (c) only one Legal Fees Form was used for a number of cases; (d) there was no certification at the end of each month; and (e) the form "original signed" for court orders was being used when refunding cash bonds, when the order should be manually signed by the Judge.

In her letter dated 24 February 2012, Bacani explained that she did not notice the delays in deposits of collections due to her workload. She added that when she is on leave, she delegates her functions to Villafuerte who attends to voluminous transactions being the Officer-in-Charge and Cashier at the same time. On the shortages in collections, Bacani admitted her accountabilities. On 24 February 2012, she deposited the total amount of ₱8,816.20 for her shortages in the: (a) JDF of ₱425.00, (b) General Fund of ₱6.00, (c) SAJF of ₱1,385.20, (d) MF of ₱5,000.00, and (e) FF of ₱2,000.00.

On 27 February 2012, Villafuerte explained in his letter that during the preliminary cash count, the alleged ₱11,065.50 shortage was in a steel cabinet, although he could not find it upon demand by the audit team. Villafuerte claimed that thereafter on the same day, he found the money inserted and stapled in one of the folders inside the steel cabinet. He then deposited the total collections. He explained that his additional functions as Officer-in-Charge affected his functions as Cashier.

In a Memorandum dated 3 October 2012 addressed to the Office of the Chief Justice, the audit team made the following recommendations, which the OCA adopted:

(1) this report be **DOCKETED** as a regular administrative matter against **Ms. LARRIZA P. BACANI**, Clerk of Court IV, Municipal Trial Court in Cities, Meycauayan City, Bulacan, and she be **FINED** in the amount of **Five Thousand Pesos (₱5,000.00)** for failure to deposit her collections on time thereby depriving the government of the supposed interest that should have been earned from such collections;

(2) Ms. LARRIZA P. BACANI, Clerk of Court IV, Municipal Trial Court in Cities, Meycauayan City, Bulacan, be **DIRECTED** to:

(2.a) **PAY** and **DEPOSIT** to the **Judiciary Development Fund (JDF)** the total amount of Five Thousand One Hundred Sixty One Pesos and 73/100 **(₱5,161.73)**, representing the interest earned, computed using the legal rate of six percent (6%) interest per annum, for not remitting the collections of the following funds on time, to wit:

FUND	Total Delayed Deposit	Total Unearned Interest at 6% per annum
JDF	171,390.00	3,118.72
GF	83,598.00	1,395.58
SAJF	36,054.40	647.43
TOTAL	**291,042.40**	**5,161.73**

(2.b) **ACCOUNT** for the missing official receipts issued by the Court to the Municipal Trial Court in Cities, Meycauayan City, Bulacan, with series nos.

- 6242001-6242050
- 8839451-8839500

(2.c) **STERNLY WARNED** that a repetition of any of the infractions committed *[i.e. **(a)** not remitting the court's collections on time that deprived the Court of the interest that should have been earned if the collections were deposited on time and **(b)** for not orderly safekeeping and safeguarding of* (sic) *the court's files and records which resulted to the lost* (sic) *of some deposit slips and official receipts]* shall be dealt with **more severely**;

(3) **Mr. VEINER [P.] VILLAFUERTE**, Cashier I, Municipal Trial Court in Cities, Meycauayan City, Bulacan, be **STERNLY WARNED** that a repetition of not depositing the court's collections on time, shall be dealt with more severely;

(4) **Hon. CECILIA SANTOYO-TALAPIAN**, Executive Judge, Municipal Trial Court in Cities, Meycauayan City, Bulacan, be **DIRECTED** to strictly **MONITOR** the financial transactions of the court and be **REMINDED** that she shall be held equally liable for the infractions committed by employees under her supervision. (Emphasis in the original)

The Court finds the report of the OCA well-taken except as to the penalty.

Clerks of court are the chief administrative officers of their respective courts.[4] They perform a sensitive function as designated custodians of the court's funds, revenues, records, properties, and premises.[5] Being the custodians of court funds and revenues, clerks of court have the duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody.[6] SC Administrative Circular No. 3-2000 mandates that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines, the authorized government depository bank.[7] SC Circular No. 50-95 further provides that "all collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within twenty-four (24) hours by the Clerk of Court

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[4] *Office of the Court Administrator v. Elumbaring*, A.M. No. P-10-2765, 13 September 2011, 657 SCRA 453, 462.

[5] *Id.*

[6] *Office of the Court Administrator v. Cruz*, A.M. No. P-11-2988, 12 December 2011, 662 SCRA 8, 11, citing *Report on the Financial Audit on the Books of Accounts of Mr. Delfin T. Polido*, 518 Phil. 1 (2006).

[7] 3. Systems and Procedures. — x x x x

(c) In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. — The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila — SAVINGS ACCOUNT No. 0591-0116-34 or if depositing daily is not possible, deposits for the Fund shall be at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the period above-indicated.

concerned, upon receipt thereof, with the Land Bank of the Philippines." Their failure to faithfully perform their duties and responsibilities make them liable for any loss or shortage of such funds.[8]

Without a doubt, Bacani has been remiss in the performance of her duties as Clerk of Court of MTCC Meycauayan. She violated SC Administrative Circular No. 3-2000 and SC Circular No. 50-95 by not remitting the court's collections on time, thus, depriving the court of the interest that could have been earned if the collections were deposited on time. Furthermore, Bacani incurred shortages in her remittances although she restituted the amount.

In *Re: Report on the Financial Audit conducted in the Municipal Trial Court (MTC), Sta. Cruz, Davao del Sur*,[9] the Court held that the failure of accountable public officers to turn over on time cash deposited with them constitutes gross neglect of duty and gross dishonesty. These grave offenses are punishable with dismissal even for the first offense although it was not imposed in that case due to respondent's death.

In *Office of the Court Administrator v. Anacaya*,[10] the Court ruled that Anacaya's acts of incurring shortages in his remittances and of failing to deposit timely his judiciary collections constitute gross neglect of duty. No protestation of good faith can override the mandatory observance of court circulars which are aimed to promote full accountability of public funds.[11] Even restitution of the amount of the shortages does not exempt respondent from the consequences of his wrongdoing.[12]

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[8] *Office of the Court Administrator v. Elumbaring, supra* note 4, citing *Office of the Court Administrator v. Caballero*, A.M. No. P-05-2064, 2 March 2010, 614 SCRA 21.

[9] A.M. No. 05-2-41-MTC, 508 Phil. 143 (2005).

[10] A.M. No. P-11-2956, 8 February 2012. (Unsigned Resolution)

[11] *Id.*, citing *Office of the Court Administrator v. Cuachon*, A.M. No. P-06-2179, 12 January 2011, 639 SCRA 278.

[12] *Id.*; *Office of the Court Administrator v. Caballero, supra* note 8.

In the present case, Bacani's failure to deposit on time her cash collections and her shortages in the remittances of collections amount to gross neglect of duty and dishonesty. Furthermore, her delegation of responsibilities to Villafuerte does not detract from her responsibility as Clerk of Court. She is an accountable officer on whom trust of the highest order is reposed, being primarily in charge of the court's funds.[13] As chief administrative officer, she is further charged with administrative supervision over court personnel as well as with the efficient recording, filing, and management of court records.[14] Consequently, her frequent delegation of her tasks to Villafuerte, non-compliance with the SC Circulars, and poor court management, causing cash shortages and loss of deposit slips and official receipts, show that she can no longer fulfill the heavy demands of her position.

Under Section 52-A, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty and gross neglect of duty amount to grave offenses punishable by dismissal even when committed for the first time.[15] In *Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Paguio-Bacani*,[16] Bacani was found guilty of dishonesty for falsifying

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[13] *Office of the Court Administrator v. Marcelo*, A.M. No. P-06-2221, 5 October 2010, 632 SCRA 129, 135.

[14] *Re: Report on the Judicial Audit and Physical Inventory of Cases in the MCTC Sara-Ajuy- Lemery, Iloilo*, 514 Phil. 41, 47 (2005).

[15] Section 52, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service provides:

> Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following are grave offenses with their corresponding penalties:
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> | | | |
> |---|---|---|
> | 1. Dishonesty | - 1st Offense | - Dismissal |
> | 2. Gross Neglect of Duty | - 1st Offense | - Dismissal |

[16] *Supra* note 1, at 257-258.

her Daily Time Records and leaving the country without the requisite travel authority. In imposing the penalty of suspension from service for one (1) year without pay, with a warning that a repetition of the same or similar offense would be dealt with more severely, the Court considered that:

> Although dishonesty through falsification of DTRs is punishable by dismissal, such an extreme penalty cannot be inflicted on an errant employee such as herein respondent, especially so in cases where there exist mitigating circumstances which could alleviate her culpability. Respondent has been Branch Clerk of Court for about ten (10) years and this is her first administrative complaint. The OCA recommended that respondent be suspended from the service for one (1) year without pay, with a warning that a repetition of the same or similar act will be dealt with more severely.

Considering that the circumstances in Bacani's earlier case are no longer present in this case, we impose the extreme administrative penalty of dismissal on Bacani. As for Villafuerte, he immediately complied with the OCA audit team's directive to deposit the amount covering the shortages after being apprised of the shortages. Since this is Villafuerte's first administrative case and he carried the responsibility of Officer-in-Charge and Cashier at the same time while Bacani was on leave, we adopt the OCA's recommendation as to him.

Time and again, this Court has stressed that the behavior of those charged with the administration of justice, from the judge to the most junior clerk, is circumscribed with a heavy responsibility.[17] Their conduct must be guided by utmost propriety and decorum at all times, in order to merit and maintain the public's respect for and trust in the Judiciary.[18] The Court will not tolerate any conduct, act or omission on the part of those

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[17] *Office of the Court Administrator v. Cruz, supra* note 6, at 12; *Office of the Court Administrator v. Elumbaring, supra* note 4, at 465.

[18] *Office of the Court Administrator v. Cruz, supra* note 6, citing *In Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan*, 445 Phil. 220 (2003).

who will violate the norm of public accountability and diminish or tend to diminish the faith of the people in the Judiciary.[19]

WHEREFORE, the Court finds Larriza P. Bacani, Clerk of Court IV, Municipal Trial Court in Cities, Meycauayan City, Bulacan, **GUILTY** of dishonesty and gross neglect of duty, for which she is **DISMISSED** from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.

Veiner P. Villafuerte, Cashier I, Municipal Trial Court in Cities, Meycauayan City, Bulacan, is **STERNLY WARNED** that a repetition of not depositing the court's collections on time shall be dealt with more severely.

Executive Judge Cecilia Santoyo-Talapian of the Municipal Trial Court in Cities, Meycauayan City, Bulacan, is **DIRECTED** to strictly **MONITOR** the financial transactions of the court; otherwise, she can be held equally liable for the infractions committed by employees under her supervision.

SO ORDERED.

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

Brion, J., on leave.

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[19] *Office of the Court Administrator v. Cruz, supra* note 6, citing *Office of the Court Administratorv. Banag,* A.M. No. P-09-2638, 7 December 2010, 637 SCRA 18.

EN BANC

[G.R. No. 192986. January 15, 2013]

ADVOCATES FOR TRUTH IN LENDING, INC. and EDUARDO B. OLAGUER, *petitioners, vs.* **BANGKO SENTRAL MONETARY BOARD, represented by its Chairman, GOVERNOR ARMANDO M. TETANGCO, JR., and its incumbent members: JUANITA D. AMATONG, ALFREDO C. ANTONIO, PETER FAVILA, NELLY F. VILLAFUERTE, IGNACIO R. BUNYE and CESAR V. PURISIMA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY NOT BE AVAILED OF AGAINST A BODY CREATED TO PERFORM EXECUTIVE FUNCTIONS.— As provided in Section 1 of Rule 65, a writ of *certiorari* is directed against a tribunal exercising judicial or quasi-judicial functions. Judicial functions are exercised by a body or officer clothed with authority to determine what the law is and what the legal rights of the parties are with respect to the matter in controversy. Quasi-judicial function is a term that applies to the action or discretion of public administrative officers or bodies given the authority to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action using discretion of a judicial nature. The CB-MB (now BSP-MB) was created to perform executive functions with respect to the establishment, operation or liquidation of banking and credit institutions, and branches and agencies thereof. It does not perform judicial or quasi-judicial functions. Certainly, the issuance of CB Circular No. 905 was done in the exercise of an executive function. *Certiorari* will not lie in the instant case.

2. ID.; CIVIL PROCEDURE; PARTIES; *LOCUS STANDI*; DEFINED.— *Locus standi* is defined as "a right of appearance in a court of justice on a given question." In private suits, Section 2, Rule 3 of the 1997 Rules of Civil Procedure provides

that "every action must be prosecuted or defended in the name of the real party in interest," who 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." Succinctly put, a party's standing is based on his own right to the relief sought.

3. **ID.; ID.; ID.; ID.; PETITIONERS HAVE NO *LOCUS STANDI* IN CASE AT BAR.—** Even in public interest cases such as this petition, the Court has generally adopted the "direct injury" test that the person who impugns the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result." Thus, while petitioners assert a public right to assail CB Circular No. 905 as an illegal executive action, it is nonetheless required of them to make out a sufficient interest in the vindication of the public order and the securing of relief. It is significant that in this petition, the petitioners do not allege that they sustained any personal injury from the issuance of CB Circular No. 905. Petitioners also do not claim that public funds were being misused in the enforcement of CB Circular No. 905. In *Kilosbayan, Inc. v. Morato*, involving the on-line lottery contract of the PCSO, there was no allegation that public funds were being misspent, which according to the Court would have made the action a public one, "and justify relaxation of the requirement that an action must be prosecuted in the name of the real party-in-interest." The Court held, moreover, that the status of *Kilosbayan* as a people's organization did not give it the requisite personality to question the validity of the contract.

4. **CIVIL LAW; LOANS; INTEREST; THE CENTRAL BANK MONETARY BOARD (CB-MB) MERELY SUSPENDED THE EFFECTIVITY OF THE USURY LAW WHEN IT ISSUED CB CIRCULAR NO. 905.—** The power of the CB to effectively suspend the Usury Law pursuant to P.D. No. 1684 has long been recognized and upheld in many cases. As the Court explained in the landmark case of *Medel v. CA*, citing several cases, CB Circular No. 905 "did not repeal nor in anyway amend the Usury Law but simply suspended the latter's effectivity[.]"

5. **ID.; ID.; ID.; ID.; THE NEW BANGKO SENTRAL NG PILIPINAS MONETARY BOARD (BSP-MB) HAS AUTHORITY TO ENFORCE CB CIRCULAR NO. 905.—** Petitioners contend that, granting that the CB had power to

"suspend" the Usury Law, the *new* BSP-MB did not retain this power of its predecessor, in view of Section 135 of R.A. No. 7653, which expressly repealed R.A. No. 265. The petitioners point out that R.A. No. 7653 did not reenact a provision similar to Section 109 of R.A. No. 265. A closer perusal shows that Section 109 of R.A. No. 265 covered only loans extended by banks, whereas under Section 1-a of the Usury Law, as amended, the BSP-MB may prescribe the maximum rate or rates of interest for all loans or renewals thereof or the forbearance of any money, goods or credits, including those for loans of low priority such as consumer loans, as well as such loans made by pawnshops, finance companies and similar credit institutions. It even authorizes the BSP-MB to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries. Act No. 2655, an earlier law, is much broader in scope, whereas R.A. No. 265, now R.A. No. 7653, merely supplemented it as it concerns loans by banks and other financial institutions. Had R.A. No. 7653 been intended to repeal Section 1-a of Act No. 2655, it would have so stated in unequivocal terms. x x x [I]n the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws. We find no such conflict between the provisions of Act 2655 and R.A. No. 7653.

6. ID.; ID.; ID.; ID.; CB CIRCULAR NO. 905 DOES NOT AUTHORIZE STIPULATIONS CHARGING USURIOUS INTEREST.— It is settled that nothing in CB Circular No. 905 grants lenders a *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. x x x Stipulations authorizing iniquitous or unconscionable interests have been invariably struck down for being contrary to morals, if not against the law. Indeed, under Article 1409 of the Civil Code, these contracts are deemed inexistent and void *ab initio*, and therefore cannot be ratified, nor may the right to set up their illegality as a defense be waived. Nonetheless, the nullity of the stipulation of usurious interest does not affect the lender's right to recover the principal of a loan, nor affect the other terms thereof. Thus, in a usurious loan with mortgage, the

right to foreclose the mortgage subsists, and this right can be exercised by the creditor upon failure by the debtor to pay the debt due. The debt due is considered as without the stipulated excessive interest, and a legal interest of 12% *per annum* will be added in place of the excessive interest formerly imposed, following the guidelines laid down in the landmark case of *Eastern Shipping Lines, Inc. v. Court of Appeals*[.]

APPEARANCES OF COUNSEL

Nathaniel A. Lobigas for petitioners.
The Solicitor General for respondents.

D E C I S I O N

REYES, *J.*:

Petitioners, claiming that they are raising issues of transcendental importance to the public, filed directly with this Court this Petition for C*ertiorari* under Rule 65 of the 1997 Rules of Court, seeking to declare that the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), replacing the Central Bank Monetary Board (CB-MB) by virtue of Republic Act (R.A.) No. 7653, has no authority to continue enforcing Central Bank Circular No. 905,[1] issued by the CB-MB in 1982, which "suspended" Act No. 2655, or the Usury Law of 1916.

Factual Antecedents

Petitioner "Advocates for Truth in Lending, Inc." (AFTIL) is a non-profit, non-stock corporation organized to engage in *pro bono* concerns and activities relating to money lending issues. It was incorporated on July 9, 2010,[2] and a month later, it filed this petition, joined by its founder and president, Eduardo B. Olaguer, suing as a taxpayer and a citizen.

R.A. No. 265, which created the Central Bank (CB) of the Philippines on June 15, 1948, empowered the CB-MB to, among

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[1] *Rollo,* pp. 48-56.

[2] *Id.* at 40-45.

others, set the maximum interest rates which banks may charge for all types of loans and other credit operations, within limits prescribed by the Usury Law. Section 109 of R.A. No. 265 reads:

> Sec. 109. *Interest Rates, Commissions and Charges*. — The Monetary Board may fix the maximum rates of interest which banks may pay on deposits and on other obligations.
>
> The Monetary Board may, within the limits prescribed in the Usury Law fix the maximum rates of interest which banks may charge for different types of loans and for any other credit operations, or may fix the maximum differences which may exist between the interest or rediscount rates of the Central Bank and the rates which the banks may charge their customers if the respective credit documents are not to lose their eligibility for rediscount or advances in the Central Bank.
>
> Any modifications in the maximum interest rates permitted for the borrowing or lending operations of the banks shall apply only to future operations and not to those made prior to the date on which the modification becomes effective.
>
> In order to avoid possible evasion of maximum interest rates set by the Monetary Board, the Board may also fix the maximum rates that banks may pay to or collect from their customers in the form of commissions, discounts, charges, fees or payments of any sort. (Underlining ours)

On March 17, 1980, the Usury Law was amended by Presidential Decree (P.D.) No. 1684, giving the CB-MB authority to prescribe different maximum rates of interest which may be imposed for a loan or renewal thereof or the forbearance of ***any*** money, goods or credits, provided that the changes are effected gradually and announced in advance. Thus, Section 1-a of Act No. 2655 now reads:

> Sec. 1-a. The Monetary Board is hereby authorized to prescribe the maximum rate or rates of interest for the loan or renewal thereof or the forbearance of ***any*** money, goods or credits, and to change such rate or rates whenever warranted by prevailing economic and social conditions: Provided, That changes in such rate or rates may be effected gradually on scheduled dates announced in advance.

In the exercise of the authority herein granted the Monetary Board may prescribe higher maximum rates for loans of low priority, such as consumer loans or renewals thereof as well as such loans made by pawnshops, finance companies and other similar credit institutions although the rates prescribed for these institutions need not necessarily be uniform. The Monetary Board is also authorized to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries. (Underlining and emphasis ours)

In its Resolution No. 2224 dated December 3, 1982,[3] the CB-MB issued CB Circular No. 905, Series of 1982, effective on January 1, 1983. Section 1 of the Circular, under its General Provisions, removed the ceilings on interest rates on loans or forbearance of ***any*** money, goods or credits, to wit:

Sec. 1. The rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of *any* money, goods, or credits, regardless of maturity and whether secured or unsecured, that may be charged or collected by any person, whether natural or juridical, shall **not** be subject to **any ceiling** prescribed under or pursuant to the Usury Law, as amended. (Underscoring and emphasis ours)

The Circular then went on to amend Books I to IV of the CB's "Manual of Regulations for Banks and Other Financial Intermediaries" (Manual of Regulations) by removing the applicable ceilings on specific interest rates. Thus, Sections 5, 9 and 10 of CB Circular No. 905 amended Book I, Subsections 1303, 1349, 1388.1 of the Manual of Regulations, by removing the ceilings for interest and other charges, commissions, premiums, and fees applicable to commercial banks; Sections 12 and 17 removed the interest ceilings for thrift banks (Book II, Subsections 2303, 2349); Sections 19 and 21 removed the ceilings applicable to rural banks (Book III, Subsection 3152.3-c); and, Sections 26, 28, 30 and 32 removed the ceilings for non-bank financial intermediaries (Book IV, Subsections 4303Q.1 to 4303Q.9, 4303N.1, 4303P).[4]

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

[4] *Id.* at 10-12.

On June 14, 1993, President Fidel V. Ramos signed into law R.A. No. 7653 establishing the Bangko Sentral ng Pilipinas (BSP) to replace the CB. The repealing clause thereof, Section 135, reads:

> Sec. 135. *Repealing Clause*. — Except as may be provided for in Sections 46 and 132 of this Act, Republic Act No. 265, as amended, the provisions of any other law, special charters, rule or regulation issued pursuant to said Republic Act No. 265, as amended, or parts thereof, which may be inconsistent with the provisions of this Act are hereby repealed. Presidential Decree No. 1792 is likewise repealed.

Petition for *Certiorari*

To justify their skipping the hierarchy of courts and going directly to this Court to secure a writ of *certiorari*, petitioners contend that the transcendental importance of their Petition can readily be seen in the issues raised therein, to wit:

a) Whether under R.A. No. 265 and/or P.D. No. 1684, the CB-MB had the statutory or constitutional authority to prescribe the maximum rates of interest for all kinds of credit transactions and forbearance of money, goods or credit beyond the limits prescribed in the Usury Law;

b) If so, whether the CB-MB exceeded its authority when it issued CB Circular No. 905, which removed all interest ceilings and thus suspended Act No. 2655 as regards usurious interest rates;

c) Whether under R.A. No. 7653, the *new* BSP-MB may continue to enforce CB Circular No. 905.[5]

Petitioners attached to their petition copies of several Senate Bills and Resolutions of the 10th Congress, which held its sessions from 1995 to 1998, calling for investigations by the Senate Committee on Banks and Financial Institutions into alleged unconscionable commercial rates of interest imposed by these entities. Senate Bill (SB) Nos. 37[6] and 1860,[7] filed by Senator

[5] *Id.* at 13.

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

[7] *Id.* at 33.

Vicente C. Sotto III and the late Senator Blas F. Ople, respectively, sought to amend Act No. 2655 by fixing the rates of interest on loans and forbearance of credit; Philippine Senate Resolution (SR) No. 1053,[8] 1073[9] and 1102,[10] filed by Senators Ramon B. Magsaysay, Jr., Gregorio B. Honasan and Franklin M. Drilon, respectively, urged the aforesaid Senate Committee to investigate ways to curb the high commercial interest rates then obtaining in the country; Senator Ernesto Maceda filed SB No. 1151 to prohibit the collection of more than two months of advance interest on any loan of money; and Senator Raul Roco filed SR No. 1144[11] seeking an investigation into an alleged cartel of commercial banks, called "Club 1821", reportedly behind the regime of high interest rates. The petitioners also attached news clippings[12] showing that in February 1998 the banks' prime lending rates, or interests on loans to their best borrowers, ranged from 26% to 31%.

Petitioners contend that under Section 1-a of Act No. 2655, as amended by P.D. No. 1684, the CB-MB was authorized only to prescribe or set the maximum rates of interest for a loan or renewal thereof or for the forbearance of any money, goods or credits, and to change such rates whenever warranted by prevailing economic and social conditions, the changes to be effected gradually and on scheduled dates; that nothing in P.D. No. 1684 authorized the CB-MB to lift or suspend the limits of interest on all credit transactions, when it issued CB Circular No. 905. They further insist that under Section 109 of R.A. No. 265, the authority of the CB-MB was clearly only to fix the banks' maximum rates of interest, but always within the limits prescribed by the Usury Law.

Thus, according to petitioners, CB Circular No. 905, which was promulgated without the benefit of any prior public hearing,

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[8] *Id.* at 34-35.

[9] *Id.* at 36-37.

[10] *Id.* at 38.

[11] *Id.* at 30.

[12] *Id.* at 26-29.

is void because it violated Article 5 of the New Civil Code, which provides that "Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

They further claim that just weeks after the issuance of CB Circular No. 905, the benchmark 91-day Treasury bills (T-bills),[13] then known as "Jobo" bills[14] shot up to 40% *per annum*, as a result. The banks immediately followed suit and re-priced their loans to rates which were even higher than those of the "Jobo" bills. Petitioners thus assert that CB Circular No. 905 is also unconstitutional in light of Section 1 of the Bill of Rights, which commands that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

Finally, petitioners point out that R.A. No. 7653 did not re-enact a provision similar to Section 109 of R.A. No. 265, and therefore, in view of the repealing clause in Section 135 of R.A. No. 7653, the BSP-MB has been stripped of the power either to prescribe the maximum rates of interest which banks may charge for different kinds of loans and credit transactions, or to suspend Act No. 2655 and continue enforcing CB Circular No. 905.

Ruling

The petition must fail.

A. The Petition is procedurally infirm.

The decision on whether or not to accept a petition for *certiorari*, as well as to grant due course thereto, is addressed

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[13] Treasury bills are government debt securities issued by the Bureau of the Treasury with maturities of less than 1 year.

[14] Named after CB Governor Jose "Jobo" Fernandez.

to the sound discretion of the court.[15] A petition for *certiorari* being an extraordinary remedy, the party seeking to avail of the same must strictly observe the procedural rules laid down by law, and non-observance thereof may not be brushed aside as mere technicality.[16]

As provided in Section 1 of Rule 65, a writ of *certiorari* is directed against a tribunal exercising judicial or quasi-judicial functions.[17] Judicial functions are exercised by a body or officer clothed with authority to determine what the law is and what the legal rights of the parties are with respect to the matter in controversy. Quasi-judicial function is a term that applies to the action or discretion of public administrative officers or bodies given the authority to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action using discretion of a judicial nature.[18]

The CB-MB (now BSP-MB) was created to perform executive functions with respect to the establishment, operation or liquidation of banking and credit institutions, and branches and agencies thereof.[19] It does not perform judicial or quasi-judicial functions. Certainly, the issuance of CB Circular No. 905 was

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[15] *Chong v. Dela Cruz*, G.R. No. 184948, July 21, 2009, 593 SCRA 311, 313-314.

[16] *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603, 611 (2001).

[17] Sec. 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[18] *Chamber of Real Estate and Builders' Associations, Inc. (CREBA) v. Energy Regulatory Commission (ERC)*, G.R. No. 174697, July 8, 2010, 624 SCRA 556, 571.

[19] *Central Bank of the Philippines v. CA*, 158 Phil. 986, 993 (1974).

done in the exercise of an executive function. *Certiorari* will not lie in the instant case.[20]

B. Petitioners have no *locus standi* to file the Petition

Locus standi is defined as "a right of appearance in a court of justice on a given question." In private suits, Section 2, Rule 3 of the 1997 Rules of Civil Procedure provides that "every action must be prosecuted or defended in the name of the real party in interest," who 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." Succinctly put, a party's standing is based on his own right to the relief sought.[21]

Even in public interest cases such as this petition, the Court has generally adopted the "direct injury" test that the person who impugns the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result."[22] Thus, while petitioners assert a public right to assail CB Circular No. 905 as an illegal executive action, it is nonetheless required of them to make out a sufficient interest in the vindication of the public order and the securing of relief. It is significant that in this petition, the petitioners do not allege that they sustained any personal injury from the issuance of CB Circular No. 905.

Petitioners also do not claim that public funds were being misused in the enforcement of CB Circular No. 905. In *Kilosbayan, Inc. v. Morato,*[23] involving the on-line lottery contract

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[20] In *Philnabank Employees Association v. Estanislao* (G.R. No. 104209, November 16, 1993, 227 SCRA 804), the Supreme Court refused to issue a writ of *certiorari* against the Secretaries of Finance and of Labor after noting that they did not act in any judicial or quasi-judicial capacity but were merely promulgating the implementing rules of R.A. No. 6971, the Productivity Incentives Act of 1990.

[21] *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 755-756 (2006). (Citations omitted)

[22] *People of the Philippines and HSBC v. Vera*, 65 Phil. 56, 89 (1937).

[23] 320 Phil. 171 (1995); 316 Phil. 652 (1995).

of the PCSO, there was no allegation that public funds were being misspent, which according to the Court would have made the action a public one, "and justify relaxation of the requirement that an action must be prosecuted in the name of the real party-in-interest." The Court held, moreover, that the status of *Kilosbayan* as a people's organization did not give it the requisite personality to question the validity of the contract. Thus:

> Petitioners do not in fact show what particularized interest they have for bringing this suit. It does not detract from the high regard for petitioners as civic leaders to say that their interest falls short of that required to maintain an action under the Rule 3, Sec. 2.[24]

C. The Petition raises no issues of transcendental importance.

In the 1993 case of *Joya v. Presidential Commission on Good Government*,[25] it was held that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the court unless there is compliance with the legal requisites for judicial inquiry, namely: (a) that the question must be raised by the proper party; (b) that there must be an actual case or controversy; (c) that the question must be raised at the earliest possible opportunity; and (d) that the decision on the constitutional or legal question must be necessary to the determination of the case itself.

In *Prof. David v. Pres. Macapagal-Arroyo*,[26] the Court summarized the requirements before taxpayers, voters, concerned citizens, and legislators can be accorded a standing to sue, *viz*:

(1) the cases involve constitutional issues;
(2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
(3) for voters, there must be a showing of obvious interest in the validity of the election law in question;

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[24] *Id.* at 696.

[25] G.R. No. 96541, August 24, 1993, 225 SCRA 568.

[26] *Supra* note 21.

(4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
(5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

While the Court may have shown in recent decisions a certain toughening in its attitude concerning the question of legal standing, it has nonetheless always made an exception where the transcendental importance of the issues has been established, notwithstanding the petitioners' failure to show a direct injury.[27] In *CREBA v. ERC*,[28] the Court set out the following instructive guides as determinants on whether a matter is of transcendental importance, namely: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised. Further, the Court stated in *Anak Mindanao Party-List Group v. The Executive Secretary*[29] that the rule on standing will not be waived where these determinants are not established.

In the instant case, there is no allegation of misuse of public funds in the implementation of CB Circular No. 905. Neither were borrowers who were actually affected by the suspension of the Usury Law joined in this petition. Absent any showing of transcendental importance, the petition must fail.

More importantly, the Court notes that the instant petition adverted to the regime of high interest rates which obtained at least 15 years ago, when the banks' prime lending rates ranged from 26% to 31%,[30] or even 29 years ago, when the 91-day

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[27] *Id.*

[28] *Supra* note 18.

[29] G.R. No. 166052, August 29, 2007, 531 SCRA 583.

[30] *Rollo*, p. 27. In contrast, as reported in the October 10, 2012 issue of the *Philippine Daily Inquirer*, Section B-2-1, a recent 25-year treasury bond issue, government securities which mature in more than a year, carried

Jobo bills reached 40% *per annum*. In contrast, according to the BSP, in the first two (2) months of 2012 the bank lending rates averaged 5.91%, which implies that the banks' prime lending rates were lower; moreover, deposit interests on savings and long-term deposits have also gone very low, averaging 1.75% and 1.62%, respectively.[31]

Judging from the most recent auctions of T-bills, the savings rates must be approaching 0%. In the auctions held on November 12, 2012, the rates of 3-month, 6-month and 1-year T-bills have dropped to 0.150%, 0.450% and 0.680%, respectively.[32] According to *Manila Bulletin*, this very low interest regime has been attributed to "high liquidity and strong investor demand amid positive economic indicators of the country."[33]

While the Court acknowledges that cases of transcendental importance demand that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure,[34] the delay of at least 15 years in the filing of the instant petition has actually rendered moot and academic the issues it now raises.

For its part, BSP-MB maintains that the petitioners' allegations of constitutional and statutory violations of CB Circular No. 905 are really mere challenges made by petitioners concerning the wisdom of the Circular. It explains that it was in view of the global economic downturn in the early 1980's that the executive department through the CB-MB had to formulate policies to achieve economic recovery, and among these policies was the establishment of a market-oriented interest rate structure which would require the removal of the government-imposed interest rate ceilings.[35]

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an annual rate of 6.125%, way below 31%. It fetched ₱63 billion, more than double the government's original offer of ₱30 billion.

[31] See www.bsp.gov.ph/statistics.online.asp.

[32] *Manila Bulletin* article, November 13, 2012, p. B-1: "Treasury Bill Yields Tumble to Record Lows, 91-Day at 0.150%"

[33] *Id.*

[34] *Araneta v. Dinglasan*, 84 Phil. 368, 373 (1949).

[35] *Rollo*, pp. 79-80, 103-105.

D. The CB-MB merely suspended the effectivity of the Usury Law when it issued CB Circular No. 905.

The power of the CB to effectively suspend the Usury Law pursuant to P.D. No. 1684 has long been recognized and upheld in many cases. As the Court explained in the landmark case of *Medel v. CA*,[36] citing several cases, CB Circular No. 905 "did not repeal nor in anyway amend the Usury Law but simply suspended the latter's effectivity";[37] that "a [CB] Circular cannot repeal a law, [for] only a law can repeal another law";[38] that "by virtue of CB Circular No. 905, the Usury Law has been rendered ineffective";[39] and "Usury has been legally non-existent in our jurisdiction. Interest can now be charged as lender and borrower may agree upon."[40]

In *First Metro Investment Corp. v. Este Del Sol Mountain Reserve, Inc*.[41] cited in *DBP v. Perez*,[42] we also belied the contention that the CB was engaged in self-legislation. Thus:

> Central Bank Circular No. 905 did not repeal nor in any way amend the Usury Law but simply suspended the latter's effectivity. The illegality of usury is wholly the creature of legislation. A Central Bank Circular cannot repeal a law. Only a law can repeal another law. x x x.[43]

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[36] 359 Phil. 820 (1998).

[37] *Security Bank and Trust Co. v. RTC-Makati, Branch 61*, 331 Phil. 787, 793 (1996).

[38] *Palanca v. Court of Appeals*, G.R. No. 106685, December 2, 1994, 238 SCRA 593, 601.

[39] *Sps. Florendo v. CA*, 333 Phil. 535, 546 (1996).

[40] *People v. Dizon*, 329 Phil. 685, 696 (1996).

[41] 420 Phil. 902 (2001).

[42] 484 Phil. 843 (2004).

[43] *Supra* note 41, at 914, citing *Medel v. CA, supra* note 36, at 829; *Security Bank and Trust v. RTC-Makati, Branch 61, supra* note 37; *Palanca v. CA, supra* note 38.

In *PNB v. Court of Appeals*,[44] an escalation clause in a loan agreement authorized the PNB to unilaterally increase the rate of interest to 25% *per annum*, plus a penalty of 6% *per annum* on past dues, then to 30% on October 15, 1984, and to 42% on October 25, 1984. The Supreme Court invalidated the rate increases made by the PNB and upheld the 12% interest imposed by the CA, in this wise:

> P.D. No. 1684 and C.B. Circular No. 905 no more than allow contracting parties to stipulate freely regarding any subsequent adjustment in the interest rate that shall accrue on a loan or forbearance of money, goods or credits. In fine, they can agree to adjust, upward or downward, the interest previously stipulated. x x x.[45]

Thus, according to the Court, by lifting the interest ceiling, CB Circular No. 905 merely upheld the parties' freedom of contract to agree freely on the rate of interest. It cited Article 1306 of the New Civil Code, under which the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

E. The BSP-MB has authority to enforce CB Circular No. 905.

Section 1 of CB Circular No. 905 provides that "*The rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of* ***any*** *money, goods, or credits, regardless of maturity and whether secured or unsecured, that may be charged or collected by* ***any*** *person, whether natural or juridical, shall not be subject to any ceiling prescribed under or pursuant to the Usury Law, as amended*." It does not purport to suspend the Usury Law only as it applies to banks, but to all lenders.

Petitioners contend that, granting that the CB had power to "suspend" the Usury Law, the *new* BSP-MB did not retain this

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[44] G.R. No. 107569, November 8, 1994, 238 SCRA 20.

[45] *Id.* at 25.

power of its predecessor, in view of Section 135 of R.A. No. 7653, which expressly repealed R.A. No. 265. The petitioners point out that R.A. No. 7653 did not reenact a provision similar to Section 109 of R.A. No. 265.

A closer perusal shows that Section 109 of R.A. No. 265 covered only loans extended by banks, whereas under Section 1-a of the Usury Law, as amended, the BSP-MB may prescribe the maximum rate or rates of interest for all loans or renewals thereof or the forbearance of any money, goods or credits, including those for loans of low priority such as consumer loans, as well as such loans made by pawnshops, finance companies and similar credit institutions. It even authorizes the BSP-MB to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries.

Act No. 2655, an earlier law, is much broader in scope, whereas R.A. No. 265, now R.A. No. 7653, merely supplemented it as it concerns loans by banks and other financial institutions. Had R.A. No. 7653 been intended to repeal Section 1-a of Act No. 2655, it would have so stated in unequivocal terms.

Moreover, the rule is settled that repeals by implication are not favored, because laws are presumed to be passed with deliberation and full knowledge of all laws existing pertaining to the subject.[46] An implied repeal is predicated upon the condition that a substantial conflict or repugnancy is found between the new and prior laws. Thus, in the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.[47] We find no such conflict between the provisions of Act 2655 and R.A. No. 7653.

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[46] *Sps. Recana, Jr. v. CA*, 402 Phil. 26, 35 (2001), citing *City Government of San Pablo, Laguna v. Reyes*, 364 Phil. 842 (1999).

[47] *Berces v. Guingona*, 311 Phil. 614, 620 (1995).

F. The lifting of the ceilings for interest rates does not authorize stipulations charging excessive, unconscionable, and iniquitous interest.

It is settled that nothing in CB Circular No. 905 grants lenders a *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.[48] As held in *Castro v. Tan*:[49]

> The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.[50]

Stipulations authorizing iniquitous or unconscionable interests have been invariably struck down for being contrary to morals, if not against the law.[51] Indeed, under Article 1409 of the Civil Code, these contracts are deemed inexistent and void *ab initio,* and therefore cannot be ratified, nor may the right to set up their illegality as a defense be waived.

Nonetheless, the nullity of the stipulation of usurious interest does not affect the lender's right to recover the principal of a loan, nor affect the other terms thereof.[52] Thus, in a usurious loan with mortgage, the right to foreclose the mortgage subsists, and this right can be exercised by the creditor upon failure by

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[48] S*pouses Solangon v. Salazar*, 412 Phil. 816, 822 (2001), citing *Sps. Almeda v. CA*, 326 Phil. 309 (1996).

[49] G.R. No. 168940, November 24, 2009, 605 SCRA 231.

[50] *Id.* at 232-233, citing *Ibarra v. Aveyro*, 37 Phil. 273, 282 (1917).

[51] *Medel v. CA*, *supra* note 36, at 830.

[52] *First Metro Investment Corp. v. Este del Sol Mountain Reserve, Inc.*, *supra* note 41, at 918.

the debtor to pay the debt due. The debt due is considered as without the stipulated excessive interest, and a legal interest of 12% *per annum* will be added in place of the excessive interest formerly imposed,[53] following the guidelines laid down in the landmark case of *Eastern Shipping Lines, Inc. v. Court of Appeals*,[54] regarding the manner of computing legal interest:

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
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> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
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> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

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[53] See *Castro v. Tan*, *supra* note 49, at 240; *Heirs of Zoilo Espiritu v. Landrito*, G.R. No. 169617, April 3, 2007, 520 SCRA 383, 394; *Cuaton v. Salud*, 465 Phil. 999 (2004); *Sps. Almeda v. CA*, *supra* note 48; *First Metro Investment Corp. v. Este Del Sol Mountain Reserve, Inc.*, *supra* note 41, at 918; *Ruiz v. Court of Appeals*, 449 Phil. 419, 433-435 (2003); S*pouses Solangon v. Salazar, supra* note 48.

[54] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[55] (Citations omitted)

The foregoing rules were further clarified in *Sunga-Chan v. Court of Appeals*,[56] as follows:

Eastern Shipping Lines, Inc. synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: The 12% *per annum* rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the 6% *per annum* under Art. 2209 of the Civil Code applies "when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general," with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid." In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest."[57] (Citations omitted)

WHEREFORE, premises considered, the Petition for *certiorari* is **DISMISSED.**

SO ORDERED.

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

Brion, J., on leave.

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[55] *Id.* at 95-97.

[56] G.R. No. 164401, June 25, 2008, 555 SCRA 275.

[57] *Id.* at 288.

EN BANC

[G.R. No. 201796. January 15, 2013]

GOVERNOR SADIKUL A. SAHALI and VICE-GOVERNOR RUBY M. SAHALI, *petitioners, vs.* **COMMISSION ON ELECTIONS (FIRST DIVISION), RASHIDIN H. MATBA and JILKASI J. USMAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DOES NOT LIE AGAINST AN INTERLOCUTORY ORDER OF A DIVISION OF THE COMELEC.—** The petitioners' resort to the extraordinary remedy of *certiorari* to assail an interlocutory order issued by the COMELEC First Division is amiss. "A party aggrieved by an interlocutory order issued by a Division of the COMELEC in an election protest may not directly assail the order in this Court through a special civil action for *certiorari*. The remedy is to seek the review of the interlocutory order during the appeal of the decision of the Division in due course." x x x [T]he Orders dated March 5, 2012 and May 3, 2012 issued by the First Division of the COMELEC were merely interlocutory orders since they only disposed of an incident in the main case *i.e.* the propriety of the technical examination of the said election paraphernalia. Thus, the proper recourse for the petitioners is to await the decision of the COMELEC First Division in the election protests filed by Matba and Usman, and should they be aggrieved thereby, to appeal the same to the COMELEC *en banc* by filing a motion for reconsideration.

2. **ID.; ID.; ID.; ID.; EXCEPTION DOES NOT APPLY IN CASE AT BAR.—** On the propriety of a filing a Petition for *Certiorari* with this Court *sans* any motion for reconsideration having been filed with the COMELEC *en banc*, it was held therein that, as an exception, direct resort to this Court *via certiorari* assailing an interlocutory order may be allowed when a Division of the COMELEC commits grave abuse of discretion tantamount to lack of jurisdiction. x x x [T]his Court may take cognizance of a *certiorari* action directed against an interlocutory order

issued by a Division of the COMELEC when the following circumstances are present: *first*, the order was issued without jurisdiction or in excess of jurisdiction or with grave abuse of discretion tantamount to lack or excess of jurisdiction; and *second*, under the COMELEC Rules of Procedure, the subject of the controversy is a matter which (1) the COMELEC *en banc* may not sit and consider or (2) a Division is not authorized to act or (3) the members of the Division unanimously vote to refer to the COMELEC *en banc*. The exception in *Kho* does not apply in the instant case since the COMELEC First Division is authorized to act on the *ex-parte* motion for the technical examination of the said election paraphernalia.

3. POLITICAL LAW; ELECTIONS; ELECTION DISPUTES; THE COMELEC IS NOT BOUND TO NOTIFY AND DIRECT THE PARTY THEREIN TO FILE AN OPPOSITION TO THE MOTION.— It bears stressing that the COMELEC, in election disputes, is not duty-bound to notify and direct a party therein to file an opposition to a motion filed by the other party. It is incumbent upon the party concerned, if he/she deems it necessary, to file an opposition to a motion within five days from receipt of a copy of the same without awaiting for the COMELEC's directive to do so. x x x If the party concerned, despite receipt of a copy of the motion that was filed with the COMELEC, did not file an opposition to the said motion, the motion would be deemed submitted for resolution upon the expiration of the period to file an opposition thereto.

4. ID.; ID.; ELECTION PROTESTS; NATURE OF.— It should be stressed that one of the factors that should be considered in election protests is expediency. Proceedings in election protests are special and expeditious and the early resolution of such cases should not be hampered by any unnecessary observance of procedural rules. "The proceedings should not be encumbered by delays. All of these are because the term of elective office is likewise short. There is the personal stake of the contestants which generates feuds and discords. Above all is the public interest. Title to public elective office must not be left long under cloud. Efficiency of public administration should not be impaired. It is thus understandable that pitfalls which may retard the determination of election contests should be avoided."

5. ID.; CONSTITUTIONAL LAW; DUE PROCESS; DENIAL, NOT A CASE OF.— [T]his Court cannot see how due process was denied to the petitioners in the issuance of the COMELEC First Division's March 5, 2012 Order. The petitioners were able to present their opposition to the said motion for technical examination in their manifestation and motion for reconsideration which they filed with the COMELEC First Division on March 9, 2012. Indeed, the petitioners' objections to the technical examination of the said election paraphernalia were exhaustively discussed by the COMELEC First Division in its May 3, 2012 Resolution. Having filed a motion for reconsideration of the COMELEC First Division's March 5, 2012 Order, the petitioners' claim of denial of due process is clearly unfounded. The petitioners should be reminded that due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard. One may be heard, not solely by verbal presentation but also, and perhaps many times more creditably and predictable than oral argument, through pleadings. In administrative proceedings moreover, technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process in its strict judicial sense. Indeed, deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.

6. ID.; ELECTIONS; COMMISSION ON ELECTIONS; HAS THE AUTHORITY TO ORDER THE TECHNICAL EXAMINATION OF ELECTION PARAPHERNALIA.— The absence of a rule which specifically mandates the technical examination of the said election paraphernalia does not mean that the COMELEC First Division is barred from issuing an order for the conduct thereof. The power of the COMELEC First Division to order the technical examination election paraphernalia in election protest cases stems from its "exclusive original jurisdiction over all contest relating to the elections, returns and qualifications of all elective regional, provincial and city officials". Otherwise stated, the express grant of power to the COMELEC to resolve election protests carries with it the grant of all other powers necessary, proper, or incidental to the effective and efficient exercise of the power expressly granted. Verily, the exclusive original jurisdiction conferred by the constitution to the COMELEC to settle said election

protests includes the authority to order a technical examination of relevant election paraphernalia, election returns and ballots in order to determine whether fraud and irregularities attended the canvass of the votes. There is no gainsaying that the COMELEC is mandated by law to resolve election cases expeditiously and promptly. "For in this specie of controversies involving the determination of the true will of the electorate, time indeed is of paramount importance - second to none perhaps, except for the genuine will of the majority. To be sure, an election controversy which by its very nature touches upon the ascertainment of the people's choice, as gleaned from the medium of the ballot, should be resolved with utmost dispatch, precedence and regard to due process." Concomitant to the COMELEC's duty to expeditiously resolve election cases is the authority to resort to every reasonable and efficient means available to it to settle the controversy. The COMELEC is thus enjoined, "not only to maintain its sense of urgency in resolving these cases, but also to explore every reasonable and feasible means of ascertaining which candidate was duly elected." x x x Here, the technical examination ordered by the COMELEC First Division, by comparing the signature and the thumbmarks appearing on the EDCVL as against those appearing on the VRRs and the Book of Voters, is a reasonable, efficient and expeditious means of determining the truth or falsity of the allegations of fraud and irregularities in the canvass of the votes in the province of Tawi-Tawi. Accordingly, the COMELEC First Division did not commit any abuse of discretion when it allowed the technical examination of the said election paraphernalia.

APPEARANCES OF COUNSEL

G.E. Garcia Law Office for petitioners.
The Solicitor General for public respondent.
Hernandez Surtida & Galicia for private respondents.

R E S O L U T I O N

REYES, *J.*:

This is a Petition for *Certiorari* under Rule 65 in relation to Rule 64 of the Rules of Court filed by Sadikul A. Sahali (Sadikul)

and Ruby M. Sahali (Ruby), assailing the Order[1] dated May 3, 2012 issued by the First Division of the Commission on Elections (COMELEC) in EPC Nos. 2010-76 and 2010-77.

During the May 10, 2010 elections, Sadikul and private respondent Rashidin H. Matba (Matba) were two of the four candidates who ran for the position of governor in the Province of Tawi-Tawi while Ruby and private respondent Jilkasi J. Usman (Usman) ran for the position of Vice-Governor.[2]

On May 14, 2010, the Provincial Board of Canvassers (PBOC) proclaimed petitioners Sadikul and Ruby as the duly elected governor and vice-governor, respectively, of the province of Tawi-Tawi. In the statement of votes issued by the PBOC, petitioner Sadikul garnered a total of 59,417 as against private respondent Matba's 56,013,[3] while petitioner Ruby prevailed over private respondent Usman, with votes of 61,005 and 45,127, respectively.[4]

Alleging that the said elections in the Province of Tawi-Tawi were attended by massive and wide-scale irregularities, Matba filed an Election Protest *Ad Cautelam*[5] with the COMELEC. Matba contested the results in 39 out of 282 clustered precincts that functioned in the province of Tawi-Tawi. The said election protest filed by Matba was raffled to the First Division of the COMELEC and was docketed as EPC No. 2010-76.

Usman also filed an Election Protest *Ad Cautelam*[6] with the COMELEC, contesting the results in 39 out of the 282 clustered precincts in the Province of Tawi-Tawi. Usman's election protest was likewise raffled to the First Division of the COMELEC

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[1] *Rollo*, pp. 32-34. Signed by Presiding Commissioner Rene V. Sarmiento and Commissioners Armando A. Velasco and Christian Robert S. Lim.

[2] *Id.* at 12.

[3] *Id.* at 38.

[4] *Id.* at 58.

[5] *Id.* at 36-52.

[6] *Id.* at 57-71.

and was docketed as EPC No. 2010-77. The respective election protests filed by private respondents Matba and Usman prayed, *inter alia*, for the technical examination of the ballots, Election Day Computerized Voters List (EDCVL), the Voters Registration Record (VRR), and the Book of Voters in all the protested precincts of the province of Tawi-Tawi.[7]

After Sadikul filed his Answer[8] with counter-protest, a preliminary conference was conducted by the COMELEC in EPC No. 2010-76. On November 24, 2011, the COMELEC issued a Preliminary Conference Order[9] in EPC No. 2010-76. Thereafter, the COMELEC issued an Order[10] dated November 23, 2011 which directed the retrieval and delivery of the 39 ballot boxes containing the ballots in the 39 protested clustered precincts as well as the election paraphernalia therein.

Meanwhile, in EPC No. 2010-77, the COMELEC, after Ruby's filing of her Answer[11] with counter-protest, conducted a preliminary conference on January 4, 2012. On January 20, 2012, the COMELEC issued its Preliminary Conference Order[12] in the said case.

On January 17, 2012, the COMELEC resolved to consolidate EPC No. 2010-76 and EPC No. 2010-77.

On February 9, 2012, the retrieval and delivery of the ballot boxes and other election documents from the 39 protested precincts were completed. On February 20, 2012, the COMELEC First Division ordered the recount of the contested ballots, directing the creation of five recount committees for the said purpose.[13]

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[7] *Id.* at 51, 70.

[8] *Id.* at 72-99.

[9] *Id.* at 129-157.

[10] *Id.* at 159-163.

[11] *Id.* at 100-127.

[12] *Id.* at 164-190.

[13] *Id.* at 191-195.

On February 24, 2012, Matba and Usman filed a Manifestation and *Ex-Parte* Motion (Re: Order Dated 20 February 2012), requesting that they be allowed to secure photocopies of the contested ballots. Further, they moved for a technical examination of the EDCVL, the VRR and the Book of Voters for the contested precincts in the province of Tawi-Tawi by comparing the signature and the thumbmarks appearing on the EDCVL as against those appearing on the VRRs and the Book of Voters.[14]

Private respondents Matba and Usman averred that, instead of recounting the ballots in the pilot precincts constituting 20% of the protested precincts, the COMELEC First Division should order the technical examination of the said election paraphernalia from the 38 clustered precincts that are the subject of both election protests filed by them.

On March 5, 2012, the COMELEC First Division issued an Order[15] which granted the said *ex-parte* motion filed by Matba and Usman. Thus, the COMELEC First Division directed its Election Records and Statistics Department (ERSD) to conduct a technical examination of the said election paraphernalia by comparing the signature and thumbmarks appearing on the EDCVL as against those appearing on the VRRs and the Book of Voters.

On March 9, 2012, Sadikul and Ruby jointly filed with the COMELEC First Division a Strong Manifestation of Grave Concern and Motion for Reconsideration (Of the Order Dated March 5, 2012).[16] They asserted that the March 5, 2012 Order issued by the COMELEC First Division, insofar as it directed the technical examination of the EDCVL, the VRR and the Book of Voters, should be reversed on account of the following: *first*, the said Order was issued without due process since the COMELEC First Division did not allow them to oppose the said *ex-parte* motion; *second*, the COMELEC First Division cannot just order a technical examination in the absence of

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[14] *Id.* at 35.

[15] *Id.*

[16] *Id.* at 196-205.

published rules on the matter; and *third*, the COMELEC First Division could not just examine the said election paraphernalia without violating the Precautionary Protection Order issued by the Presidential Electoral Tribunal in the protest case between Manuel Roxas and Jejomar Binay.

On March 15, 2012, Matba and Usman filed with the COMELEC First Division their counter-manifestation[17] to the said manifestation and motion for reconsideration filed by Sadikul and Ruby. They asserted therein that Sadikul and Ruby were not deprived of due process when the COMELEC First Division issued its March 15, 2012 Order. They averred that their respective election protests and the Preliminary Conference Orders issued by the COMELEC First Division all indicated that they would move for the technical examination of the said election paraphernalia. Nonetheless, they pointed out that Sadikul and Ruby failed to express any objection to their intended motion for technical examination of the said election paraphernalia.

Further, Matba and Usman claimed that said motion for technical examination is not a contentious motion since the intended technical examination would not prejudice the rights of Sadikul and Ruby considering that the same only included the EDCVL, the VRR and the Book of Voters, and not the ballots.

On March 23, 2012, Sadikul and Ruby then filed with the COMELEC First Division their Reply[18] to the counter-manifestation filed by Matba and Usman. In turn, Matba and Usman filed with the COMELEC First Division their Rejoinder[19] on March 30, 2012.

On May 3, 2012, the COMELEC First Division issued the herein assailed Order[20] which denied the said motion for reconsideration of the March 5, 2012 Order filed by Sadikul and Ruby. The COMELEC First Division maintained that Sadikul

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[17] *Id.* at 206-216.

[18] *Id.* at 217-225.

[19] *Id.* at 226-235.

[20] *Supra* note 1.

and Ruby were not deprived of due process. It pointed out that the intention of Matba and Usman to ask for the technical examination of the said election documents had always been apparent from the filing of their separate election protests, preliminary conference briefs and their intention to offer as evidence all election documents and paraphernalia such as the EDCVL, VRRs and Book of Voters on the protested precincts.

Further, the COMELEC First Division opined that the insinuation asserted by Sadikul and Ruby that there are no published rules governing the technical examination of election paraphernalia is untenable. It pointed out that the technical examination of election paraphernalia is governed by Section 1, Rule 18 of COMELEC Resolution No. 8804. As to the Precautionary Protection Order issued in the protest case between Manuel Roxas and Jejomar Binay, the COMELEC First Division averred that it would request a clearance from the Presidential Electoral Tribunal for the conduct of said technical examination.

Hence, petitioners Sadikul and Ruby filed the instant petition with this Court essentially asserting that the COMELEC First Division committed grave abuse of discretion amounting to lack or excess of jurisdiction when: *first*, it did not give them the opportunity to oppose the motion for technical examination filed by Matba and Usman; and *second*, it ordered the technical examination of the said election paraphernalia despite the lack of sanction and published rules governing such examination.

The petition is denied.

The petitioners' resort to the extraordinary remedy of *certiorari* to assail an interlocutory order issued by the COMELEC First Division is amiss. "A party aggrieved by an interlocutory order issued by a Division of the COMELEC in an election protest may not directly assail the order in this Court through a special civil action for *certiorari*. The remedy is to seek the review of the interlocutory order during the appeal of the decision of the Division in due course."[21]

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[21] *Cagas v. Commission on Elections*, G.R. No. 194139, January 24, 2012, 663 SCRA 644, 645.

Under the Constitution, the power of this Court to review election cases falling within the original exclusive jurisdiction of the COMELEC only extends to final decisions or resolutions of the COMELEC *en banc*, not to interlocutory orders issued by a Division thereof. Section 7, Article IX of the Constitution mandates:

> Sec. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof**. (Emphasis ours)

In *Ambil, Jr. v. COMELEC*,[22] this Court elucidated on the import of the said provision in this wise:

> We have interpreted this provision to mean **final orders, rulings and decisions** of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers." This decision must be a **final decision or resolution** of the Comelec ***en banc***, **not of a division**, certainly not an interlocutory order **of a division**. The Supreme Court has no power to review *via certiorari*, an interlocutory order or even a final resolution of a Division of the Commission on Elections.
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> The mode by which a decision, order or ruling of the Comelec *en banc* may be elevated to the Supreme Court is by the special civil action of *certiorari* under Rule 65 of the 1964 Revised Rules of Court, now expressly provided in Rule 64, 1997 Rules of Civil Procedure, as amended.
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> Rule 65, Section 1, 1997 Rules of Civil Procedure, as amended, requires that there be no **appeal**, **or any plain**, **speedy** and **adequate remedy** in the ordinary course of law. A motion for reconsideration **is a plain** and **adequate remedy provided by law**. **Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition**.

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[22] 398 Phil. 257 (2000).

In like manner, a decision, order or resolution of a division of the Comelec must be reviewed by the Comelec *en banc via* a motion for reconsideration before the final *en banc* decision may be brought to the Supreme Court on *certiorari*. The pre-requisite filing of a motion for reconsideration is mandatory. x x x[.][23] (Citations omitted and emphasis supplied)

Here, the Orders dated March 5, 2012 and May 3, 2012 issued by the First Division of the COMELEC were merely interlocutory orders since they only disposed of an incident in the main case *i.e.* the propriety of the technical examination of the said election paraphernalia. Thus, the proper recourse for the petitioners is to await the decision of the COMELEC First Division in the election protests filed by Matba and Usman, and should they be aggrieved thereby, to appeal the same to the COMELEC *en banc* by filing a motion for reconsideration.[24]

The petitioners, citing the case of *Kho v. COMELEC*,[25] nevertheless insist that this Court may take cognizance of the instant Petition for *Certiorari* since the COMELEC *en banc* is not the proper forum in which the said interlocutory orders issued by the COMELEC First Division can be reviewed.

The petitioners' reliance on *Kho* is misplaced. In *Kho*, the issue was whether a Division of the COMELEC may admit an answer with counter-protest which was filed beyond the reglementary period. This Court held that the COMELEC First Division gravely abused its discretion when it admitted the answer with counter-protest that was belatedly filed.

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

[24] Section 3, Article IX-C of the Constitution provides that:

Section 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rule of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.

[25] 344 Phil. 878 (1997).

On the propriety of a filing a Petition for *Certiorari* with this Court *sans* any motion for reconsideration having been filed with the COMELEC *en banc*, it was held therein that, as an exception, direct resort to this Court *via certiorari* assailing an interlocutory order may be allowed when a Division of the COMELEC commits grave abuse of discretion tantamount to lack of jurisdiction. Thus:

> As to the issue of whether or not the case should be referred to the COMELEC *en banc*, this Court finds the respondent COMELEC First Division correct when it held in its order dated February 28, 1996 that no final decision, resolution or order has yet been made which will necessitate the elevation of the case and its records to the Commission *en banc*. No less than the Constitution requires that the election cases must be heard and decided first in division and any motion for reconsideration of decisions shall be decided by the commission *en banc*. Apparently, the orders dated July 26, 1995, November 15, 1995 and February 28, 1996 and the other orders relating to the admission of the answer with counter-protest are issuances of a Commission in division and are all interlocutory orders because they merely rule upon an incidental issue regarding the admission of Espinosa's answer with counter-protest and do not terminate or finally dispose of the case as they leave something to be done before it is finally decided on the merits. **In such a situation, the rule is clear that the authority to resolve incidental matters of a case pending in a division, like the questioned interlocutory orders, falls on the division itself, and not on the Commission *en banc*.** x x x
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> x x x x x x x x x
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> Furthermore, a look at Section 2, Rule 3 of the COMELEC Rules of Procedure confirms that the subject case does not fall on any of the instances over which the Commission *en banc* can take cognizance of. It reads as follows:
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> "Section 2. The Commission *en banc*. — The Commission shall sit *en banc* in cases hereinafter specifically provided, or in pre-proclamation cases upon a vote of a majority of the members of a Commission, or in all other cases where a division is not authorized to act, or where, upon a unanimous vote of all the members of a Division, an interlocutory matter or issue relative to an action or proceeding before it is decided to be referred to the Commission *en banc*."

In the instant case, it does not appear that the subject controversy is one of the cases specifically provided under the COMELEC Rules of Procedure in which the Commission may sit *en banc*. Neither is it shown that the present controversy a case where a division is not authorized to act nor a situation wherein the members of the First Division unanimously voted to refer the subject case to the Commission *en banc*. Clearly, the Commission *en banc*, under the circumstances shown above, can not be the proper forum which the matter concerning the assailed interlocutory orders can be referred to.

In a situation such as this where the Commission in division committed grave abuse of discretion or acted without or in excess of jurisdiction in issuing interlocutory orders relative to an action pending before it and the controversy did not fall under any of the instances mentioned in Section 2, Rule 3 of the COMELEC Rules of Procedure, the remedy of the aggrieved party is not to refer the controversy to the Commission *en banc* as this is not permissible under its present rules but to elevate it to this Court *via* a petition for *certiorari* under Rule 65 of the Rules of Court.[26] (Citations omitted and emphasis ours)

Thus, exceptionally, this Court may take cognizance of a *certiorari* action directed against an interlocutory order issued by a Division of the COMELEC when the following circumstances are present: *first*, the order was issued without jurisdiction or in excess of jurisdiction or with grave abuse of discretion tantamount to lack or excess of jurisdiction; and *second*, under the COMELEC Rules of Procedure, the subject of the controversy is a matter which (1) the COMELEC *en banc* may not sit and consider or (2) a Division is not authorized to act or (3) the members of the Division unanimously vote to refer to the COMELEC *en banc*.[27]

The exception in *Kho* does not apply in the instant case since the COMELEC First Division is authorized to act on the *ex-parte* motion for the technical examination of the said election paraphernalia. The COMELEC First Division has already

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[26] *Id.* at 886-888.

[27] See *Cagas, supra* note 21, at 656.

acquired jurisdiction over the election protests filed by Matba and Usman. Concomitant with such acquisition of jurisdiction is the authority of the COMELEC First Division to rule on the issues raised by the parties and all incidents arising therefrom, including the authority to act on the *ex-parte* motion for technical examination of said election paraphernalia.

In *Kho*, the COMELEC First Division did not acquire jurisdiction on the answer with counter-protest since it was filed beyond the reglementary period and, consequently, did not have any authority to act on the issues raised therein and all incidents arising therefrom. Thus:

> It is worthy to note that as early as in the case of *Arrieta vs. Rodriguez*, this Court had firmly settled the rule that the counter-protest must be filed within the period provided by law, otherwise, the forum loses its jurisdiction to entertain the belatedly filed counter-protest. In the case at bar, there is no question that the answer with counter-protest of Espinosa was filed outside the reglementary period provided for by law. **As such, the COMELEC First Division has no jurisdictional authority to entertain the belated answer with counter-protest much less pass upon and decide the issues raised therein. It follows therefore that the order of July 26, 1995 which pertains to the admission of the answer with counter[-]protest of Espinosa as well as the other consequent orders implementing the order of admission issued by the COMELEC First Division are void for having been issued without jurisdiction.** Even if petitioner Kho did not file a motion for reconsideration of the order dated July 26, 1995 admitting the answer with counter-protest, the jurisdictional infirmity, brought about by the late filing of the answer to the protest, persist and can not be cured by the omission on the part of the protestee-petitioner to seek a reconsideration of the order dated July 26, 1995.[28] (Citation omitted and emphasis ours)

Even if this Court is to disregard the procedural lapse committed by the petitioners and rule on the issues raised, the instant petition would still be denied.

The petitioners claim that they were denied due process when the COMELEC granted the motion for technical examination

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[28] *Supra* note 25, at 885-886.

filed by Matba and Usman without giving them the opportunity to oppose the said motion.

This Court does not agree.

It bears stressing that the COMELEC, in election disputes, is not duty-bound to notify and direct a party therein to file an opposition to a motion filed by the other party. It is incumbent upon the party concerned, if he/she deems it necessary, to file an opposition to a motion within five days from receipt of a copy of the same without awaiting for the COMELEC's directive to do so. On this score, Section 3, Rule 9 of COMELEC Resolution No. 8804[29] clearly provides that:

> Sec. 3. No hearings on motions. — Motions shall not be set for hearing unless the Commission directs otherwise. Oral argument in support thereof shall be allowed only upon the discretion of the Commission. **The adverse party may file opposition five days from receipt of the motion, upon the expiration of which such motion is deemed submitted for resolution.** The Commission shall resolve the motion within five days. (Emphasis ours)

If the party concerned, despite receipt of a copy of the motion that was filed with the COMELEC, did not file an opposition to the said motion, the motion would be deemed submitted for resolution upon the expiration of the period to file an opposition thereto.

It should be stressed that one of the factors that should be considered in election protests is expediency. Proceedings in election protests are special and expeditious and the early resolution of such cases should not be hampered by any unnecessary observance of procedural rules.[30] "The proceedings should not be encumbered by delays. All of these are because the term of elective office is likewise short. There is the personal stake of the contestants which generates feuds and discords.

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[29] In re: COMELEC Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections, approved on March 22, 2010.

[30] See *Gementiza v. Commission on Elections*, 406 Phil. 292, 301 (2001).

Above all is the public interest. Title to public elective office must not be left long under cloud. Efficiency of public administration should not be impaired. It is thus understandable that pitfalls which may retard the determination of election contests should be avoided."[31]

Here, the petitioners did not file an opposition to the said motion for technical examination that was filed by Matba and Usman on February 24, 2012. It was only after the COMELEC First Division issued its March 5, 2012 Order that the petitioners decided to register their opposition to the intended technical examination, albeit in the form of a motion for reconsideration of the said Order. Contrary to the petitioners' claim, Section 3, Rule 9 of COMELEC Resolution No. 8804 gave them the opportunity to raise their objections to the said motion for technical examination. However, for reasons known only to them, petitioners did not file any opposition to the said motion. Accordingly, it is the petitioners themselves and not the COMELEC First Division who should be faulted for their predicament.

Further, this Court cannot see how due process was denied to the petitioners in the issuance of the COMELEC First Division's March 5, 2012 Order. The petitioners were able to present their opposition to the said motion for technical examination in their manifestation and motion for reconsideration which they filed with the COMELEC First Division on March 9, 2012. Indeed, the petitioners' objections to the technical examination of the said election paraphernalia were exhaustively discussed by the COMELEC First Division in its May 3, 2012 Resolution. Having filed a motion for reconsideration of the COMELEC First Division's March 5, 2012 Order, the petitioners' claim of denial of due process is clearly unfounded.

The petitioners should be reminded that due process does not necessarily mean or require a hearing, but simply an opportunity or right to be heard. One may be heard, not solely by verbal presentation but also, and perhaps many times more

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[31] *Estrada, et al. v. Sto. Domingo, et al.*, 139 Phil. 158, 176-177 (1969).

creditably and predictable than oral argument, through pleadings. In administrative proceedings moreover, technical rules of procedure and evidence are not strictly applied; administrative process cannot be fully equated with due process in its strict judicial sense. Indeed, deprivation of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration.[32]

Anent the issue on the technical examination of election paraphernalia, the petitioners contend that the COMELEC First Division cannot order a technical examination of the said election paraphernalia since there is as yet no published rule therefor. They assert that Section 1, Rule 18 of COMELEC Resolution No. 8804, the rule relied upon by the COMELEC First Division in ordering a technical examination, is vague as it failed to provide the documents that should be subjected to technical examination in election protest cases.

At the core of the petitioners' assertion is the power of the COMELEC First Division to order the technical examination of the said election paraphernalia. This Court agrees with the petitioners that Section 1, Rule 18 of COMELEC Resolution No. 8804 does not expressly authorize the conduct of technical examination of election paraphernalia as it merely provides for the procedure to be followed in the presentation and reception of evidence in election protest cases.

Section 1, Rule 18 of COMELEC Resolution No. 8804, in part, reads:

> Sec. 1. Presentation and reception of evidence; order of hearing. — The reception of evidence on all matters or issues raised in the protest and counter-protests shall be presented and offered in a hearing upon completion of (a) the recount of ballots, or re-tabulation of election documents, or (b) the technical examination, if warranted.
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> x x x x x x x x x

While Section 1, Rule 18 of COMELEC Resolution No. 8804 does not explicitly provide for the rule on the technical examination

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[32] *Paat v. CA*, 334 Phil. 146, 155 (1997); citations omitted.

of election paraphernalia, it does not mean, however, that the COMELEC First Division does not have the power to order the conduct of such technical examination.

The absence of a rule which specifically mandates the technical examination of the said election paraphernalia does not mean that the COMELEC First Division is barred from issuing an order for the conduct thereof. The power of the COMELEC First Division to order the technical examination election paraphernalia in election protest cases stems from its "exclusive original jurisdiction over all contest relating to the elections, returns and qualifications of all elective regional, provincial and city officials."[33]

Otherwise stated, the express grant of power to the COMELEC to resolve election protests carries with it the grant of all other powers necessary, proper, or incidental to the effective and efficient exercise of the power expressly granted. Verily, the exclusive original jurisdiction conferred by the constitution to the COMELEC to settle said election protests includes the authority to order a technical examination of relevant election paraphernalia, election returns and ballots in order to determine whether fraud and irregularities attended the canvass of the votes.

There is no gainsaying that the COMELEC is mandated by law to resolve election cases expeditiously and promptly. "For in this specie of controversies involving the determination of the true will of the electorate, time indeed is of paramount importance - second to none perhaps, except for the genuine will of the majority. To be sure, an election controversy which by its very nature touches upon the ascertainment of the people's choice, as gleaned from the medium of the ballot, should be resolved with utmost dispatch, precedence and regard to due process."[34]

Concomitant to the COMELEC's duty to expeditiously resolve election cases is the authority to resort to every reasonable and

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[33] CONSTITUTION, Article IX-C, Section 2 (2).

[34] *Miguel v. Commission on Elections*, 390 Phil. 478, 488 (2000).

efficient means available to it to settle the controversy. The COMELEC is thus enjoined, "not only to maintain its sense of urgency in resolving these cases, but also to explore every reasonable and feasible means of ascertaining which candidate was duly elected."[35] Thus, this Court has declared:

> An election contest, unlike an ordinary civil action, is clothed with a public interest. The purpose of an election protest is to ascertain whether the candidate proclaimed by the board of canvassers is the lawful choice of the people. What is sought is the correction of the canvass of votes, which was the basis of proclamation of the winning candidate. **An election contest therefore involves not only the adjudication of private and pecuniary interests of rival candidates but paramount to their claims is the deep public concern involved and the need of dispelling the uncertainty over the real choice of the electorate. And the court has the corresponding duty to ascertain by all means within its command who is the real candidate elected by the people**.[36] (Emphasis ours)

Here, the technical examination ordered by the COMELEC First Division, by comparing the signature and the thumbmarks appearing on the EDCVL as against those appearing on the VRRs and the Book of Voters, is a reasonable, efficient and expeditious means of determining the truth or falsity of the allegations of fraud and irregularities in the canvass of the votes in the province of Tawi-Tawi. Accordingly, the COMELEC First Division did not commit any abuse of discretion when it allowed the technical examination of the said election paraphernalia.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED.** The assailed Order dated May 3, 2012 issued by the First Division of the Commission on Elections in EPC Nos. 2010-76 and 2010-77 is **AFFIRMED.**

SO ORDERED.

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[35] See *Alberto v. COMELEC,* 370 Phil. 230, 239 (1999).

[36] *Pacanan, Jr. v. Commission on Elections*, G.R. No. 186224, August 25, 2009, 597 SCRA 189, 203.

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

Brion, J., on leave.

SECOND DIVISION

[OCA I.P.I. NO. 11-3631-RTJ. January 16, 2013]

KAREEN P. MAGTAGÑOB, *complainant, vs.* **JUDGE GENIE G. GAPAS-AGBADA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; A TEMPORARY COURT STENOGRAPHER SEEKING TO BE APPOINTED IN A PERMANENT POSITION MUST PROVE THAT SHE HAS MET THE PRESCRIBED QUALIFICATION STANDARD FOR THE POSITION.— Complainant was appointed Court Stenographer III at RTC, Branch 42, Virac, Catanduanes on 16 October 2008. Her appointment was under temporary status in view of her lack of two years relevant experience which was required for the position. Her temporary appointment was renewed for one year on 16 October 2009 upon recommendation of Judge Agbada, the presiding judge of her court. After another year, however, complainant was no longer recommended by her judge for permanent position (change of status from temporary to permanent). Thus, her temporary appointment expired on 16 October 2010. In her resolve to discredit her judge, complainant made a shotgun imputation of offenses allegedly committed by the former. She, however, failed to show any proof that she was entitled to be given a permanent position. Other than her allegation that she was given two "very satisfactory" and one "satisfactory" rating, there was no evidence presented that she has met the prescribed

qualification standard for the position. "Such standard is a mix of the formal education, experience, training, civil service eligibility, physical health and attitude that the job requires." Respondent judge, who is the immediate supervisor of complainant, is in the best position to observe the fitness, propriety and efficiency of the employee for the position. It should be impressed upon complainant that her appointment in the Judiciary is not a vested right. It is not an entitlement that she can claim simply for the reason that she had been in the service for almost two years.

2. JUDICIAL ETHICS; JUDGES; WHILE AN ADMINISTRATIVE CASE AGAINST A JUDGE WAS DISMISSED, SHE WAS REMINDED TO BE CIRCUMSPECT IN HER ACTUATIONS.— There being no proof that respondent judge abused her position, the case against her should be dismissed. Respondent judge should, however, be reminded to be circumspect in her actuations so as not to give the impression that she is guilty of favoritism.

D E C I S I O N

PEREZ, *J.*:

Through the letter dated 4 April 2011, Kareen P. Magtagñob (complainant), former Court Stenographer III of the Regional Trial Court (RTC), Branch 42, Virac, Catanduanes accuses Executive Judge Genie G. Gapas-Agbada (respondent), same court, of oppression, conduct unbecoming of a judge and abuse of authority.[1]

Complainant contends that her appointment was not renewed because respondent judge refused to sign the requirements for the change of her employment status from temporary to permanent despite her two-year service. Thus, her temporary appointment ended last 16 October 2010.

Complainant claims that respondent judge's refusal was capricious, oppressive and done with abuse of authority and

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[1] *Rollo*, pp. 1-2.

without valid grounds considering that she was given two "very satisfactory" and one "satisfactory" ratings in all three semesters within the two-year period of her service with the court. Complainant avers that she stays with respondent judge in court even after office hours to assist the judge with her work. Being a distant relative, complainant alleges that she lived with respondent judge and even attends to her personal needs at home.

Complainant states that many of her officemates have questioned the "satisfactory" rating given to her by respondent judge considering that Isidro Guerrero (Mr. Guerrero), their non-performing utility clerk, received a higher rating despite respondent judge's knowledge of his misdeeds. Worse, she claims that respondent judge even recommended Mr. Guerrero for a position in the court of her "*kumare*," Judge Lorna B. Santiago-Ubalde (Judge Ubalde) of the Municipal Trial Court, Virac, Catanduanes.

Complainant alleges that respondent judge has retained her position as executive judge of RTC, Virac, Catanduanes because she has successfully maligned the character of the other judge in the station, Judge Lelu P. Contreras (Judge Contreras). This was allegedly done through an anonymous letter which complainant claimed she personally mailed at the instance of respondent judge. Complainant also claims that she even bought the SIM card which respondent judge used to convey to the Bicol Peryodiko malicious text messages about Judge Contreras. Further, respondent judge allegedly directed her to send a letter via registered mail to Catanduanes Tribune to impute wrongful acts to Judge Contreras.

Complainant reports that respondent judge and Atty. Ruel P. Borja (Atty. Borja) of the Public Attorney's Office (PAO) are close and would usually have coffee inside respondent judge's chamber. She claims that one time she overheard the two talking about the alleged relationship between Judge Lelu P. Contreras and the Bishop of Catanduanes. Complainant criticizes the closeness of respondent to Atty. Borja who has pending cases before respondent judge. Complainant informs the Court that she also filed a complaint against Atty. Borja in the PAO Central

Office for the latter's alleged connivance with respondent judge in oppressing her.[2]

Finally, complainant prays that she be reinstated to her former position because she believes that her separation from employment was unjust and without valid grounds. She further prays that respondent judge be relieved as executive judge of RTC, Virac, Catanduanes to put an end to her abusive acts towards lowly employees.

In her comment[3] dated 15 July 2011, respondent judge rebuts the allegations in the complaint. She asserts that the filing of the complaint was a form of revenge for her refusal to recommend complainant's permanent appointment as Stenographer III. She avers that complainant even sent her a text message stating "*wala akong utang na loob sa iyo…Sana nakakatulog ka sa ginawa mo; sana mangyari rin sayo nangyari sa akin*."[4] Respondent judge further avers that the complaint contains distorted facts and had hearsay statements maliciously crafted to malign her reputation.

Anent her refusal to recommend complainant for permanent appointment, respondent judge explains that this is justified because of complainant's display of discourteous behavior, dishonest demeanor, immoral conduct and unprofessional ways despite the trainings and reminders given her. As evidence, respondent judge attached an affidavit executed by Judge Ubalde stating that she witnessed how discourteous and disobedient complainant was to her superiors. Respondent judge maintains that the instant complaint is but a desperate act of an employee who has been separated from work for her unethical, unprofessional and immoral conduct.

As regards complainant's receipt of a mere satisfactory rating, respondent judge clarifies that each employee in her court is not mechanically rated. The employee's performance is

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[2] *Id.* at 6.

[3] *Id.* at 38-54.

[4] *Id.* at 38.

thoroughly evaluated and discussed, especially for those who were given a lower rating than their previous one. This is done for them to improve their performance. Complainant received a satisfactory rating[5] for January 2010 to June 2010 because it was during that period that her incorrigible unethical conduct came to fore as duly noted by her immediate supervisor, Atty. Lino A. Gianan, Jr., Branch Clerk of Court, RTC, Branch 42.

On the higher rating given to Mr. Guerrero, respondent judge avers that instead of reassessing her own misdeeds, complainant would point out the alleged misdeeds of her co-employees. Respondent judge claims that she never stops in her effort to discipline her court employees, by calling their attention; giving them memoranda; and investigating reports of their misconduct. These efforts to discipline employees were attested to by Judge Ubalde[6] and Katrina V. Tabuzo,[7] one of the members of her staff.

Respondent judge also denies that she recommended Mr. Guerrero to Judge Ubalde for promotion to the position of process server. The denial is supported by Judge Ubalde's affidavit[8] dated 20 January 2011. She also disavows the influence she supposedly exerted to reinstate Michael Bagadiong as security guard in the Hall of Justice.

On the personal services allegedly rendered to her by complainant, respondent judge admits that she would request complainant to accompany her in the office even beyond office hours to type or encode her decisions. She claims that the services are not done for her but are part of the duties of a court stenographer.

Respondent judge explains that it was complainant who volunteered to accompany her at night but only during weekdays

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[5] *Id.* at 16.

[6] *Id.* at 122-123.

[7] *Id.* at 121.

[8] *Id.* at 119.

and so that complainant can save on her daily expenses, considering that she is both a staff and a distant relative. Respondent judge states that complainant also accompanied her twice a week during her teaching schedules in Catanduanes State Colleges because complainant wanted to listen to her lectures to improve her proficiency in English.

With regard to the alleged closeness and connivance with Atty. Borja, respondent judge claims that complainant's motive in singling out Atty. Borja among the other lawyers is to give a ring of truth to her malicious imputation that Atty. Borja conspired with her to oppress complainant. Respondent judge clarifies that she offers coffee to all lawyers and judges who see her in her chamber for pre-trial conferences or meetings.

Anent the alleged anonymous letter, publications and rumor-mongering against Judge Contreras, respondent judge asserts that complainant fabricated those stories to destroy her relationship with Judge Contreras, in whom complainant sought refuge after her temporary appointment in RTC, Branch 42 ended. Respondent judge stresses that it was only after complainant failed to get from her the requested recommendation that complainant started concocting stories and rumors against Judge Contreras, pointing to respondent as the source.

On 2 September 2011, the Office of the Court Administrator (OCA) received a letter from Judge Contreras, who at her own instance, addresses the accusations allegedly hurled against her by respondent judge as mentioned in the complaint.[9]

Judge Contreras attests to the credibility of Ms. Magtagñob regarding the anonymous letter mailed by the latter to the Supreme Court as ordered by respondent judge. She states that the anonymous letter accused her of using forfeited lumber materials for her personal needs regardless of whether or not the illegal logging case in her court has been terminated. Contrary to such accusations, she clarifies that respondent judge knew that the lumber materials were donated by the DENR to her office

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[9] *Id.* at 182-192.

(Branch 43, RTC, Virac, Catanduanes) and were used in various carpentry works in the office. Judge Contreras maintains that Ms. Magtagñob disclosed to her the information regarding the letter to warn her of the true character of respondent judge.

On her alleged romantic involvement with the Bishop of Catanduanes, Judge Contreras reports that it was confirmed to her by Atty. Borja that it was respondent judge who made such remark not merely as a rumor but as a conclusion but without proof.

She claims that before she assumed office in RTC, Virac, she was already forewarned by some judges to be careful in dealing with respondent judge. Judge Contreras further claims that without respondent judge knowing it, the latter's staff had been "seeking refuge/relief" in her branch and confiding to her staff what they were going through under respondent judge.

Judge Contreras concludes that respondent judge feels threatened by her presence and that is the reason why the latter wanted to remain on top even if she has to fabricate lies against her and hide behind the cloak of anonymity.

In her reply[10] dated 18 August 2011, complainant reiterates the averments in her complaint and stresses that she has performed her duty as court stenographer well enough for respondent judge to give her a rating of "very satisfactory." Based on her performance, complainant then finds respondent judge's actuations to be inconsistent.

Complainant admits that she sent respondent judge a text message, but only because she was really hurt when the latter did not sign her appointment papers.

The OCA reported[11] that it also received an anonymous letter dated 3 February 2011 which contains substantially the same allegations as the 4 April 2011 letter of complainant. The letter from the "concerned citizen" details the abusive acts allegedly

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[10] *Id.* at 135-146.

[11] *Id.* at 258-263.

committed by respondent judge. The unidentified complainant laments that respondent judge terminated Ms. Magtagñob from the service without any justifiable grounds despite the latter's earnest efforts in performing her duties as court stenographer.

The letter-writer likewise states that respondent judge had been sending anonymous letters to the Supreme Court maliciously imputing certain acts against Judge Contreras in order to wrest the position of executive judge from Judge Contreras. The letter-writer claims that this was admitted by Ms. Magtagñob, respondent judge's erstwhile confidant and former employee, who was unceremoniously terminated from the service by respondent judge.

Finally, the anonymous complainant decries respondent judge's lack of respect for court employees. She allegedly treats them as though she is paying their salary; shouts at them and turns a deaf ear to any of their explanations.

In compliance with the directive issued by then Deputy Court Administrator Nimfa C. Vilches, Judge Contreras submitted a report dated 8 June 2011 on the discreet investigation she conducted with respect to the anonymous letter dated 3 February 2011.

In her report, Judge Contreras revealed that Mr. Guerrero is a distant relative of respondent judge. Although holding the position of court aide, Mr. Guerrero seldom performs janitorial works. His daily routine involves the switching on of the lights and air-conditioning units when he arrives every morning, after which, he leaves the Hall of Justice and returns later at around 10:00 o'clock or 11:00 o'clock in the morning. His work assignments are usually performed by the janitors hired by the agency.

Moreover, respondent judge's weekly gasoline privileges given by the provincial government are extended to Mr. Guerrero who goes with her to the gas station and gets a full tank for his motorcycle while respondent judge gets whatever remains of her gasoline allowance.

The report further revealed that Mr. Guerrero plays mahjong and also goes out to play "*tupada*" during office hours. These activities were reported to respondent judge, but she dismissed the same as mere hearsay. Respondent judge always takes Mr. Guerrero's side every time a member of her staff complains about his lackadaisical behavior and arrogance.

As to Ms. Magtagñob, the report disclosed that she too is a close relative of respondent judge. The report confirmed that she stayed in the residence of respondent judge and worked as her housemaid. She cooked for her, ironed her clothes, cleaned the house and practically did all errands for her.

Their relationship, however, allegedly took a drastic turn when Ms. Magtagñob became pregnant and eventually got married, which angered respondent judge. Consequently, respondent judge told Ms. Magtagñob to move out of the house. Thereafter, she was also told to move out of respondent judge's chamber and transfer to the staff room. Moreover, respondent judge allegedly told Ms. Magtagñob that her appointment would no longer be renewed. Ms. Magtagñob's performance rating likewise took a dramatic plunge from "36" to "32", until she was finally told to stop reporting for work in October 2010.

The report further states that fortunately, the PAO Office, through its Chief of Office Atty. Borja, took in Ms. Magtagñob as a detailed casual employee. The employment was, however, short-lived as she was informed that a memorandum from the main office prohibited the detail of casual employees. Ms. Magtagñob suspects that her dismissal was not in view of the memorandum because she allegedly found out that a few days prior to her termination Atty. Borja had gone to see respondent judge. The meeting gave rise to Ms. Magtagñob's speculation that respondent judge had prevailed upon Atty. Borja to remove her from the PAO.

The report further disclosed that the unexpected removal of Ms. Magtagñob became a "hot topic" in the Hall of Justice. When Judge Contreras went to see Judge Ubalde, who is reportedly one of respondent judge's closest friends, the latter

allegedly informed her that respondent judge was hurt when she came to know of Ms. Magtagñob's pregnancy from other sources and not directly from the latter. Consequently, Judge Contreras interpreted respondent judge's actuations in this wise:

Judge Agbada's treatment of Ms. Padilla is a clear proof of how unjust and unfair she is. Since Ms. Padilla can no longer be of personal service to her, she did everything to ease her out, like lowering her performance rating to 'Satisfactory' to give her valid and justifiable reason to recommend her termination, but she remains deaf and blind to the wrongdoings of Mr. Guerrero.[12]

As to respondent judge's association with Atty. Borja, the report disclosed that among the practicing lawyers, only Atty. Borja was served coffee inside the chamber of respondent judge where they were usually left to talk alone. In fact, Judge Contreras reported that their "closeness became the butt of all the jokes among those who were able to observe their camaraderie."

Judge Contreras further revealed that she found out from Ms. Magtagñob that the anonymous letter against her which was sent to the Supreme Court was authored by respondent judge. Judge Contreras then took the opportunity to address that part of the anonymous complaint which concerned her and the Bishop of Catanduanes and denied all the allegations relative thereto.

Finding the versions presented by the parties as conflicting, the OCA in its report[13] dated 25 September 2012, recommended the referral of the instant administrative matter to one of the Associate Justices of the Court of Appeals for investigation, report and recommendation.

We find no need for such referral. This is a simple case involving a former employee of the court who complains against her judge for not renewing her temporary appointment. In her complaint, she imputed offenses allegedly committed by her

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[12] *Id.* at 262-263.

[13] *Id.* at 251-264.

former judge. The case was complicated when it was referred for discreet investigation to a judge from the same station who has a pending case against respondent judge and who has been implicated as one of the items of rumors allegedly respondent judge circulated.

The valuable time and resources of the Court had been wasted in the resolution of the instant administrative matter. The time of the judges which is supposed to be spent in conducting hearings and drafting of decisions was instead spent for the conduct of investigation, preparation of comments and submission of report. In highlighting the quarrel between the two judges of Virac, Catanduanes, the core issue which led to the filing of this complaint was overlooked. We find it just and reasonable to limit the resolution of this case only on the issue of whether respondent judge was capricious, oppressive and abusive of her authority in not renewing the appointment of complainant. The other issues, if valid and can be proven, should be addressed in separate complaints against the persons involved.

In fact, records reveal that the case involving the alleged solicitation of lumber by Judge Contreras had already been resolved by the Court in a resolution dated 10 February 2010. Likewise, records from the Legal Office, OCA reveal that the allegation of rumor mongering on the part of respondent judge is already among the offenses complained of by Judge Contreras in OCA I.P.I No. 11-3734-RTJ which is pending resolution by the Court.

The complaint herein is bereft of merit.

Complainant was appointed Court Stenographer III at RTC, Branch 42, Virac, Catanduanes on 16 October 2008. Her appointment was under temporary status in view of her lack of two years relevant experience which was required for the position. Her temporary appointment was renewed for one year on 16 October 2009 upon recommendation of Judge Agbada, the presiding judge of her court.[14]

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[14] Certification issued by the Office of Administrative Services, OCA, 22 November 2010. *Id.* at 193.

After another year, however, complainant was no longer recommended by her judge for permanent position (change of status from temporary to permanent). Thus, her temporary appointment expired on 16 October 2010.[15]

In her resolve to discredit her judge, complainant made a shotgun imputation of offenses allegedly committed by the former. She, however, failed to show any proof that she was entitled to be given a permanent position. Other than her allegation that she was given two "very satisfactory" and one "satisfactory" rating, there was no evidence presented that she has met the prescribed qualification standard for the position. "Such standard is a mix of the formal education, experience, training, civil service eligibility, physical health and attitude that the job requires."[16] Respondent judge, who is the immediate supervisor of complainant, is in the best position to observe the fitness, propriety and efficiency of the employee for the position. It should be impressed upon complainant that her appointment in the Judiciary is not a vested right. It is not an entitlement that she can claim simply for the reason that she had been in the service for almost two years.

The changes in complainant's rating, if at all, manifested that respondent judge had not been complacent in the rating of her employees. As claimed in her comment, respondent judge does not rate her employees mechanically. They were rated based on the evaluation of their performance during the period concerned. Records from the Office of Administrative Services, OCA reveal that during the same period, almost all the employees of RTC, Branch 42, Virac received varied performance ratings.

We note that complainant likewise filed an administrative complaint against Atty. Borja, officer-in-charge of the PAO-Virac, Catanduanes. Complainant accuses Atty. Borja of abuse of authority and acting in connivance with respondent judge with intention of oppressing her.

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[15] *Id.*

[16] *Department of Labor and Employment v. Maceda*, G.R. No. 185112, 18 January 2010, 610 SCRA 266, 273.

In a letter dated 15 October 2012, respondent judge submitted to the Court a copy of the resolution[17] issued by the Public Attorney's Office, Department of Justice, Quezon City dismissing the complaint filed by complainant against Atty. Borja.

The subsequent filing of complaint against Atty. Borja manifests complainant's propensity to file complaints whenever she does not get what she wants. Such attitude should not be tolerated. Otherwise, judges will be placed in hostage situations by employees who will threaten to file complaints whenever they do not get their way with their judges.

There being no proof that respondent judge abused her position, the case against her should be dismissed. Respondent judge should, however, be reminded to be circumspect in her actuations so as not to give the impression that she is guilty of favoritism.

It is worthy to note also that in Administrative Order No. 88-2011 dated 14 June 2011, respondent judge was designated assisting judge of RTC, Branch 221. Quezon City. In Administrative Order No. 12-2012 dated 19 January 2012, respondent judge was designated as full time acting presiding judge of RTC, Branch 154, Pasig City. Judge Contreras, in addition to her regular court, had been designated in the same administrative order as acting presiding judge of RTC, Branch 42, Virac, Catanduanes. Thus, Judge Contreras now presides over the two RTCs in Virac, Catanduanes.

WHEREFORE, IN THE LIGHT OF THE FOREGOING, the Court resolves:

(1) to **NOTE:** (a) the complaint dated 4 April 2011 of Ms. Kareen P. Magtagñob; (b) the comment dated 15 July 2011 of respondent Judge Genie G. Gapas-Agbada; (c) the reply dated 18 August 2011 of complainant; (d) the letter dated 18 August 2011 of Judge Lelu P. Contreras; (e) the report dated 25 September 2012 of the Office of the Court Administrator; and (f) the resolution dated 23 May 2012 of the Public Attorney's Office, Department of Justice, Quezon City; and

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[17] *Rollo*, pp. 265-274.

(2) to *DISMISS* the instant administrative complaint filed by Ms. Kareen P. Magtagñob against Judge Genie G. Gapas-Agbada, Regional Trial Court, Branch 42, Virac, Catanduanes for lack of merit.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[G.R. No. 160138. January 16, 2013]

AUTOMOTIVE ENGINE REBUILDERS, INC. (AER), ANTONIO T. INDUCIL, LOURDES T. INDUCIL, JOCELYN T. INDUCIL and MA. CONCEPCION I. DONATO, *petitioners, vs.* **PROGRESIBONG UNYON NG MGA MANGGAGAWA SA AER, ARNOLD VILLOTA, FELINO E. AGUSTIN, RUPERTO M. MARIANO II, EDUARDO S. BRIZUELA, ARNOLD S. RODRIGUEZ, RODOLFO MAINIT, JR., FROILAN B. MADAMBA, DANILO D. QUIBOY, CHRISTOPHER R. NOLASCO, ROGER V. BELATCHA, CLEOFAS B. DELA BUENA, JR., HERMINIO P. PAPA, WILLIAM A. RITUAL, ROBERTO CALDEO, RAFAEL GACAD, JAMES C. CAAMPUED, ESPERIDION V. LOPEZ, JR., FRISCO M. LORENZO, JR., CRISANTO LUMBAO, JR., and RENATO SARABUNO,** *respondents.*

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[*] Per Special Order No. 1408 dated 15 January 2013.

[G.R. No. 160192. January 16, 2013]

PROGRESIBONG UNYON NG MGA MANGGAGAWA SA AER, ARNOLD VILLOTA, FELINO E. AGUSTIN, RUPERTO M. MARIANO II, EDUARDO S. BRIZUELA, ARNOLD S. RODRIGUEZ, RODOLFO MAINIT, JR., FROILAN B. MADAMBA, DANILO D. QUIBOY, CHRISTOPHER R. NOLASCO, ROGER V. BELATCHA, CLEOFAS B. DELA BUENA, JR., HERMINIO P. PAPA, WILLIAM A. RITUAL, ROBERTO CALDEO, RAFAEL GACAD, JAMES C. CAAMPUED, ESPERIDION V. LOPEZ, JR., FRISCO M. LORENZO, JR., CRISANTO LUMBAO, JR., and RENATO SARABUNO, *petitioners, vs.* **AUTOMOTIVE ENGINE REBUILDERS, INC., and ANTONIO T. INDUCIL,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ONLY EMPLOYEES WHO WERE NOT FOUND GUILTY OF ILLEGAL STRIKE AND HAVE SIGNED THE MEMBERSHIP RESOLUTION ATTACHED TO THE PETITION SHOULD BE REINSTATED AND GIVEN BACKWAGES.— [T]he Court holds that only nine (9) of the fourteen (14) excluded employees deserve to be reinstated immediately with backwages. Records disclose that thirty-two (32) employees filed a complaint for illegal suspension and unfair labor practice against AER. Out of these 32 workers, only eighteen (18) of them were charged by AER with illegal strike leaving fourteen (14) of them excluded from its complaint. x x x Technically, as no charges for illegal strike were filed against these 14 employees, they cannot be among those found guilty of illegal strike. They cannot be considered *in pari delicto*. They should be reinstated and given their backwages. Out of these 14 employees, however, five (5) failed to write their names and affix their signatures in the Membership Resolution attached to the petition filed before the CA, authorizing Union President Arnold Villota to represent them. It must be noted that Arnold Villota signed as the Affiant in the Verification and Certification

by virtue of the Membership Resolution. x x x Because of their failure to affix their names and signatures in the Membership Resolution, Edwin Mendoza, Tammy Punzalan, Edward Ferrancol, Menching Mariano, Jr. and Carlos Carolina cannot be granted the relief that Unyon wanted for them in its Motion for Partial Reconsideration. Only the following nine (9) employees who signed their names in the petition can be granted the relief prayed for therein[.] x x x These excluded nine (9) workers, who signed their names in their petition before the CA, deserve to be reinstated immediately and granted backwages. It is basic in jurisprudence that illegally dismissed workers are entitled to reinstatement with backwages plus interest at the legal rate.

APPEARANCES OF COUNSEL

Acaban & Associates for Automotive Engine Rebuilder, Inc.
Remigio D. Saladero, Jr. for Progresibong Unyon ng mga Manggagawa sa AER, *et al.*

R E S O L U T I O N

MENDOZA, *J.*:

For resolution is the Motion for Partial Reconsideration filed by Progresibong Unyon Ng Mga Manggagawa Sa AER *(Unyon)* which questioned the Court's July 13, 2011 Decision insofar as it failed to award backwages to fourteen (14) of its members. The decretal portion of the decision reads:

WHEREFORE, the petitions are **DENIED**. Accordingly, the complaining employees should be reinstated without backwages. If reinstatement is no longer feasible, the concerned employees should be given separation pay up to the date set for their return in lieu of reinstatement.[1]

In arriving at said determination, the Court found out both parties were at fault or *in pari delicto* and must bear the

[1] *Rollo* (G.R. No. 160138), p. 253.

consequences of their own wrongdoing.[2] Thus, it decreed that the striking employees must be restored to their respective positions prior to the illegal strike and illegal lockout.

Records disclose that this labor controversy started when both parties filed charges against each other, blaming the other party for violating labor laws. Thirty-two (32) employees filed and signed a complaint,[3] dated February 18, 1999, against Automotive Engine Rebuilders, Inc. *(AER)*. The complaint prayed that AER be declared guilty of Unfair Labor Practices, Illegal Dismissal, Illegal Suspension, and Run-away shop; that the complainants be reinstated; and that they be paid "full backwages and without loss of seniority rights and privileges, payment of wages during suspension, plus moral and exemplary damages and attorney's fees."[4]

The names of the 32 complaining employees are as follows:

1. Felino Agustin
2. Ruperto Mariano II
3. Eduardo Brizuela
4. Otilio Rabino
5. Arnold Rodriguez
6. Froilan Madamba
7. Ferdinand Flores
8. Jonathan Taborda
9. Rodolfo Mainit, Jr.
10. Danilo Quiboy
11. Christopher Nolasco
12. Roger Belatcha
13. Claud Moncel
14. Cleofas dela Buena, Jr.
15. Edwin Mendoza
16. Herminio Papa
17. Oscar Macaranas

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[2] *Id.* at 245.

[3] *Rollo* (G.R. No. 160138), pp. 121-126; (G.R. No. 160192), pp. 115-120.

[4] *Rollo* (G.R. No. 160138), pp. 121-122.

18. William Ritual
19. Roberto Caldeo
20. Rafael Gacad
21. James Caampued
22. Esperidion Lopez, Jr.
23. Frisco Lorenzo, Jr.
24. Bernardino Acosta, Jr.
25. Benson Pingol
26. Tammy Punsalan
27. Edward Ferrancol
28. Crisanto Lumbao, Jr.
29. Arnold Villota
30. Menching Mariano, Jr.
31. Carlos Carolino
32. Renato Sarabuno

Out of the 32, six (6) resigned and signed waivers and quitclaims, namely:

1. Oscar Macaranas
2. Bernardino Acosta
3. Ferdinand Flores
4. Benson Pingol
5. Otillo Rabino
6. Jonathan Taborda

On the other hand, the earlier complaint[5] filed by AER against Unyon and eighteen (18) of its members for illegal concerted activities prayed that, after notice and hearing, judgment be rendered as follows:

1. Finding respondents guilty of unfair labor practice and illegal concerted activity;

2. Finding respondents guilty of abandonment of work, serious misconduct, gross disrespect, commission of felonies against the complainant and their respective officers, threats, coercion and intimidation;

3. Penalizing complainants with dismissal and/or termination of employment; and

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[5] *Rollo* (G.R. No. 160192), pp. 139-144.

4. Adjudging respondents to be jointly and solidarily liable to complainant for moral damages in the sum of ₱500,000.00, exemplary damages in the sum of ₱500,000.00 and attorney's fees and costs.

The names of the 18 workers charged with illegal strike by AER are as follows:

1. Felino Agustin
2. Eduardo Brizuela
3. Otilio Rabino
4. Ferdinand Flores
5. Jonathan Taborda
6. Rodolfo Mainit, Jr.
7. Christopher Nolasco
8. Claud Moncel
9. Cleofas dela Buena
10. Herminio Papa
11. Oscar Macaranas
12. William Ritual
13. Rafael Gacad
14. James Caampued
15. Benson Pingol
16. Frisco Lorenzo, Jr.
17. Bernardino Acosta, Jr.
18. Esperidion Lopez, Jr.

AER likewise suspended seven (7) union members who tested positive for illegal drugs, namely:

1. Froilan Madamba
2. Arnold Rodriguez
3. Roberto Caldeo
4. Roger Bilatcha
5. Ruperto Mariano
6. Edwin Fabian
7. Nazario Madala

Out of the seven (7) suspended employees, only Edwin Fabian and Nazario Madala were allowed by AER to report back to work. The other five (5) suspended employees were not admitted by AER without first submitting the required medical certificate attesting to their fitness to work.

On August 9, 2001, after the parties submitted their respective position papers,[6] the Labor Arbiter *(LA)* rendered a decision[7] in favor of Unyon by directing AER to reinstate the concerned employees but without backwages effective October 16, 2001. Both parties filed their respective appeals[8] with the National Labor Relations Commission (*NLRC*).

On March 5, 2002, the NLRC issued its Resolution[9] modifying the LA decision by setting aside the order of reinstatement as it ruled out illegal dismissal. The NLRC likewise ruled that the concerned employees had no valid basis in conducting a strike. On April 19, 2002, Unyon filed a motion for reconsideration[10] insisting, among others, that AER was guilty of unfair labor practice, illegal suspension and illegal dismissal. Unyon also argued that since AER charged only 18 of the 32 employees with illegal strike, the employees who were not included in the said charge should have been admitted back to work by AER. Unyon also claimed that there was no allegation that these employees, who were not included in AER's charge for illegal strike, were involved in the January 28, 1999 incident.[11]

After the denial of their motion for reconsideration, Unyon and the concerned employees filed a petition[12] before the Court of Appeals *(CA)*. Unyon reiterated its argument that AER should admit back to work those excluded from its list of 18 employees charged with illegal strike.[13]

On June 27, 2003, the CA rendered a decision,[14] the dispositive portion of which reads, as follows:

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[6] *Id.* at 40-58.

[7] *Id.* at 69-73.

[8] *Id.* at 74-92.

[9] *Id.* at 93-101.

[10] *Id.* at 102-114.

[11] *Id.* at 109.

[12] *Id.* at 123-145.

[13] *Id.* at 139.

[14] *Id.* at 24-32.

WHEREFORE, premises considered, the petition is **GRANTED.** Respondents are hereby directed to reinstate the petitioners effective immediately but without backwages, **except those who were tested positive for illegal drugs and have failed to submit their respective medical certificates.**

On October 1, 2003, ruling on the motion for partial reconsideration filed by Unyon, the CA rendered the assailed Amended Decision,[15] ordering the immediate reinstatement of all the suspended employees without backwages. Thus,

WHEREFORE, the partial motion for reconsideration is **GRANTED** insofar as the reinstatement of the suspended employees is concerned. This Court's decision dated June 27, 2003 is hereby **MODIFIED**. Private respondents are hereby directed to **reinstate all petitioners** immediately without backwages.

Unsatisfied, both parties filed the present consolidated petitions. Unyon argued that the CA erred in not awarding backwages to the suspended employees who were ordered reinstated. AER, on the other hand, argued that the CA erred in ordering the reinstatement of the suspended employees.

On July 13, 2011, this Court rendered a decision,[16] the dispositive portion of which reads, as follows:

WHEREFORE, the petitions are **DENIED**. Accordingly, the complaining employees should be reinstated without backwages. If reinstatement is no longer feasible, the concerned employees should be given separation pay up to the date set for their return in lieu of reinstatement.

Unyon filed the subject Motion for Partial Reconsideration[17] questioning the Court's July 13, 2011 Decision insofar as it failed to award backwages to fourteen (14) of its members.

Unyon argues that backwages should have been awarded to the 14 employees who were excluded from the complaint filed

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[15] *Id.* at 33-34.

[16] *Id.* at 237-259.

[17] *Id.* at 260-266.

by AER and that the latter should have reinstated them immediately because they did not have any case at all.

AER was directed to file its comment. Its Comment,[18] however, failed to address the issue except to say that the motion for partial reconsideration was pro-forma.

After going over the records again, the Court holds that only nine (9) of the fourteen (14) excluded employees deserve to be reinstated immediately with backwages.

Records disclose that thirty-two (32) employees filed a complaint for illegal suspension and unfair labor practice against AER. Out of these 32 workers, only eighteen (18) of them were charged by AER with illegal strike leaving fourteen (14) of them excluded from its complaint. The names of these 14 employees are as follows:

1. Ruperto Mariano II
2. Arnold Rodriguez
3. Froilan Madamba
4. Danilo Quiboy
5. Roger Belatcha
6. Edwin Mendoza
7. Roberto Caldeo
8. Tammy Punsalan
9. Edward Ferrancol
10. Crisanto Lumbao, Jr.
11. Arnold Villota
12. Menching Mariano, Jr.
13. Carlos Carolino
14. Renato Sarabuno

Technically, as no charges for illegal strike were filed against these 14 employees, they cannot be among those found guilty of illegal strike. They cannot be considered *in pari delicto*. They should be reinstated and given their backwages.

Out of these 14 employees, however, five (5) failed to write their names and affix their signatures in the Membership

[18] *Rollo* (G.R. No. 160138), pp. 263-268.

Resolution[19] attached to the petition filed before the CA, authorizing Union President Arnold Villota to represent them. It must be noted that Arnold Villota signed as the Affiant in the Verification and Certification by virtue of the Membership Resolution.[20] The names of these 5 employees are:

1. Edwin Mendoza
2. Tammy Punzalan
3. Edward Ferrancol
4. Menching Mariano, Jr.
5. Carlos Carolina

Because of their failure to affix their names and signatures in the Membership Resolution, Edwin Mendoza, Tammy Punzalan, Edward Ferrancol, Menching Mariano, Jr. and Carlos Carolina cannot be granted the relief that Unyon wanted for them in its Motion for Partial Reconsideration. Only the following nine (9) employees who signed their names in the petition can be granted the relief prayed for therein, namely:

1. Ruperto Mariano II
2. Arnold Rodriguez
3. Froilan Madamba
4. Danilo Quiboy
5. Roger Belatcha
6. Roberto Caldeo
7. Crisanto Lumbao, Jr.
8. Arnold Villota
9. Renato Sarabuno

These excluded nine (9) workers, who signed their names in their petition before the CA, deserve to be reinstated immediately and granted backwages. It is basic in jurisprudence that illegally dismissed workers are entitled to reinstatement with backwages plus interest at the legal rate.[21]

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[19] *Rollo* (G.R. No. 160192), pp. 116-117.

[20] *Id.* at 114.

[21] *Session Delights Ice Cream and Fast Foods v. CA*, G.R. No. 172149, February 8, 2010, 612 SCRA 10, 24.

As stated in the Amended Decision of the CA, which the Court effectively affirmed after denying the petition of both parties, the reinstatement shall be "without prejudice to the right of private respondent AER to subject them for further medical check-up to determine if subject petitioners are drug dependents."[22]

WHEREFORE, the Motion for Partial Reconsideration filed by Progresibong Unyon Ng Mga Manggagawa Sa AER is **GRANTED** only insofar as the nine (9) employees are concerned, namely: Ruperto Mariano II, Arnold Rodriguez, Froilan Madamba, Danilo Quiboy, Roger Belatcha, Roberto Caldeo, Crisanto Lumbao, Jr., Arnold Villota, and Renato Sarabuno.

Accordingly, the July 13, 2011 Decision is hereby **MODIFIED** in that the aforementioned nine (9) workers are entitled to be reinstated and granted backwages with interest at the rate of six percent (6%) per annum which shall be increased to twelve percent (12%) after the finality of this judgment.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr. (Chairperson), and *Abad, JJ.,* concur.

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[22] CA Amended Decision, *rollo* (G.R. No. 160138), p. 50.

SECOND DIVISION

[G.R. No. 175209. January 16, 2013]

ROLANDO L. CERVANTES, *petitioner, vs.* **PAL MARITIME CORPORATION and/or WESTERN SHIPPING AGENCIES, PTE., LTD.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION; RULES OF PROCEDURE; WHERE LATE SUBMISSION OF THE JOINT DECLARATION ON APPEAL CONSIDERED AS SUBSTANTIAL COMPLIANCE.— While the Rule mandates the submission of a joint declaration, this may be liberally construed especially in cases where there is substantial compliance with the Rule. When the NLRC issued an order directing respondents to file their Joint Declaration, the latter immediately complied. Thus, there was only a late submission of the Joint Declaration. There was substantial compliance when respondents manifested their willingness to comply, and in fact complied with, the directive of the NLRC. x x x As correctly pointed out by the Court of Appeals, respondents had posted a surety bond equivalent to the monetary award and had filed the notice of appeal and appeal memorandum, all within the reglementary period. All these show substantial compliance with the appeal requirement, considered as they must be, together with late submission of the Joint Declaration.

2. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; FORCED RESIGNATION, NOT A CASE OF.— Resignation is the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, such that he has no other choice but to disassociate himself from his employment. This is precisely what obtained in this case. The tenor of petitioner's telex message was an unmistakeable demand that he be relieved of his assignment[.] x x x Respondents met the challenge and accepted petitioner's resignation. x x x The statements of petitioner were simple and straightforward. There is no merit to his claim that he was forced

to resign due to extreme pressure. Only two (2) days had elapsed from the time petitioner received a copy of the complaint from the owners of the vessel until his letter demanding his relief. The telex message outlining numerous complaints against petitioner probably bruised his ego, causing petitioner to react impulsively by resigning. Petitioner failed to substantiate his claim that he and the Filipino crew members were being subjected to racial discrimination on board.

3. ID.; ID.; ID.; WHERE FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL WAS A MERE AFTERTHOUGHT.— The rule that filing of a complaint for illegal dismissal is inconsistent with resignation does not hold true in this case. The filing of the complaint one year after his alleged termination, coupled with the clear tenor of his resignation letter should be taken to mean that petitioner's filing of the illegal dismissal case was a mere afterthought.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan for petitioner.
Venustiano Roxas & Associates for respondents.

D E C I S I O N

PEREZ, *J.*:

This treats of the petition for review filed by petitioner Rolando Cervantes assailing the Decision[1] and Resolution of the Court of Appeals dated 14 August 2006 and 26 October 2006, respectively, in CA-G.R. SP No. 76756.

At the center of this controversy is the question whether petitioner resigned or was terminated from his employment.

Petitioner Rolando Cervantes was hired as Master on board the vessel M/V Themistocles by respondent PAL Maritime

[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Eliezer R. De Los Santos and Fernanda Lampas Peralta, concurring. *Rollo*, pp. 24-33.

Corporation, the manning agent of respondent Western Shipping Agencies, PTE., LTD., (Western Shipping) for a 10-month period effective 1 July 1995, with a basic monthly salary of United States (US)$1,600.00, an allowance of US$240.00 per month, a fixed overtime pay of US$640.00, and vacation leave with pay amounting to US$320.00 per month.[2]

On 31 July 1995, a telex message was sent to petitioner enumerating the complaints received from Colonial Shipping, the owner of the vessel, as follows:

1. Poor communications exist among key personnel
2. Vessel's certifications and company procedures were disorganized
3. Has no awareness on purpose of key documents such as ship board oil pollution emergency plan.
4. Has no working knowledge of grain loading calculation procedures
5. Improve operational and maintenance standards x x x.[3]

On the following day, petitioner sent a telex message and imputed ill-motive on the part of the foreign inspectors who were making false accusations against Filipino crew members. In the same message, petitioner addressed all the complaints raised against him.[4]

On 2 August 1995, petitioner sent another telex message informing Western Shipping of the unbearable situation on board. He ended his message with these words:

ANYHOW TO AVOID REPETITION [ON] MORE HARSH REPORTS TO COME. BETTER ARRANGE MY RELIEVER [AND] C/O BUSTILLO RELIEVER ALSO. UPON ARR NEXT USA LOADING PORT FOR THEIR SATISFACTION.[5]

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[2] See Contract of Employment. CA *rollo*, p. 67.

[3] *Id.* at 206.

[4] *Id.* at 207.

[5] *Id.* at 209.

In response to said message, on 20 September 1995, Western Shipping sent a letter informing petitioner that:

OWNERS HAVE DECIDED TO RELIEVE YOU UPON PASSING PANAMA CANAL OR NEXT CONVENIENT PORT. WE TRUST THIS PRE-MATURED ENDING OF CONTRACT IS MUTUALLY AGREED AND FOR THE BENEFITS OF ALL PARTIES CONCERNED.[6]

Petitioner replied in this wise:

HV NO CHOICE BUT TO ACCEPT YR DECISION. TKS ANYHOW FOR RELIEVING ME IN NEXT CONVENIENT PORT WILL EASE THE BURDEN THAT I HV FELT ONBOARD. REST ASSURE VSL WILL BE TURNED OVER PROPERLY TO INCOMING MASTER.[7]

On 13 October 1995, petitioner was repatriated to Manila.

On 25 October 1996, petitioner filed a Complaint for illegal dismissal. He prayed for actual damages in the amount of US$18,480.00 corresponding to his salaries for the unexpired period of his contract; moral damages for an amount not less than ₱200,000.00; exemplary damages for an amount not less than ₱100,000.00; and attorney's fees in an amount not less than 10% of the monetary award.[8]

In their Answer, respondents alleged that petitioner voluntarily and freely pre-terminated his own contract.

On 2 July 1999, Labor Arbiter Donato G. Quinto, Jr. found that petitioner was illegally dismissed. The dispositive portion of the Decision reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered declaring complainant Rolando L. Cervantes to have been illegally dismissed and ordering respondents PAL Maritime Corporation and Western Shipping Agencies PTE, LTD to pay, jointly

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[6] *Id.* at 210.

[7] *Id.* at 211.

[8] *Id.* at 54.

and severally, the amount of US$7,440.00, or its peso equivalent at the time of payment, representing his salary for the unexpired portion of his contract, plus 10% thereof as attorney's fees, all as discussed and computed above.

All other claims are hereby dismissed for lack of merit.[9]

The Labor Arbiter focused on two (2) correspondences: 1) the letter-communication dated 20 September 1995 issued by respondent Western Shipping which terminated petitioner's employment, and 2) the subsequent reply of petitioner acceding to Western Shipping's decision to terminate him. The Labor Arbiter construed these correspondences as involuntary repatriation of petitioner.

On appeal, the Labor Arbiter's Decision was reversed by the First Division of the National Labor Relations Commission (NLRC). The NLRC initially referred the case to another Labor Arbiter, Thelma M. Concepcion (Labor Arbiter Concepcion) for review and submission of a report pursuant to Article 218 (c)[10] of the Labor Code. Labor Arbiter Concepcion found that petitioner was not dismissed from service but that he opted to be relieved from his post. This finding was adopted by the NLRC. Petitioner filed a motion for reconsideration but

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[9] *Id.* at 156-157.

[10] Art. 218. Powers of the Commission. The Commission shall have the power and authority:

To conduct investigation for the determination of a question, matter or controversy within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearings to any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss any matter or refrain from further hearing or from determining the dispute or part thereof, where it is trivial or where further proceedings by the Commission are not necessary or desirable;

it was denied by the NLRC in an Order dated 26 December 2002, prompting him to file a petition before the Court of Appeals.

Finding that petitioner voluntarily resigned, the Court of Appeals, on 14 August 2006, denied the petition and affirmed the decision of the NLRC.

Petitioner elevated the case to this Court *via* a petition for review on *certiorari* raising the following issues:

a) Whether the petitioner is entitled to his claims the *(sic)* under the POEA Employment Contract which arose from his illegal termination and what amount of evidence is required from the petitioner to prove their entitlement thereto.

b) Whether or not an appeal without the joint declaration under oath is considered perfected?[11]

We shall first tackle the procedural issue raised.

Petitioner points out that the failure of respondent to file the required Joint Declaration Under Oath on the appeal bond warrants the dismissal of the appeal for non-perfection. On the other hand, respondents brush aside the late submission of their Joint Declaration Under Oath as a mere technicality.

The pertinent provision of the NLRC Rules of Procedure governing at the time the appeal was made to the NLRC is Rule VI, Section 3.[12] Section 3 enumerates the following requisites for perfection of appeal:

1. The appeal shall be filed within the reglementary period;
2. It shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond; and
3. It shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and

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[11] *Rollo*, p. 16.

[12] Now Rule VI, Section 4 of the 2011 NLRC Rules of Procedure.

> a statement of the date when the appellant received the appealed decision, order or award and proof of service on the other party of such appeal.

In relation to the posting of the appeal bond, Section 6 further requires the submission by petitioner and his counsel of a Joint Declaration Under Oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case.[13]

While the Rule mandates the submission of a joint declaration, this may be liberally construed especially in cases where there is substantial compliance with the Rule. When the NLRC issued an order directing respondents to file their Joint Declaration, the latter immediately complied. Thus, there was only a late submission of the Joint Declaration. There was substantial compliance when respondents manifested their willingness to comply, and in fact complied with, the directive of the NLRC.

The appeal may have been treated differently had respondents failed to post the appeal bond itself. It bears mention that this Court had in numerous cases granted even the late posting of the appeal bond. In *University Plans Incorporated v. Solano*,[14] the Court ratiocinated:

> After all, the present case falls under those cases where the bond requirement on appeal may be relaxed considering that (1) there was substantial compliance with the Rules; (2) the surrounding facts

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[13] SECTION 6. Bond. — In case the decision of a Labor Arbiter, POEA Administrator and Regional Director or his duly authorized hearing officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.

The employer as well as counsel shall submit a joint declaration under oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case.

[14] G.R. No. 170416, 22 June 2011, 652 SCRA 492 citing *Nicol v. Footjoy Industrial Corporation*, G.R. No. 159372, 27 July 2007, 528 SCRA 300.

and circumstances constitute meritorious grounds to reduce the bond; and (3) the petitioner, at the very least, exhibited its willingness and/or good faith by posting a partial bond during the reglementary period. Also, such a procedure would be in keeping with the Labor Code's mandate to 'use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.'[15]

As correctly pointed out by the Court of Appeals, respondents had posted a surety bond equivalent to the monetary award and had filed the notice of appeal and appeal memorandum, all within the reglementary period. All these show substantial compliance with the appeal requirement, considered as they must be, together with late submission of the Joint Declaration.

Further, no less than the Labor Code directs labor officials to use reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities and Section 10, Rule VII, of the New Rules of Procedure of the NLRC provides that technical rules are not binding. Indeed, the application of technical rules or procedure may be relaxed in labor cases to serve the demand of substantial justice.[16]

On the substantive issue, petitioner insists that he did not resign but was terminated from employment. Petitioner claims that he and the other Filipino crew members were subjects of racial discrimination which resulted from the complaint that they lodged against the vessel's Greek technician, Angelo Fatorous, due to the latter's inefficiency and maltreatment of crew members. Petitioner avers that voluntariness was lacking in his decision to write the letter on 3 August 1995 indicating his desire to be relieved from the post, because he was compelled

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[15] *University Plans Incorporated v. Solano, id.* at 505-506 citing *Nicol v. Footjoy Industrial Corporation, id.* at 312.

[16] *Dacuital v. L.M. Camus Engineering Corporation,* G.R. No. 176748, 1 September 2010, 629 SCRA 702, 711-712 citing *Pacquing v. Coca-Cola Philippines, Inc.,* G.R. No. 157966, 31 January 2008, 543 SCRA 344, 356-357.

by extreme pressure to prevent the happening of any untoward incident on the vessel.[17]

In their Comment, respondents argue that they and the owners of the vessel never initiated the repatriation to Manila of petitioner. All the owners of the vessel did was to advise respondents of their findings on petitioner's incompetence, negligence, and inability to render satisfactory service, and give petitioner one month to take corrective actions on board the vessel. Respondents, on the other hand, merely relayed to petitioner, through a telex message, said findings and the message of the owners of the vessel.

Resignation is the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, such that he has no other choice but to disassociate himself from his employment.[18] This is precisely what obtained in this case.

The tenor of petitioner's telex message was an unmistakeable demand that he be relieved of his assignment:

ANYHOW TO AVOID REPETITION [ON] MORE HARSH REPORTS TO COME. BETTER ARRANGE MY RELIEVER [AND] C/O BUSTILLO RELIEVER ALSO. UPON ARR NEXT USA LOADING PORT FOR THEIR SATISFACTION.

Respondents met the challenge and accepted petitioner's resignation. Petitioner even appeared resigned to his fate by stating:

HV NO CHOICE BUT TO ACCEPT YR DECISION. TKS ANYHOW FOR RELIEVING ME IN NEXT CONVENIENT PORT WILL EASE THE BURDEN THAT I HV FELT ONBOARD. REST ASSURE VSL WILL BE TURNED OVER PROPERLY TO INCOMING MASTER.

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[17] *Rollo*, p. 18.

[18] *Hilton Heavy Equipment Corporation v. Dy*, G.R. No. 164860, 2 February 2010, 611 SCRA 329, 336-337; *Bilbao v. Saudi Arabian Airlines*, G.R. No. 183915, 14 December 2011, 662 SCRA 540, 549.

The statements of petitioner were simple and straightforward. There is no merit to his claim that he was forced to resign due to extreme pressure. Only two (2) days had elapsed from the time petitioner received a copy of the complaint from the owners of the vessel until his letter demanding his relief. The telex message outlining numerous complaints against petitioner probably bruised his ego, causing petitioner to react impulsively by resigning.

Petitioner failed to substantiate his claim that he and the Filipino crew members were being subjected to racial discrimination on board. Petitioner presented a letter-petition against a Greek technician who allegedly maltreated Filipino crew members. However, there was no showing that the Greek technician spearheaded nor had any participation in the complaint of Colonial Shipping against petitioner.

Labor Arbiter Concepcion's finding of resignation was best explained in the NLRC Decision, to wit:

> The records show that in a telefax message dated July 28, 1995, the shipowner, Colonial Navigation Co. Inc. has made a complaint to Mr. Rodney Lim, which the latter forwarded to the respondent PAL Maritime, regarding poor work performance of the complainant as Master of the Vessel. The complainant's deficiencies were enumerated as follows:
>
> a) Poor communication exist among the by[sic] personnel;
> b) The vessels' certificates and company procedures were disorganized;
> c) The Master did not have an awareness of the purpose of the key documents, such as the ship board oil pollution emergency plan;
> d) The Master despite on board for one month did not have any awareness of the safety procedures that the company has set out in its Manuals.
>
> In connection with the aforementioned deficiencies, the complainant was given by the owner one month to take corrective measures to improve the operational and maintenance standards on board the vessel. x x x. Thereafter, the complainant was informed of the aforesaid complaint by the respondent as shown in the telefax message dated July 31, 1995 x x x. While the complainant denied

the accusations of the owners he made a counter charge that the owners are racists x x x. In response thereto, the owners were surprised with the accusation of the complainant considering that they have been a principal of respondent PAL Maritime for more than four years and have employed several Filipino seamen x x x. Instead of complying with the request of the shipowners, the complainant opted to be relieved from his post. His telefax message in part reads:

> x x x Anyhow to avoid repetition [on] more harsh reports to come, better arranges my reliever [and] c/o Bustillo reliever also. Upon ARR next USA loading port for their satisfaction x x x.

The foregoing exchange of communications clearly shows that complainant was not dismissed from the service but he opted to be relieved from his post as master. While it is true that his resignation was an offshoot of the complaint of the shipowners but the latter were merely requesting the complainant and the chief officers to improve in their performance. The dismissal aspect was not dismissed at all. It was complainant who brought out the idea and which was accepted by the shipowner as shown in the telefax message dated September 20, 1995 x x x.

This x x x Commission finds the reply dated September 21, 1995 of the complainant misleading. His statement that "HV no choice but to accept yr Decision," is not accurate inasmuch as it was he who opted to be relieved at the next loading port. His request which was favorably acted upon by the respondents certainly negates his claims that he was illegally dismissed.[19]

The rule that filing of a complaint for illegal dismissal is inconsistent with resignation does not hold true in this case. The filing of the complaint one year after his alleged termination, coupled with the clear tenor of his resignation letter should be taken to mean that petitioner's filing of the illegal dismissal case was a mere afterthought.

In fine, we do not find any persuasive or cogent reason to deviate from the findings of the NLRC, as affirmed by the appellate court.

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[19] CA *rollo*, pp. 33-35.

WHEREFORE, the petition is **DENIED.** The 14 August 2006 Decision and the 26 October 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 76756 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), del Castillo, Perlas-Bernabe, and *Leonen,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 179628. January 16, 2013]

THE MANILA INSURANCE COMPANY, INC., *petitioner, vs.* **SPOUSES ROBERTO and AIDA AMURAO,** *respondents.*

SYLLABUS

1. CIVIL LAW; INSURANCE; SURETYSHIP; NATURE OF SURETY'S LIABILITY.— A contract of suretyship is defined as "an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of a third party, called the obligee. It includes official recognizances, stipulations, bonds or undertakings issued by any company by virtue of and under the provisions of Act No. 536, as amended by Act No. 2206." We have consistently held that a surety's liability is joint and several, limited to the amount of the bond, and determined strictly by the terms of contract of suretyship in relation to the principal contract between the obligor and the obligee. It bears stressing, however, that although the contract of suretyship is secondary to the principal contract, the surety's liability to the obligee is nevertheless direct, primary, and absolute.

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[*] Per Special Order No. 1408 dated 15 January 2013.

2. POLITICAL LAW; ADMINISTRATIVE LAW; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); CLAIM FROM THE PERFORMANCE BOND IN RELATION TO A CONSTRUCTION CONTRACT FALLS UNDER CIAC JURISDICTION.— The fact that petitioner is not a party to the CCA cannot remove the dispute from the jurisdiction of the CIAC because the issue of whether respondent-spouses are entitled to collect on the performance bond, as we have said, is a dispute arising from or connected to the CCA. In fact, in *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.*, we rejected the argument that the jurisdiction of CIAC is limited to the construction industry, and thus, cannot extend to surety contracts. In that case, we declared that "[a]lthough not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal. The Performance Bond is significantly and substantially connected to the construction contract that there can be no doubt it is the CIAC, under Section 4 of E.O. No. 1008, which has jurisdiction over any dispute arising from or connected with it. In view of the foregoing, we agree with the petitioner that jurisdiction over the instant case lies with the CIAC, and not with the RTC. Thus, the Complaint filed by respondent-spouses with the RTC must be dismissed.

APPEARANCES OF COUNSEL

Paner Hosaka & Ypil for petitioner.
Asterio G. Rea for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The jurisdiction of the Construction Industry Arbitration Commission (CIAC) is conferred by law. Section 4[1] of Executive Order (E.O.) No. 1008, otherwise known as the Construction

[1] SEC. 4. *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the

Industry Arbitration Law, "is broad enough to cover any dispute arising from, or connected with construction contracts, whether these involve mere contractual money claims or execution of the works."[2]

This Petition for Review on *Certiorari*[3] under Rule 45 of the Rules of Court assails the Decision[4] dated June 7, 2007 and the Resolution[5] dated September 7, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 96815.

Factual Antecedents

On March 7, 2000, respondent-spouses Roberto and Aida Amurao entered into a Construction Contract Agreement (CCA)[6] with Aegean Construction and Development Corporation (Aegean) for the construction of a six-storey commercial building in Tomas Morato corner E. Rodriguez Avenue, Quezon City.[7] To guarantee its full and faithful compliance with the terms and conditions of the CCA, Aegean posted performance bonds secured by

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abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship, violation of the terms of agreement, interpretation and/or application of contractual time and delays, maintenance and defects, payment, default of employer or contractor, and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

[2] *LICOMCEN, Incorporated v. Foundation Specialists, Inc.*, G.R. Nos. 167022 and 169678, April 4, 2011, 647 SCRA 83, 97.

[3] *Rollo,* pp. 13-37.

[4] *Id.* at 39-47; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Aurora Santiago-Lagman.

[5] *Id.* at 49.

[6] *Id.* at 72-85.

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

petitioner The Manila Insurance Company, Inc.[8] (petitioner) and Intra Strata Assurance Corporation (Intra Strata).[9]

On November 15, 2001, due to the failure of Aegean to complete the project, respondent spouses filed with the Regional Trial Court (RTC) of Quezon City, Branch 217, a Complaint,[10] docketed as Civil Case No. Q-01-45573, against petitioner and Intra Strata to collect on the performance bonds they issued in the amounts of ₱2,760,000.00 and ₱4,440,000.00, respectively.[11]

Intra Strata, for its part, filed an Answer[12] and later, a Motion to Admit Third Party Complaint,[13] with attached Third Party Complaint[14] against Aegean, Ronald D. Nicdao, and Arnel A. Mariano.

Petitioner, on the other hand, filed a Motion to Dismiss[15] on the grounds that the Complaint states no cause of action[16] and that the filing of the Complaint is premature due to the failure of respondent-spouses to implead the principal contractor, Aegean.[17] The RTC, however, denied the motion in an Order[18] dated May 8, 2002. Thus, petitioner filed an Answer with Counterclaim and Cross-claim,[19] followed by a Third Party Complaint[20] against Aegean and spouses Ronald and Susana Nicdao.

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

[9] *Id.* at 70-71.

[10] *Id.* at 63-67.

[11] *Id.* at 66.

[12] Records, Volume I, pp. 29-32.

[13] *Id.* at 38-39.

[14] *Id.* at 40-42.

[15] *Id.* at 26-28.

[16] *Id.* at 26.

[17] *Id.* at 27.

[18] *Id.* at 49-50; penned by Judge Lydia Querubin Layosa.

[19] *Rollo*, pp. 88-94.

[20] *Id.* at 97-100.

During the pre-trial, petitioner and Intra Strata discovered that the CCA entered into by respondent-spouses and Aegean contained an arbitration clause.[21] Hence, they filed separate Motions to Dismiss[22] on the grounds of lack of cause of action and lack of jurisdiction.

Ruling of the Regional Trial Court

On May 5, 2006, the RTC denied both motions.[23] Petitioner and Intra Strata separately moved for reconsideration but their motions were denied by the RTC in its subsequent Order[24] dated September 11, 2006.

Aggrieved, petitioner elevated the case to the CA by way of special civil action for *certiorari*.[25]

Ruling of the Court of Appeals

On June 7, 2007, the CA rendered a Decision[26] dismissing the petition. The CA ruled that the presence of an arbitration clause in the CCA does not merit a dismissal of the case because under the CCA, it is only when there are differences in the interpretation of Article I of the construction agreement that the parties can resort to arbitration.[27] The CA also found no grave abuse of discretion on the part of the RTC when it disregarded the fact that the CCA was not yet signed at the time petitioner issued the performance bond on February 29, 2000.[28] The CA explained that the performance bond was intended to be coterminous with the construction of the building.[29] It

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[21] *Id.* at 40.

[22] *Id.* at 117-124 and 110-116.

[23] Records, Volume II, pp. 544-546.

[24] *Id.* at 589.

[25] CA *rollo*, pp. 2-22.

[26] *Rollo*, pp. 39-47.

[27] *Id.* at 42-44.

[28] *Id.* at 45-46.

[29] *Id.* at 46.

pointed out that "if the delivery of the original contract is contemporaneous with the delivery of the surety's obligation, each contract becomes completed at the same time, and the consideration which supports the principal contract likewise supports the subsidiary one."[30] The CA likewise said that, although the contract of surety is only an accessory to the principal contract, the surety's liability is direct, primary and absolute.[31] Thus:

> WHEREFORE, we resolve to **DISMISS** the petition as we find that no grave abuse of discretion attended the issuance of the order of the public respondent denying the petitioner's motion to dismiss.
>
> **IT IS SO ORDERED.**[32]

Petitioner moved for reconsideration but the CA denied the same in a Resolution[33] dated September 7, 2007.

Issues

Hence, this petition raising the following issues:

A.

THE HONORABLE [CA] ERRED WHEN IT HELD THAT IT IS ONLY WHEN THERE ARE DIFFERENCES IN THE INTERPRETATION OF ARTICLE I OF THE CONSTRUCTION AGREEMENT THAT THE PARTIES MAY RESORT TO ARBITRATION BY THE CIAC.

B.

THE HONORABLE [CA] ERRED IN TREATING [PETITIONER] AS A SOLIDARY DEBTOR INSTEAD OF A SOLIDARY GUARANTOR.

C.

THE HONORABLE [CA] OVERLOOKED AND FAILED TO CONSIDER THE FACT THAT THERE WAS NO ACTUAL AND

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[30] *Id.*

[31] *Id.* at 45.

[32] *Id.* at 46-47.

[33] *Id.* at 49.

EXISTING CONSTRUCTION AGREEMENT AT THE TIME THE MANILA INSURANCE BOND NO. G (13) 2082 WAS ISSUED ON FEBRUARY 29, 2000.[34]

Petitioner's Arguments

Petitioner contends that the CA erred in ruling that the parties may resort to arbitration only when there is difference in the interpretation of the contract documents stated in Article I of the CCA.[35] Petitioner insists that under Section 4 of E.O. No. 1008, it is the CIAC that has original and exclusive jurisdiction over construction disputes, such as the instant case.[36]

Petitioner likewise imputes error on the part of the CA in treating petitioner as a solidary debtor instead of a solidary guarantor.[37] Petitioner argues that while a surety is bound solidarily with the obligor, this does not make the surety a solidary co-debtor.[38] A surety or guarantor is liable only if the debtor is himself liable.[39] In this case, since respondent-spouses and Aegean agreed to submit any dispute for arbitration before the CIAC, it is imperative that the dispute between respondent-spouses and Aegean must first be referred to arbitration in order to establish the liability of Aegean.[40] In other words, unless the liability of Aegean is determined, the filing of the instant case is premature.[41]

Finally, petitioner puts in issue the fact that the performance bond was issued prior to the execution of the CCA.[42] Petitioner

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[34] *Id.* at 168-169.

[35] *Id.* at 169.

[36] *Id.* at 171.

[37] *Id.* at 174.

[38] *Id.* at 175.

[39] *Id.*

[40] *Id.* at 180.

[41] *Id.* at 182.

[42] *Id.* at 183.

claims that since there was no existing contract at the time the performance bond was executed, respondent-spouses have no cause of action against petitioner.[43] Thus, the complaint should be dismissed.[44]

Respondent spouses' Arguments

Respondent-spouses, on the other hand, maintain that the CIAC has no jurisdiction over the case because there is no ambiguity in the provisions of the CCA.[45] Besides, petitioner is not a party to the CCA.[46] Hence, it cannot invoke Article XVII of the CCA, which provides for arbitration proceedings.[47] Respondent-spouses also insist that petitioner as a surety is directly and equally bound with the principal.[48] The fact that the performance bond was issued prior to the execution of the CCA also does not affect the latter's validity because the performance bond is coterminous with the construction of the building.[49]

Our Ruling

The petition has merit.

Nature of the liability of the surety

A contract of suretyship is defined as "an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of a third party, called the obligee. It includes official recognizances, stipulations, bonds or undertakings issued by any company by virtue of and under the provisions of Act

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[43] *Id.* at 185.

[44] *Id.* at 186.

[45] *Id.* at 192-193.

[46] *Id.* at 193.

[47] *Id.*

[48] *Id.* at 195.

[49] *Id.* at 196.

No. 536, as amended by Act No. 2206."[50] We have consistently held that a surety's liability is joint and several, limited to the amount of the bond, and determined strictly by the terms of contract of suretyship in relation to the principal contract between the obligor and the obligee.[51] It bears stressing, however, that although the contract of suretyship is secondary to the principal contract, the surety's liability to the obligee is nevertheless direct, primary, and absolute.[52]

In this case, respondent-spouses (obligee) filed with the RTC a Complaint against petitioner (surety) to collect on the performance bond it issued. Petitioner, however, seeks the dismissal of the Complaint on the grounds of lack of cause of action and lack of jurisdiction.

The respondent-spouses have cause of action against the petitioner; the performance bond is coterminous with the CCA

Petitioner claims that respondent-spouses have no cause of action against it because at the time it issued the performance bond, the CCA was not yet signed by respondent-spouses and Aegean.

We do not agree.

A careful reading of the Performance Bond reveals that the "bond is coterminous with the final acceptance of the project."[53] Thus, the fact that it was issued prior to the execution of the CCA does not affect its validity or effectivity.

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[50] INSURANCE CODE, Section 175.

[51] *Intra-Strata Assurance Corporation v. Republic*, G.R. No. 156571, July 9, 2008, 557 SCRA 363, 369.

[52] *Prudential Guarantee and Assurance, Inc. v. Equinox Land Corporation*, G.R. Nos. 152505-06, September 13, 2007, 533 SCRA 257, 268.

[53] *Rollo*, p. 86.

But while there is a cause of action against petitioner, the complaint must still be dismissed for lack of jurisdiction.

The CIAC has jurisdiction over the case

Section 4 of E.O. No. 1008 provides that:

> SEC. 4. *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship, violation of the terms of agreement, interpretation and/or application of contractual time and delays, maintenance and defects, payment, default of employer or contractor, and changes in contract cost.
>
> Excluded from the coverage of the law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Based on the foregoing, in order for the CIAC to acquire jurisdiction two requisites must concur: "first, the dispute must be somehow connected to a construction contract; and second, the parties must have agreed to submit the dispute to arbitration proceedings."[54]

In this case, both requisites are present.

The parties agreed to submit to arbitration proceedings "[a]ny dispute arising in the course of the execution and performance of [the CCA] by reason of difference in interpretation of the Contract Documents x x x which [the parties] are unable to resolve amicably between themselves."[55] Article XVII of the CCA reads:

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[54] *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.*, G.R. No. 177240, September 8, 2010, 630 SCRA 368, 376.

[55] *Rollo*, p. 83.

ARTICLE XVII – ARBITRATION

17.1 Any dispute arising in the course of the execution and performance of this Agreement by reason of difference in interpretation of the Contract Documents set forth in Article I which the OWNER and the CONTRACTOR are unable to resolve amicably between themselves shall be submitted by either party to a board of arbitrators composed of Three (3) members chosen as follows: One (1) member shall be chosen by the CONTRACTOR AND One (1) member shall be chosen by the OWNER. The said Two (2) members, in turn, shall select a third member acceptable to both of them. The decision of the Board of Arbitrators shall be rendered within Ten (10) days from the first meeting of the board, which decision when reached through the affirmative vote of at least Two (2) members of the board shall be final and binding upon the OWNER and CONTRACTOR.

17.2 Matters not otherwise provided for in this Contract or by Special Agreement of the parties shall be governed by the provisions of the Arbitration Law, Executive Order No. 1008.[56]

In *William Golangco Construction Corporation v. Ray Burton Development Corporation*,[57] we declared that monetary claims under a construction contract are disputes arising from "differences in interpretation of the contract" because "the matter of ascertaining the duties and obligations of the parties under their contract all involve interpretation of the provisions of the contract."[58] Following our reasoning in that case, we find that the issue of whether respondent-spouses are entitled to collect on the performance bond issued by petitioner is a "dispute arising in the course of the execution and performance of [the CCA] by reason of difference in the interpretation of the contract documents."

The fact that petitioner is not a party to the CCA cannot remove the dispute from the jurisdiction of the CIAC because the issue of whether respondent-spouses are entitled to collect

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[56] *Id.*

[57] G.R. No. 163582, August 9, 2010, 627 SCRA 74.

[58] *Id.* at 85.

on the performance bond, as we have said, is a dispute arising from or connected to the CCA.

In fact, in *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.*,[59] we rejected the argument that the jurisdiction of CIAC is limited to the construction industry, and thus, cannot extend to surety contracts. In that case, we declared that "[a]lthough not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal. The Performance Bond is significantly and substantially connected to the construction contract that there can be no doubt it is the CIAC, under Section 4 of E.O. No. 1008, which has jurisdiction over any dispute arising from or connected with it."[60]

In view of the foregoing, we agree with the petitioner that jurisdiction over the instant case lies with the CIAC, and not with the RTC. Thus, the Complaint filed by respondent-spouses with the RTC must be dismissed.

WHEREFORE, the petition is hereby **GRANTED.** The Decision dated June 7, 2007 and the Resolution dated September 7, 2007 of the Court of Appeals in CA-G.R. SP No. 96815 are hereby **ANNULLED** and **SET ASIDE.** The Presiding Judge of the Regional Trial Court of Quezon City, Branch 217 is **DIRECTED** to dismiss Civil Case No. Q-01-45573 for lack of jurisdiction.

SO ORDERED.

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

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[59] *Supra* note 54 at 373-379.

[60] *Id.* at 377.

[*] Per raffle dated January 14, 2013.

[**] Per Special Order No. 1408 dated January 15, 2013.

SPECIAL SECOND DIVISION

[G.R. No. 180036. January 16, 2013]

SITUS DEVELOPMENT CORPORATION, DAILY SUPERMARKET, INC. and COLOR LITHOGRAPHIC PRESS, INC., *petitioners, vs.* **ASIATRUST BANK, ALLIED BANKING CORPORATION, METROPOLITAN BANK AND TRUST COMPANY, and CAMERON GRANVILLE II ASSET MANAGEMENT, INC. "CAMERON,"** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; FINANCIAL REHABILITATION AND INSOLVENCY ACT OF 2010 (FRIA); PRESUPPOSES A PROSPECTIVE APPLICATION.— Sec. 146 of the FRIA, which makes it applicable to "all further proceedings in insolvency, suspension of payments and rehabilitation cases x x x except to the extent that in the opinion of the court their application would not be feasible or would work injustice," still presupposes a prospective application. The wording of the law clearly shows that it is applicable to all further proceedings. In no way could it be made retrospectively applicable to the Stay Order issued by the rehabilitation court back in 2002.

2. ID.; ID.; FRIA IN RELATION TO INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; REHABILITATION COURT HAS NO AUTHORITY TO SUSPEND FORECLOSURE PROCEEDINGS AGAINST PROPERTIES OF THIRD-PARTY MORTGAGORS.— At the time of the issuance of the Stay Order, the rules in force were the 2000 Interim Rules of Procedure on Corporate Rehabilitation (the "Interim Rules"). Under those rules, one of the effects of a Stay Order is the stay of the "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." Nowhere in the Interim Rules is the rehabilitation

court authorized to suspend foreclosure proceedings against properties of third-party mortgagors. In fact, we have expressly ruled in *Pacific Wide Realty and Development Corp. v. Puerto Azul Land, Inc.* that the issuance of a Stay Order cannot suspend the foreclosure of accommodation mortgages. Whether or not the properties subject of the third-party mortgage are used by the debtor corporation or are necessary for its operation is of no moment, as the Interim Rules do not make a distinction. To repeat, when the Stay Order was issued, the rehabilitation court was only empowered to suspend claims against the debtor, its guarantors, and sureties not solidarily liable with the debtor. Thus, it was beyond the jurisdiction of the rehabilitation court to suspend foreclosure proceedings against properties of third-party mortgagors.

APPEARANCES OF COUNSEL

De Castro and Cagampang Law Offices, Divina and Uy Law Offices and *Tabalingcos & Associates* for petitioners.

Mendoza Navarro Mendoza & Partners Law Offices for Metrobank.

Bernas Law Office for Asiatrust.

Francisco Garardo C. Llamas and *Bienvenido C. Alde, Jr.* for Allied Banking Corporation.

R E S O L U T I O N

SERENO, *C.J.*:

For resolution is the Motion for Reconsideration[1] of our 25 July 2012 Decision[2] in the case involving petitioners herein, Situs Development Corporation, Daily Supermarket, Inc. and Color Lithographic Press, Inc.

Most of the arguments raised by petitioners are too insubstantial to merit our consideration or are merely rehashed from their previous pleadings and have already been passed upon by this Court. However, certain issues merit a brief discussion, to wit:

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[1] *Rollo,* pp. 1299-1322.

[2] *Id*. at 1273-1293.

1. That the properties belonging to petitioner corporations' majority stockholders may be included in the rehabilitation plan pursuant to *Metropolitan Bank and Trust Company v. ASB Holdings, Inc.*[3] (the *Metrobank Case*);
2. That the subject properties should be included in the ambit of the Stay Order by virtue of the provisions of the Financial Rehabilitation and Insolvency Act of 2010 (FRIA), which should be given a retroactive effect; and
3. That Allied Bank and Metro Bank were not the owners of the mortgaged properties when the Stay Order was issued by the rehabilitation court.

On the first issue, petitioners incorrectly argue that the properties belonging to their majority stockholders may be included in the rehabilitation plan, because these properties were mortgaged to secure petitioners' loans. In support of their argument, they cite a footnote appearing in the *Metrobank Case*, which states:[4]

> In their petition for rehabilitation, the corporations comprising the ASB Group of Companies alleged that their allied companies … have joined in the said petition 'because they executed mortgages and/or pledges over their real and personal properties to secure the obligations of petitioner ASB Group of Companies. Further, (they) agreed to contribute, to the extent allowed by law, some of their specified properties and assets to help rehabilitate petitioner ASB Group of Companies.' (*Rollo*, pp. 119-120)

A reading of the footnote shows that it is not a ruling on the propriety of the joinder of parties; rather, it is a statement of the fact that the afore-quoted allegation was made in the petition for rehabilitation in that case.

On the second issue, petitioners argue that the trial court was correct in including the subject properties in the ambit of the Stay Order. Under the FRIA, the Stay Order may now cover third-party or accommodation mortgages, in which the "mortgage

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[3] G.R. No. 166197, 27 February 2007, 517 SCRA 1.

[4] *Id*. at 4.

is necessary for the rehabilitation of the debtor as determined by the court upon recommendation by the rehabilitation receiver."[5] The FRIA likewise provides that its provisions may be applicable to further proceedings in pending cases, except to the extent that, in the opinion of the court, their application would not be feasible or would work injustice.[6]

Sec. 146 of the FRIA, which makes it applicable to "all further proceedings in insolvency, suspension of payments and rehabilitation cases x x x except to the extent that in the opinion of the court their application would not be feasible or would work injustice," still presupposes a prospective application. The wording of the law clearly shows that it is applicable to all further proceedings. In no way could it be made retrospectively applicable to the Stay Order issued by the rehabilitation court back in 2002.

At the time of the issuance of the Stay Order, the rules in force were the 2000 Interim Rules of Procedure on Corporate Rehabilitation (the "Interim Rules"). Under those rules, one of the effects of a Stay Order is the stay of the "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."[7]

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[5] FRIA, Sec. 18. *Exceptions to the Stay or Suspension Order.* — The Stay or Suspension Order shall not apply:

> (c) to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit, unless the property subject of the third party or accommodation mortgage is necessary for the rehabilitation of the debtor as determined by the court upon recommendation by the rehabilitation receiver;

[6] Sec. 146. *Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases.* — This Act shall govern all petitions filed after it has taken effect. All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply.

[7] Interim Rules, Rule 4, Sec. 6.

Nowhere in the Interim Rules is the rehabilitation court authorized to suspend foreclosure proceedings against properties of third-party mortgagors. In fact, we have expressly ruled in *Pacific Wide Realty and Development Corp. v. Puerto Azul Land, Inc.*[8] that the issuance of a Stay Order cannot suspend the foreclosure of accommodation mortgages. Whether or not the properties subject of the third-party mortgage are used by the debtor corporation or are necessary for its operation is of no moment, as the Interim Rules do not make a distinction. To repeat, when the Stay Order was issued, the rehabilitation court was only empowered to suspend claims against the debtor, its guarantors, and sureties not solidarily liable with the debtor. Thus, it was beyond the jurisdiction of the rehabilitation court to suspend foreclosure proceedings against properties of third-party mortgagors.

The third issue, therefore, is immaterial. Whether or not respondent banks had acquired ownership of the subject properties at the time of the issuance of the Stay Order, the same conclusion will still be reached. The subject properties will still fall outside the ambit of the Stay Order issued by the rehabilitation court.

Since the subject properties are beyond the reach of the Stay Order, and since foreclosure and consolidation of title may no longer be stalled, petitioners' rehabilitation plan is no longer feasible. We therefore affirm our earlier finding that the dismissal of the Petition for the Declaration of State of Suspension of Payments with Approval of Proposed Rehabilitation Plan is in order.

WHEREFORE, the Court resolves to **DENY WITH FINALITY** the instant Motion for Reconsideration for lack of merit. No further pleadings shall be entertained. Let entry of judgment be made in due course.

SO ORDERED.

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

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[8] G.R. Nos. 178768 & 180893, 25 November 2009, 605 SCRA 503, 521-522.

SECOND DIVISION

[G.R. No. 180463. January 16, 2013]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **AFP RETIREMENT AND SEPARATION BENEFITS SYSTEM,**[*] *respondent,* **HEIRS OF CABALO KUSOP and ATTY. NILO J. FLAVIANO,** *respondents-intervenors.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; SALES PATENTS ISSUED AFTER THE LAND HAD LOST ITS ALIENABLE AND DISPOSABLE CHARACTER ARE NULL AND VOID.— [T]he sales patents over Lot X are null and void, for at the time the sales patents were applied for and granted, the land had lost its alienable and disposable character. It was set aside and was being utilized for a public purpose, that is, as a recreational park. Under Section 83 of CA 141, "the President may designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Commonwealth of the Philippines or of any of its branches, or of the inhabitants thereof, in accordance with regulations prescribed for this purpose, or for quasi-public uses or purposes, when the public interest requires it, including reservations for highways, rights of way for railroads, hydraulic power sites, irrigation systems, communal pastures or *leguas comunales*, public parks, public quarries, public fishponds, workingmen's village and other improvements for the public benefit." And under the present Constitution, national parks are declared part of the public domain, and shall be conserved and may not be increased nor diminished, except by law. x x x Respondents-intervenors no longer had any right to Lot X — not by acquisitive prescription, and certainly not by sales patent.

2. ID.; ID.; ID.; A PARTY IN WHOSE NAME SALES PATENTS HAS BEEN ISSUED CANNOT FEIGN IGNORANCE OF

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[*] Also referred to as AFP Retirement and Separation Benefit System in some parts of the records.

THE LAW WHICH RESERVES CERTAIN LANDS FOR RECREATION AND HEALTH PURPOSES.— Respondents-intervenors' actions betray their claim of ownership to Lot X. When Proc. 168 was issued, they did not institute action to question its validity, using as cause of action their claimed ownership and title over the land. The same is true when Proc. 2273 came out. They did not file suit to invalidate it because it contravenes their claimed ownership over Lot X. They simply sat and waited for the good graces of the government to fall on their laps. They simply waited for the State to declare them beneficiaries of the land. And when the President failed to include Lot X in Proc. 2273 and declare it open for disposition to them as beneficiaries, they filed their applications for issuance of miscellaneous sales patents over said lot. All these actions are anathema to a claim of ownership, and instead indicate a willingness to abide by the actions of the State, a show of respect for its dominion over the land. Under the law, respondents-intervenors are charged with knowledge of the law; they cannot feign ignorance. In fact, they could not claim to be unaware of Proc. 168, for precisely they hid under its protective mantle to seek the invalidation of a donation claimed to have been made by them to one Jose Tayoto. Thus, in *Tayoto v. Heirs of Kusop*, an alleged donee (Tayoto) of property located within Lots X, Y-1, and Y-2 filed a case for quieting of title against the donors – herein respondents-intervenors – to protect the property which they allegedly donated to him, which was then in danger of being lost for the reason that respondents-intervenors supposedly reneged on the donation. Respondents-intervenors filed an urgent motion to dismiss the Complaint claiming, among others, the "invalidity of the donation as the subject thereof had not yet been excluded from the Magsaysay Park." x x x For obvious reasons, respondents-intervenors should have, as early as 1990 when the above Decision was promulgated, taken exception to its pronouncements if they rightfully believed that the property covered by Proc. 168 (which included Lot X) rightfully belonged to them. Yet they did not. Instead, after seven long years or in 1997, they filed their applications for the issuance of miscellaneous sales patents over Lot X. This act of filing applications for the issuance of miscellaneous sales patents in their name, taken in conjunction with all the other attendant circumstances, constitutes an express

acknowledgment that the land does not belong to them, but to the State.

3. ID.; ID.; ID.; WHERE POSSESSION SINCE TIME IMMEMORIAL CANNOT SUPPORT A CLAIM OF OWNERSHIP OR APPLICATION FOR PATENT.— While it is true that possession since time immemorial could result in the acquisition of title without need of judicial or other action, respondents-intervenors' actions and conduct, as shown above, not only negate the application of such principle, but in fact point to the opposite. x x x Contrary to the CA's pronouncements, proof or evidence of possession since time immemorial becomes irrelevant and cannot support a claim of ownership or application for a patent, not only because respondents-intervenors have conceded ownership to the State, but also on account of the fact that Lot X has been withdrawn from being alienable and disposable public land, and is now classified and being used as a national park. It has ceased to be alienable, and no proof by the respondents-intervenors will operate to bolster their claim; Lot X will never be awarded to them or to anybody so long as it is being used as a public park or reserve.

4. ID.; ID.; TITLE ISSUED COVERING NON-DISPOSABLE LOT SHALL BE CANCELLED.— [A]s regards AFP-RSBS' rights, the Court sustains the petitioner's view that "[a]ny title issued covering non-disposable lots even in the hands of an alleged innocent purchaser for value shall be cancelled." We deem this case worthy of such principle. Besides, we cannot ignore the basic principle that a spring cannot rise higher than its source; as successor-in-interest, AFP-RSBS cannot acquire a better title than its predecessor, the herein respondents-intervenors. Having acquired no title to the property in question, there is no other recourse but for AFP-RSBS to surrender to the rightful ownership of the State.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rodolfo G. Rabaja & Rolando G. Borja for AFP-RSBS.
Flaviano Oclarit Oquendo & Associates for Heirs of Cabalo Kusop.

D E C I S I O N

DEL CASTILLO, *J.*:

The processes of the State should not be trifled with. The failure of a party to avail of the proper remedy to acquire or perfect one's title to land cannot justify a resort to other remedies which are otherwise improper and do not provide for the full opportunity to prove his title, but instead require him to concede it before availment.

Certificates of title issued covering inalienable and non-disposable public land, even in the hands of an alleged innocent purchaser for value, should be cancelled.

Before us is a Petition for Review on *Certiorari*[1] questioning the October 26, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 75170, which reversed the November 5, 2001 Decision[3] of the Regional Trial Court (RTC), Branch 23 of General Santos City in Civil Case No. 6419.

Factual Antecedents

Lots X, Y-1 and Y-2 — lands of the public domain consisting of 52,678 square meters located in Barrio Dadiangas, General Santos Municipality (now General Santos City) — were reserved for recreation and health purposes by virtue of Proclamation No. 168[4] (Proc. 168), which was issued in 1963. In 1983, Proclamation No. 2273[5] (Proc. 2273) was issued amending

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[1] *Rollo,* pp. 8-57.

[2] *Id.* at 59-80; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Romulo V. Borja and Elihu A. Ybañez.

[3] *Id.* at 81-94; penned by Judge Jose S. Majaducon.

[4] RESERVING FOR RECREATIONAL AND HEALTH RESORT SITE PURPOSES A CERTAIN PARCEL OF LAND OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITY OF GENERAL SANTOS, PROVINCE OF COTABATO, ISLAND OF MINDANAO.

[5] EXCLUDING FROM THE OPERATION OF PROCLAMATION NO. 168, DATED OCTOBER 3, 1963, WHICH ESTABLISHED THE

Proc. 168, and removing and segregating Lots Y-1 and Y-2 from the reservation and declaring them open for disposition to qualified applicants. As a result, only Lot X — which consists of 15,020 square meters — remained part of the reservation now known as Magsaysay Park.

The record discloses that respondents-intervenors waged a campaign — through petitions and pleas made to the President — to have Lots Y-1 and Y-2 taken out of the reservation for the reason that through their predecessor Cabalo Kusop (Kusop), they have acquired vested private rights over these lots. This campaign resulted in Proc. 2273, which re-classified and returned Lots Y-1 and Y-2 to their original alienable and disposable state.

In 1997, respondents-intervenors filed applications[6] for the issuance of individual miscellaneous sales patents over the whole of Lot X with the Department of Environment and Natural Resources (DENR) regional office in General Santos City, which approved them. Consequently, 16 original certificates of title[7] (OCTs) covering Lot X were issued in the names of respondents-intervenors and several others. In September 1997, these 16 titles were simultaneously conveyed[8] to herein respondent AFP-Retirement and Separation Benefits System (AFP-RSBS), resulting in the issuance of 16 new titles (the AFP-RSBS titles) — Transfer Certificates of Title (TCT) No. T-81051 through T-81062, T-81146-T-81147, and T-81150-T-81151.[9]

RECREATIONAL AND HEALTH RESORT RESERVATION SITUATED IN THE MUNICIPALITY OF GENERAL SANTOS CITY, ISLAND OF MINDANAO, CERTAIN PORTIONS OF THE LAND EMBRACED THEREIN AND DECLARING THE SAME OPEN TO DISPOSITION UNDER THE PROVISIONS OF THE PUBLIC LAND ACT.

[6] Exhibits "D to D-15", Folder of Exhibits for Plaintiff.

[7] Exhibits "E to E-15", *id.*

[8] See Deeds of Absolute Sale, Exhibits "F to F-15," *id.*

[9] Exhibits "G to G-15", *id.*

On September 11, 1998, herein petitioner Republic of the Philippines instituted Civil Case No. 6419, which is a Complaint[10] for reversion, cancellation and annulment of the AFP-RSBS titles, on the thesis that they were issued over a public park which is classified as inalienable and non-disposable public land.

Respondents-intervenors intervened[11] in Civil Case No. 6419, and, together with the defendant AFP-RSBS, argued that their predecessor-in-interest Kusop had acquired vested interests over Lot X even before Proc. 168 was issued, having occupied the same for more than 30 years. They claimed that these vested rights, taken together with the favorable recommendations and actions of the DENR and other government agencies to the effect that Lot X was alienable and disposable land of the public domain, as well as the subsequent issuance of sales patents and OCTs in their names, cannot be defeated by Proc. 168. They added that under Proc. 168, private rights are precisely recognized, as shown by the preliminary paragraph thereof which states:

> Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the authority vested in me by law, I, Diosdado Macapagal, President x x x, do hereby withdraw from sale or settlement and reserve for recreational and health resort site purposes, under the administration of the municipality of General Santos, **subject to private rights, if any there be** x x x[12] (Emphasis supplied.)

Ruling of the Regional Trial Court

On November 5, 2001, the trial court rendered judgment nullifying the AFP-RSBS titles and ordering the return of Lot X to the Republic, with the corresponding issuance of new titles in its name. The trial court ruled that the respondents-intervenors — having benefited by the grant, through Proc. 2273, of Lots Y-1 and Y-2 to them — can no longer claim Lot X, which has been specifically declared as a park reservation under

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[10] *Rollo*, pp. 95-105.

[11] Records, Vol. 1, pp. 158-162.

[12] See Proc. 168, Exhibit "A", Folder of Exhibits for Plaintiff.

Proc. 168 and further segregated under Proc. 2273. In other words, their private rights, which were guaranteed under Proc. 168, have already been recognized and respected through the subsequently issued Proc. 2273; as a consequence, the succeeding sales patents and OCTs in the names of the respondents-intervenors should be declared null and void not only for being in violation of law, but also because respondents-intervenors did not deserve to acquire more land.

Ruling of the Court of Appeals

The CA reduced the issues for resolution to just two: 1) whether the respondents-intervenors acquired vested rights over Lot X, and 2) whether AFP-RSBS is a buyer in good faith.[13] It went on to declare that Lot X was alienable and disposable land, and that respondents-intervenors' predecessor-in-interest acquired title by prescription, on the basis of the documentary evidence presented:

1. Report to the President of the Republic dated August 2, 1982 by the Board of Liquidators, recommending the amendment of Proc. 168 to recognize and respect the rights of respondents-intervenors' predecessors-in-interest, who have been in possession of portions of the reservation since time immemorial;[14]

2. Report of District Land Officer Buenaventura Gonzales of the Bureau of Lands, dated May 26, 1975, likewise stating that respondents-intervenors' predecessors-in-interest have been in possession of portions of the reservation since time immemorial, and that for this reason, Proc. 168 was never in force and effect;[15]

3. Report of Deputy Public Land Inspector Jose Balanza of the Bureau of Lands, dated May 6, 1976, finding that the property covered by Proc. 168 is private property and within an area declared as alienable and disposable under Project No. 47 per L.C. Map No. 700 established by the then Bureau of Forestry;[16]

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[13] *Rollo*, p. 66.

[14] *Id.* at 67.

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

[16] *Id.* at 70.

4. Tax Declaration No. 716 in the name of Cabalo Kusop and its subsequent revisions;[17]

5. Certifications issued by the (then) municipal treasurer of General Santos and official receipts showing payment of taxes from 1945-1972;[18]

6. Sworn declaration of ownership submitted to the Philippine Constabulary;[19]

7. 1975 letter of then General Santos Mayor acknowledging that Kusop was in possession of Lot X even before the war; [and][20]

8. Statements and testimonies of several witnesses.[21]

The CA added that as a consequence of their predecessor's possession of Lot X since time immemorial, respondents-intervenors have acquired title without need of judicial or other action, and the property ceased to be public land and thus became private property.[22] It stressed that while "government has the right to classify portions of public land, the primary right of a private individual who possessed and cultivated the land in good faith much prior to such classification must be recognized and should not be prejudiced by after-events which could not have been anticipated."[23]

The CA went on to justify that the reason why Proc. 2273 did not take Lot X out of the public domain is not because the Executive wanted it to remain a recreational park reserve —

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[17] *Id.* at 73.

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

[19] *Id.* at 74.

[20] *Id.*

[21] *Id.*

[22] Citing *Director of Lands v. Iglesia ni Kristo*, G.R. No. 54276, August 16, 1991, 200 SCRA 606, 609, and *The Director of Lands v. Intermediate Appellate Court*, 230 Phil. 590, 602 (1986).

[23] Citing *Republic v. Court of Appeals*, 261 Phil. 393, 408 (1990).

but because the respondents-intervenors were in the process of donating said Lot X to General Santos City, and the President deemed it unnecessary to still place it within the coverage of Proc. 2273.

The CA further ruled that the miscellaneous sales patents issued in the names of the respondents-intervenors affirm their claim of ownership over Lot X, while the OCTs subsequently issued in their names rendered their claim indefeasible.

Finally, the appellate court declared that since respondents-intervenors' titles to Lot X were duly obtained, the sale and transfer thereof to respondent AFP-RSBS should be accorded the same treatment as a sale or transfer made to a purchaser in good faith. Besides, it having been shown that the petitioner is not entitled to Lot X since it already belonged to the respondents-intervenors, petitioner had no right to raise the issue of AFP-RSBS' good or bad faith.

Thus, petitioner's Complaint for reversion was dismissed.

Issues

The petition now enumerates the following issues for resolution:

I

BY APPLYING FOR MISCELLANEOUS SALES PATENT, THE HEIRS HAVE ADMITTED THAT LOT X IS PUBLIC LAND. THE EVIDENCE THEY SUBMITTED TO ESTABLISH THEIR ALLEGED PRIVATE OWNERSHIP IS THEREFORE UNAVAILING.

II

THE ALLEGED "VESTED RIGHTS" OF THE HEIRS OVER LOT X CANNOT PREVAIL AGAINST GOVERNMENT OWNERSHIP OF PUBLIC LAND UNDER THE REGALIAN DOCTRINE.

III

THERE IS NO BASIS TO CONCLUDE THAT PROCLAMATION 2273 RECOGNIZED THE OWNERSHIP OF LOT X BY THE HEIRS. NEITHER IS THERE BASIS TO CLAIM THAT THE HEIRS RETAINED OWNERSHIP OF LOT X DUE TO THE FAILURE OF

THE CITY OF GENERAL SANTOS TO ACCEPT THE DONATION OF LOT X.

IV

AFP-RSBS IS NOT A BUYER IN GOOD FAITH.[24]

Petitioner's Arguments

Apart from echoing the pronouncements of the trial court, the Republic, in its Petition and Consolidated Reply,[25] submits that respondents-intervenors' applications for miscellaneous sales patents constitute acknowledgment of the fact that Lot X was public land, and not private property acquired by prescription.

Petitioner argues further that with the express recognition that Lot X is public land, it became incumbent upon respondents-intervenors — granting that they are entitled to the issuance of miscellaneous sales patents — to prove that Lot X is alienable and disposable land pursuant to Commonwealth Act No. 141[26] (CA 141); and that in this regard respondents-intervenors failed. They offered proof, in the form of reports and recommendations made by the Bureau of Lands and the Board of Liquidators, among others, which were insufficient to establish that Lot X was alienable and disposable land of the public domain. Besides, under the law governing miscellaneous sales patents, Republic Act No. 730[27] (RA 730), it is specifically required that the property covered by the application should be one that is not being used for a public purpose. Yet the fact remains that Lot X is being utilized as a public recreational park. This being the case, Lot X should not have qualified for distribution allowable under RA 730.

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[24] *Rollo*, pp. 19-20.

[25] *Id.* at 141-178.

[26] THE PUBLIC LAND ACT. November 7, 1936.

[27] AN ACT TO PERMIT THE SALE WITHOUT PUBLIC AUCTION OF PUBLIC LANDS OF THE REPUBLIC OF THE PHILIPPINES FOR RESIDENTIAL PURPOSES TO QUALIFIED APPLICANTS UNDER CERTAIN CONDITIONS. June 18, 1952.

Petitioner next insists that if indeed respondents-intervenors have become the owners of Lot X by acquisitive prescription, they should have long availed of the proper remedy or remedies to perfect their title through an action for confirmation of imperfect title or original registration. Yet they did not; instead, they resorted to an application for issuance of miscellaneous sales patents. By so doing, respondents-intervenors conceded that they had not acquired title to Lot X.

Petitioner next advances the view that respondents-intervenors' vested rights cannot prevail as against the State's right to Lot X under the Regalian doctrine. Petitioner argues that the presumption still weighs heavily in favor of state ownership of all lands not otherwise declared private and that since Lot X was not declared open for disposition as were Lots Y-1 and Y-2 by and under Proc. 2273, it should properly retain its character as an inalienable public recreational park.

Finally, petitioner submits that the good or bad faith of AFP-RSBS is irrelevant because any title issued on inalienable public land is void even in the hands of an innocent purchaser for value.[28]

Respondents' Arguments

AFP-RSBS and the respondents-intervenors collectively argue that the grounds relied upon by the Republic in the petition involve questions of fact, which the Court may not pass upon. They add that since private rights are explicitly recognized under Proc. 168, the respondents-intervenors' predecessor's prior possession since time immemorial over Lot X should thus be respected and should bestow title upon respondents-intervenors.

They argue that if respondents-intervenors chose the wrong remedy in their attempt to perfect their title over Lot X, this was an innocent mistake that in no way divests such title, which was already perfected and acquired by virtue of their predecessor's open, continuous and uninterrupted possession of Lot X.

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[28] Citing *Republic v. Court of Appeals*, 232 Phil. 444, 457 (1987).

Finally, they argue that the reports and recommendations of the Bureau of Lands and the Board of Liquidators constitute findings of facts of administrative agencies which thus bind the Court. They add that the presumption arising from the Regalian doctrine may be overcome by proof to the contrary, and that it has in fact been overcome by the evidence presented before the trial court.

Our Ruling

The Court grants the Petition.

From the wording of Proc. 168, the land it comprises is subject to sale or settlement, and thus alienable and disposable —

> Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the authority vested in me by law, **I, Diosdado Macapagal, President x x x, do hereby withdraw from sale or settlement and reserve for recreational and health resort site purposes**, under the administration of the municipality of General Santos, **subject to private rights, if any there be** x x x[29] (Emphasis and underscoring supplied.)

However, this alienable and disposable character of the land covered by the proclamation was subsequently withdrawn, and the land was re-classified by then President Macapagal to pave the way for the establishment of a park reservation, subject only to previously acquired private rights. Respondents-intervenors then lobbied for the exclusion of certain portions of the reservation which they claimed to be theirs, allegedly acquired by their predecessor Kusop through prescription. They were successful, for in 1983, then President Marcos issued Proc. 2273, which excluded and segregated Lots Y-1 and Y-2 from the coverage of Proc. 168. In addition, Proc. 2273 declared Lots Y-1 and Y-2 open for distribution to qualified beneficiaries — which included the herein respondents-intervenors. However, Lot X was retained as part of the reservation.

Respondents-intervenors did not question Proc. 2273, precisely because they were the beneficiaries thereof; nor did they object

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[29] See Proc. 168, Exhibit "A", Folder of Exhibits for Plaintiff.

to the retention of Lot X as part of the park reserve. Instead, in 1997, they applied for, and were granted, sales patents over Lot X.

Evidently, the sales patents over Lot X are null and void, for at the time the sales patents were applied for and granted, the land had lost its alienable and disposable character. It was set aside and was being utilized for a public purpose, that is, as a recreational park. Under Section 83 of CA 141, "the President may designate by proclamation any tract or tracts of land of the public domain as reservations for the use of the Commonwealth of the Philippines or of any of its branches, or of the inhabitants thereof, in accordance with regulations prescribed for this purpose, or for quasi-public uses or purposes, when the public interest requires it, including reservations for highways, rights of way for railroads, hydraulic power sites, irrigation systems, communal pastures or *leguas comunales*, public parks, public quarries, public fishponds, workingmen's village and other improvements for the public benefit." And under the present Constitution, national parks are declared part of the public domain, and shall be conserved and may not be increased nor diminished, except by law.[30]

The 1935 Constitution classified lands of the public domain into **agricultural, forest or timber**. Meanwhile, the 1973 Constitution provided the following divisions: agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest and grazing lands, and such other classes as may be provided by law, giving the government great leeway for classification. **Then the 1987 Constitution reverted to the 1935 Constitution classification with one addition: national parks**. **Of these, only agricultural lands may be alienated**. x x x[31] (Emphasis supplied.)

Respondents-intervenors no longer had any right to Lot X — not by acquisitive prescription, and certainly not by sales

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[30] CONSTITUTION, Article XII, Sections 3 and 4.

[31] *Secretary of the Department of Environment and Natural Resources v. Yap*, G.R. Nos. 167707 and 173775, October 8, 2008, 568 SCRA 164, 184.

patent. In fact, their act of applying for the issuance of miscellaneous sales patents operates as an express acknowledgment that the State, and not respondents-intervenors, is the owner of Lot X. It is erroneous to suppose that respondents-intervenors possessed title to Lot X when they applied for miscellaneous sales patents, for the premise of such grant or privilege is precisely that the State is the owner of the land, and that the applicant acknowledges this and surrenders to State ownership. The government, as the agent of the State, is possessed of the plenary power as the persona in law to determine who shall be the favored recipients of public lands, as well as under what terms they may be granted such privilege, not excluding the placing of obstacles in the way of their exercise of what otherwise would be ordinary acts of ownership.[32]

Respondents-intervenors' actions betray their claim of ownership to Lot X. When Proc. 168 was issued, they did not institute action to question its validity, using as cause of action their claimed ownership and title over the land. The same is true when Proc. 2273 came out. They did not file suit to invalidate it because it contravenes their claimed ownership over Lot X. They simply sat and waited for the good graces of the government to fall on their laps. They simply waited for the State to declare them beneficiaries of the land. And when the President failed to include Lot X in Proc. 2273 and declare it open for disposition to them as beneficiaries, they filed their applications for issuance of miscellaneous sales patents over said lot. All these actions are anathema to a claim of ownership, and instead indicate a willingness to abide by the actions of the State, a show of respect for its dominion over the land.

Under the law, respondents-intervenors are charged with knowledge of the law; they cannot feign ignorance. In fact, they could not claim to be unaware of Proc. 168, for precisely they hid under its protective mantle to seek the invalidation of a donation claimed to have been made by them to one Jose Tayoto. Thus, in *Tayoto v. Heirs of Kusop*,[33] an alleged donee (Tayoto)

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[32] *Id.* at 185.

[33] 263 Phil. 269 (1990).

of property located within Lots X, Y-1, and Y-2 filed a case for quieting of title against the donors — herein respondents-intervenors — to protect the property which they allegedly donated to him, which was then in danger of being lost for the reason that respondents-intervenors supposedly reneged on the donation. Respondents-intervenors filed an urgent motion to dismiss the Complaint claiming, among others, the "invalidity of the donation as the subject thereof had not yet been excluded from the Magsaysay Park."[34] In disposing of the case, the Court made the following pronouncement:

> Be that as it may, the donation is void. There are three essential elements of donations: [1] the reduction of the patrimony of the donor, [2] the increase in the patrimony of the donee, and [3] the intent to do an act of liberality (*animus donandi*). Granting that there is an *animus donandi*, **we find that the alleged donation lacks the first two elements which presuppose the donor's ownership rights over the subject of the donation which he transmits to the donee thereby enlarging the donee's estate**. This is in consonance with the rule that a donor cannot lawfully convey what is not his property. In other words, a donation of a parcel of land the dominical rights of which do not belong to the donor at the time of the donation, is void. This holds true even if the subject of the donation is not the land itself but the possessory and proprietary rights over said land.
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> In this case, although they allegedly declared Magsaysay Park as their own for taxation purposes, **the heirs of Cabalo Kusop did not have any transmissible proprietary rights over the donated property at the time of the donation. In fact, with respect to Lot Y-2, they still had to file a free patents application to obtain an original certificate of title thereon. This is because Proclamation No. 2273 declaring as 'open to disposition under the provisions of the Public Land Act' some portions of the Magsaysay Park, is not an operative law which automatically vests rights of ownership on the heirs of Cabalo Kusop over their claimed parcels of land**.
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> The import of said quoted proviso in a presidential proclamation is discussed in the aforecited *Republic v. Court of Appeals* case

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[34] *Id.* at 277.

which dealt with the validity of a donation by a sales awardee of a parcel of land which was later reserved by presidential proclamation for medical center site purposes. We held therein that where the land is withdrawn from the public domain and declared as disposable by the Director of Lands under the Public Land Act, the Sales Award covering the same confers on a sales awardee only a possessory and not proprietary right over the land applied, for. The disposition of the land by the Director is merely provisional as the applicant still has to comply with the requirements of the law before any patent is issued. It is only after the compliance with such requirements that the patent is issued and the land applied for considered 'permanently disposed of by the Government.'

The interpretation of said proviso should even be more stringent in this case considering that with respect to Lot Y-1, the heirs of Cabalo Kusop do not appear to have taken even the initial steps mandated by the Public Land Act for claimants of the land excluded from the public domain. The alleged donation was therefore no more than an exercise in futility.[35] (Emphasis and underscoring supplied.)

For obvious reasons, respondents-intervenors should have, as early as 1990 when the above Decision was promulgated, taken exception to its pronouncements if they rightfully believed that the property covered by Proc. 168 (which included Lot X) rightfully belonged to them. Yet they did not. Instead, after seven long years or in 1997, they filed their applications for the issuance of miscellaneous sales patents over Lot X. This act of filing applications for the issuance of miscellaneous sales patents in their name, taken in conjunction with all the other attendant circumstances, constitutes an express acknowledgment that the land does not belong to them, but to the State.

Neither may respondents-intervenors claim innocent mistake for all their missteps in claiming the subject property as their own. The mistakes are simply too numerous, and respondents-intervenors' inaction since 1963 is too glaring. To repeat, their actions are anathema to a claim of ownership. While it is true that possession since time immemorial could result in the

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

acquisition of title without need of judicial or other action, respondents-intervenors' actions and conduct, as shown above, not only negate the application of such principle, but in fact point to the opposite.

The principle of estoppel "bars [one] from denying the truth of a fact which has, in the contemplation of law, become settled by the acts and proceedings of judicial or legislative officers or by the act of the party himself, either by conventional writing or by representations, express or implied or *in pais*."[36] Besides, respondents-intervenors should not be allowed to trifle with the processes of the State. They cannot resort to other remedies which are improper and do not provide for the opportunity to prove their title, but instead require them to concede it before availment.

Contrary to the CA's pronouncements, proof or evidence of possession since time immemorial becomes irrelevant and cannot support a claim of ownership or application for a patent, not only because respondents-intervenors have conceded ownership to the State, but also on account of the fact that Lot X has been withdrawn from being alienable and disposable public land, and is now classified and being used as a national park. It has ceased to be alienable, and no proof by the respondents-intervenors will operate to bolster their claim; Lot X will never be awarded to them or to anybody so long as it is being used as a public park or reserve.

The CA justifies that Proc. 2273 was issued on the assumption that respondents-intervenors were about to donate Lot X to the city (General Santos City); thus, the President has seen fit not to include it in the proclamation. This is specious. If the President indeed knew of the intended donation, then it was all the more necessary for him to have included Lot X in Proc. 2273 and withdrawn it from the coverage of Magsaysay Park; or else the donation to the city would be null and void, for want of right to donate. Yet he did not. Lot X was retained as part of the park reserve precisely because the respondents-intervenors had

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[36] *Cruz v. Court of Appeals*, 354 Phil. 1037, 1054 (1998).

no vested right to it. And, far from confirming ownership over Lot X, the Republic is correct in the opinion that the miscellaneous sales patents amount to an acknowledgment that respondents-intervenors' rights are inferior, and cannot defeat ownership over Lot X by the State.

Given the above pronouncements, the CA's ruling on other matters, as well as the respondents' arguments on specific points, become irrelevant and inapplicable, if not necessarily invalidated.

Finally, as regards AFP-RSBS' rights, the Court sustains the petitioner's view that "[a]ny title issued covering non-disposable lots even in the hands of an alleged innocent purchaser for value shall be cancelled."[37] We deem this case worthy of such principle. Besides, we cannot ignore the basic principle that a spring cannot rise higher than its source; as successor-in-interest, AFP-RSBS cannot acquire a better title than its predecessor, the herein respondents-intervenors.[38] Having acquired no title to the property in question, there is no other recourse but for AFP-RSBS to surrender to the rightful ownership of the State.

WHEREFORE, premises considered, the Petition is **GRANTED.** The October 26, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 75170 is **ANNULLED** and **SET ASIDE.** The November 5, 2001 Decision of the Regional Trial Court, Branch 23 of General Santos City in Civil Case No. 6419 is **REINSTATED.**

The Register of Deeds of General Santos City is ordered to *CANCEL* Transfer Certificates of Title Nos. T-81051, T-81052, T-81053, T-81054, T-81055, T-81056, T-81057, T-81058, T-81059, T-81060, T-81061, T-81062, T-81146, T-81147, T-81150, and T-81151, and **ISSUE** in lieu thereof, new titles in the name of the Republic of the Philippines.

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[37] *Land Bank of the Philippines v. Republic*, G.R. No. 150824, February 4, 2008, 543 SCRA 453, 467.

[38] *Roa v. Heirs of Ebora*, G.R. No. 161137, March 15, 2010, 615 SCRA 231, 238-239.

No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 188603. Janaury 16, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAMIL RARUGAL *alias* "AMAY BISAYA,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT AND FINALITY.— This Court has consistently stated that the trial court is in a better position to adjudge the credibility of witnesses, especially if its decision is affirmed by the Court of Appeals. x x x The rationale for these guidelines is that the trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under grueling examination. We see no need to depart from the aforestated rules. After a careful review of the records, we find that appellant failed to negate the findings of the trial court with concrete evidence that the latter had overlooked, misconstrued, or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. We agree with the Court of Appeals that the prosecution witness recounted

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[**] Per Special Order No. 1408 dated January 15, 2013.

the details of that fateful night in a "clear, straightforward and convincing [manner], devoid of any signs of falsehood or fabrication."

2. ID.; ID.; DEFENSES OF DENIAL AND ALIBI, NOT PROVEN.— [P]rosecution witness Sit-Jar positively identified appellant as the victim's assailant in contrast to the appellant's defense of denial and alibi. x x x The records are devoid of any indication that it was physically impossible for appellant to have been in the scene of the crime at the time it was committed. Appellant's bare alibi that he was working as a farm administrator in Urbiztondo, Pangasinan and was allegedly staying there at the time of the commission of the crime does not suffice to prove the alleged physical impossibility that he committed the crime charged, moreso in the face of positive identification by the witness, who was not motivated by any improper motive to falsely testify against him. *Second*, the victim was still alive after the stabbing incident. He had time to reach his house and confide in his brother, witness Renato, that it was appellant who had stabbed him.

3. ID.; ID.; DYING DECLARATION; REQUISITES, PRESENT.— We agree with the Court of Appeals that the statement of Florendo made to his brother Renato has complied with the requisites of a dying declaration. It is important to note that Florendo, after being stabbed by appellant twice on the chest, went home and under labored breathing, told Renato that it was appellant who had stabbed him. Clearly, the statement made was an expression of the cause and the surrounding circumstances of his death, and under the consciousness of impending death. There being nothing in the records to show that Florendo was incompetent, he would have been competent to testify had he survived. It is enough to state that the deceased was at the time competent as a witness. Lastly, the dying declaration is offered in an inquiry the subject of which involves his death. x x x It is of no moment that the victim died seven days from the stabbing incident and after receiving adequate care and treatment, because the apparent proximate cause of his death, the punctures in his lungs, was a consequence of appellant's stabbing him in the chest.

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.— Anent the finding of treachery

by the RTC, we agree that appellant's act of suddenly stabbing Florendo while he was innocently cycling along Sampaguita Street, Barangay Capari, Novaliches, Quezon City constituted the qualifying circumstance of treachery. As we previously ruled, treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. Here, appellant surprised Florendo when he suddenly and swiftly attacked and stabbed him in the chest. The swift turn of events left Florendo defenseless to protect himself, allowing appellant to commit the crime without risk to his own person. Thus, we sustain the findings of the trial court and the Court of Appeals that the qualifying circumstance of treachery attended the commission of the crime.

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

6. ID.; ID.; CIVIL LIABILITY.— Anent the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. We agree with the Court of Appeals that the heirs of the victim were able to prove before the trial court actual damages in the amount of ₱27,896.00 based on the receipts they submitted. Moreover, we agree with the Court of Appeals that the award of exemplary damages is proper in this case. x x x We, however, increase the award of exemplary damages to ₱30,000.00 and the award for mandatory civil indemnity to ₱75,000.00 to conform to recent jurisprudence. We sustain the RTC's award for moral damages in the amount of ₱50,000.00 even in the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on

the part of the victim's family. In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is the appeal of the June 30, 2008 **Decision**[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02413,[2] which affirmed with modification the May 29, 2006 **Decision**[3] of the Regional Trial Court (RTC), Branch 86, Quezon City in Crim. Case No. Q-99-82409, entitled *People of the Philippines v. Ramil Rarugal* that found appellant Ramil Rarugal *alias* "Amay Bisaya" guilty beyond reasonable doubt for the crime of murder.

On December 8, 1998, the following information for the crime of murder was filed against appellant:

That on or about the 19th day of October, 1998, in Quezon City, Philippine, the above-named [appellant], with intent to kill, qualified by evident premeditation and treachery, did, then and there, wil[l]fully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one Arnel M. Florendo, by then and there stabbing him with a bladed weapon, hitting him on the different parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely

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[1] *Rollo*, pp. 2-16; penned by Associate Justice Edgardo F. Sundiam with Associate Justices Monina Arevalo-Zenarosa and Sixto C. Marella, Jr., concurring.

[2] Entitled *People of the Philippines v. Ramil Rarugal alias "Amay Bisaya."*

[3] CA *rollo*, pp. 14-22; penned by Judge Teodoro A. Bay.

death, to the damage and prejudice of the heirs of the said Arnel M. Florendo.[4]

Appellant was only arrested sometime in August 2001. During his arraignment on August 27, 2001, appellant pleaded not guilty.[5] Trial on the merits ensued.

Based on the testimonies of witnesses presented by the prosecution, the RTC found that on the night of October 19, 1998 at around 9:45 p.m., while victim Arnel Florendo (Florendo) was cycling along Sampaguita Street, Barangay Capari, Novaliches, Quezon City, appellant, with the use of a long double-bladed weapon, stabbed Florendo; thus, forcibly depriving him of his bicycle. Immediately thereafter, appellant hurriedly fled the scene. This incident was witnessed by Roberto Sit-Jar, who positively identified appellant in court.

Florendo arrived home bleeding. He was quickly attended to by his siblings, including his brother Renato. When Renato recounted the events of that night to the court, he testified that Florendo told him and his other relatives that it was appellant who had stabbed him. They then took Florendo to Tordesillas Hospital but had to transfer him to Quezon City General Hospital, due to the unavailability of blood. It was there that Florendo died[6] on October 26, 1998 with the family spending about ₱2,896.00[7] for his hospitalization and ₱25,000.00[8] for his funeral.

Autopsy Report signed by Medico-Legal Officer, Dr. Dominic L. Aguda, showed the following Postmortem Findings:[9]

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[4] Records, p. 1; signed by Edgardo T. Paragua, Assistant City Prosecutor.

[5] *Id.* at 18.

[6] *Id.* at 70.

[7] *Id.* at 161-165.

[8] *Id.* at 166.

[9] *Id.* at 65.

Cyanosis, lips and fingernailbeds
Brain- pale
Heart-chambers, contain small amount of dark clotted blood
STAB WOUND-

sutured, healing, 3.0 cms, located on left chest, 15.0 cms. from the anterior median line directed backwards and medially involving the skin and underlying tissues passing between the 6th and 7th left ribs, entering the thoracic cavity and severed the lower lobe of the left lung with a depth of 7-8 cms.

THORACOSTOMY INCISIONS-

sutured, 3.5 cms., located on the left chest, 19.0 cms. from the anterior median line; sutured, 3.2 cms. located on the right chest 20 cms. from the anterior median line
Hemothorax- left, 500 cc
Visceral organs- pale
Stomach- empty
CAUSE OF DEATH:

STAB WOUND, LEFT CHEST

In his defense, appellant denied that he stabbed Florendo since he was at that time working as a farm administrator for the town mayor in Pangasinan. He said he was living with his cousin in Urbiztondo, Pangasinan on October 19, 1998, where he had been staying since 1997. He stated that during the period 1997 to 1998, he did not visit Manila at any point. On cross-examination, appellant stated that he was arrested in front of his house in Novaliches, Quezon City.[10]

On May 29, 2006, the RTC found appellant guilty beyond reasonable doubt of the crime of murder as defined under Article 248 of the Revised Penal Code. It stated:

> After evaluation, the Court finds that the guilt of the [appellant] was proven beyond reasonable doubt. Witness Sit-Jar positively identified [appellant] as the assailant of Florendo. In view of the positive identification made by Sit-Jar, the denial and alibi made by [appellant] [has] no leg to stand on. Under prevailing jurisprudence alibis and denials are worthless in light of positive identification by witnesses who have no motive to falsely testify.

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[10] TSN, December 6, 2004.

Moreover, [Florendo] did not immediately die after he was stabbed by the [appellant]. [Florendo], apparently conscious that he could die of his wound, identified his assailant as the [appellant] Ramil Rarugal. Under the rules, statements made by a person under the consciousness of an impending death is admissible as evidence of the circumstances of his death. The positive identification made by the victim before he died, under the consciousness of an impending death is a strong evidence indicating the liability of herein [appellant].

x x x x x x x x x

As shown by the evidence, the killing of Arnel Florendo was sudden indicating treachery and the [appellant] being then armed with a knife, the killing was done with abuse of superior strength. These circumstances qualify the crime to murder, all of the elements of the offense being present.

x x x x x x x x x

WHEREFORE, premises considered judgment is hereby rendered finding the [appellant] Ramil Rarugal *alias* "Amay Bisaya" GUILTY beyond reasonable doubt of the crime of murder and hereby sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim the amount of ₱28,124.00 for actual damages, ₱50,000.00 for civil indemnity and ₱50,000.00 as and for moral damages.[11] (Citations omitted.)

Appellant filed his notice of appeal on July 21, 2006.[12] He questioned the RTC's finding of guilt beyond reasonable doubt in the commission of the crime and its appreciation of treachery as a qualifying circumstance. He argued that witness Sit-Jar lacked credibility for giving inconsistent testimony. Moreover, he averred that there was no basis for the finding that treachery qualified the crime to murder since its elements were not established.[13]

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[11] CA *rollo*, pp. 19-22.

[12] *Id.* at 23.

[13] *Id.* at 45-50.

On June 30, 2008, the Court of Appeals affirmed with modification the May 29, 2006 decision of the RTC. It stated that witness Sit-Jar's positive identification of appellant as the one who stabbed Florendo takes precedence over appellant's defense of denial and alibi. Moreover, appellant failed to adduce evidence to show that Sit-Jar had any improper motive to falsely testify against him. The Court of Appeals thus disposed of the appeal in the following manner:

> **WHEREFORE,** premises considered, the Decision appealed from is **AFFIRMED** with the **MODIFICATION** that the [appellant] **RAMIL RARUGAL** is hereby ordered to pay the heirs of the victim the amount of ₱27,896.00 as actual damages and the amount of ₱25,000.00 as exemplary damages. The said Decision in all other respect **STANDS**.[14]

Hence, this appeal.[15] Petitioner's confinement was confirmed by the Bureau of Corrections on September 30, 2009.[16]

Both the appellee[17] and the appellant[18] waived the filing of supplemental briefs and adopted the briefs they filed before the Court of Appeals.

We affirm the June 30, 2008 decision of the Court of Appeals, with modification respecting the award of damages.

This Court has consistently stated that the trial court is in a better position to adjudge the credibility of witnesses, especially if its decision is affirmed by the Court of Appeals.[19] We have been reminded in *People v. Clores*[20] that:

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

[15] *Id.* at 17.

[16] *Id.* at 24.

[17] *Id.* at 26-29.

[18] *Id.* at 36-39.

[19] *Ilisan v. People*, G.R. No. 179487, November 15, 2010, 634 SCRA 658, 663.

[20] 263 Phil. 585, 591 (1990).

When it comes to the matter of credibility of a witness, settled are the guiding rules some of which are that (1) the [a]ppellate court will not disturb the factual findings of the lower [c]ourt, unless there is a showing that it had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case x x x; (2) the findings of the [t]rial [c]ourt pertaining to the credibility of a witness is entitled to great respect since it had the opportunity to examine his demeanor as he testified on the witness stand, and, therefore, can discern if such witness is telling the truth or not[;] and (3) a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness. (Citations omitted.)

The rationale for these guidelines is that the trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under grueling examination.[21]

We see no need to depart from the aforestated rules. After a careful review of the records, we find that appellant failed to negate the findings of the trial court with concrete evidence that the latter had overlooked, misconstrued, or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. We agree with the Court of Appeals that the prosecution witness recounted the details of that fateful night in a "clear, straightforward and convincing [manner], devoid of any signs of falsehood or fabrication."[22]

First, prosecution witness Sit-Jar positively identified appellant as the victim's assailant in contrast to the appellant's defense of denial and alibi. We have stated in *Malana v. People*[23] that:

It is elementary that alibi and denial are outweighed by positive identification that is categorical, consistent and untainted by any

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[21] *People v. Escleto*, G.R. No. 183706, April 25, 2012, 671 SCRA 149, 156.

[22] *Rollo*, p. 7.

[23] G.R. No. 173612, March 26, 2008, 549 SCRA 451, 465-466.

ill motive on the part of the eyewitness testifying on the matter. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. The prosecution witnesses positively identified appellants as two of the perpetrators of the crime. It is incumbent upon appellants to prove that they were at another place when the felony was committed, and that it was physically impossible for them to have been at the scene of the crime at the time it was committed. x x x. (Citations omitted.)

The records are devoid of any indication that it was physically impossible for appellant to have been in the scene of the crime at the time it was committed. Appellant's bare alibi that he was working as a farm administrator in Urbiztondo, Pangasinan and was allegedly staying there at the time of the commission of the crime does not suffice to prove the alleged physical impossibility that he committed the crime charged, moreso in the face of positive identification by the witness, who was not motivated by any improper motive to falsely testify against him.

Second, the victim was still alive after the stabbing incident. He had time to reach his house and confide in his brother, witness Renato, that it was appellant who had stabbed him.

Rule 130, Section 37 of the Rules of Court provides:

SEC. 37. *Dying declaration*. — The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

The Court has stated in *People v. Maglian*:[24]

The Rules of Court states that a dying declaration is admissible as evidence if the following circumstances are present: "(a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the

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[24] G.R. No. 189834, March 30, 2011, 646 SCRA 770, 778.

dying declaration is offered in a case in which the subject of inquiry involves the declarant's death." x x x. (Citation omitted.)

We agree with the Court of Appeals that the statement of Florendo made to his brother Renato has complied with the requisites of a dying declaration. It is important to note that Florendo, after being stabbed by appellant twice on the chest, went home and under labored breathing, told Renato that it was appellant who had stabbed him. Clearly, the statement made was an expression of the cause and the surrounding circumstances of his death, and under the consciousness of impending death. There being nothing in the records to show that Florendo was incompetent, he would have been competent to testify had he survived.[25] It is enough to state that the deceased was at the time competent as a witness.[26] Lastly, the dying declaration is offered in an inquiry the subject of which involves his death. We reproduce the statement of the RTC:

Moreover, the [victim] did not immediately die after he was stabbed by the [appellant]. The victim, apparently conscious that he could die of his wound, identified his assailant as the [appellant] Ramil Rarugal. Under the rules, statement made by a person under the

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[25] Rule 130, Sections 20 and 21 which provides:

Section 20. *Witnesses; their qualifications*. — Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be a ground for disqualification.

Section 21. *Disqualification by reason of mental incapacity or immaturity*. — The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

[26] *People v. Santos*, 337 Phil. 334, 349 (1997).

consciousness of an impending death is admissible as evidence of the circumstances of his death. The positive identification made by the victim before he died, under the consciousness of an impending death is a strong evidence indicating the liability of herein [appellant].[27]

It is of no moment that the victim died seven days from the stabbing incident and after receiving adequate care and treatment, because the apparent proximate cause of his death, the punctures in his lungs, was a consequence of appellant's stabbing him in the chest.

Anent the finding of treachery by the RTC, we agree that appellant's act of suddenly stabbing Florendo while he was innocently cycling along Sampaguita Street, Barangay Capari, Novaliches, Quezon City constituted the qualifying circumstance of treachery. As we previously ruled, treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[28] Here, appellant surprised Florendo when he suddenly and swiftly attacked and stabbed him in the chest. The swift turn of events left Florendo defenseless to protect himself, allowing appellant to commit the crime without risk to his own person. Thus, we sustain the findings of the trial court and the Court of Appeals that the qualifying circumstance of treachery attended the commission of the crime.

Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the crime of murder. There being no aggravating or mitigating circumstance, the RTC, as affirmed by the Court of Appeals, properly imposed the penalty of *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the Revised Penal Code.[29]

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[27] CA *rollo*, pp. 19-20.

[28] *People v. Laurio*, G.R. No. 182523, September 13, 2012.

[29] *People v. Escleto*, *supra* note 21 at 159-160.

However, to conform to existing jurisprudence, the Court must modify the amount of indemnity for death and exemplary damages awarded by the courts *a quo*.

Anent the award of damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[30]

We agree with the Court of Appeals that the heirs of the victim were able to prove before the trial court actual damages in the amount of ₱27,896.00 based on the receipts[31] they submitted. Moreover, we agree with the Court of Appeals that the award of exemplary damages is proper in this case. We have stated that:

> Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.[32] (Emphasis omitted.)

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

[31] Records, pp. 161-166.

[32] *People v. Salafranca*, G.R. No. 173476, February 22, 2012, 666 SCRA 501, 517.

We, however, increase the award of exemplary damages to ₱30,000.00[33] and the award for mandatory civil indemnity to ₱75,000.00[34] to conform to recent jurisprudence.

We sustain the RTC's award for moral damages in the amount of ₱50,000.00 even in the absence of proof of mental and emotional suffering of the victim's heirs.[35] As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[36]

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.[37]

WHEREFORE, the appeal is **DENIED.** The June 30, 2008 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02413 is **AFFIRMED.** Appellant **RAMIL RARUGAL *alias* "Amay Bisaya"** is found **GUILTY** beyond reasonable doubt of **MURDER,** and is sentenced to suffer the penalty of *reclusion perpetua*. Appellant is further ordered to pay the heirs of Arnel M. Florendo the amounts of ₱27,896.00 as actual damages, ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

No pronouncement as to costs.

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[33] *People v. Escleto*, *supra* note 21 at 160.

[34] *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 520.

[35] *People v. Concillado*, G.R. No. 181204, November 28, 2011, 661 SCRA 363, 391; *People v. Fontanilla*, G.R. No. 177743, January 25, 2012, 664 SCRA 150, 162.

[36] *People v. Escleto*, *supra* note 21 at 160.

[37] *Id.* at 161.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191691. January 16, 2013]

ROMEO A. GONTANG, IN HIS OFFICIAL CAPACITY AS MAYOR OF GAINZA, CAMARINES SUR, *petitioner, vs.* **ENGR. CECILIA ALAYAN**, *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; AUTHORITY TO REPRESENT; A PRIVATE COUNSEL MAY REPRESENT A PUBLIC OFFICIAL IN A CASE WHERE THE LATTER'S PERSONAL LIABILITY COULD HAVE RESULTED.— The present case stemmed from special civil action no. 2002-0019 for *mandamus* and damages. The damages sought therein could have resulted in personal liability, hence, petitioner cannot be deemed to have been improperly represented by private counsel. In *Alinsug v. RTC Br. 58, San Carlos City, Negros Occidental*, the Court ruled that in instances like the present case where personal liability on the part of local government officials is sought, they may properly secure the services of private counsel[.] x x x Consequently Attys. Fandiño and Saulon had the authority to represent petitioner at the initial stages of the litigation and this authority continued even up to his appeal and the filing of the petition for *certiorari* with the CA respecting the execution of the RTC judgment. It was therefore an error for the CA to have dismissed the said petition for *certiorari* on the ground of unauthorized representation.

APPEARANCES OF COUNSEL

Office of the Provincial Legal Officer (Camarines Sur) for petitioner.

Epifanio Ma. J. Terbio, Jr. for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition filed under Rule 45 of the Rules of Court seeking to set aside the May 26, 2009[1] and March 22, 2010[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 107366 which dismissed the case due to the lack of legal authority of the private attorneys to represent the Municipality of Gainza, Camarines Sur.

The Facts

Respondent Engr. Cecilia Alayan (respondent) was appointed in 2000 as Municipal Government Department Head (Municipal Assessor) on temporary status. In May 2001, she applied for change of status from temporary to permanent, which the Civil Service Commission-Camarines Sur Field Office (CSC-CSFO) denied for lack of relevant experience. On appeal, the CSC-Regional Office in its August 13, 2001 Order approved her application effective May 22, 2001. Thus, she reported for work and sought recognition of her appointment and the grant of the emoluments of the position from petitioner, then incumbent Mayor Romeo A. Gontang (petitioner). Her requests having been denied, she filed before the Regional Trial Court (RTC) of Naga City on February 5, 2002 a petition for *mandamus*, docketed as Special Civil Action No. 2002-0019, against petitioner, in his official

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[1] *Rollo,* pp. 25-26. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Arturo G. Tayag, concurring.

[2] *Id.* at 39-40. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Rosmari D. Carandang and Florito S. Macalino, concurring.

capacity as Municipal Mayor of Gainza, Camarines Sur. However, the RTC dismissed the petition for having been prematurely filed as the Order of the CSC-Regional Office had not attained finality due to the pendency of the appeal before the CSC. Respondent appealed to the CA which, in its June 20, 2003 decision,[3] ruled in her favor holding that the pendency of an appeal is not a justification to prevent her from assuming office. Said decision attained finality on August 10, 2007[4] with the denial of petitioner's petition before the Supreme Court.[5] However, prior to the CA decision, the CSC set aside the August 13, 2001 Order of the CSC-Regional Office on May 8, 2003[6] upon a finding that there was no permanent appointment as the concurrence of the local *Sanggunian* was not obtained. Respondent's appeal of the CSC decision was denied by the CA[7] and such denial became final on October 6, 2006.[8]

On March 17, 2008, respondent moved for the issuance of an *alias* writ of execution by the RTC in Special Civil Action No. 2002-0019 for the alleged unsatisfied judgment award in the amount of ₱837,022.50 representing her unpaid salaries and allowances from May 8, 2003 to October 6, 2006 during the pendency of her appeal of the CSC Resolutions.[9] Petitioner opposed the motion claiming full satisfaction of the judgment after having already paid respondent the net sum of ₱391,040.60[10] covering all benefits for the period from the date the CSC-CSFO approved her request for change of status on August 13, 2001 to May 7, 2003, the day before the CSC denied her application for permanent appointment.

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[3] *Id.* at 103-112. Docketed as CA-G.R. SP No. 75048.

[4] Records, p. 197.

[5] *Rollo*, pp. 131-132.

[6] Records, pp. 524-532.

[7] *Rollo*, pp. 124-129. Docketed as CA-G.R. SP No. 90782.

[8] Records, p. 310.

[9] *Rollo*, pp. 133-136.

[10] *Id.* at 69-70, 52-53. In addition to attorney's fees of ₱10,000.00.

Ruling of the Regional Trial Court

Finding that the May 8, 2003 CSC Resolution became final and executory only on October 6, 2006 after respondent's appeal was resolved by the CA and with no appeal having been taken therefrom, the RTC ordered the issuance of an *alias* writ of execution in the order dated October 22, 2008.[11] It also subsequently denied petitioner's motion for reconsideration.[12]

Dissatisfied, petitioner, through Attorneys Joselito I. Fandiño (Atty. Fandiño) and Voltaire V. Saulon (Atty. Saulon), the counsels he had retained since the initial stage of the litigation, filed a petition for *certiorari* seeking to annul and set aside the two (2) Orders of the RTC.

Ruling of the Court of Appeals

The CA dismissed the petition on the ground of lack of legal authority on the part of Atty. Saulon, a private attorney, to represent the Municipality of Gainza, Camarines Sur. Petitioner's motion for reconsideration was denied in the assailed March 22, 2010 Resolution.

Issue Before the Court

Hence, the instant petition raising the issue of whether the CA erred in dismissing the petition for *certiorari* on the ground of unauthorized representation of petitioner by private lawyers.

The Ruling of the Court

The petition is meritorious.

The present case stemmed from Special Civil Action No. 2002-0019 for *mandamus* and damages.[13] The damages sought

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[11] *Id.* at 69-72. Penned by Judge Maria Eden Huenda Altea.

[12] *Id.* at 73.

[13] *Id.* at 98. The petition for *mandamus*, *inter alia* seeks "that respondent be held personally liable for the amount of One Hundred Thousand Pesos (₱100,000) by way of moral damages suffered by the petitioner; Fifty Thousand Pesos (₱50,000) by way of exemplary damages; Ten Thousand

therein could have resulted in personal liability, hence, petitioner cannot be deemed to have been improperly represented by private counsel.[14] In *Alinsug v. RTC Br. 58, San Carlos City, Negros Occidental*,[15] the Court ruled that in instances like the present case where personal liability on the part of local government officials is sought, they may properly secure the services of private counsel, explaining:

> It can happen that a government official, ostensibly acting in his official capacity and sued in that capacity, is later held to have exceeded his authority. On the one hand, his defense would have then been underwritten by the people's money which ordinarily should have been his personal expense. On the other hand, personal liability can attach to him without, however, his having had the benefit of assistance of a counsel of his own choice. In *Correa v. CFI*, the Court held that in the discharge of governmental functions, 'municipal corporations are responsible for the acts of its officers, except if and when, and only to the extent that, they have acted by authority of the law, and in conformity with the requirements thereof.
>
> In such instance, this Court has sanctioned the representation by private counsel. In one case, We held that where rigid adherence to the law on representation of local officials in court actions could deprive a party of his right to redress for a valid grievance, the hiring of a private counsel would be proper. And in *Albuera v. Torres*, this Court also said that a provincial governor sued in his official capacity may engage the services of private counsel when "the complaint contains other allegations and a prayer for moral damages, which, if due from the defendants, must be satisfied by them in their private capacity.[16] (Citations omitted)

Consequently Attys. Fandiño and Saulon had the authority to represent petitioner at the initial stages of the litigation and

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Pesos (₱10,000) as and for attorney's fees; One Thousand Pesos (₱1,000) per appearance; plus costs of the suit amounting to not less than Five Thousand Pesos (₱5,000) all in favor of the petitioner."

[14] *Mancenido v. CA*, G.R. No. 118605, April 12, 2000, 330 SCRA 419, 426.

[15] G.R. No. 108232, August 23, 1993, 225 SCRA 553.

[16] *Id.* at 559.

this authority continued even up to his appeal[17] and the filing of the petition for *certiorari* with the CA respecting the execution of the RTC judgment.[18] It was therefore an error for the CA to have dismissed the said petition for *certiorari* on the ground of unauthorized representation.

WHEREFORE, the petition is **GRANTED.** The assailed May 26, 2009 and March 22, 2010 Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 107366 are hereby **SET ASIDE.** The case is **REMANDED** to the CA for further proceedings.

SO ORDERED.

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

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[17] Rules of Court, Rule 138, Sec 22, provides:

Sec. 22. Attorney who appears in lower court presumed to represent client on appeal.-An attorney who appears *de parte* in a case before a lower court shall be presumed to continue representing his client on appeal, unless he files a formal petition withdrawing his appearance in the appellate court.

[18] Rules of Court, Rule 138, Sec 22, provides:

> Sec. 23. Authority of attorneys to bind clients.— Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. x x x

See also *Province of Bulacan v. CA,* G.R. No. 126232, November 27, 1998, 299 SCRA 442, 453-454, where the Court stated that "[s]uch questions as what action or pleading to file, where and when to file it, what are its formal requirements, what should be the theory of the case, what defenses to raise, how may the claim or defense be proved, when to rest the case, as well as those affecting the competency of a witness, the sufficiency, relevancy, materiality or immateriality of certain evidence and the burden of proof are within the authority of the attorney to decide."

[*] Designated Additional Member per Special Order No. 1408 dated January 15, 2013.

THIRD DIVISION

[G.R. No. 177167. January 17, 2013]

NELSON B. GAN, *petitioner, vs.* **GALDERMA PHILIPPINES, INC. and ROSENDO C. VENERACION,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF LABOR OFFICIALS ACCORDED RESPECT AND FINALITY.— Settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only with respect but even finality by the courts when supported by substantial evidence, *i.e.*, such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Likewise, factual findings arrived at by a trier of facts, who is uniquely positioned to observe the demeanor of the witnesses appearing before him and is most competent in judging the credibility of the contending parties, are accorded great weight and certitude. x x x After a judicious consideration of the pleadings filed by both parties, the Court finds no compelling reason to reverse the findings of fact as well as conclusions of law of the CA, which sustained the decision of the NLRC affirming the labor arbiter. Indeed, there is no arbitrary disregard or misapprehension of evidence of such nature as to compel a contrary conclusion.

2. ID.; CIVIL PROCEDURE; JURISDICTION OF THE SUPREME COURT UNDER RULE 45; EXCEPTIONS; NOT APPLICABLE.— In the same vein, the jurisdiction of this Court in cases brought before it from the CA *via* Rule 45 is generally limited to reviewing errors of law or jurisdiction. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding. The reason is that this Court does not entertain factual issues. It is not our function to analyze or weigh evidence all over again as the evaluation of facts is best left to the trial or administrative agencies/quasi-judicial bodies and appellate court which are better equipped for the task.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL AND RESIGNATION, DISTINGUISHED.— [C]onstructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances. On the other hand, "[r]esignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment."

4. ID.; ID.; ID.; WHERE A MANAGERIAL EMPLOYEE SUBMITTED A RESIGNATION LETTER, IT IS INCUMBENT UPON HIM TO PROVE THAT SUCH ACT WAS NOT VOLUNTARY; COERCION AND HARASSMENT, NOT ESTABLISHED IN CASE AT BAR.— Since Gan submitted a resignation letter, it is incumbent upon him to prove with clear, positive, and convincing evidence that his resignation was not voluntary but was actually a case of constructive dismissal; that it is a product of coercion or intimidation. He has to prove his allegations with particularity. Gan could not have been coerced. Coercion exists when there is a reasonable or well-grounded fear of an imminent evil upon a person or his property or upon the person or property of his spouse, descendants or ascendants. Neither do the facts of this case disclose that Gan was

intimidated. x x x The instances of "harassment" alleged by Gan are more apparent than real. Aside from the need to treat his accusations with caution for being self-serving due to lack of substantial documentary or testimonial evidence to corroborate the same, the acts of "harassment," if true, do not suffice to be considered as "peculiar circumstances" material to the execution of the subject resignation letter. x x x What the records of this case reveal is that Gan deliberately wrote and filed a resignation letter that is couched in a clear, concise, and categorical language. Its content confirmed his unmistakable intent to resign. The resignation letter indicates that he was resigning *"to pursue the establishment of [his] own business or explore opportunities with other companies."* The reasons stated for relinquishing his position are but logical options for a person of his experience and standing. x x x Gan is no ordinary laborer with limited education and skills; he is not a rank-and-file employee with inadequate understanding such that he would be easily beguiled or forced into doing something against his will. He was a managerial employee holding a responsible position and receiving more than the mandated minimum wage. He also appears to have a good professional track record that highlights his marketability. At the time he resigned, he had more than a decade of experience in sales and marketing with expertise in product management. Indeed, it would be absurd to assume that he did not understand the full import of the words he used in his resignation letter and the consequences of executing the same. What is evident, therefore, is that Gan's resignation is NOT *"a case of adherence, not of choice,"* but was a product of a mutually beneficial arrangement. We agree with respondents that the result of the negotiation leading to Gan's resignation is a "win-win" solution for both parties. On one hand, Gan was able to obtain a favorable severance pay while getting flexible working hours to implement his post-resignation career options. On the other hand, Galderma was able to cut its relation with an employee perceived to be unwilling to perform additional product responsibilities while being given ample time to look for an alternative to hire and train. Indeed, Gan voluntarily resigned from Galderma for a valuable consideration. He negotiated for an improvement of the resignation package offered and he managed to obtain an acceptable one.

APPEARANCES OF COUNSEL

Enrico A. Benito for petitioner.
Quisumbing Torres Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure seeking the reversal of the March 21, 2007 Decision[1] of the Court of Appeals in CA-G.R. SP No. 91118, which upheld the assailed resolutions of the National Labor Relations Commission (NLRC) affirming the Labor Arbiter's ruling that petitioner Nelson B. Gan voluntarily resigned and was not constructively dismissed by respondent Galderma Philippines, Inc.

Now the facts.

Respondent Galderma Philippines, Inc. (Galderma), a wholly-owned subsidiary of Galderma Pharma S.A., is engaged in the business of selling, marketing, and distribution of Cetaphil Brand Product Lines (CBPL) that include Cetaphil liquid and bar cleansers, and pharmaceutical products, such as Locetar, Benzac and other prescription drugs. CBPL, which are over-the-counter products sold and/or distributed through supermarkets and health and beauty outlets, are handled by Galderma's Consumer Products Division, while pharmaceutical products, which are mostly prescription drugs sold and/or distributed through drug stores, are handled by its Ethical Products Division.

On February 9, 2001, petitioner Nelson B. Gan (Gan) was hired by Galderma as Product Manager for its Consumer Products Division to handle the marketing of CBPL effective March 1, 2001 with salary and benefits as follows:

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. concurring; *rollo*, pp. 76-93.

1. Monthly Salary - PHP 30,000.00 (Guaranteed 13 months)
2. Sales Incentives Scheme
   - Monthly Incentive (should the monthly sales target for the CBPL be achieved) – PHP 8,000.00
   - Year-to-Date (YTD) Incentive (should the monthly sales target for the CBPL be consistently achieved) – PHP 2,000.00
   - Annual Incentive (should the annual sales target for the CBPL be achieved) – PHP 15,000.00
3. Others
   - Provision and free use of company car
   - Monthly car allowance – PHP 3,200.00
   - Vision care annual subsidy for Gan and his dependents – PHP 1,200.00
   - Rice subsidy – PHP 1,500 every other month
   - Grocery items – worth PHP 900.00 upon attainment of the monthly sales target, subject to upgrade to PHP 1,300.00 at the end of every quarter upon national attainment of quarter targets
   - Funeral assistance – PHP 10,000
   - Monthly cellular telephone reimbursement – PHP 500.00
   - Paid vacation leave of ten (10) working days per annum after one (1) year of employment
   - Paid sick leave of ten (10) working days per annum after six (6) months of employment
   - Paid funeral leave of five (5) days in case of death of an immediate family member (legitimate wife, children and parents)
   - Paternity Leave
   - Group Life Insurance
   - Group Personal Accident Insurance
   - Retirement Plan
   - Foreign travel incentive like any other employee of Galderma depending on their performance for the year[2]

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[2] *Rollo*, pp. 211-217.

Gan was initially under the immediate supervision of Sales and Marketing Manager, Stephen C. Peregrino (Peregrino). Starting September 1, 2001, however, in view of Peregrino's resignation, he directly reported to Galderma's President and General Manager, respondent Rosendo C. Veneracion (Veneracion).[3]

With his satisfactory performance during the first year, Gan was acknowledged and rewarded by Galderma through positive performance appraisal, salary and benefits increases, and informal notations on his marketing reports:

18.1 [Gan] was given a FULLY EFFECTIVE RATING by [Veneracion] in his Overall Performance Evaluation for the year 2001, particularly -

Result Assessment

KEY RESULT AREAS	RATING	DESCRIPTION
Brand Growth	5	Fully effective.
Business Expansion	5	Fully effective.
Profitability	5	Fully effective.
Marketing Plan Implementation	5	Fully effective.

Behavioral Assessment

AREAS OF BEHAVIOR	RATING	DESCRIPTION
Client Orientation – understands clients; produces services and products for clients; uses knowledge to equip clients; meets clients' needs.	5	Fully effective.

[3] *Id.* at 390, 465.

Drive for Results – makes things happen; is proactive, balances analysis with doing; sets high standards for self; commits to organizational goals.	5	Fully effective.
Teamwork – collaborates with others; shares knowledge; acknowledges [other's] contributions; works effectively in diversity; seeks help as needed.	6	Exceptionally effective.

NOTE: "6" being the highest rate and "1" the lowest.

18.2. [Gan] was given a 40% increase in his gross monthly salary, that is, from PHP 30,000.00 to PHP 42,000.00 effective [1] January 2002 through the 10 December 2001 Office Correspondence (or memorandum) of [Veneracion] x x x.

18.3. [Gan's] PHP 8,000.00 monthly sales incentive was also increased to PHP 9,000.00 effective [1] January 2002 through [Veneracion's] Office Correspondence of 14 December 2001 x x x.

18.4. [Gan's] PHP 3,200.00 monthly car allowance was likewise increased to PHP 4,125.00. This increase, however, was not evidenced by any memorandum and was merely implemented by [Galderma] and included in his monthly pay.

18.5. [Gan] was also included among the select group of employees of [Galderma] entitled to and given an all expense paid overseas trip for 2001 (in Sydney, Australia), but he was unable to join the same due to visa problem.[4]

Gan's above-average performance in handling CBPL continued in the first quarter of 2002:

19.1. The total 1st quarter net sales of the CBPL was almost double the 2000 annual net sales and already 53% of the 2001 annual net sales x x x

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[4] *Id.* at 15-17; 245-250.

19.2. The average monthly net sales for 2002 was already 96% higher than the average monthly net sales for 2001. If this trend continues, the annual net sales for the CBPL is expected at PHP 14,020,232.00 or more than double the annual net sales for 2001.

19.3. The excellent year 2002 1st quarter performance of [Gan] was acknowledged by [Veneracion] with his handwritten comments on the CBPL Marketing Report for February 2002 prepared and submitted by [Gan] x x x to wit –

19.3.1. [Veneracion] commended [Gan] for the good sales results for the 1st 2 months of 2002 when he commented – *"Good sales results! Looks like we're off to a good start!! Keep it up!"* – when [Gan] reported that the CBPL generated total gross sales of PHP 1.65 million [or] a 144% *attainment vs. the February forecast,* which sales total surpassed the previous high of PHP 1.46 million for January 2002.

19.3.2. [Veneracion] commented as *"EXCELLENT"* the eight (8) Press Releases or Articles for the CBPL for the month of February 2002.[5]

Pursuant to its intention to give him additional product management responsibilities, Galderma provided Gan with product knowledge training on Benzac and Locetar brands in December 2001. Thereafter, Gan's incentive program was revised and took effect in April 2002, thus:

MONTHLY INCENTIVE

Earn cash incentive upon achieving monthly national trade sales forecasts of the Cetaphil Consumer line, Locetar line and Benzac line as follows:

Cetaphil consumer line	₱ 4,500.00
Locetar line	3,000.00
Benzac line	1,500.00

Earn monthly cash incentive as YTD Consistency Award as follows:

Cetaphil consumer line	₱ 1,000.00
Locetar line	750.00
Benzac line	250.00

[5] *Id.* at 17; 251-253.

ANNUAL INCENTIVE

Earn cash incentive upon achieving Annual Trade Forecasts of the following:

Cetaphil consumer line	₱ 7,500.00
Locetar line	5,000.00
Benzac line	2,500.00[6]

The above policy actually modified the 2002 Incentive Program previously communicated to Gan per December 14, 2001 Office Correspondence,[7] the mechanics of which were as follows:

MONTHLY INCENTIVE:

Earn Ps 9,000 cash incentive upon achievement of monthly national trade sales forecast of the Cetaphil consumer line and/or any product line that management may add to the line-up of consumer products promoted to supermarket accounts.

Earn Ps 2,000 monthly cash incentive as YTD Consistency Award for the Cetaphil consumer line and/or any product line that management may add to the line-up of consumer products promoted to supermarket accounts.

ANNUAL INCENTIVE:

Earn Ps 15,000 cash incentive upon achievement of annual trade sales forecast of the Cetaphil consumer line and/or any product line that management may add to the line-up of consumer products promoted to supermarket accounts.

The December 14, 2001 Office Correspondence further advised that Galderma's management "*reserves the prerogative to modify or cancel [the] incentive program dependent on the company's financial capability to continue with the program*" and that "*[i]n such an event, a 30-day advance notice shall be provided [to] personnel affected by the change.*"

On April 11, 2002, Gan severed his employment ties with Galderma. His resignation letter reads:

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[6] *Id.* at 253.

[7] *Id.* at 250.

April 11, 2002

Gerry Castro
Sr. Product Manager

Please accept my resignation as OTC Product Manager effective July 15, 2002.

I am giving the company this notice in advance so that Galderma Philippines may have ample time to find a suitable replacement for my position.

I plan to pursue the establishment of my own business or explore opportunities with other companies.

(Signed)
NELSON GAN[8]

On the same day, Gerry M. Castro (Castro), his immediate superior at the time, accepted the resignation tendered:

April 11, 2002

G.M. Castro
Marketing

Nelson Gan c.c.: R.C. Veneracion
W.M. Marquez

Acceptance

This is to accept your resignation which will take effect on July 15, 2002. We appreciate your gesture for providing the company three months advance notice to recruit and train suitable replacement. We wish you success in your future endeavor.

(Signed)
GERRY M. CASTRO[9]

Three months passed, on July 25, 2002, Gan filed a Complaint[10] for illegal constructive dismissal, full backwages, separation

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[8] *Id.* at 254.

[9] *Id.* at 255.

[10] *Id.* at 181-210.

pay, damages, attorney's fees, and cost of suit against respondents Galderma and Veneracion.

Gan has consistently alleged his version of facts:

The start of [Gan's]
Calvary in [Galderma].

20. [In] the morning of [4] March 2002, [Gan] was summoned by [Veneracion], who informed him of his disgust in [Gan's] act of taking an emergency sick leave on 28 February 2002, immediately after availing of a five (5)-day vacation leave from 21-27 February 2002. [Veneracion] also informed [Gan] that he disliked his act in applying for the emergency sick leave, that is, by merely "texting" (short message service or SMS) [Veneracion's] executive secretary instead of informing [Veneracion] himself. [Gan] apologized to [Veneracion] and informed him that it will not be repeated, as in fact it was never repeated x x x.

Incident with
[Veneracion] on [7]
March 2002.

21. [Gan], as previously required by [Veneracion], submitted a five (5)-year sales forecast and marketing program for a Benzac brand anti-acne product (an ethical product, thus not covered by the CBPL). [Veneracion] wanted to include the said product under the brand management functions of [Gan] in the CBPL x x x.

22. [Veneracion] did not like the sales forecast and marketing program prepared by [Gan] to the point that he questioned the competence of [Gan] as product manager. To appease the irritated [Veneracion], [Gan] politely stated that x x x –

> 22.1. The matters stated in his sales forecast and marketing programs are merely his professional views and should the same be unacceptable to [Veneracion], the decision of the latter would naturally prevail and be implemented by [Gan].
>
> 22.2. Perhaps the reason why [Veneracion] did not like the sales forecast and marketing programs submitted by [Gan] is because the Benzac Brand is not within [Gan's] expertise, being

an ethical product, and not among the products understood by [Gan] to be covered by his responsibility as product manager when he accepted the work in [Galderma].

23. [Veneracion], however, did not accept the explanation of [Gan] and started enumerating his dissatisfaction with [Gan] unfairly branding the latter as - *"slow, lacking in initiative and uncooperative"* (THE 1st ACT OF HARASSMENT). Not satisfied, [Veneracion] continued and then asked [Gan] to *reconsider his stay [in] [Galderma] (in other words to leave or resign) because of his aforementioned negative attitudes* (THE 2nd ACT OF HARASSMENT). [Gan], naturally and considering his excellent performance in 2001-2002 and his immense contribution to [Galderma's] success, refuted as false the unfair allegations of [Veneracion] x x x.

Incident with
[Veneracion] on 15
March 2002 x x x.

24. On or about 10:00 [a.m.], [Veneracion] went to the office cubicle of [Gan] to ask for a list of the advertising rates of the leading newspaper publications, which he [needed] as reference in studying the five (5)-year business plan of [Galderma]. [Gan] respectfully informed [Veneracion] that he does not have a list, but he would ask for one (as in fact he did) from [Galderma's] retained PR Agency, Agatep and Associates x x x.

25. About 10 minutes later, [Veneracion] returned to the office cubicle of [Gan] again asking for the list of ad rates. [Gan] explained to [Veneracion] that he has already requested it from Agatep and Associates, but the PR Agency has not yet forwarded a copy to him as he requested. He informed [Veneracion] that he [would] again call the PR Agency for a copy of the list of ad rates x x x.

26. But even before [Gan] [could] call the PR Agency, [Veneracion], surprisingly, again got angry at [Gan] with his reply. *[Veneracion] again unfairly and falsely accused [Gan] of being remiss in his duties as product manager for not having a ready copy of the list of ad rates* (THE 3rd ACT OF HARASSMENT). [Gan] explained to [Veneracion] that he does not have a copy of the said list as he does not use paid advertisement as a means of promoting the CBPL, as

what he uses are PR articles and paid newspaper advertisements in magazines (not newspapers). This further infuriated [Veneracion] who was still *insisting that [Gan] should have a ready copy of the said list of ad rates and again unfairly and without basis questioned his competence as product manager* x x x.

27. [Veneracion], still furious, thereafter summoned [Gan] to his office for a *closed-door meeting where he continued lambasting [Gan] for his alleged negative work behavior and his poor performance as product manager in [Galderma]* (THE 4th ACT OF HARASSMENT). [Gan] defended himself through his good performance record x x x.

28. [Veneracion], notwithstanding the explanation of [Gan], again *accused [Gan] of being a distraction in [Galderma] and for the second time asked him to reconsider his stay in [Galderma]* (THE 5th ACT OF HARASSMENT). After the outburst of [Veneracion], [Gan] asked him what he wants [Gan] to do to satisfy [Veneracion], to which *[Veneracion] replied —"make your move" - insinuating that [Gan] resign from [Galderma]*. Shocked at the statement of [Veneracion] for him to resign, *[Gan] replied - "no you make your move" - insinuating that [Veneracion] should fire him if he is not satisfied with his performance. [Veneracion] thereafter warned [Gan] not to give a reason to terminate him.* At this, [Gan] stated that he will not resign his employment in [Galderma], as he knows he is doing his job very well, as reflected by his sales record x x x.

29. Immediately after their meeting, [Veneracion] verbally ordered that from that time onwards *[Gan] [would] start to report directly to the Senior Product Manager Mr. Gerry M. Castro ["Castro"], instead of to [Veneracion] directly* x x x.

Incident with
[Castro] on [3]
April 2002 x x x.

30. [Gan] was called to the office of [Castro]. There[,] [Gan] was informed that his 2002 INCENTIVE SCHEME was revised (hereinafter the "REVISED 2002 INCENTIVE SCHEME" - THE 6th ACT OF HARASSMENT), as follows x x x:

2002 INCENTIVE SCHEME	REVISED 2002 INCENTIVE SCHEME	EFFECTS
PHP 9,000 – *monthly incentive* for meeting the monthly sales target for the CBPL.	SAME AMOUNT of *Monthly incentive* was distributed as follows:	
	* PHP 4,500.00 for meeting the monthly sales target for the CBPL.	50% DECREASE in monthly incentive for meeting the SAME CBPL monthly sales target.
	* PHP 3,000.00 for meeting the monthly sales target for the Locetar Brand.	Represents 33% of the monthly incentive for the CBPL DEDUCTED from [Gan].
	* PHP 1,500.00 for meeting the monthly sales target for the Benzac Brand	Represents 17% of the monthly incentive for the CBPL DEDUCTED from [Gan].
PHP 2,000.00 – *YTD incentive* for regularly meeting the monthly sales target for the CBPL.	*SAME AMOUNT OF YTD incentive* was distributed as follows:	
	* PHP 1,000.00 for the CBPL.	50% DECREASE in YTD incentive for meeting the same CBPL sales target.
	* PHP 750.00 for the Locetar Brand.	Represents 37.5% of the YTD incentive for the CBPL DEDUCTED from [Gan].
	* PHP 250.00 for the Benzac Brand.	Represents 12.5% of the YTD incentive for the CBPL DEDUCTED from [Gan]
PHP 15,000.00 – *annual incentive* for meeting the annual sales target for the CBPL.	SAME AMOUNT of *Annual incentive* was distributed as follows:	
	* PHP 7,500.00 for the CBPL.	50% DECREASE in the annual incentive for meeting the same sales target for the CBPL.
	* PHP 5,000.00 for the Locetar Brand.	Represents 33% of the annual incentive for the CBPL DEDUCTED from [Gan]
	* PHP 2,500.00 for the Benzac Brand.	Represents 17% of the annual incentive for the CBPL DEDUCTED from [Gan]

31. [Gan] requested from [Castro] the following x x x:

31.1. A one (1)-month transition period to familiarize himself with the new products added to his responsibilities and to study its market.

31.2. Not to implement his revised incentive scheme during the requested transition period.

[Castro] informed [Gan] that he understood his position and he [would] discuss the matter with [Veneracion] immediately upon the return of the latter from Singapore. On his way out of [Castro's] office, [Gan] was handed a copy of the memorandum dated [2] April 2002 (to take effect [1] April 2002) revising, or to be specific — REDUCING — his incentive scheme for his signature evidencing conformity x x x. [Gan] asked [Castro] if he [could] delay the signing until after [Veneracion] has decided on his above requests, to which [Castro] readily agreed.

Incident with [Castro]
on 10 April 2002 x x x.

32. [Gan] was instructed by [Castro] to formally put in writing his request for reconsideration on his REVISED 2002 INCENTIVE SCHEME as they previously discussed on [3] April 2002. [Gan][,] fearing that this [might] only fuel another of [Veneracion's] recent and numerous outbursts against him[,] informed [Castro] that *"kung magiging issue lang huwag na tanggapin ko na"* but [Castro] insisted that he put it in writing. [Gan] did so as instructed by [Castro] x x x.

Incident with
[Veneracion] on 11
April 2002 x x x.

33. Early that morning, [Gan] and [Castro] were having a discussion in the latter's office when *[Veneracion] arrived and started lambasting [Gan] for his alleged incompetence as product manager.* [Gan] allegedly failed to consider some details in the CBPL presentation for the Getz Bros. April cycle meeting. *[Veneracion] continued his attack on the alleged incompetence of [Gan] and [Veneracion's] inclination to remove the CBPL responsibility from him. [Veneracion] said he [would] handle it himself* — THE 7th ACT OF HARASSMENT x x x.

34. Not satisfied, [Veneracion] thereafter summoned both [Gan] and [Castro] in his office where he *continued lambasting and humiliating [Gan]. This time, [Veneracion] was furious because of [Gan's] written request for reconsideration on his REVISED 2002 INCENTIVE SCHEME telling [Gan] outright that he has no right to reject management's decision on compensation matters.* Not satisfied, *[Veneracion] continued that [Gan] has become a liability in [Galderma] and that [Galderma] [would] be better off without him (stated another way, that [Gan] leave [Galderma])* — THE 8th ACT OF HARASSMENT x x x.

35. *[Veneracion], thereafter[,] asked [Gan] if he has had any luck in looking for another employment. Surprised at [Veneracion], [Gan] replied that he was not looking for another job. [Veneracion] replied that he was surprised that [Gan] was not planning to leave [Galderma] considering their conflicts. [Veneracion] also asked [Gan] if he has consulted a lawyer and when [Gan] answered no, [Veneracion] again expressed his surprise* — THE 9th ACT OF HARASSMENT x x x.

36. Not satisfied with the humiliation inflicted on [Gan], *[Veneracion] for the nth time told [Gan] to reconsider his stay in [Galderma] (in other words[,] that [Gan] leave [Galderma]). [Veneracion] told [Gan] that he [would] be given 15 days to look for another job (in short, he [would] be terminated in 15 days), as a gesture of his good will* — THE 10th ACT OF HARASSMENT x x x.

The forced resignation
of [Gan].

37. Shocked and humiliated at the turn of events, [Gan] requested to talk privately with [Veneracion] (which request was granted). [Gan], who had just lost his job (with the 15-day notice given by [Veneracion]) notwithstanding his excellent performance record, wanted to talk privately with [Veneracion] in the hope of salvaging a better term for his forced exit in [Galderma] (as [Gan] was of the belief, [and] rightfully so, that [Veneracion] [would] not allow him to remain employed in [Galderma] as he [had] clearly and numerously manifested). Finally, [Veneracion] offered him the following, as an alternative to him being terminated in 15 days x x x:

37.1. [Gan] was required to file his voluntary resignation that day, 11 April 2002, which resignation shall take effect on 15 July 2002 or 90 days thereafter.

It must be noted that the initial offer of [Veneracion] to [Gan] was 60 days pay in exchange for his forced resignation, but [Veneracion] increased it to 90 days pay INSTEAD of granting the request of [Gan] to include with the 60 days pay the cash amount equivalent of the Sydney trip incentive, which he failed to avail of because of visa problems x x x.

37.2. In exchange for [Gan's] resignation, [Gan] [would] no longer be required to report for work in [Galderma] starting 12 April 2002 until 15 July 2002 to afford him time to look for another employment.

37.3. Notwithstanding that he [would] no longer [be] reporting for work in [Galderma], [Gan] [would] still be paid his salary and all benefits until 15 July 2002 (the 90-day pay sweetener) *in exchange for the resignation*.

37.4. To hide their unwritten agreement from the internal auditors of [Galderma] and to justify the continued payment of his salary and benefits, [Gan] was required by [Veneracion] to submit periodic field reports (on the CBPL), on a twice a month basis, until 15 July 2002 to make it appear that he was still working for [Galderma].

38. As required by [Veneracion] and for [Gan] to receive his pay and all benefits until 15 July 2002 (the 90-day pay sweetener), [Gan] was forced to submit his required voluntary resignation x x x on the same day and which resignation was immediately accepted x x x by [Galderma] x x x.

39. [Veneracion] even dictated to [Gan] the reasons to be stated in his forced resignation letter, that - "*the 90 days is necessary to afford [Galderma] time to find suitable replacement and to afford [Gan] time to pursue his own business or to explore opportunities outside [Galderma]*" x x x.

What transpired after
the forced resignation.

40. After his forced resignation and as agreed upon, [Gan][,] starting 12 April 2002[,] stopped reporting for work in the offices

of [Galderma]. He, however, continued to do occasional field work for [Galderma] and submitted the required periodic field reports on a twice a month basis x x x.

x x x x x x x x x

41. [Veneracion], likewise, complied with his undertaking to continue paying [Gan] his salary and benefits x x x.

x x x x x x x x x

42. On 23 July 2002, [Gan] received, by parcel delivery (LBC), the 22 July 2002 letter of [Galderma] signed by its Finance Manager, Winston Marquez x x x, informing him of the availability for pick-up of his last pay (period 1-15 July 2002) and other benefits (June incentive, pro-rated 13th month pay, reimbursement of expenses, tax refund) amounting to PHP 50,425.02. Payment of the check, however, was conditioned on [Gan] signing a quitclaim in favor of [Galderma], which he refused considering the filing of the instant suit. The said amount[,]thus[,] remains unpaid x x x.[11]

Respondents' narration of events differs in material details. They aver:

5. In December of 2001, the company provided [Gan] with product knowledge training on the Benzac and Locetar brands. The training was pursuant to the company's intention to give additional product responsibilities to [Gan]. Multi-brand assignment is a usual practice in the company because the product management team of the company is composed of only three persons – the Senior Product Manager, the Product Manager[,] and the Assistant Product Manager. There is no clear division between personnel who handle ethical brands and those who handle consumer products. For example, the company's Assistant Product Manager, Annalyn Gamboa ("Gamboa"), handles some Cetaphil (consumer) products in addition to the ethical products that she manages. Senior Product Manager Gerry M. Castro ("Castro") also handles both consumer and ethical products. Since Cetaphil was the only consumer brand of the company, it was only natural that the additional product responsibilities given to [Gan] were ethical products.

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[11] *Id.* at 17-25.

6. Galderma's senior managers noticed that [Gan] had a change of attitude from the time the management decided to include the Benzac and Locetar brands under his responsibility. Despite the fact that the company provided [Gan] with product knowledge training on the said brands, he initially refused to accept the additional assignment. The company had to remind [Gan] that the assignment was part of his Job Description, which allowed the company to assign him to undertake additional tasks as may be deemed necessary by operations.

7. On 4 March 2002, respondent Veneracion summoned [Gan] to his office in order to discuss the latter's failure to report to work after taking a five-day vacation leave. [Gan] previously undertook to come to the office after his vacation leave. However, [Gan] merely sent a "text message" to Executive Assistant Abigail R. Peralta ("Peralta"), saying that he was "still tired" from his trip and will not report to the office. After their discussion, [Gan] apologized and Veneracion accepted his apology. Veneracion refrained from issuing a show-cause memorandum to [Gan] because Veneracion thought that the matter was already settled with [Gan's] apology and undertaking to refrain from repeating the same infraction.

8. On 7 March 2002, Veneracion and [Gan] discussed [Gan's] five-year sales forecast and marketing program for a Benzac brand anti-acne product. In the course of their discussion, Veneracion reiterated to [Gan] that the latter's additional assignment is included in his Job Description. While Veneracion had some comments on [Gan's] sales forecast and marketing program, Veneracion neither asked [Gan] to reconsider his stay in Galderma nor insinuated that [Gan] should resign.

9. On 15 March 2002, Veneracion went to [Gan's] office to ask for a list of the advertising rates of the leading newspaper publications. [Gan] informed Veneracion that he did not have a list, but that he would ask one from Galderma's retained public relations agency. When Veneracion returned to [Gan's] office for the list, [Gan] explained that the public relations agency had not yet forwarded him a copy. Veneracion then requested Peralta to call up the Philippine Daily Inquirer directly, and they were able to secure the advertising rates within minutes through fax. After obtaining the advertising rates, Veneracion summoned [Gan] for a closed-door meeting for him to explain why a basic consumer marketing data was not available in his fact book. At that point [Gan] raised his voice in a very

disrespectful manner. Nevertheless, Veneracion limited the discussion to [Gan's] duties as Product Manager and did not dwell on personal matters.

10. On 3 April 2002, Castro called [Gan] to his (Castro's) office to discuss [Gan's] revised incentive program, which was brought about by the inclusion of the Locetar and Benzac lines among [Gan's] product management responsibilities. Prior to their discussion, Castro gave [Gan] his copy of the revised incentive scheme. [Gan] expressed his disappointment over the change in the program and sought a one-month transition period. Castro told [Gan] that he (Castro) would discuss [Gan's] request with Veneracion, upon Veneracion's return from a business trip abroad. After their discussion, [Gan] returned his copy of the revised incentive program to Castro. Pursuant to company practice on circulation of inter-office correspondence, Castro requested [Gan] to get his copy and to acknowledge receipt thereof. However, [Gan] refused to receive his copy and told Castro to first discuss his request with Veneracion. To avoid further confrontation, Castro let [Gan] leave without him receiving his copy.

11. On 4 April 2002, Castro again requested [Gan] to receive his copy of the revised incentive scheme. [Gan] still refused to receive the copy and even dictated what the management should do in case additional brands are assigned to a product manager. To appease [Gan], Castro reiterated that he would discuss [Gan's] request with Veneracion upon the latter's return from his trip abroad. [Gan] retorted that if Castro should decide to take it up with Veneracion, then Castro should do it quickly. Only then did [Gan] finally agree to receive his copy of the revised incentive scheme, but not without first saying: "Anyway, I will only put it on my file."

12. On 8 April 2002, Castro had a meeting with Veneracion regarding recent developments within the company. In the course of their discussion, Castro gave Veneracion an update about [Gan's] training and scheduled "revalida" or oral examination. In order to help [Gan] manage his newly assigned brands, Veneracion instructed Castro to give [Gan] additional exposure to the ethical marketing operations of the company by asking [Gan] to do clinic visits. Part of Castro's discussion with Veneracion was [Gan's] verbal request for consideration regarding the implementation of the new incentive program. Castro told Veneracion that he (Castro) would ask [Gan] to formalize the request so Castro could put a written endorsement or recommendation for approval. At that time, Veneracion already

approved [Gan's] request in principle. Castro immediately told [Gan] to formalize his request so that the former could submit the request to Veneracion's office with Castro's endorsement. After Castro got [Gan's] letter in the afternoon, Castro put his endorsement on it and left it on Veneracion's desk.

13. On 11 April 2002, [Gan] and Castro had a discussion regarding [Gan's] presentation for the Getz Brothers April Cycle Meeting. Veneracion later joined them and informed Castro of the revisions that Veneracion asked [Gan] to make on his presentation. Veneracion further asked [Gan] some information relating to the Cetaphil consumer sales operation, as well as some directions that he expected [Gan] to take. Veneracion also explained to [Gan] that the incentive program offered by the company was subject to change. There was an impassioned discussion between [Gan] and Veneracion, but Veneracion was only reacting to the provocative responses and negative behavior of [Gan]. While the meeting was intense, it covered only business matters. Veneracion did not lambast [Gan], or insinuate that [Gan] should resign from Galderma.

14. Right after the discussion, [Gan] asked for a private meeting with Veneracion. During this meeting, [Gan] informed Veneracion of his desire to leave the company and requested that his resignation be made to take effect after 60 days. [Gan] asked if he could use the period to find another job or evaluate the feasibility of opening up a business. At that time, [Gan] told Veneracion that he was thinking of exploring the possibility of opening a drugstore. In addition, [Gan] requested for the cash conversion of his Sydney Trip Incentive. Veneracion did not immediately respond to [Gan's] requests, but asked for time to think about it. As [Gan's] proposal was seen to be a precedent-setting arrangement, Veneracion decided to consult the senior managers of the company.

15. At around 11:00 a.m. of 11 April 2002, [Gan] sent a "text message" to the company's Finance Manager, Winston M. Marquez ("Marquez"). [Gan] said that he wanted to ask for help on his request for favorable terms from the company concerning his resignation. At around noon, while [Gan] and Marquez were having lunch, [Gan] told Marquez that he asked the company to give him a sixty-day grace period, which he will use either to explore the possibility of a (sic) setting up his own business or to look for other employment opportunities. [Gan] also told Marquez that he requested for the cash conversion of his Trip Incentive. At no time did [Gan] mention

anything about being forced to resign by Veneracion.

16. In the afternoon of 11 April 2002, Veneracion met with Galderma's senior managers (*i.e.,* Executive Assistant Peralta, Finance Manager Marquez[,] and Senior Product Manager Castro) in order to discuss [Gan's] requests. The assessment of the group was that [Gan's] proposal would be a "win-win" situation, considering [Gan's] apparent change in attitude pertaining to his job assignment and sales incentive. As a gesture of goodwill, the group agreed to grant [Gan's] request for a grace period to allow him to either find a new job or set up his own business. It was further agreed that in lieu of [Gan's] Trip Incentive, which was not convertible to cash under company policy, the grace period arrangement could be extended for another 30 days.

17. Immediately after the meeting, Veneracion advised [Gan] of the company's agreement to [Gan's] proposal. [Gan] then submitted his letter of resignation, which was accepted by his immediate superior, Senior Product Manager Castro. Throughout this meeting, [Gan] was very calm and gave the impression to everybody that he was quite pleased with the approval of his requested grace period arrangement.

18. From April to June 2002, [Gan] continued to receive his salaries from the company. During the same period, [Gan] also submitted periodic field reports to the company.[12]

On April 21, 2003, Labor Arbiter Manuel M. Manansala dismissed the complaint for constructive dismissal.[13] He noted that Gan's separation from Galderma was voluntarily initiated and was concluded by the written resignation letter which was accepted in a business-like manner through a formal office correspondence. The text of Gan's letter was treated as conclusive, *res ipsa loquitur*. Agreeing with respondents' contention, the Labor Arbiter cited the case of *St. Michael Academy v. NLRC*[14] insofar as it enumerated the requisites of intimidation which would vitiate one's consent, but are wanting in Gan's case.

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[12] *Id.* at 874-879.

[13] *Id.* at 536-556.

[14] G.R. No. 119512, July 13, 1998, 292 SCRA 478; 354 Phil. 491 (1998).

Likewise pointed out was the presence of the sworn affidavits separately executed by Gan's former co-workers – Gerry M. Castro, Annalyn M. Gamboa, Winston M. Marquez, and Abigail R. Peralta – which were fully supportive of respondents' defenses. Lastly, applying *Samaniego v. NLRC,*[15] *Dizon, Jr. vs. NLRC,*[16] *Habana v. NLRC,*[17] and *San Miguel Brewery Sales Force Union (PTGWO) v. Ople*[18] invoked by respondents, the Labor Arbiter ruled that Gan surely understood the legal effects of his resignation letter considering that he is an Industrial Engineering graduate of the Mapua Institute of Technology and has Master of Business Administration (MBA) units in Letran College. The *fallo* of the Decision disposed:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. Declaring respondent Galderma Philippines, Inc. (GPI) not guilty of constructive dismissal-illegal constructive dismissal for the reasons above-discussed. Consequently, all the money claims as enumerated and prayed for in complainant Nelson B. Gan's Complaint are hereby denied/dismissed for lack of merit for the reasons above-discussed.
>
> 2. Declaring complainant Nelson B. Gan as entitled to his final pay amounting to ₱50,425.02 which he failed to receive from respondent GPI since 15 July 2002. Thus, respondent GPI is hereby directed to pay complainant Gan the aforestated amount.
>
> 3. Dismissing the charges against individual respondent Rosendo C. Veneracion as President and General Manager of respondent GPI for lack of merit.
>
> SO ORDERED.[19]

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[15] G.R. No. 93059, June 3, 1991, 198 SCRA 111.

[16] G.R. No. 69018, January 29, 1990, 181 SCRA 472; 260 Phil. 501 (1990).

[17] G.R. No. 121486, November 16, 1998, 298 SCRA 537; 359 Phil. 65 (1998).

[18] G.R. No. 53515, February 8, 1989, 170 SCRA 25; 252 Phil. 27 (1989).

[19] *Rollo,* pp. 555-556.

On appeal, the NLRC affirmed the Labor Arbiter's Decision.[20] It said that Gan's resignation letter is more determinative in the present controversy as it "distinctly speaks of [his] reasons for resigning x x x in a mild and sober expression as to graciously give [advance notice to Galderma] without a tinge of remorse on his part." In accord with the Labor Arbiter's findings, the NLRC held:

> The interchange of words and ideas between the parties herein appurtenant to [Gan's] resignation does not in any manner show a color of frustration or an iota of anger by any of the parties. Thus, We cannot see nor perceive that [Gan's] resignation letter is a sham or irregular on its face as the same is made by the forced dictation of [respondent Veneracion] and is involuntary on the part of [Gan]. For no reason is convincingly adduced on record for us to rationally conclude that [Gan] was forced, threatened, intimidated or dictated against his will in the absence of a substantial evidence to the contrary. Indeed, [Gan's] resignation letter speaks well of itself. *Res ipsa* [*loquitur*].
>
> In fine, We concur and affirm the Arbiter's disquisition that [Gan's] resignation from work is indeed voluntary on his part. [Gan's] strongly worded supposition that acts of harassment on the part of [respondents] forced him to execute and sign the demanded and dictated resignation letter as he has no other choice considering the options given him by [respondents] which were (a) termination in 15 days, or (b) execute and sign the demanded and dictated letter and get 90 days pay is essentially naked for being unsubstantiated if not totally unfounded. [Gan's] bare allegation of force or "dictation" has no place to support the "involuntariness" of forced resignation.
>
> It is more telling to consider that [Gan] is a managerial employee who holds a sensitive position as Product Manager of respondent company. Undeniably, [Gan] is a man of letters holding a bachelor's degree in Industrial Engineering and possesses a Master's degree in Business Administration (MBA). As a highly educated individual, [Gan] must fully understand if not totally comprehend the import of his own words and the consequences of his own acts. Thus, the natural import of the words and expressions of his ideas as manifested by [Gan] himself should be accorded a literal meaning for being

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[20] CA *rollo*, pp. 66-83.

unambiguous. To say the least that the questioned letter is forced is far-fetched and floats in the realm of imagination.[21]

When Gan's motion for reconsideration was denied by the NLRC on June 22, 2005,[22] he subsequently filed before the CA a petition for *certiorari* under Rule 65 of the 1997 Revised Rules on Civil Procedure.[23] On March 21, 2007, the CA denied the petition, finding no grave abuse of discretion on the part of the NLRC.[24] In adopting the NLRC's recitation of facts, which was substantially lifted from the factual findings of the Labor Arbiter, the legal conclusions reached by the NLRC were likewise adhered to by the CA. Further, it opined:

> x x x While *(sic)* it may be true that Respondent VENERACION appeared to be hostile towards [Gan]. However, the latter's allegations failed to show persuasive proof of Respondent VENERACION's desire to deprive him of his employment. [Gan] would like us to believe that the peculiar circumstances alluded to by him is constitutive of his involuntary act to resign from his post. However, this is belied by his allegation in this Petition which in effect is an implied admission of the non-existence of any hint of anger, dictation, force or harassment employed upon him in the execution of the subject resignation letter.[25]

Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, with the following assigned errors:

> I. THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT [GAN] VOLUNTARILY RESIGNED AND WAS NOT ILLEGALLY OR CONSTRUCTIVELY DISMISSED, AS EVIDENCED SOLELY BY THE TENOR OF THE SUBJECT RESIGNATION LETTER, WITHOUT CONSIDERING, AS MANDATED BY ESTABLISHED JURISPRUDENCE, THE PECULIAR CIRCUMSTANCES SURROUNDING ITS EXECUTION.

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

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

[23] *Id.* at 2-63.

[24] *Rollo*, pp. 76-93.

[25] *Id.* at 89.

II. COROLLARILY, THE COURT OF APPEALS LIKEWISE COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE ERRONEOUS LAMM AND NLRC DECISION DISMISSING ALL OF [GAN'S] COUNTERCLAIMS.

III. FINALLY, THE COURT OF APPEALS ALSO COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE ERRONEOUS LAMM AND NLRC DECISION DISMISSING THE COMPLAINT AGAINST RESPONDENT [VENERACION].[26]

We deny the petition.

Settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only with respect but even finality by the courts when supported by substantial evidence, *i.e.*, such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[27] Likewise, factual findings arrived at by a trier of facts, who is uniquely positioned to observe the demeanor of the witnesses appearing before him and is most competent in judging the credibility of the contending parties, are accorded great weight and certitude.[28]

In the same vein, the jurisdiction of this Court in cases brought before it from the CA *via* Rule 45 is generally limited to reviewing errors of law or jurisdiction. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding. The reason is that this Court does not entertain factual issues. It is not our function to analyze or weigh evidence all over again as the evaluation of facts is best left to the trial or

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[26] *Id.* at 33.

[27] *Julie's Bakeshop v. Arnaiz*, G.R. No. 173882, February 15, 2012, 666 SCRA 101, 113-114; *Philippine Veterans Bank v. NLRC (Fourth Division)*, G.R. No. 188882, March 30, 2010, 617 SCRA 204, 212; and *Merck Sharp and Dohme (Philippines) v. Robles*, G.R. No. 176506, November 25, 2009, 605 SCRA 488, 494.

[28] *Metro Transit Organization, Inc. v. NLRC*, G.R. No. 122046, January 16, 1998, 284 SCRA 308, 314; 348 Phil. 334, 340 (1998).

administrative agencies/quasi-judicial bodies and appellate court which are better equipped for the task.[29]

Admittedly, the above rule is not ironclad.[30] There are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made 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) the Court of Appeals goes beyond the issues of the case, and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the CA are contrary to those of the trial court (in this case, the Labor Arbiter and NLRC); (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) 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) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[31]

This case, however, does not fall under any of the recognized exceptions. After a judicious consideration of the pleadings filed by both parties, the Court finds no compelling reason to reverse the findings of fact as well as conclusions of law of the CA, which sustained the decision of the NLRC affirming the labor arbiter. Indeed, there is no arbitrary disregard or misapprehension of evidence of such nature as to compel a contrary conclusion.

To begin with, constructive dismissal is defined as quitting or cessation of work because continued employment is rendered

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[29] See *Dimagan v. Dacworks United, Incorporated,* G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445 and *Pharmacia and Upjohn, Inc. v. Albayda, Jr.,* G.R. No. 172724, August 23, 2010, 628 SCRA 544, 557.

[30] *Dimagan v. Dacworks United, Incorporated, supra.*

[31] *Galang v. Malasugui,* G.R. No. 174173, March 7, 2012, 667 SCRA 622, 631-632; *Pharmacia and Upjohn, Inc. v. Albayda, Jr., supra* note 29; and *Merck Sharp and Dohme (Philippines) v. Robles, supra* note 27, at 494-495.

impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits.[32] It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[33] There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer.[34] The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances.[35]

On the other hand, "[r]esignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment."[36]

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[32] *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012, 664 SCRA 110, 117 and *Dimagan v. Dacworks United, Incorporated, supra* note 29, at 446.

[33] *Morales v. Harbour Centre Port Terminal, Inc., supra*, at 117-118; *Gilles v. Court of Appeals*, G.R. No. 149273, June 5, 2009, 588 SCRA 298, 316.

[34] *Gilles v. Court of Appeals, supra.*

[35] *Dimagan v. Dacworks United, Incorporated, supra* note 29, at 446; *Philippine Veterans Bank v. NLRC (Fourth Division), supra* note 27, at 213; and *CRC Agricultural Trading v. NLRC*, G.R. No. 177664, December 23, 2009, 609 SCRA 138, 149.

[36] *Nationwide Security and Allied Services, Inc. v. Valderama*, G.R. No. 186614, February 23, 2011, 644 SCRA 299, 307-308. See also *BMG Records (Phils.), Inc. v. Aparecio*, G.R. No. 153290, September 5, 2007, 532 SCRA 300, 313-314.

Since Gan submitted a resignation letter, it is incumbent upon him to prove with clear, positive, and convincing evidence that his resignation was not voluntary but was actually a case of constructive dismissal; that it is a product of coercion or intimidation.[37] He has to prove his allegations with particularity.

Gan could not have been coerced. Coercion exists when there is a reasonable or well-grounded fear of an imminent evil upon a person or his property or upon the person or property of his spouse, descendants or ascendants.[38] Neither do the facts of this case disclose that Gan was intimidated. In *St. Michael Academy v. NLRC,*[39] We enumerated the requisites for intimidation to vitiate one's consent, thus:

> x x x (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property. x x x[40]

The instances of "harassment" alleged by Gan are more apparent than real. Aside from the need to treat his accusations with caution for being self-serving due to lack of substantial documentary or testimonial evidence to corroborate the same, the acts of "harassment," if true, do not suffice to be considered

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[37] *Vicente v. Court of Appeals,* G.R. No. 175988, August 24, 2007, 531 SCRA 240, 250.

[38] *Globe Telecom v. Crisologo,* G.R. No. 174644, August 10, 2007, 529 SCRA 811, 820.

[39] *Supra* note 14.

[40] *Supra* note 14, at 496; 509-510, citing *Guatson International Travel and Tours, Inc. v. NLRC,* G.R. No. 100322, March 9, 1994, 230 SCRA 815, 822. See also *Mandapat v. Add Force Personnel Services, Inc.,* G.R. No. 180285, July 6, 2010, 624 SCRA 155, 165; *BMG Records (Phils.), Inc. v. Aparecio, supra* note 36, at 312-313; and *Vicente v. Court of Appeals, supra* note 37, at 251.

as "peculiar circumstances" material to the execution of the subject resignation letter.

First, the words allegedly uttered by Veneracion which asked Gan to *"reconsider his stay," "make [his] move,"* or that *"[Galderma] will be better off without him,"* are ambivalent and susceptible of varying interpretations depending on one's feelings, bias, and emotional threshold. All these are subjective and highly speculative or even presumptuous. Veneracion's intent to dismiss Gan cannot reasonably be inferred therefrom. Much less, the words do not definitely show Veneracion's firm resolve to act on such intent. At the most, the remarks may be regarded as sarcastic or suggestive of a plan of action which *may or may not* include a plot to actually, or even constructively, dismiss Gan.

Second, Gan repeatedly boasts of his *"excellent performance"* in and *"immense contribution"* to Galderma's success. If that is the case, his proper mindset towards Veneracion's attacks on his purported work ethics (such as *"slow," "lacking in initiative," "uncooperative," "negative attitude," "remiss in duties as product manager," "negative work behaviour," "poor performance," "incompetence," "distraction/liability in Galderma"*) should have been to simply brush them aside and continue doing what he is supposed to do as the product manager of CBPL, Locetar and Benzac brands. He should have thought that his *"good performance record"* would speak for itself and would stand the test of any baseless accusation, whether it be hurled to him in close-door or in full view of others. Gan did not see it this way. He considered the comments as manifestations of "harassment." His oversensitivity, which is rather surprising for an experienced sales and marketing manager who should have been so used to customer rejection or indifference and to superior's assertive or temperamental side due to constant pressure of keeping up and beating market competition, would not help him make a case.

Third, the revision of Gan's 2002 incentive scheme cannot be considered as a form of harassment. The change is not a diminution of benefits, since Gan would have also received the

same sum if he achieved the desired targets for the Locetar and Benzac brands, the two new products which were added under his watch. Gan admitted that such act is a valid exercise of management prerogative; hence, he should have realized that their inclusion necessarily called for a corresponding modification of the incentive scheme so as to accurately measure his effectiveness in handling all three products, not just one or two of them. Nonetheless, while this Court holds that the 2002 revised incentive scheme is a reasonable and valid exercise of management prerogative, We agree with Gan that its immediate implementation, taking effect in April 2002, is improper for want of 30-day prior notice. Thus, for April 2002, Gan should have received the same monetary benefits granted under the 2002 incentive scheme per December 14, 2001 Office Correspondence.

A pivotal argument raised by Gan in this petition is that Veneracion's 10th act of harassment — his statement that Gan *"[would] be given 15 days to look for another job"* — already constitutes actual illegal dismissal, a termination without just or valid cause. In support thereof, he cited the case of *Far East Agricultural Supply, Inc. v. Lebatique*.[41]

We disagree.

Unlike in Gan's case, the employee involved in *Far East Agricultural Supply, Inc.* did not submit a resignation letter. Instead, Lebatique's employer alleged that he abandoned his job. Hence, this Court held:

> The records show that petitioners failed to prove that Lebatique abandoned his job. Nor was there a showing of a clear intention on the part of Lebatique to sever the employer-employee relationship. When Lebatique was verbally told by Alexander Uy, the company's General Manager, to look for another job, Lebatique was in effect dismissed. Even assuming earlier he was merely suspended for illegal use of company vehicle, the records do not show that he was afforded the opportunity to explain his side. It is clear also from the sequence

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[41] G.R. No. 162813, February 12, 2007, 515 SCRA 491; 544 Phil. 420 (2007).

of the events leading to Lebatique's dismissal that it was Lebatique's complaint for nonpayment of his overtime pay that provoked the management to dismiss him, on the erroneous premise that a truck driver is a field personnel not entitled to overtime pay.[42]

What the records of this case reveal is that Gan deliberately wrote and filed a resignation letter that is couched in a clear, concise, and categorical language. Its content confirmed his unmistakable intent to resign. The resignation letter indicates that he was resigning *"to pursue the establishment of [his] own business or explore opportunities with other companies."* The reasons stated for relinquishing his position are but logical options for a person of his experience and standing.

Further, distinct from *Far East Agricultural Supply, Inc.*, respondent Veneracion disputed the allegation that Gan was given 15 days to look for another job. His categorical denial was backed up by Castro, who was also present when the alleged incident happened on April 11, 2002. Their duly sworn statements, unless proven to be false or perjured, bear more weight and credence than Gan's lonesome representations.

Lastly, in contrast with Lebatique who was a mere truck driver of animal feeds receiving a daily wage of Php 223.50 at 1996 rate, Gan is no ordinary laborer with limited education and skills; he is not a rank-and-file employee with inadequate understanding such that he would be easily beguiled or forced into doing something against his will. He was a managerial employee holding a responsible position and receiving more than the mandated minimum wage. He also appears to have a good professional track record that highlights his marketability.[43] At the time he resigned, he had more than a decade of experience in sales and marketing with expertise in product management.[44] Indeed, it would be absurd to assume that he did not understand

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[42] *Far East Agricultural Supply, Inc. v. Lebatique, supra,* at 497-498.

[43] See *Domondon v. NLRC*, G.R. No. 154376, September 30, 2005, 471 SCRA 559, 568; 508 Phil. 541, 549 (2005).

[44] *Rollo*, p. 391.

the full import of the words he used in his resignation letter and the consequences of executing the same.

What is evident, therefore, is that Gan's resignation is NOT *"a case of adherence, not of choice,"* but was a product of a mutually beneficial arrangement. We agree with respondents that the result of the negotiation leading to Gan's resignation is a "win-win" solution for both parties. On one hand, Gan was able to obtain a favorable severance pay while getting flexible working hours to implement his post-resignation career options. On the other hand, Galderma was able to cut its relation with an employee perceived to be unwilling to perform additional product responsibilities while being given ample time to look for an alternative to hire and train. Indeed, Gan voluntarily resigned from Galderma for a valuable consideration. He negotiated for an improvement of the resignation package offered and he managed to obtain an acceptable one. As opposed to the case of *San Miguel Corporation v. NLRC,*[45] Gan was not tricked or was "morally and psychologically hoodwinked" to draft, sign, and tender his resignation letter. It was not made without proper discernment and time to reflect; nor was it a knee-jerk reaction that left him with no alternative but to accede.[46]

Having resolved the case on the basis of the foregoing, it is needless to delve into Gan's second and third assigned errors.

WHEREFORE, the March 21, 2007 Decision of the Court of Appeals in CA-G.R. SP No. 91118, which upheld the resolutions of the NLRC affirming the Labor Arbiter's ruling that dismissed Gan's complaint for constructive dismissal, is hereby **AFFIRMED WITH MODIFICATION** insofar as Our ruling that, for April 2002, Gan is still entitled to the monetary benefits provided under the original 2002 incentive scheme. The Labor Arbiter is hereby **DIRECTED** to include in Gan's final pay of ₱50,425.02, the difference in the amount he actually received as incentive/s per his payslip of April 2002.

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[45] G.R. No. 107693, July 23, 1998, 293 SCRA 13; 354 Phil. 815 (1998).

[46] See *Metro Transit Organization, Inc. v. NLRC, supra* note 28, at 312; 338.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170054. January 21, 2013]

GOYA, INC., *petitioner, vs.* **GOYA, INC. EMPLOYEES UNION-FFW,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; FOR CLARIFICATION OF A LEGAL PRINCIPLE, THE COURT SHOULD STILL RESOLVE THE CASE DESPITE THE OCCURRENCE OF A SUPERVENING EVENT.— [O]n July 16, 2009, the Company filed a Manifestation informing this Court that its stockholders and directors unanimously voted to shorten the Company's corporate existence only until June 30, 2006, and that the three-year period allowed by law for liquidation of the Company's affairs already expired on June 30, 2009. Referring to *Gelano v. Court of Appeals, Public Interest Center, Inc. v. Elma*, and *Atienza v. Villarosa*, it urged Us, however, to still resolve the case for future guidance of the bench and the bar as the issue raised herein allegedly calls for a clarification of a legal principle, specifically, whether the VA is empowered to rule on a matter not covered by the issue submitted for arbitration.

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[*] Designated additional member, in lieu of Associate Justice Marvic Mario Victor F. Leonen, per Special Order No. 1412 dated January 16, 2013.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT (CBA); PLENARY JURISDICTION AND AUTHORITY OF THE VOLUNTARY ARBITRATOR TO INTERPRET THE CBA.— We confirm that the VA ruled on a matter that is covered by the sole issue submitted for voluntary arbitration. Resultantly, the CA did not commit serious error when it sustained the ruling that the hiring of contractual employees from PESO was not in keeping with the intent and spirit of the CBA. Indeed, the opinion of the VA is germane to, or, in the words of the CA, "interrelated and intertwined with," the sole issue submitted for resolution by the parties. This being said, the Company's invocation of Sections 4 and 5, Rule IV and Section 5, Rule VI of the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings dated October 15, 2004 issued by the NCMB is plainly out of order. x x x [*Ludo*] case reaffirms the plenary jurisdiction and authority of the voluntary arbitrator to interpret the CBA and to determine the scope of his/her own authority. Subject to judicial review, the leeway of authority as well as adequate prerogative is aimed at accomplishing the rationale of the law on voluntary arbitration – speedy labor justice. In this case, a complete and final adjudication of the dispute between the parties necessarily called for the resolution of the related and incidental issue of whether the Company still violated the CBA but without being guilty of ULP as, needless to state, ULP is committed only if there is *gross* violation of the agreement.

3. ID.; ID.; ID.; WHERE THE EXERCISE OF MANAGEMENT PREROGATIVE IS LIMITED BY THE PROVISION OF THE CBA.— [T]he Company kept on harping that both the VA and the CA conceded that its engagement of contractual workers from PESO was a valid exercise of management prerogative. It is confused. To emphasize, declaring that a particular act falls within the concept of management prerogative is significantly different from acknowledging that such act is a valid *exercise* thereof. What the VA and the CA correctly ruled was that the Company's act of contracting out/outsourcing is within the purview of management prerogative. Both did not say, however, that

such act is a valid exercise thereof. Obviously, this is due to the recognition that the CBA provisions agreed upon by the Company and the Union delimit the free exercise of management prerogative pertaining to the hiring of contractual employees. Indeed, the VA opined that "the right of the management to outsource parts of its operations is not totally eliminated but is merely limited by the CBA," while the CA held that "[t]his management prerogative of contracting out services, however, is not without limitation. x x x [These] categories of employees particularly with respect to casual employees [serve] as limitation to [the Company's] prerogative to outsource parts of its operations especially when hiring contractual employees." x x x In this case, Section 4, Article I (on categories of employees) of the CBA between the Company and the Union must be read in conjunction with its Section 1, Article III (on union security). Both are interconnected and must be given full force and effect. Also, these provisions are clear and unambiguous. The terms are explicit and the language of the CBA is not susceptible to any other interpretation. Hence, the literal meaning should prevail. As repeatedly held, the exercise of management prerogative is not unlimited; it is subject to the limitations found in law, collective bargaining agreement or the general principles of fair play and justice. Evidently, this case has one of the restrictions — the presence of specific CBA provisions[.] x x x [T]he CBA is the norm of conduct between the parties and compliance therewith is mandated by the express policy of the law.

APPEARANCES OF COUNSEL

De la Rosa & Nograles for petitioner.
Jose Sonny G. Matula for respondent.

D E C I S I O N

PERALTA, ***J.*:**

This petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure seeks to reverse and set aside the

June 16, 2005 Decision[1] and October 12, 2005 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 87335, which sustained the October 26, 2004 Decision[3] of Voluntary Arbitrator Bienvenido E. Laguesma, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered declaring that the Company is NOT guilty of unfair labor practice in engaging the services of PESO.
>
> The company is, however, directed to observe and comply with its commitment as it pertains to the hiring of casual employees when necessitated by business circumstances.[4]

The facts are simple and appear to be undisputed.

Sometime in January 2004, petitioner Goya, Inc. (*Company*), a domestic corporation engaged in the manufacture, importation, and wholesale of top quality food products, hired contractual employees from PESO Resources Development Corporation (PESO) to perform temporary and occasional services in its factory in Parang, Marikina City. This prompted respondent Goya, Inc. Employees Union–FFW (*Union*) to request for a grievance conference on the ground that the contractual workers do not belong to the categories of employees stipulated in the existing Collective Bargaining Agreement (CBA).[5] When the matter remained unresolved, the grievance was referred to the National Conciliation and Mediation Board (NCMB) for voluntary arbitration.

During the hearing on July 1, 2004, the Company and the Union manifested before Voluntary Arbitrator (VA) Bienvenido E. Laguesma that amicable settlement was no longer possible;

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[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eliezer R. de los Santos and Arturo D. Brion (now a member of this Court) concurring; *rollo*, pp. 33-42.

[2] *Id.* at 43-44.

[3] CA *rollo*, pp. 24-29.

[4] *Id.* at 29.

[5] *Id.* at 62.

hence, they agreed to submit for resolution the solitary issue of "[w]hether or not [the Company] is guilty of unfair labor acts in engaging the services of PESO, a third party service provider[,] under the existing CBA, laws[,] and jurisprudence."[6] Both parties thereafter filed their respective pleadings.

The Union asserted that the hiring of contractual employees from PESO is not a management prerogative and in gross violation of the CBA tantamount to unfair labor practice (ULP). It noted that the contractual workers engaged have been assigned to work in positions previously handled by regular workers and Union members, in effect violating Section 4, Article I of the CBA, which provides for three categories of employees in the Company, to wit:

Section 4. Categories of Employees.— The parties agree on the following categories of employees:

(a) Probationary Employee. – One hired to occupy a regular rank-and-file position in the Company and is serving a probationary period. If the probationary employee is hired or comes from outside the Company (non-Goya, Inc. employee), he shall be required to undergo a probationary period of six (6) months, which period, in the sole judgment of management, may be shortened if the employee has already acquired the knowledge or skills required of the job. If the employee is hired from the casual pool and has worked in the same position at any time during the past two (2) years, the probationary period shall be three (3) months.

(b) Regular Employee. – An employee who has satisfactorily completed his probationary period and automatically granted regular employment status in the Company.

(c) Casual Employee, – One hired by the Company to perform occasional or seasonal work directly connected with the regular operations of the Company, or one hired for specific projects of limited duration not connected directly with the regular operations of the Company.

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[6] *Id.* at 30.

It was averred that the categories of employees had been a part of the CBA since the 1970s and that due to this provision, a pool of casual employees had been maintained by the Company from which it hired workers who then became regular workers when urgently necessary to employ them for more than a year. Likewise, the Company sometimes hired probationary employees who also later became regular workers after passing the probationary period. With the hiring of contractual employees, the Union contended that it would no longer have probationary and casual employees from which it could obtain additional Union members; thus, rendering inutile Section 1, Article III (Union Security) of the CBA, which states:

> Section 1. Condition of Employment. – As a condition of continued employment in the Company, all regular rank-and-file employees shall remain members of the Union in good standing and that new employees covered by the appropriate bargaining unit shall automatically become regular employees of the Company and shall remain members of the Union in good standing as a condition of continued employment.

The Union moreover advanced that sustaining the Company's position would easily weaken and ultimately destroy the former with the latter's resort to retrenchment and/or retirement of employees and not filling up the vacant regular positions through the hiring of contractual workers from PESO, and that a possible scenario could also be created by the Company wherein it could "import" workers from PESO during an actual strike.

In countering the Union's allegations, the Company argued that: (a) the law expressly allows contracting and subcontracting arrangements through Department of Labor and Employment (DOLE) Order No. 18-02; (b) the engagement of contractual employees did not, in any way, prejudice the Union, since not a single employee was terminated and neither did it result in a reduction of working hours nor a reduction or splitting of the bargaining unit; and (c) Section 4, Article I of the CBA merely provides for the definition of the categories of employees and does not put a limitation on the Company's right to engage the services of job contractors or its management prerogative to address temporary/occasional needs in its operation.

On October 26, 2004, VA Laguesma dismissed the Union's charge of ULP for being purely speculative and for lacking in factual basis, but the Company was directed to observe and comply with its commitment under the CBA. The VA opined:

> We examined the CBA provision [Section 4, Article I of the CBA] allegedly violated by the Company and indeed the agreement prescribes three (3) categories of employees in the Company and provides for the definition, functions and duties of each. Material to the case at hand is the definition as regards the functions of a casual employee described as follows:
>
> > *Casual Employee* — One hired by the COMPANY to perform occasional or seasonal work directly connected with the regular operations of the COMPANY, or one hired for specific projects of limited duration not connected directly with the regular operations of the COMPANY.
>
> While the foregoing agreement between the parties did eliminate management's prerogative of outsourcing parts of its operations, it serves as a limitation on such prerogative particularly if it involves functions or duties specified under the aforequoted agreement. It is clear that the parties agreed that in the event that the Company needs to engage the services of additional workers who will perform "occasional or seasonal work directly connected with the regular operations of the COMPANY," or "specific projects of limited duration not connected directly with the regular operations of the COMPANY", the Company can hire casual employees which is akin to contractual employees. If we note the Company's own declaration that PESO was engaged to perform "temporary or occasional services" (*See* the Company's Position Paper, at p. 1), then it should have directly hired the services of casual employees rather than do it through PESO.
>
> It is evident, therefore, that the engagement of PESO is not in keeping with the intent and spirit of the CBA provision in question. It must, however, be stressed that the right of management to outsource parts of its operations is not totally eliminated but is merely limited by the CBA. Given the foregoing, the Company's engagement of PESO for the given purpose is indubitably a violation of the CBA.[7]

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

While the Union moved for partial reconsideration of the VA Decision,[8] the Company immediately filed a petition for review[9] before the Court of Appeals (CA) under Rule 43 of the Revised Rules of Civil Procedure to set aside the directive to observe and comply with the CBA commitment pertaining to the hiring of casual employees when necessitated by business circumstances. Professing that such order was not covered by the sole issue submitted for voluntary arbitration, the Company assigned the following errors:

THE HONORABLE VOLUNTARY ARBITRATOR EXCEEDED HIS POWER WHICH WAS EXPRESSLY GRANTED AND LIMITED BY BOTH PARTIES IN RULING THAT THE ENGAGEMENT OF PESO IS NOT IN KEEPING WITH THE INTENT AND SPIRIT OF THE CBA.[10]

THE HONORABLE VOLUNTARY ARBITRATOR COMMITTED A PATENT AND PALPABLE ERROR IN DECLARING THAT THE ENGAGEMENT OF PESO IS NOT IN KEEPING WITH THE INTENT AND SPIRIT OF THE CBA.[11]

On June 16, 2005, the CA dismissed the petition. In dispensing with the merits of the controversy, it held:

> This Court does not find it arbitrary on the part of the Hon. Voluntary Arbitrator in ruling that "the engagement of PESO is not in keeping with the intent and spirit of the CBA." The said ruling is interrelated and intertwined with the sole issue to be resolved that is, "Whether or not [the Company] is guilty of unfair labor practice in engaging the services of PESO, a third party service provider[,] under existing CBA, laws[,] and jurisprudence." Both issues concern the engagement of PESO by [the Company] which is perceived as a violation of the CBA and which constitutes as unfair labor practice on the part of [the Company]. This is easily discernible in the decision of the Hon. Voluntary Arbitrator when it held:

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[8] *Id.* at 70.

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

[10] *Id.* at 10.

[11] *Id.* at 13.

> x x x While the engagement of PESO is in violation of Section 4, Article I of the CBA, it does not constitute unfair labor practice as it (sic) not characterized under the law as a gross violation of the CBA. Violations of a CBA, except those which are gross in character, shall no longer be treated as unfair labor practice. Gross violations of a CBA means flagrant and/or malicious refusal to comply with the economic provisions of such agreement. x x x

Anent the second assigned error, [the Company] contends that the Hon. Voluntary Arbitrator erred in declaring that the engagement of PESO is not in keeping with the intent and spirit of the CBA. [The Company] justified its engagement of contractual employees through PESO as a management prerogative, which is not prohibited by law. Also, it further alleged that no provision under the CBA limits or prohibits its right to contract out certain services in the exercise of management prerogatives.

Germane to the resolution of the above issue is the provision in their CBA with respect to the categories of the employees:

x x x x x x x x x

A careful reading of the above-enumerated categories of employees reveals that the PESO contractual employees do not fall within the enumerated categories of employees stated in the CBA of the parties. Following the said categories, [the Company] should have observed and complied with the provision of their CBA. Since [the Company] had admitted that it engaged the services of PESO to perform temporary or occasional services which is akin to those performed by casual employees, [the Company] should have tapped the services of casual employees instead of engaging PESO.

In justifying its act, [the Company] posits that its engagement of PESO was a management prerogative. It bears stressing that a management prerogative refers to the right of the employer to regulate all aspects of employment, such as the freedom to prescribe work assignments, working methods, processes to be followed, regulation regarding transfer of employees, supervision of their work, lay-off and discipline, and dismissal and recall of work, presupposing the existence of employer-employee relationship. On the basis of the foregoing definition, [the Company's] engagement of PESO was indeed a management prerogative. This is in consonance with the pronouncement of the Supreme Court in the case of *Manila Electric*

Company vs. Quisumbing where it ruled that contracting out of services is an exercise of business judgment or management prerogative.

This management prerogative of contracting out services, however, is not without limitation. In contracting out services, the management must be motivated by good faith and the contracting out should not be resorted to circumvent the law or must not have been the result of malicious arbitrary actions. In the case at bench, the CBA of the parties has already provided for the categories of the employees in [the Company's] establishment. [These] categories of employees particularly with respect to casual employees [serve] as limitation to [the Company's] prerogative to outsource parts of its operations especially when hiring contractual employees. As stated earlier, the work to be performed by PESO was similar to that of the casual employees. With the provision on casual employees, the hiring of PESO contractual employees, therefore, is not in keeping with the spirit and intent of their CBA. (Citations omitted)[12]

The Company moved to reconsider the CA Decision,[13] but it was denied;[14] hence, this petition.

Incidentally, on July 16, 2009, the Company filed a Manifestation[15] informing this Court that its stockholders and directors unanimously voted to shorten the Company's corporate existence only until June 30, 2006, and that the three-year period allowed by law for liquidation of the Company's affairs already expired on June 30, 2009. Referring to *Gelano v. Court of Appeals*,[16] *Public Interest Center, Inc. v. Elma*,[17] and *Atienza v. Villarosa*,[18] it urged Us, however, to still resolve the case for future guidance of the bench and the bar as the issue raised herein allegedly calls for a clarification of a legal principle,

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[12] *Id.* at 83-88.

[13] *Id.* at 91-97.

[14] Resolution dated October 12, 2005; *id.* at 100-101.

[15] *Rollo*, pp. 145-157.

[16] No. L-39050, February 24, 1981, 103 SCRA 90; 190 Phil. 814 (1981).

[17] G.R. No. 138965, June 30, 2006, 494 SCRA 53; 526 Phil. 550 (2006).

[18] G.R. No. 161081, May 10, 2005, 458 SCRA 385; 497 Phil. 689 (2005).

specifically, whether the VA is empowered to rule on a matter not covered by the issue submitted for arbitration.

Even if this Court would brush aside technicality by ignoring the supervening event that renders this case moot and academic[19] due to the permanent cessation of the Company's business operation on June 30, 2009, the arguments raised in this petition still fail to convince Us.

We confirm that the VA ruled on a matter that is covered by the sole issue submitted for voluntary arbitration. Resultantly, the CA did not commit serious error when it sustained the ruling that the hiring of contractual employees from PESO was not in keeping with the intent and spirit of the CBA. Indeed, the opinion of the VA is germane to, or, in the words of the CA, "interrelated and intertwined with," the sole issue submitted for resolution by the parties. This being said, the Company's invocation of Sections 4 and 5, Rule IV[20] and Section 5,

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[19] In *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, and 171424 , May 3, 2006, 489 SCRA 160, 213-215; 522 Phil. 705, 753-754 (2006), the Court held:

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.
>
> x x x x x x x x x
>
> The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.

[20] Rule IV, Sections 4 and 5 state:

Section 4. ***When Jurisdiction is Exercised.*** The voluntary arbitrator shall exercise jurisdiction over specific case/s:

1) Upon receipt of a submission agreement duly signed by both parties.

2) Upon receipt of the notice to arbitrate when there is refusal from one party;

Rule VI[21] of the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings dated October 15, 2004 issued by the NCMB is plainly out of order.

Likewise, the Company cannot find solace in its cited case of *Ludo & Luym Corporation v. Saornido*.[22] In *Ludo*, the company was engaged in the manufacture of coconut oil, corn starch, glucose and related products. In the course of its business operations, it engaged the arrastre services of CLAS for the loading and unloading of its finished products at the wharf. The arrastre workers deployed by CLAS to perform the services needed were subsequently hired, on different dates, as Ludo's regular rank-and-file employees. Thereafter, said employees joined LEU, which acted as the exclusive bargaining agent of the rank-and-file employees. When LEU entered into a CBA with Ludo, providing for certain benefits to the employees (the amount of which vary according to the length of service rendered), it

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3) Upon receipt of an appointment/designation as voluntary arbitrator by the board in either of the following circumstances:

3.1. In the event that parties fail to select an arbitrator; or

3.2. In the absence of a named arbitrator in the CBA and the party upon whom the notice to arbitrate is served does not favorably reply within seven days from receipt of such notice.

Section 5. ***Contents of submission agreement.*** The submission agreement shall contain, among others, the following:

1. The agreement to submit to arbitration;
2. The specific issue/s to be arbitrated;
3. The name of the arbitrator;
4. The names, addresses and contact numbers of the parties;
5. The agreement to perform or abide by the decision. (Emphasis supplied)

[21] Rule VI, Sec. 5 provides:

Section 5. ***Simplification of Arbitrable Issue/s.*** The arbitrator must see to it that he understands clearly the issue/s submitted to arbitration. If, after conferring with the parties, he finds the necessity to clarify/simplify the issue/s, he shall assist the parties in the reformulation of the same.

[22] G.R. No. 140960, January 20, 2003, 395 SCRA 45l; 443 Phil. 554 (2003).

requested to include in its members' period of service the time during which they rendered arrastre services so that they could get higher benefits. The matter was submitted for voluntary arbitration when Ludo failed to act. Per submission agreement executed by both parties, the sole issue for resolution was the date of regularization of the workers. The VA Decision ruled that: (1) the subject employees were engaged in activities necessary and desirable to the business of Ludo, and (2) CLAS is a labor-only contractor of Ludo. It then disposed as follows: (a) the complainants were considered regular employees six months from the first day of service at CLAS; (b) the complainants, being entitled to the CBA benefits during the regular employment, were awarded sick leave, vacation leave, and annual wage and salary increases during such period; (c) respondents shall pay attorney's fees of 10% of the total award; and (d) an interest of 12% per annum or 1% per month shall be imposed on the award from the date of promulgation until fully paid. The VA added that all separation and/or retirement benefits shall be construed from the date of regularization subject only to the appropriate government laws and other social legislation. Ludo filed a motion for reconsideration, but the VA denied it. On appeal, the CA affirmed *in toto* the assailed decision; hence, a petition was brought before this Court raising the issue, among others, of whether a voluntary arbitrator can award benefits not claimed in the submission agreement. In denying the petition, We ruled:

> Generally, the arbitrator is expected to decide only those questions expressly delineated by the submission agreement. Nevertheless, the arbitrator can assume that he has the necessary power to make a final settlement since arbitration is the final resort for the adjudication of disputes. The succinct reasoning enunciated by the CA in support of its holding, that the Voluntary Arbitrator in a labor controversy has jurisdiction to render the questioned arbitral awards, deserves our concurrence, thus:
>
> > In general, the arbitrator is expected to decide those questions expressly stated and limited in the submission agreement. However, since arbitration is the final resort for the adjudication of disputes, the arbitrator can assume that he has the power to make a final settlement. Thus, assuming that the submission

> empowers the arbitrator to decide whether an employee was discharged for just cause, the arbitrator in this instance can reasonably assume that his powers extended beyond giving a yes-or-no answer and included the power to reinstate him with or without back pay.
>
> In one case, the Supreme Court stressed that "xxx the Voluntary Arbitrator had plenary jurisdiction and authority to interpret the agreement to arbitrate and to determine the scope of his own authority subject only, in a proper case, to the *certiorari* jurisdiction of this Court. The Arbitrator, as already indicated, viewed his authority as embracing not merely the determination of the abstract question of whether or not a performance bonus was to be granted but also, in the affirmative case, the amount thereof.
>
> By the same token, the issue of regularization should be viewed as two-tiered issue. While the submission agreement mentioned only the determination of the date or regularization, law and jurisprudence give the voluntary arbitrator enough leeway of authority as well as adequate prerogative to accomplish the reason for which the law on voluntary arbitration was created — speedy labor justice. It bears stressing that the underlying reason why this case arose is to settle, once and for all, the ultimate question of whether respondent employees are entitled to higher benefits. To require them to file another action for payment of such benefits would certainly undermine labor proceedings and contravene the constitutional mandate providing full protection to labor.[23]

Indubitably, *Ludo* fortifies, not diminishes, the soundness of the questioned VA Decision. Said case reaffirms the plenary jurisdiction and authority of the voluntary arbitrator to interpret the CBA and to determine the scope of his/her own authority. Subject to judicial review, the leeway of authority as well as adequate prerogative is aimed at accomplishing the rationale of the law on voluntary arbitration — speedy labor justice. In this case, a complete and final adjudication of the dispute between the parties necessarily called for the resolution of the related

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[23] *Ludo & Luym Corporation v. Saornido, supra* note 22, at 459; at 562-563. (Citations omitted.)

and incidental issue of whether the Company still violated the CBA but without being guilty of ULP as, needless to state, ULP is committed only if there is *gross* violation of the agreement.

Lastly, the Company kept on harping that both the VA and the CA conceded that its engagement of contractual workers from PESO was a valid exercise of management prerogative. It is confused. To emphasize, declaring that a particular act falls within the concept of management prerogative is significantly different from acknowledging that such act is a valid *exercise* thereof. What the VA and the CA correctly ruled was that the Company's act of contracting out/outsourcing is within the purview of management prerogative. Both did not say, however, that such act is a valid exercise thereof. Obviously, this is due to the recognition that the CBA provisions agreed upon by the Company and the Union delimit the free exercise of management prerogative pertaining to the hiring of contractual employees. Indeed, the VA opined that "the right of the management to outsource parts of its operations is not totally eliminated but is merely limited by the CBA," while the CA held that "[t]his management prerogative of contracting out services, however, is not without limitation. x x x [These] categories of employees particularly with respect to casual employees [serve] as limitation to [the Company's] prerogative to outsource parts of its operations especially when hiring contractual employees."

A collective bargaining agreement is the law between the parties:

> It is familiar and fundamental doctrine in labor law that the CBA is the law between the parties and they are obliged to comply with its provisions. We said so in *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda*:
>
> > A collective bargaining agreement or CBA refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals,

> good customs, public order or public policy. Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law.
>
> Moreover, if the terms of a contract, as in a CBA, are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of their stipulations shall control. x x x.[24]

In this case, Section 4, Article I (on categories of employees) of the CBA between the Company and the Union must be read in conjunction with its Section 1, Article III (on union security). Both are interconnected and must be given full force and effect. Also, these provisions are clear and unambiguous. The terms are explicit and the language of the CBA is not susceptible to any other interpretation. Hence, the literal meaning should prevail. As repeatedly held, the exercise of management prerogative is not unlimited; it is subject to the limitations found in law, collective bargaining agreement or the general principles of fair play and justice.[25] Evidently, this case has one of the restrictions — the presence of specific CBA provisions — unlike in *San Miguel Corporation Employees Union-PTGWO v. Bersamira*,[26] *De Ocampo v. NLRC*,[27] *Asian Alcohol Corporation v. NLRC*,[28] and *Serrano v. NLRC*[29] cited by the Company. To reiterate, the CBA is the norm of conduct between the parties and compliance therewith is mandated by the express policy of the law.[30]

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[24] *TSPIC Corporation v. TSPIC Employees Union (FFW)*, G.R. No. 163419, February 13, 2008, 545 SCRA 215, 225. (Citations omitted.)

[25] *DOLE Philippines, Inc. v. Pawis ng Makabayang Obrero*, G.R. No. 146650, January 13, 2003, 395 SCRA 112, 116; 443 Phil. 143, 149 (2003).

[26] G.R. No. 87700, June 13, 1990, 186 SCRA 496; 264 Phil. 875 (1990).

[27] G.R. No. 101539, September 4, 1992, 213 SCRA 652.

[28] G.R. No. 131108, March 25, 1999, 305 SCRA 416; 364 Phil. 912 (1999).

[29] G.R. No. 117040, January 27, 2000, 323 SCRA 445; 380 Phil. 416 (2000).

[30] *DOLE Philippines, Inc. v. Pawis ng Makabayang Obrero, supra* note 25, at 150.

WHEREFORE, the petition is **DENIED.** The assailed June 16, 2005 Decision, as well as the October 12, 2005 Resolution of the Court of Appeals, which sustained the October 26, 2004 Decision of the Voluntary Arbitrator, are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174882. January 21, 2013]

MONDRAGON PERSONAL SALES, INC., *petitioner, vs.* **VICTORIANO S. SOLA, JR.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; LEGAL COMPENSATION; REQUISITES; PRESENT.— We find that petitioner's act of withholding respondent's service fees/commissions and applying them to the latter's outstanding obligation with the former is merely an acknowledgment of the legal compensation that occurred by operation of law between the parties. Compensation is a mode of extinguishing to the concurrent amount the obligations of persons who in their own right and as principals are reciprocally debtors and creditors of each other. Legal compensation takes place by operation of law when all the requisites are present, as opposed to conventional compensation which takes place when the parties agree to compensate their mutual obligations even in the absence of some requisites. Legal compensation requires the concurrence of the following conditions: (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) That both debts consist in a sum of

money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) That the two debts be due; (4) That they be liquidated and demandable; (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. We find the presence of all the requisites for legal compensation. Petitioner and respondent are both principal obligors and creditors of each other. Their debts to each other consist in a sum of money. Respondent acknowledged and bound himself to pay petitioner the amount of ₱1,973,154.73 which was already due, while the service fees owing to respondent by petitioner become due every month. Respondent's debt is liquidated and demandable, and petitioner's payments of service fees are liquidated and demandable every month as they fell due. Finally, there is no retention or controversy commenced by third persons over either of the debts. Thus, compensation is proper up to the concurrent amount where petitioner owes respondent ₱125,040.01 for service fees, while respondent owes petitioner ₱1,973,154.73.

2. ID.; ID.; CONTRACTS; RESCISSION OF CONTRACT; THE PARTY WHO FIRST BREACHED THE CONTRACT CANNOT ASK FOR RESCISSION THEREOF.— As legal compensation took place in this case, there is no basis for respondent to ask for rescission since he was the first to breach their contract when, on April 29, 1995, he suddenly closed and padlocked his bodega cum office in General Santos City occupied by petitioner.

3. REMEDIAL LAW; PLEADINGS AND PRACTICE; COUNTERCLAIM; AWARD OF PETITIONER'S COUNTERCLAIM, AFFIRMED.— Petitioner claims that the CA erred in obliterating the RTC's award of its counterclaim which it had alleged and proved during trial and which respondent even admitted. We agree. In his letter dated January 6, 1995, respondent confirmed the amount of ₱1,973,154.73 owing to petitioner. On September 29, 1997, petitioner wrote another letter to petitioner's Credit and Collection Manager, Rudy Machanco, wherein he again confirmed the indebtedness in the amount of ₱1,973,154.73. In the same letter, he showed the payments he had already made and after deducting the same from the confirmed indebtedness, the total balance remained to be at ₱1,668,683.97. As we have said earlier,

respondent's service fees from February to April 1995 which was in the total amount of ₱125,040.01 was not assailed at all by respondent in his appeal with the CA, thus he is bound by such computation. Hence, the amount of ₱125,040.01 which petitioner owes respondent shall be offset against the ₱1,973,154.73 which respondent owes petitioner, and therefore leaving a balance of ₱1,543,643.96 which respondent must pay.

APPEARANCES OF COUNSEL

Melzar P. Galicia for petitioner.
Torreon De Vera Torreon Law Firm for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* seeking to set aside the Decision[1] dated February 10, 2006 and the Resolution[2] dated September 6, 2006 issued by the Court of Appeals (CA) in CA-G.R. CV No. 71690.

Petitioner Mondragon Personal Sales Inc., a company engaged in the business of selling various consumer products through a network of sales representatives, entered into a Contract of Services[3] with respondent Victoriano S. Sola, Jr. for a period of three years commencing on October 2, 1994 up to October 1, 1997. Under the said contract, respondent, as service contractor, would provide service facilities, *i.e.*, bodega cum office, to petitioner's products, sales force and customers in General Santos City and as such, he was entitled to a commission or service fee as follows:

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Romulo V. Borja and Ricardo R. Rosario concurring; *rollo*, pp. 23-35.

[2] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Romulo V. Borja and Sixto C. Marella, Jr. concurring; *rollo*, pp. 43-44.

[3] *Id.* at 71-78.

MONTHLY SALES (net of vat)	SERVICE FEE
₱50,000.00 to 2,500,000.00	Five percent (5%)
₱2,500,001.00 to 3,000.000.00	₱125,000.00
₱3,000,001.00 to 3,500,000.00	150,000.00
₱3,500,001.00 – UP	200,000.00[4]

The agreement then came into effect when petitioner's goods were delivered to respondent's bodega and were sold by petitioner's employees. Prior to the execution of the contract, however, respondent's wife, Lina Sola, had an existing obligation with petitioner arising from her Franchise Distributorship Agreement with the latter. On January 26, 1995, respondent wrote a letter[5] addressed to Renato G. de Leon, petitioner's Vice-President for Finance, wherein he acknowledged and confirmed his wife's indebtedness to petitioner in the amount of ₱1,973,154.73 (the other accountability in the sum of ₱1,490,091.15 was still subject to reconciliation) and, together with his wife, bound himself to pay on installment basis the said debt. Consequently, petitioner withheld the payment of respondent's service fees from February to April 1995 and applied the same as partial payments to the debt which he obligated to pay. On April 29, 1995, respondent closed and suspended operation of his office cum bodega where petitioner's products were stored and customers were being dealt with.

On May 24, 1995, respondent filed with the Regional Trial Court (RTC) of Davao, a Complaint[6] for accounting and rescission against petitioner alleging that petitioner withheld portions of his service fees covering the months from October 1994 to January 1995 and his whole service fees for the succeeding months of February to April 1995, the total amount of which was ₱222,202.84; that petitioner's act grossly hampered, if not paralyzed, his business operation, thus left with no other recourse,

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[4] *Id.* at 74.

[5] *Id.* at 79.

[6] *Id.* at 48-53; Docketed as Civil Case No. 23,625-95.

he suspended operations to minimize losses. He prayed for the rescission of the contract of services and for petitioner to render an accounting of his service fees.

In its Answer with Counterclaim[7] filed on June 14, 1995, petitioner contended that respondent's letter dated January 26, 1995 addressed to petitioner's Vice-President for Finance, confirmed and obligated himself to pay on installment basis the accountability of his wife with petitioner, thus respondent's service fees/commission earned for the period of February to April 1995 amounting to ₱125,040.01 was applied by way of compensation to the amounts owing to it; that all the service fees earned by respondent prior to February 1995 were fully paid to him. By way of counterclaim, petitioner asked for the payment of the amount of ₱1,547,892.55 which respondent obligated to pay plus interest; the delivery of petitioner's products padlocked in respondent's office cum bodega, the payment for the loss of income in the amount of ₱833,600.00 as well as the remaining balance of ₱45,728.30 from the ₱100,000.00 given by petitioner to respondent as advance money for the purchase of office equipment and the renovation of the bodega cum office.

In his Reply and Answer[8] to petitioner's counterclaim, respondent averred that he was made to believe that the sales commission contained in petitioner's memorandum dated July 5, 1994 would be applicable to him; that it was improper for petitioner to confuse respondent's transaction with that of his wife as it was divergent in nature and terms.

Pending trial, petitioner moved for the issuance of a preliminary attachment and replevin which the RTC granted in its Order dated June 19, 1995 upon the filing of bonds.[9] Respondent filed a Motion to Quash the Writ of Attachment, which the RTC denied in an Order dated July 24, 1995.[10] As respondent's motion

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[7] *Id.* at 54-65.

[8] Records, pp. 34-35.

[9] *Id.* at 42.

[10] *Id.* at 85-88.

for reconsideration was also denied, he filed with us a petition for *certiorari,* docketed as G.R. No. 126427, assailing the RTC orders which we dismissed in a Resolution[11] dated November 11, 1996 on procedural matters.

Trial thereafter ensued.

On July 6, 2000, the RTC rendered its Decision,[12] the dispositive portion of which reads:

> FOR THE FOREGOING, judgment is hereby rendered in favor of defendant and against plaintiff, ordering the latter to pay the former:
>
> 1) the sum of ₱1,543,643.96 representing the principal balance of plaintiff's account with defendant, plus legal interest from the time of filing of the complaint until fully paid, at the rate of 6% per annum;
>
> 2) attorney's fees in the amount of ₱25,000.00
>
> 3) costs of the suit.[13]

In so ruling, the RTC found that in computing the service fees/commissions due respondent, the rate as provided in the contract of service dated January 27, 1995 was controlling, since respondent was a party thereto duly affixing his signature therein; that petitioner's computation of respondent's service fees for the months of February to April 1995 in the total amount of ₱125,040.01 which was based on the said contract deserved credence. The RTC ruled that while Article 1381 of the Civil Code provides for the grounds for which a contract may be rescinded, none of these grounds existed in this case; that there was no showing of fraud which petitioner employed when it entered into the contract with respondent nor did respondent agree to such a contract without knowing its content, thus the contract was not rescissible.

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[11] *Id.* at 174-175.

[12] *Id.* at 262-274; Per Judge Salvador M. Ibarreta, Jr.

[13] *Id.* at 273-274.

As regards to petitioner's counterclaim that respondent confirmed and assumed the payment of his wife's account with petitioner, the RTC found that respondent obligated himself to pay his wife's account as evidenced by his letter dated January 26, 1995; that after deducting from the confirmed amount of ₱1,668,683.97 the respondent's service commission for the period from February 1995 to April 1995, which was in the total amount of ₱125,040.01, the amount owing to petitioner would still be ₱1,543,643.96. The RTC dismissed the other counterclaims, since they were not substantiated but found petitioner entitled to attorney's fees due to the amount of money involved and the time spent in pursuing the case.

Respondent filed his appeal to the CA to which petitioner filed its appellee's brief. On February 10, 2006, the CA rendered its assailed decision, the dispositive portion of which reads as follows:

> **WHEREFORE,** in the light of the foregoing premises, herein appeal is **GRANTED**. Accordingly, the *Contract of Services* is hereby **RESCINDED**. Let the case be **REMANDED** to the court *a quo* for the proper determination of the amount of service fees unlawfully withheld from the appellant.
>
> Furthermore, Appellee is hereby ordered to pay the Appellant attorney's fees in the amount of twenty-five thousand pesos (₱25,000.00).[14]

The CA found that under Article 1191 of the Civil Code, respondent was entitled to rescind the contract of services as it was petitioner who breached the same by withholding the service fees lawfully due to the former; that petitioner's act of unlawfully withholding the service fees due respondent constituted a willful and deliberate infringement on contractual obligations which would justify rescission under Article 1191. The CA declared that the contract of services entered into by the parties did not fall under any of the rescissible contracts enumerated under Article 1381 of the Civil Code but under Article 1191 which

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[14] *Rollo*, p. 34. (Emphasis in the original).

pertains to rescission of reciprocal obligations as in the instant case.

The CA ruled that respondent did not assume his wife's obligation as he did not substitute himself in the shoes of his wife regarding the payment of the latter's liability; that there can be no novation as novation was never presumed. Petitioner's act of withholding respondent's service fee and thereafter applying them to the obligation of his wife was unlawful, considering that respondent never assumed his wife's obligation with petitioner; that there could be no legal compensation, since it was respondent's wife who was principally indebted to petitioner owing from the franchise distributorship agreement she earlier entered into with petitioner; that granting the debt redounded to the benefit of the family and incurred with the consent of respondent, and the spouse, as joint administrators of the community property are solidarily liable with their separate properties for debts incurred, however, such liability is only subsidiary, when the community property is not sufficient to pay for all liabilities, however, in this case, there was no showing that the community property of the spouses was insufficient to pay the debt.

The CA ordered the deletion of attorney's fees as it was respondent who was entitled to such award, since he was compelled to litigate to protect his interest for the unjustified act of petitioner.

Petitioner's motion for reconsideration was denied in a Resolution dated September 6, 2006.

Hence, this petition where petitioner alleges that the CA erred:

1. In finding that petitioner breached its contract with respondent and that there is no compensation in accordance to Article 1279 of the Civil Code;
2. In finding that respondent did not assume the obligation of his wife;
3. In remanding the case to the court *a quo* for proper determination of service fee withheld when the same has been determined;

4. In obliterating the award of petitioner's counterclaim when respondent admitted his obligation to petitioner.[15]

The CA found that petitioner's act of withholding respondent's service fees and thereafter applying them as partial payment to the obligation of respondent's wife with petitioner was unlawful, considering that respondent never assumed his wife's obligation, thus, there can be no legal compensation under Article 1279 of the Civil Code.

We do not agree.

In his letter dated January 26, 1995 addressed to Mr. Renato G. De Leon, petitioner's Vice-President for Finance, respondent wrote, and which we quote in full:

Gentlemen:

This refers to the account of my wife, Lina (Beng) Sola, with Mondragon Personal Sales, Inc. in the amount of ₱3,463,173.88. Of this total amount, we are initially confirming the total amount of ₱1,973,154.73 as due from Lina (Beng) Sola, while the remaining balance of ₱1,490,091.15 will be subject to a reconciliation on or before February 5, 1995.

In recognition of Lina (Beng) Sola's account, we undertake to pay ₱100,000.00 on or before February 01, 1995 and the balance of ₱1,873,154.73 plus interest of 18% per annum and 2% administrative charge per month on the diminishing balance will be covered by postdated checks of not less than ₱100,000.00 per month starting February 28, 1995 and every end of the month thereafter but not to exceed eighteen (18) months or July 31, 1996.

With regards to the remaining balance of ₱1,490,019.15, we agree that upon final verification of these accounts, we will issue additional postdated checks subject to the same terms and conditions as stated above.

We further agree that all subsequent orders that will be released to us will be covered by postdated checks.

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[15] *Id.* at 13.

I fully understand and voluntarily agree to the above undertaking with full knowledge of the consequences which may arise therefrom.

Very truly yours,

(signed)
Victoriano S. Sola[16]

A reading of the letter shows that respondent becomes a co-debtor of his wife's accountabilities with petitioner. Notably, the last paragraph of his letter which states "I fully understand and voluntarily agree to the above undertaking with full knowledge of the consequences which may arise therefrom" and which was signed by respondent alone, shows that he solidarily bound himself to pay such debt. Based on the letter, respondent's wife had an account with petitioner in the amount of ₱3,463,173.88, out of which only the amount of ₱1,973,154.73 was confirmed while the remaining amount of ₱1,490,019.15 would still be subject to reconciliation. As respondent bound himself to pay the amount of ₱1,973,154.73, he becomes petitioner's principal debtor to such amount.

On the other hand, respondent, as petitioner's service contractor, was entitled to a payment of service fees as provided in their contract of services dated January 26, 1995. We note that respondent never refuted the amount of monthly sales recorded but only assailed in the RTC the rate of the service fees which he was entitled to. However, we find that there could be no other computation of the rate of the service fees other than what was provided in the contract of services dated January 26, 1995 signed by respondent and petitioner. Thus, we give credence to petitioner's computation of respondent's service fees for the months of February to April 1995 in the total amount of ₱125,040.01. Since respondent promised petitioner in his letter dated January 26, 1995, to monthly pay a certain amount to cover the indebtedness to petitioner which he failed to do, the latter withheld the payment of respondent's service fees and applied the same as partial payments of the debt by way of compensation.

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[16] *Id.* at 79.

We find that petitioner's act of withholding respondent's service fees/commissions and applying them to the latter's outstanding obligation with the former is merely an acknowledgment of the legal compensation that occurred by operation of law between the parties.[17] Compensation is a mode of extinguishing to the concurrent amount the obligations of persons who in their own right and as principals are reciprocally debtors and creditors of each other. Legal compensation takes place by operation of law when all the requisites are present, as opposed to conventional compensation which takes place when the parties agree to compensate their mutual obligations even in the absence of some requisites.[18] Legal compensation requires the concurrence of the following conditions:

> (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
> (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
> (3) That the two debts be due;
> (4) That they be liquidated and demandable;
> (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.[19]

We find the presence of all the requisites for legal compensation. Petitioner and respondent are both principal obligors and creditors of each other. Their debts to each other consist in a sum of money. Respondent acknowledged and bound himself to pay petitioner the amount of ₱1,973,154.73 which was already due, while the service fees owing to respondent by petitioner become due every month. Respondent's debt is liquidated and demandable, and petitioner's payments of service fees are liquidated and demandable every month as they fell due. Finally, there is no retention or controversy commenced by third persons over either

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[17] See *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 142731, June 8, 2006, 490 SCRA 168, 178; 523 Phil. 548, 560 (2006).

[18] *Id.*

[19] Civil Code, Art. 1279.

of the debts. Thus, compensation is proper up to the concurrent amount where petitioner owes respondent ₱125,040.01 for service fees, while respondent owes petitioner ₱1,973,154.73.

As legal compensation took place in this case, there is no basis for respondent to ask for rescission since he was the first to breach their contract when, on April 29, 1995, he suddenly closed and padlocked his bodega cum office in General Santos City occupied by petitioner.

Petitioner claims that the CA erred in obliterating the RTC's award of its counterclaim which it had alleged and proved during trial and which respondent even admitted.

We agree.

In his letter dated January 6, 1995, respondent confirmed the amount of ₱1,973,154.73 owing to petitioner. On September 29, 1997, petitioner wrote another letter[20] to petitioner's Credit and Collection Manager, Rudy Machanco, wherein he again confirmed the indebtedness in the amount of ₱1,973,154.73. In the same letter, he showed the payments he had already made and after deducting the same from the confirmed indebtedness, the total balance remained to be at ₱1,668,683.97. As we have said earlier, respondent's service fees from February to April 1995 which was in the total amount of ₱125,040.01 was not assailed at all by respondent in his appeal with the CA, thus he is bound by such computation. Hence, the amount of ₱125,040.01 which petitioner owes respondent shall be offset against the ₱1,973,154.73 which respondent owes petitioner, and therefore leaving a balance of ₱1,543,643.96 which respondent must pay.

WHEREFORE, the petition for review is **GRANTED.** The Decision dated February 10, 2006 and the Resolution dated September 6, 2006 of the Court of Appeals are hereby **REVERSED** and **SET ASIDE.** Respondent is hereby ordered to pay petitioner the amount of ₱1,543,643.96 with 6% percent

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[20] *Rollo*, p. 81.

per annum from June 14, 1995 until finality of this Decision and 12% percent per annum thereafter until full payment.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 184698. January 21, 2013]

SPOUSES ALBERTO AND SUSAN CASTRO, *petitioners, vs.* **AMPARO PALENZUELA, for herself and as authorized representative of VIRGINIA ABELLO, GERARDO ANTONIO ABELLO, ALBERTO DEL ROSARIO, INGEBORG REGINA DEL ROSARIO, HANS DEL ROSARIO, MARGARET DEL ROSARIO ISLETA, ENRIQUE PALENZUELA and CARLOS MIGUEL PALENZUELA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; THE TRIAL COURT POSSESSES SUFFICIENT DISCRETION TO GRANT OR DENY THE HEARING SOUGHT BY THE PARTIES FOR THEIR MOTION FOR RECONSIDERATION.— [T]he Court cannot subscribe to petitioners' argument that they had a right to a hearing on their motion for reconsideration. The trial court may not be faulted for denying what it could have perceived was another of petitioners' delaying tactics, given how they acted throughout the proceedings. It may have been a baffling situation for the trial court to find itself suddenly confronted with petitioners' zeal in presenting their case, at such a late stage, when they have repeatedly waived such right during the trial of the case. Indeed, it possessed sufficient discretion

to grant or deny the hearing sought for their motion for reconsideration; under the circumstances, the Court finds that such discretion was exercised soundly. Besides, as will be seen, the evidence is ample and clear enough to warrant judgment outside of a hearing.

2. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; THE OMISSION TO REBUT THAT WHICH WOULD HAVE NATURALLY INVITED AN IMMEDIATE, PERVASIVE AND STIFF OPPOSITION, CREATES AN ADVERSE INFERENCE THAT EITHER THE CONTROVERTING EVIDENCE PRESENTED WILL ONLY PREJUDICE ITS CASE, OR THAT THE UNCONTROVERTED EVIDENCE INDEED SPEAKS OF THE TRUTH.— [R]espondents do not deny that this amount of ₱863,796.00 is what they are actually charging petitioners for one month's extended use of their fishponds. If this is so, then it is truly excessive, considering that for the immediately preceding month – the whole of June 1999 – it costs only ₱244,025.00 for the petitioners to rent the same property. The trial court may have been impelled to accept respondents' own computation of what they believed was due from petitioners on account of the fact that at that time, petitioners were declared in default and could not cross-examine the respondents' witness. But the fact remains that the July 22, 1999 demand letter clearly sets forth in detail what appears to be the true, accurate and reasonable amount of petitioners' outstanding obligation. If this document were a forgery, respondents would have vehemently objected to its presentation at the very first opportunity. Yet they did not. Such document could thus be considered and given weight. "[T]he omission x x x 'to rebut that which would have naturally invited an immediate, pervasive and stiff opposition x x x create[s] an adverse inference that either the controverting [evidence] x x x presented x x x will only prejudice its case, or that the uncontroverted evidence indeed speaks of the truth.'"

3. CIVIL LAW; SPECIAL CONTRACTS; LEASE; THE LESSEE'S ADOPTION OF THE LESSOR'S DEMAND LETTER CHARGING ADDITIONAL RENT, AS THEIR OWN EVIDENCE IN SEEKING A REDUCTION IN THE TRIAL COURT'S AWARD OF UNPAID RENT, CONSTITUTES AN ADMISSION OF LIABILITY TO THE EXTENT OF SUCH LESSER AMOUNT.— As for

petitioners' submission that respondents were not authorized to charge additional rent for their extended stay, this issue should be deemed settled by their very reliance on the July 22, 1999 demand letter, where a charge for additional rent for their extended stay in the amount of ₱244,025.00 is included. By adopting the letter as their own evidence in seeking a reduction in the award of unpaid rent, petitioners are considered to have admitted liability for additional rent as stated therein, in the amount of ₱244,025.00. Petitioners may not simultaneously accept and reject the demand letter; this would go against the rules of fair play. Besides, respondents are correct in saying that when the lease expired on June 30, 1999 and petitioners continued enjoying the premises without objection from the respondents, an implied new lease was created pursuant to Article 1670 of the Civil Code, which placed upon petitioners the obligation to pay additional rent.

4. ID.; DAMAGES; INTEREST; 12% INTEREST PER ANNUM, IMPOSED.— On the matter of interest, the proper rate is not 6% as petitioners argue, but 12% *per annum*, collected from the time of extrajudicial demand on July 22, 1999. Back rentals in this case are equivalent to a loan or forbearance of money.

5. ID.; ID.; ATTENDANCE OF BAD FAITH IN THE BREACH OF CONTRACT JUSTIFIES THE AWARD OF MORAL AND EXEMPLARY DAMAGES; AWARD OF ATTORNEY'S FEES AND COSTS OF THE SUIT, PROPER.— On the issue of moral and exemplary damages, the Court finds no reason to disturb the trial and appellate courts' award in this regard. Petitioners have not been exactly above-board in dealing with respondents. They have been found guilty of several violations of the agreement, and not just one. They incurred delay in their payments, and their check payments bounced, for one; for another, they subleased the premises to Reyes, in blatant disregard of the express prohibition in the lease agreement; thirdly, they refused to honor their obligation, as stipulated under the lease agreement, to pay the fishpond license and other permit fees and; finally, they refused to vacate the premises after the expiration of the lease. Even though respondents received payments directly from the sublessee Reyes, this could not erase the fact that petitioners are guilty of subleasing the fishponds to her. Respondents may have been compelled to accept payment from

> Reyes only because petitioners have been remiss in honoring their obligation to pay rent. Bad faith "means breach of a known duty through some motive or interest or ill will." By refusing to honor their solemn obligations under the lease, and instead unduly profiting from these violations, petitioners are guilty of bad faith. Moral damages may be awarded when the breach of contract is attended with bad faith. "Exemplary damages may [also] be awarded when a wrongful act is accompanied by bad faith or when the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner x x x. [And] since the award of exemplary damages is proper in this case, attorney's fees and costs of the suit may also be recovered, as stipulated in the lease agreement.

APPEARANCES OF COUNSEL

Gancayco Balasbas & Associates Law Office for petitioners.
The Law Firm of Allan Ramiro L. Guevarra for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

A demand letter presented in evidence by a lessee to prove a lesser liability for unpaid rentals than that awarded by the trial court constitutes an admission of liability to the extent of such lesser amount.

This Petition for Review on *Certiorari*[1] assails the January 29, 2008 Decision[2] of the Court of Appeals (CA) which dismissed the appeal in CA-G.R. CV No. 86925, and its September 15, 2008 Resolution[3] denying petitioners' Motion for Reconsideration.

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[1] *Rollo*, pp. 10-40.

[2] *Id.* at 43-55; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Rodrigo V. Cosico and Arturo G. Tayag.

[3] *Id.* at 57-58; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Remedios Salazar-Fernando and Arturo G. Tayag.

Factual Antecedents

Respondents Amparo Palenzuela, Virginia Abello, Gerardo Antonio Abello, Alberto Del Rosario, Ingeborg Regina Del Rosario, Hans Del Rosario, Margaret Del Rosario Isleta, Enrique Palenzuela and Carlos Miguel Palenzuela own several fishponds in Bulacan, Bulacan totaling 72 hectares.[4] In March 1994, respondents, through their duly appointed attorney-in-fact and co-respondent Amparo Palenzuela, leased out these fishponds to petitioners, spouses Alberto and Susan Castro. The lease was to be for five years, or from March 1, 1994 up to June 30, 1999.[5] The Contract of Lease[6] of the parties provided for the following salient provisions:

1. For the entire duration of the lease, the Castro spouses shall pay a total consideration of ₱14,126,600.00,[7] via postdated checks[8] and according to the following schedule:

   a. Upon signing of the lease agreement, petitioners shall pay ₱842,300.00 for the lease period March 1, 1994 to June 30, 1994;[9]

   b. On or before June 1, 1994, petitioners shall pay ₱2,520,000.00 for the one-year lease period July 1, 1994 to June 30, 1995;[10]

   c. On or before June 1, 1995, petitioners shall pay ₱2,520,000.00 for the one-year lease period July 1, 1995 to June 30, 1996;[11]

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[4] *Id.* at 122-123.

[5] *Id.* at 124.

[6] *Id.* at 122-133.

[7] *Id.* at 123.

[8] *Id.* at 126.

[9] *Id.* at 124.

[10] *Id.*

[11] *Id.*

d. On or before June 1, 1996, petitioners shall pay ₱2,520,000.00 for the one-year lease period July 1, 1996 to June 30, 1997;[12]

e. On or before June 1, 1997, petitioners shall pay ₱2,796,000.00 for the one-year lease period July 1, 1997 to June 30, 1998;[13] and

f. On or before June 1, 1998, petitioners shall pay ₱2,928,300.00 for the one-year lease period July 1, 1998 to June 30, 1999.[14]

2. Petitioners committed to pay respondents the amount of ₱500,000.00 in five yearly installments from June 1, 1994. The amount represents arrears of the previous lessee, which petitioners agreed to assume;[15]

3. Petitioners shall exercise extraordinary care and diligence in the maintenance of the leased premises, with the obligation to maintain in good order, repair and condition, among others, two warehouses found thereon;[16]

4. Necessary repairs,[17] licenses, permits, and other fees[18] necessary and incidental to the operation of the fishpond shall be for petitioners' account;

5. Petitioners shall not sublease the premises to third parties;[19] and,

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.* at 124-125.

[16] *Id.* at 126.

[17] *Id.*

[18] *Id.* at 127.

[19] *Id.* at 128.

6. Should respondents be constrained to file suit against petitioners on account of the lease, the latter agrees to pay liquidated damages in the amount of ₱1,000,000.00, 25% as attorney's fees, and costs of the suit.[20]

The lease expired on June 30, 1999, but petitioners did not vacate and continued to occupy and operate the fishponds until August 11, 1999, or an additional 41 days beyond the contract expiration date.

Previously, or on July 22, 1999, respondents sent a letter[21] to petitioners declaring the latter as trespassers and demanding the settlement of the latter's outstanding obligations, including rent for petitioners' continued stay within the premises, in the amount of ₱378,451.00, broken down as follows:

Unpaid balance as of May 31, 1999 for the fifth year of the lease	₱111,082.00
Accrued interest from May 31, 1999 to July 31, 1999 at 16%	23,344.00
Trespassing fee for the whole month of July 1999	244,025.00[22]
Total owed to the Lessors	₱378,451.00

Petitioners are in actual receipt of this letter.[23]

On June 8, 2000,[24] respondents instituted Civil Case No. Q-00-41011 for collection of a sum of money with damages in the Regional Trial Court (RTC) of Quezon City, Branch 215, claiming that petitioners committed violations of their lease

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

[21] *Id.* at 74.

[22] Which amount represents the monthly rental for the fifth and final year of the lease, arrived at by dividing ₱2,928,300.00 (or the stipulated one-year total lease consideration for the fifth and final year) by 12 (the total number of months comprising the said fifth and final one-year lease period).

[23] *Rollo*, pp. 23, 69.

[24] Records, Vol. 1, p. 1.

agreement — non-payment of rents as stipulated, subletting the fishponds, failure to maintain the warehouses, and refusal to vacate the premises on expiration of the lease — which caused respondents to incur actual and liquidated damages and other expenses in the respective amounts of ₱570,101.00[25] for unpaid rent, ₱275,430.00[26] for unpaid additional rent for petitioners' one-month extended stay beyond the contract date, and ₱2,000,000.00[27] for expenses incurred in restoring and repairing their damaged warehouses. In addition, respondents prayed to be awarded moral and exemplary damages, attorney's fees, and costs of litigation.[28]

For failure to file their Answer, petitioners were declared in default,[29] and on August 16, 2000, during the presentation of evidence for the plaintiffs, respondent Amparo Palenzuela testified, detailing petitioners' several violations of the lease contract; petitioners' failure to maintain the warehouses in good condition; their unauthorized subleasing of the premises to one Cynthia Reyes; their failure to pay the license fees, permits and other fees; their extended stay for 41 days, or until August 11, 1999 despite expiration of the lease on June 30, 1999; and petitioners' unpaid rents in the aggregate amount of ₱863,796.00, interest included.[30]

During said proceedings, respondents presented in evidence a statement of account[31] detailing petitioners' outstanding obligations as of July 31, 1999.

In a subsequent Order,[32] the trial court, on petitioners' motion, lifted its previous Order of default, and the latter were given

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[25] *Id.* at 5.

[26] *Id.* at 6.

[27] *Id.*

[28] *Id.* at 7-8.

[29] *Id.* at 40.

[30] TSN, August 16, 2000, pp. 7-17.

[31] Exhibit "K", Records, Vol. 1, pp. 119-124.

[32] See Order dated October 11, 2000, *id.* at 137.

the opportunity to cross-examine respondents' witnesses which they failed to do. Moreover, they also failed to attend subsequent scheduled hearings. The trial court thus declared the forfeiture, on waiver, of petitioners' rights to cross-examine and present their evidence, and considered the case submitted for decision based solely on respondents' evidence.[33] However, on petitioners' motion,[34] the trial court again reconsidered, and scheduled the presentation of their evidence on October 5, 2001.[35]

However, petitioners moved to reset the October 5, 2001 hearing.[36] After several postponements, the trial was reset to April 11, 2002.[37] On said date, the testimony of the first witness for the defense, petitioner Alberto Castro, was taken and completed. Cross-examination was scheduled on May 30, 2002,[38] but was rescheduled to be taken on August 21, 2002.[39]

On August 21, 2002, petitioners once more failed to appear; the trial court, in an Order[40] of even date, decreed that petitioner Alberto Castro's testimony be stricken off the record and declared the case submitted for decision. Petitioners moved for reconsideration;[41] respondents opposed,[42] noting that for more than two years and in spite of several opportunities afforded them, petitioners have been unable to participate in the proceedings and present their evidence. The trial court did not reconsider.[43]

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[33] See Order dated May 3, 2001, *id.* at 144.

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

[35] See Order dated August 28, 2001, *id.* at 157-158.

[36] See Order dated September 26, 2001, *id.* at 165.

[37] See Order dated February 20, 2002, *id.* at 190.

[38] *Id.*

[39] *Id.* at 206.

[40] *Id.* at 214.

[41] *Id.* at 218-220.

[42] *Id.* at 225-230.

[43] See Order dated November 22, 2002, *id.* at 231-232.

Petitioners took issue in the CA via Petition for *Certiorari*,[44] but the appellate court, in a February 18, 2004 Decision,[45] sustained the trial court and declared that no grave abuse of discretion was committed when it ordered the striking out of petitioner Alberto Castro's testimony and the termination of trial.

Petitioners next filed a Motion to Inhibit[46] claiming that they could not obtain justice and a fair trial from the presiding judge. In her April 21, 2003 Order,[47] Judge Ma. Luisa Quijano-Padilla voluntarily inhibited herself from trying the case. She stressed, however, that she was doing so only in order that the probity and objectivity of the court could be maintained, but not because petitioners' grounds for seeking inhibition are meritorious.

The case was then re-raffled to Branch 85 of the Quezon City RTC, which required the parties to submit memoranda.[48] While respondents submitted theirs, petitioners did not.

Ruling of the Regional Trial Court

On January 31, 2005, the trial court issued its Decision,[49] decreeing as follows:

WHEREFORE, judgment is hereby rendered ordering the defendants, jointly and severally, to pay plaintiffs the following:

1. Eight Hundred Sixty-three Thousand Seven Hundred Ninety Six Pesos (₱863,796.00), by way of actual or compensatory damages;

2. Fifty Thousand Pesos (₱50,000.00), by way of moral damages;

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[44] *Id.* at 233-243. Docketed as CA-G.R. SP No. 75348.

[45] *Rollo*, pp. 135-139; penned by Associate Justice Eliezer R. De los Santos and concurred in by Associate Justices B.A. Adefuin De la Cruz and Jose C. Mendoza (now a Member of this Court).

[46] Records, Vol. 1, pp. 253-255.

[47] *Id.* at 272-273.

[48] See Order dated October 25, 2004, *id.* at 294.

[49] CA *rollo*, pp. 56-65; penned by Judge Marlene Gonzales-Sison.

3. Fifty Thousand Pesos (₱50,000.00), by way of exemplary damages;

4. The amount equivalent to twenty-five (25%) percent of the total amount recoverable herein by plaintiffs, by way of attorney's fees; and

5. Costs of suit.

SO ORDERED.[50]

The trial court held that petitioners violated the terms of the lease:[51] petitioners failed to pay rent on time,[52] the warehouses were shown to be in damaged condition,[53] and they overstayed beyond the contract period.[54] However, respondents failed to prove the actual amount of their pecuniary losses in regard to the damaged warehouses, which entitles them merely to nominal damages.[55] As to moral damages, the trial court held that because petitioners acted in gross and wanton disregard of their contractual obligations, respondents are entitled to such damages, as well as attorneys fees as stipulated at 25% of the total amount recoverable.[56]

With respect to petitioners, the trial court said that although they claim to have paid all their obligations in full, no evidence to such effect has been presented,[57] for the precise reason that they failed to participate in the proceedings on their own account.

Both parties moved for reconsideration. Respondents prayed that petitioners be made additionally liable for liquidated damages

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

[51] *Id.* at 60.

[52] *Id.* at 62.

[53] *Id.* at 64.

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.* at 63.

and ₱2,000,000.00 as compensation for the restoration of the damaged warehouses.[58]

Petitioners, in their Verified Motion for Reconsideration,[59] argued that the evidence is not sufficient to warrant a finding of liability on their part, and the award is excessive. They claimed that they should not be made to pay additional rent for their unauthorized stay beyond the lease expiration date, or from July 1 to August 11, 1999, because the lease agreement did not provide for such. Likewise, they claimed that, as represented by respondents themselves in their July 22, 1999 demand letter,[60] which they annexed to their Verified Motion for Reconsideration and was presented to the court for the first time, petitioners' outstanding obligation, including back rentals, interest, and the supposed one-month additional rent, was pegged at a mere ₱378,451.00; thus, the judgment award of ₱863,796.00 is excessive and illegal. Petitioners added that there is no factual basis for the award of moral and exemplary damages. Thus, they prayed that the Decision be reconsidered and that the Complaint be dismissed.

In a January 30, 2006 Omnibus Order,[61] the trial court declined to reconsider. Only petitioners went up to the CA on appeal.

Ruling of the Court of Appeals

In the CA, petitioners maintained that the Decision is erroneous and the awards excessive, echoing their previous argument below that the lease agreement did not authorize respondents to charge additional rents for their extended stay and interest on delayed rental payments. They added that respondents are not entitled to moral and exemplary damages and attorney's fees. Finally, they bemoaned the trial court's act of resolving their Verified Motion for Reconsideration of the Decision without conducting oral arguments.

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[58] *Id.* at 89.

[59] *Id.* at 71-84.

[60] *Rollo*, p. 74.

[61] *Id.* at 75-77.

The CA, however, was unconvinced. It held that the preponderance of evidence,[62] which remained uncontroverted by petitioners, points to the fact that petitioners indeed failed to pay rent in full, considering that their postdated checks bounced upon presentment,[63] and their unauthorized extended stay from July 1 until August 11, 1999.[64] It added that petitioners were undeniably guilty of violating several provisions of the lease agreement, as it has also been shown that they failed to pay rent on time and illegally subleased the property to one Cynthia Reyes, who even made direct payments of rentals to respondents on several occasions.[65]

On petitioners' argument that respondents are not entitled to additional rent for petitioners' extended stay beyond the lease expiration date, the CA held that the respondents are in fact authorized to collect whatever damages they may have incurred by reason of the lease,[66] citing Section 16 of the lease agreement which provides as follows:

> SECTION 16. TERMINATION OR CANCELLATION OF THE LEASE. Any delay in or violation, failure or refusal of the LESSEE to perform and comply with any of the obligations stipulated hereunder shall automatically give an absolute right to the LESSORS to cancel, terminate or otherwise rescind this Contract of Lease. x x x.
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> x x x x x x x x x
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> **The above provisions shall, however, be without prejudice to any right of claim by the LESSORS against the LESSEE for whatever damages which may be incurred or assessed under this Contract of Lease**.[67] (Emphasis supplied)

The CA found no error in the award of moral and exemplary damages, noting that petitioners' violations of the lease agreement

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[62] *Id.* at 51.

[63] *Id.* at 51-52.

[64] *Id.* at 51.

[65] *Id.* at 52.

[66] *Id.* at 53.

[67] *Id.* at 128-129.

compelled respondents to litigate and endure unreasonable delays, sleepless nights, mental anguish, and serious anxiety.[68] As for attorney's fees, the CA sustained the trial court's award of 25%, saying that such stipulation may be justified under Article 2208 of the Civil Code.[69] Since respondents were compelled to incur expenses to protect their interests as a result of petitioners' acts and omissions, they should be allowed to collect the stipulated attorney's fees.[70]

Finally, the CA held that the matter of conducting further oral arguments on a party's Motion for Reconsideration rests upon the sound discretion of the court. Because petitioners' Verified Motion for Reconsideration is a mere reiteration of their defenses which they raised all throughout the proceedings

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[68] *Id.* at 52.

[69] Art. 2208. 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;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[70] *Rollo*, p. 53.

below, conducting a hearing on the motion would have been a mere superfluity.[71]

The CA thus dismissed the petitioners' appeal and sustained *in toto* the January 31, 2005 decision of the trial court.[72] Their Motion for Reconsideration[73] was denied as well, through the questioned September 15, 2008 Resolution.[74]

Issues

The instant Petition thus raises the following issues:

A

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT CALLING THE TRIAL COURT TO TASK FOR REFUSING TO RECEIVE EVIDENCE IN SUPPORT OF THE VERIFIED MOTION FOR RECONSIDERATION OF PETITIONERS ON THE GROUND THAT THE AWARD OF DAMAGES IS EXCESSIVE.

B

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT DISCERNING THE INTERNAL FACTUAL INCONSISTENCIES OF THE FINDINGS OF THE TRIAL COURT AS WELL AS THE LACK OF LEGAL BASIS THEREOF, *VIS-À-VIS* THE CLAIM OF UNPAID RENT AND INTEREST, IN CLEAR DISREGARD OF THE PRONOUNCEMENTS OF THIS HONORABLE COURT IN *MARTIN V. COURT OF APPEALS*.

C

THERE IS SIMILARLY NO BASIS FOR THE AWARD OF MORAL AND EXEMPLARY DAMAGES, AND THE HONORABLE COURT OF APPEALS WAS IN GRIEVOUS ERROR IN SUSTAINING THE TRIAL COURT IN CLEAR DISREGARD OF THIS HONORABLE COURT'S PRONOUNCEMENTS IN *ABS-CBN BROADCASTING CORPORATION V. COURT OF APPEALS*.[75]

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[71] *Id.* at 54.

[72] *Id.* at 55.

[73] CA *rollo*, pp. 225-242.

[74] *Rollo*, pp. 57-58.

[75] *Id.* at 20.

Petitioners' Arguments

Petitioners pray for the setting aside of the questioned Decision and Resolution of the CA, as well as the dismissal of respondents' Complaint, claiming that they have in fact settled all their obligations to respondents.

Petitioners first claim that they should have been given the opportunity to present evidence during proceedings covering their Verified Motion for Reconsideration of the trial court's Decision, invoking Section 1, Rule 37 of the Rules of Court[76] which allows them to question the trial court's Decision on the ground that the damages awarded are excessive or that the evidence is insufficient to justify the Decision.[77]

Petitioners direct the Court's attention to respondents' July 22, 1999 demand letter[78] indicating that their outstanding obligation was only ₱378,451.00, which thus renders excessive the award of ₱863,796.00.

Petitioners next insist that the lease agreement did not authorize respondents to charge additional rents for their July 1 to August 11, 1999 extended stay,[79] which thus renders without

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[76] Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

[77] *Rollo*, pp. 21-23.

[78] *Id.* at 23.

[79] *Id.* at 27.

legal or factual basis and excessive the award of ₱863,796.00.[80] If at all, the basis for computation thereof should be the immediately preceding monthly rental of ₱244,025.00.[81] Nor is the imposition of interest allowed under the agreement. Petitioners concede that in the absence of stipulation as to interest, respondents are entitled only to 6% annual interest as indemnity for damages,[82] pursuant to Article 2209 of the Civil Code.[83]

On the issue of petitioners' contract violations, it is claimed that petitioners are not guilty of subleasing the property to one Cynthia Reyes (Reyes). They argue that although Reyes paid a portion of the rentals, this may not be taken as sufficient proof of the existence of a sublease agreement between them; and even assuming that a sublease agreement indeed existed between them, such arrangement was condoned by respondents when they accepted payments of rents made directly to them by Reyes.[84]

Regarding damages and attorney's fees, petitioners maintain that there could not have been delay in the payment of rentals as to warrant the award of moral damages, since they have paid the rents in full; their supposed liability was only for the additional rent incurred for their extended stay. Petitioners proceed to argue that if only respondents had exercised their option — allowed under the lease agreement — to forcibly evict petitioners from the premises, then they would not have incurred the damages they claim to be entitled to. As for the award of exemplary damages and attorney's fees, petitioners find no factual and legal bases for the grant thereof. Since they did not act with

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

[81] *Id.* at 28.

[82] *Id.*

[83] Article 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum.

[84] *Rollo*, pp. 32-33.

malice or bad faith in all matters relative to the lease, respondents should not be entitled thereto.[85]

Respondents' Arguments

In their Comment,[86] respondents insist that petitioners committed several violations of the lease agreement,[87] specifically: for their failure to pay the rents on time,[88] for subleasing the property to Reyes,[89] for neglecting to maintain the warehouses which resulted in their damaged condition after the lease,[90] for refusing to vacate the premises upon the expiration of the lease,[91] and for their neglect and refusal to pay the required fishpond license and permit fees imposed by the municipality of Bulacan.[92] Respondents add that for these violations, they incurred actual damages and suffered moral damages, which further entitles them to exemplary damages and attorney's fees as stipulated in the lease agreement.[93]

Respondents insist that far from being excessive, the trial court's award is instead insufficient, considering the damages suffered as a result of the petitioners' neglect to maintain the premises, specifically the warehouses, as agreed.

Respondents maintain that in the event of expiration of the lease period and the lessee maintains himself within the premises, the law authorizes the collection of rentals on a month-to-month or year-to-year basis,[94] citing Articles 1670 and 1687 of the

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[85] *Id.* at 33-37.

[86] *Id.* at 106-121.

[87] *Id.* at 107.

[88] *Id.*

[89] *Id.* at 108.

[90] *Id.* at 107-108.

[91] *Id.* at 108.

[92] *Id.*

[93] *Id.* at 112-113.

[94] *Id.* at 110.

Civil Code.[95] Thus, even if the lease agreement with petitioners failed to provide for a stipulation covering lease extension, the obligation to pay rent is not extinguished by the expiration of the lease on June 30, 1999.[96]

Respondents further claim that interest should be paid at 12% *per annum*, and not merely 6%, on the outstanding obligation.[97]

Our Ruling

While this Court is not a trier of facts, it appears that both the trial court and the CA have misappreciated the facts and the evidence; rectification is thus in order, if justice is to be properly served.

But first, on the procedural issue raised, the Court cannot subscribe to petitioners' argument that they had a right to a hearing on their motion for reconsideration. The trial court may not be faulted for denying what it could have perceived was another of petitioners' delaying tactics, given how they acted throughout the proceedings. It may have been a baffling situation for the trial court to find itself suddenly confronted with petitioners' zeal in presenting their case, at such a late stage,

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[95] Art. 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived.

Art. 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

[96] *Rollo*, p. 110.

[97] *Id.* at 111.

when they have repeatedly waived such right during the trial of the case. Indeed, it possessed sufficient discretion to grant or deny the hearing sought for their motion for reconsideration; under the circumstances, the Court finds that such discretion was exercised soundly. Besides, as will be seen, the evidence is ample and clear enough to warrant judgment outside of a hearing.

Both courts erred in finding that there are outstanding rents owing to the respondents in the amount of ₱863,796.00. Attention must be called to respondents' July 22, 1999 demand letter.[98] The letter, which appears to have been handwritten and signed by Amparo Palenzuela herself, makes a demand upon petitioners to pay the total amount of ₱378,451.00 which respondents claim constitutes what is owing to them as of July 31, 1999 by way of unpaid rentals (₱111,082.00); additional rent for the whole duration of petitioners' stay on the premises beyond the contract date, or for the whole of July 1999 (₱244,025.00); and interest from May 31, 1999 up to July 31, 1999 (₱23,344.00). This letter belies the claim that petitioners owed respondents a greater amount by way of unpaid rents. Even though it is not newly-discovered evidence, it is material; indeed, petitioners could not have presented it during trial because they were declared in default.

Of this amount – ₱378,451.00 – petitioners admit to paying nothing. Thus, for petitioners, this is their admitted liability.

The Court notes further that respondents do not even dispute petitioners' argument that the amount of ₱863,796.00 actually represented rentals being claimed for their one-month extended stay on the premises, which to them is excessive. This argument of the petitioners finds support in the direct testimony of respondents' witness, Amparo Palenzuela, thus —

> Q x x x Madam Witness, you mentioned x x x that the defendants have outstanding obligation to you. Can you tell the Court how much is the outstanding obligation to

[98] *Id.* at 74.

you of the defendants with respect to their occupation of your fishponds?

A Up to July 31, 2000,[99] Mr. Castro's obligation is **₱863,796.00**.

Q Can you briefly explain to the Court how you came about this figure?

A Actually this is what he owes for back lease that he has not paid including interest. **This one is supposedly for overstaying of one month**. **We did not charge him 41 days, we are only charging him one month and that is the total**.[100]

Q With respect to this ₱863,796.00 this is the total as of July?

A July 31.

Q 2000?[101]

A That's right.

Q And this pertains to unpaid rent and interest thereof?

A That's right.

Q The stipulated interest thereof?

A That's right.

Q And with respect to damages which you expect to incur is not yet included in this?

A Yes.

Q And the unpaid municipal fees are also not included in this?

A Not included but they have been paid.[102] (Emphasis supplied)

Indeed, respondents do not deny that this amount of ₱863,796.00 is what they are actually charging petitioners for one month's extended use of their fishponds. If this is so, then it is truly excessive, considering that for the immediately preceding month — the whole of June 1999 — it costs only ₱244,025.00[103]

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[99] Should be 1999.

[100] Petitioners overstayed from July 1 to August 11, 1999 – a total of 41 days, but respondents waived the rent for August 1-11.

[101] Should be 1999.

[102] TSN, August 16, 2000, pp. 16-17.

[103] *Supra* note 22.

for the petitioners to rent the same property. The trial court may have been impelled to accept respondents' own computation[104] of what they believed was due from petitioners on account of the fact that at that time, petitioners were declared in default and could not cross-examine the respondents' witness. But the fact remains that the July 22, 1999 demand letter[105] clearly sets forth in detail what appears to be the true, accurate and reasonable amount of petitioners' outstanding obligation. If this document were a forgery, respondents would have vehemently objected to its presentation at the very first opportunity. Yet they did not. Such document could thus be considered and given weight. "[T]he omission x x x 'to rebut that which would have naturally invited an immediate, pervasive and stiff opposition x x x create[s] an adverse inference that either the controverting [evidence] x x x presented x x x will only prejudice its case, or that the uncontroverted evidence indeed speaks of the truth'."[106]

As for petitioners' submission that respondents were not authorized to charge additional rent for their extended stay, this issue should be deemed settled by their very reliance on the July 22, 1999 demand letter,[107] where a charge for additional rent for their extended stay in the amount of ₱244,025.00 is included. By adopting the letter as their own evidence in seeking a reduction in the award of unpaid rent, petitioners are considered to have admitted liability for additional rent as stated therein, in the amount of ₱244,025.00. Petitioners may not simultaneously accept and reject the demand letter; this would go against the rules of fair play. Besides, respondents are correct in saying that when the lease expired on June 30, 1999 and petitioners continued enjoying the premises without objection from the respondents, an implied new lease was created pursuant to

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[104] Exhibit "K", Records, Vol. 1, pp. 119-124.

[105] *Rollo*, p. 74.

[106] *Dayonot v. National Labor Relations Commission*, 356 Phil. 427, 433 (1998).

[107] *Rollo*, p. 74.

Article 1670 of the Civil Code, which placed upon petitioners the obligation to pay additional rent.

On the matter of interest, the proper rate is not 6% as petitioners argue, but 12% *per annum*, collected from the time of extrajudicial demand on July 22, 1999. Back rentals in this case are equivalent to a loan or forbearance of money.[108]

On the issue of moral and exemplary damages, the Court finds no reason to disturb the trial and appellate courts' award in this regard. Petitioners have not been exactly above-board in dealing with respondents. They have been found guilty of several violations of the agreement, and not just one. They incurred delay in their payments, and their check payments bounced, for one; for another, they subleased the premises to Reyes, in blatant disregard of the express prohibition in the lease agreement; thirdly, they refused to honor their obligation, as stipulated under the lease agreement, to pay the fishpond license and other permit fees and; finally, they refused to vacate the premises after the expiration of the lease.

Even though respondents received payments directly from the sublessee Reyes, this could not erase the fact that petitioners are guilty of subleasing the fishponds to her. Respondents may have been compelled to accept payment from Reyes only because petitioners have been remiss in honoring their obligation to pay rent.

Bad faith "means breach of a known duty through some motive or interest or ill will."[109] By refusing to honor their solemn obligations under the lease, and instead unduly profiting from these violations, petitioners are guilty of bad faith. Moral damages may be awarded when the breach of contract is attended with

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[108] See *Liga v. Allegro Resources Corporation*, G.R. No. 175554, December 23, 2008, 575 SCRA 310, 323; *Spouses Catungal v. Hao*, 407 Phil. 309, 328-329 (2001).

[109] *Elcee Farms, Inc. v. National Labor Relations Commission*, 541 Phil. 576, 593 (2007).

bad faith.[110] "Exemplary damages may [also] be awarded when a wrongful act is accompanied by bad faith or when the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner x x x. [And] since the award of exemplary damages is proper in this case, attorney's fees and costs of the suit may also be recovered,[111] as stipulated in the lease agreement.

WHEREFORE, premises considered, the Petition is **DENIED.** The January 29, 2008 Decision of the Court of Appeals in CA-G.R. CV No. 86925 which affirmed *in toto* the January 31, 2005 Decision of the Regional Trial Court of Quezon City, Branch 85 in Civil Case No. Q-00-41011 is **AFFIRMED** with the **MODIFICATION** that the actual and compensatory damages are reduced to ₱378,451.00, the same to earn legal interest at the rate of twelve percent (12%) *per annum* from July 22, 1999 until fully paid.

SO ORDERED.

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

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[110] *Frias v. San Diego-Sison*, G.R. No. 155223, April 3, 2007, 520 SCRA 244, 256; *Bankard, Inc. v. Feliciano*, 529 Phil. 53, 62-63 (2006).

[111] *Sunbanun v. Go*, G.R. No. 163280, February 2, 2010, 611 SCRA 320, 327-328.

[*] Per Special Order No. 1408 dated January 15, 2013.

SECOND DIVISION

[G.R. No. 199338. January 21, 2013]

ELEAZAR S. PADILLO,[+] *petitioner, vs.* **RURAL BANK OF NABUNTURAN, INC. and MARK S. OROPEZA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT ON GROUND OF DISEASE; DOES NOT CONTEMPLATE A SITUATION WHERE IT IS THE EMPLOYEE WHO SEVERS HIS EMPLOYMENT TIES; CLAIM FOR SEPARATION PAY, DENIED.— [I]t must be maintained that the Labor Code provision on termination on the ground of disease under Article 297 does not apply in this case, considering that it was the petitioner and not the Bank who severed the employment relations. As borne from the records, the clear import of Padillo's September 10, 2007 letter and the fact that he stopped working before the foregoing date and never reported for work even thereafter show that it was Padillo who voluntarily retired and that he was not terminated by the Bank. As held in *Villaruel*, a precedent which the CA correctly applied, Article 297 of the Labor Code contemplates a situation where the employer, and not the employee, initiates the termination of employment on the ground of the latter's disease or sickness, *viz*: *A plain reading of the* [Article 297 of the Labor Code] **clearly presupposes that it is the employer who terminates the services of the employee found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees**. **It does not contemplate a situation where it is the employee who severs his or her employment ties**. This is precisely the reason why Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor

[+] Eleazar Padillo passed away last February 24, 2012 and had been substituted in this case by his heirs Anita Guillena Padillo, Lynette Padillo Banayo, Earvin G. Padillo, Marco Antonio G. Padillo, Anileebeth G. Padillo and Patrick Ray G. Padillo. *See rollo,* pp. 187-198, 221.

Code, directs that an employer shall not terminate the services of the employee unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. Thus, given the inapplicability of Article 297 of the Labor Code to the case at bar, it necessarily follows that petitioners' claim for separation pay anchored on such provision must be denied.

2. ID.; THE LABOR CODE; RETIREMENT; ABSENT ANY APPLICABLE AGREEMENT, THE RETIREMENT BENEFITS UNDER ARTICLE 300 OF THE LABOR CODE APPLIES; AGE AND TENURE REQUIREMENTS.— What remains applicable, however, is the Labor Code provision on retirement. In particular, Article 300 of the Labor Code as amended by Republic Act Nos. 7641 and 8558 partly provides: Art. 300. Retirement. — x x x. **In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more,** but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age**,** who has served at least five (5) years in the said establishment, **may retire and shall be entitled to retirement pay** equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year. x x x. Simply stated, in the absence of any applicable agreement, an employee must (1) retire when he is at least sixty (60) years of age and (2) serve at least (5) years in the company to entitle him/her to a retirement benefit of at least one-half (1/2) month salary for every year of service, with a fraction of at least six (6) months being considered as one whole year. Notably, these age and tenure requirements are cumulative and non-compliance with one negates the employee's entitlement to the retirement benefits under Article 300 of the Labor Code altogether.

3. ID.; ID.; ID.; ID.; ID.; ABSENT ANY CONTRACT OR COMPANY POLICY, BOTH THE AGE AND TENURE REQUIREMENTS MUST BE COMPLIED WITH IN ORDER TO BE ENTITLED TO THE RETIREMENT BENEFITS PROVIDED UNDER ARTICLE 300 OF THE LABOR CODE; CLAIM FOR RETIREMENT BENEFITS DENIED FOR NON-COMPLIANCE WITH THE AGE REQUIREMENT.— In this case, it is undisputed that there

exists no retirement plan, collective bargaining agreement or any other equivalent contract between the parties which set out the terms and condition for the retirement of employees, with the sole exception of the Philam Life Plan which premiums had already been paid by the Bank. Neither was it proven that there exists an established company policy of giving early retirement packages to the Bank's aging employees. x x x. [I]n the absence of any applicable contract or any evolved company policy, Padillo should have met the age and tenure requirements set forth under Article 300 of the Labor Code to be entitled to the retirement benefits provided therein. Unfortunately, while Padillo was able to comply with the five (5) year tenure requirement — as he served for twenty-nine (29) years — he, however, fell short with respect to the sixty (60) year age requirement given that he was only fifty-five (55) years old when he retired. Therefore, without prejudice to the proceeds due under the Philam Life Plan, petitioners' claim for retirement benefits must be denied.

4. ID.; ID.; ID.; AWARD OF FINANCIAL ASSISTANCE INCREASED TO PHP 75,000.00.— [T]he Court concurs with the CA that financial assistance should be awarded but at an increased amount. With a veritable understanding that the award of financial assistance is usually the final refuge of the laborer, considering as well the supervening length of time which had sadly overtaken the point of Padillo's death – an employee who had devoted twenty-nine (29) years of dedicated service to the Bank – the Court, in light of the dictates of social justice, holds that the CA's financial assistance award should be increased from ₱50,000.00 to ₱75,000.00, still exclusive of the ₱100,000.00 benefit receivable by the petitioners under the Philam Life Plan which remains undisputed.

5. CIVIL LAW; HUMAN RELATIONS; DAMAGES ON ACCOUNT OF ABUSE OF RIGHT; ELEMENTS; NOT PRESENT.— [T]he Court finds no bad faith in any of respondents' actuations as they were within their right, absent any proof of its abuse, to ignore Padillo's misplaced claim for retirement benefits. Respondents' obstinate refusal to accede to Padillo's request is precisely justified by the fact that there lies no basis under any applicable agreement or law which accords the latter the right to demand any retirement benefits from the Bank. While the Court mindfully notes that damages may be recoverable due to an abuse of right under Article 21

in conjunction with Article 19 of the Civil Code of the Philippines, the following elements must, however, obtain: (1) there is a legal right or duty; (2) exercised in bad faith; and (3) for the sole intent of prejudicing or injuring another. Records reveal that none of these elements exists in the case at bar and thus, no damages on account of abuse of right may be recovered.

6. ID.; ID.; ID.; ID.; IMPUTATION OF DISCRIMINATION AND BAD FAITH NOT PROVED; BAD FAITH CAN NEVER BE PRESUMED — IT MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE.— Neither can the grant of an early retirement package to Lusan show that Padillo was unfairly discriminated upon. Records show that the same was merely an isolated incident and petitioners have failed to show that any bad faith or motive attended such disparate treatment between Lusan and Padillo. Irrefragably also, there is no showing that other Bank employees were accorded the same benefits as that of Lusan which thereby dilutes the soundness of petitioners' imputation of discrimination and bad faith. Verily, it is axiomatic that bad faith can never be presumed — it must be proved by clear and convincing evidence. This petitioners were unable to prove in the case at bar.

APPEARANCES OF COUNSEL

Ethan Allen E. Cenabre for petitioner.
Prospero C. Mojica for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] assailing the June 28, 2011 Decision[2] and October 27, 2011

[1] *Id.* at 8-19.

[2] *Id.* at 20-36, penned by Associate Justice Pamela Ann A. Maxino, with Associate Justices Edgardo T. Lloren and Zenaida T. Galapate-Laguilles, concurring.

Resolution[3] of the Cagayan de Oro City Court of Appeals (CA) in CA-G.R. SP No. 03669-MIN which revoked and set aside the National Labor Relations Commission's (NLRC's) Resolutions dated December 29, 2009[4] and March 31, 2010[5] and reinstated the Labor Arbiter's (LA's) Decision dated March 13, 2009[6] with modification.

The Facts

On October 1, 1977, petitioner, the late Eleazar Padillo (Padillo), was employed by respondent Rural Bank of Nabunturan, Inc. (Bank) as its SA Bookkeeper. Due to liquidity problems which arose sometime in 2003, the Bank took out retirement/insurance plans with Philippine American Life and General Insurance Company (Philam Life) for all its employees in anticipation of its possible closure and the concomitant severance of its personnel. In this regard, the Bank procured Philam Plan Certificate of Full Payment No. 88204, Plan Type 02FP10SC, Agreement No. PP98013771 (Philam Life Plan) in favor of Padillo for a benefit amount of ₱100,000.00 and which was set to mature on July 11, 2009.[7]

On October 14, 2004, respondent Mark S. Oropeza (Oropeza), the President of the Bank, bought majority shares of stock in the Bank and took over its management which brought about its gradual rehabilitation. The Bank's finances improved and eventually, its liquidity was regained.[8]

During the latter part of 2007, Padillo suffered a mild stroke due to hypertension which consequently impaired his ability to effectively pursue his work. In particular, he was diagnosed

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[3] *Id.* at 44-47. Amended by CA Resolution dated November 28, 2011.

[4] *Id.* at 92-99. Penned by Commissioner Proculo T. Sarmen, with Presiding Commissioner Salic B. Dumarpa and Dominador B. Medroso, Jr., concurring.

[5] *Id.* at 109-111.

[6] *Id.* at 79-85. Penned by Labor Arbiter Miriam A. Libron-Barroso.

[7] *Id.* at 76.

[8] *Id.* at 22, 69.

with Hypertension S/P CVA (Cerebrovascular Accident) with short term memory loss, the nature of which had been classified as a total disability.[9] On September 10, 2007, he wrote a letter addressed to respondent Oropeza expressing his intention to avail of an early retirement package. Despite several follow-ups, his request remained unheeded.

On October 3, 2007, Padillo was separated from employment due to his poor and failing health as reflected in a Certification dated December 4, 2007 issued by the Bank. Not having received his claimed retirement benefits, Padillo filed on September 23, 2008 with the NLRC Regional Arbitration Branch No. XI of Davao City a complaint for the recovery of unpaid retirement benefits. He asserted, among others, that the Bank had adopted a policy of granting its aging employees early retirement packages, pointing out that one of his co-employees, Nenita Lusan (Lusan), was accorded retirement benefits in the amount of ₱348,672.72[10] when she retired at the age of only fifty-three (53). The Bank and Oropeza (respondents) countered that the claim of Padillo for retirement benefits was not favorably acted upon for lack of any basis to grant the same.[11]

The LA Ruling

On March 13, 2009, the LA issued a Decision[12] dismissing Padillo's complaint but directed the Bank to pay him the amount of ₱100,000.00 as financial assistance, treated as an advance from the amounts receivable under the Philam Life Plan.[13] It found Padillo disqualified to receive any benefits under Article 300 (formerly, Article 287) of the Labor Code of the Philippines (Labor Code)[14] as he was only fifty-five (55) years old when he

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[9] *Id.* at 61.

[10] *Id.* at 23, 63.

[11] *Id.* at 24.

[12] *Supra* note 6.

[13] *Id.* at 85.

[14] As amended by Republic Act No. 8558 and further renumbered to Article 300 pursuant to Republic Act No. 10151.

resigned, while the law specifically provides for an optional retirement age of sixty (60) and compulsory retirement age of sixty-five (65). Dissatisfied with the LA's ruling, Padillo elevated the matter to the NLRC.

The NLRC Ruling

On December 29, 2009, the NLRC's Fifth Division reversed and set aside the LA's ruling and ordered respondents to pay Padillo the amount of ₱164,903.70 as separation pay, on top of the ₱100,000.00 Philam Life Plan benefit.[15] Relying on the case of *Abaquin Security and Detective Agency, Inc. v. Atienza* (*Abaquin*),[16] the NLRC applied the Labor Code provision on termination on the ground of disease — particularly, Article 297 thereof (formerly, Article 323) — holding that while Padillo did resign, he did so only because of his poor health condition.[17] Respondents moved for reconsideration but the same was denied by the NLRC in its Resolution dated March 31, 2010.[18] Aggrieved, respondents filed a petition for *certiorari* with the CA.

The CA Ruling

On June 28, 2011, the CA granted respondents' petition for *certiorari* and rendered a decision setting aside the NLRC's December 29, 2009 and March 31, 2010 Resolutions, thereby reinstating the LA's March 13, 2009 Decision but with modification. It directed the respondents to pay Padillo the amount of ₱50,000.00 as financial assistance exclusive of the ₱100,000.00 Philam Life Plan benefit which already matured on July 11, 2009.

The CA held that Padillo could not, absent any agreement with the Bank, receive any retirement benefits pursuant to Article 300 of the Labor Code considering that he was only

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[15] *Supra* note 4.

[16] G.R. No. 72971, October 15, 1990, 190 SCRA 460.

[17] *Supra* note 4, at 96.

[18] *Supra* note 5.

fifty-five (55) years old when he retired.[19] It likewise found the evidence insufficient to prove that the Bank has an existing company policy of granting retirement benefits to its aging employees. Finally, citing the case of *Villaruel v. Yeo Han Guan* (*Villaruel*),[20] it pronounced that separation pay on the ground of disease under Article 297 of the Labor Code should not be given to Padillo because he was the one who initiated the severance of his employment and that even before September 10, 2007, he already stopped working due to his poor and failing health.[21]

Nonetheless, Padillo was still awarded the amount of ₱50,000.00 as financial assistance, in addition to the benefits accruing under the Philam Life Plan, considering his twenty-nine (29) years of service with no derogatory record and that he was severed not by reason of any infraction on his part but because of his failing physical condition.[22]

Displeased with the CA's ruling, Padillo (now substituted by his legal heirs due to his death on February 24, 2012) filed the instant petition contending that the CA erred when it: (*a*) deviated from the factual findings of the NLRC; (*b*) misapplied the case of *Villaruel vis-à-vis* the factual antecedents of this case; (*c*) drastically reduced the computation of financial assistance awarded by the NLRC; (*d*) failed to rule on the consequences of respondents' bad faith; and (*e*) reversed and set aside the NLRC's December 29, 2009 Resolution.[23]

The Ruling of the Court

The petition is partly meritorious.

At the outset, it must be maintained that the Labor Code provision on termination on the ground of disease under

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

[20] G.R. No. 169191, June 1, 2011, 650 SCRA 64.

[21] *Rollo,* pp. 32-33.

[22] *Id.* at 35.

[23] *Id.* at 13-14.

Article 297[24] does not apply in this case, considering that it was the petitioner and not the Bank who severed the employment relations. As borne from the records, the clear import of Padillo's September 10, 2007 letter[25] and the fact that he stopped working

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[24] Art. 297. Disease as Ground for Termination. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[25] *Rollo*, p. 60. Mr. Padillo's September 10, 2007 Letter reads as follows:

Sir/Madam

Greetings!

It is always my desire to be a good employee in your company. Working with RBN is a great honor and privilege that is why I remain faithful and loyal throughout my 31 years of service. RBN had given me the chance to prove my ability in my work and with the people I'm working with whom I called my second family.

Unfortunately, I just lately had a mild stroke due to hypertension and that causes me with some memory lapses that I am having a hard time to pursue with working in the bank. Though I am trying so hard to refresh and recover my memories with the nature of my job. Yet, I don't want that my co-workers and the operation of the bank might be affected with the adjustments I had undergone. I finally had decided then, that I have to take a rest of my body and mind for total recovery.

With this regard, I am applying for an early retirement to hopefully regain normal health conditions. I am also requesting for the settlement of my retirement benefits with my employment in RBN. As a father, I am looking forward that my application and request will be granted soon so that the education of my two children in high school and one in college may not be affected of my becoming retired from employment. So as to aid the lifetime support of my daily requirements of medication.

I am very hopeful for your kind consideration and understanding.

Thank you

Sincerely yours,

[signature]
ELEAZAR S. PADILLO
Employee.

before the foregoing date and never reported for work even thereafter show that it was Padillo who voluntarily retired and that he was not terminated by the Bank.

As held in *Villaruel*,[26] a precedent which the CA correctly applied, Article 297 of the Labor Code contemplates a situation where the employer, and not the employee, initiates the termination of employment on the ground of the latter's disease or sickness, *viz*:

> A plain reading of the [Article 297 of the Labor Code] **clearly presupposes that it is the employer who terminates the services of the employee found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees**. **It does not contemplate a situation where it is the employee who severs his or her employment ties**. This is precisely the reason why Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code, directs that an employer shall not terminate the services of the employee unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. (Emphasis, underscoring and words in brackets supplied)

Thus, given the inapplicability of Article 297 of the Labor Code to the case at bar, it necessarily follows that petitioners' claim for separation pay anchored on such provision must be denied.

Further, it is noteworthy to point out that the NLRC's application of *Abaquin*[27] was gravely misplaced considering its dissimilar factual milieu with the present case.

To elucidate, a careful reading of *Abaquin* shows that the Court merely awarded termination pay on the ground of disease in favor of security guard[28] Antonio Jose because he belonged

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[26] *Supra* note 20, at 70.

[27] *Supra* note 16.

[28] *Abaquin* was decided on October 15, 1990, or before the subsequent amendments to the Labor Code. At that time, the old Article 245 of the

to a "special class of employees x x x deprived of the right to ventilate demands collectively."[29] Thus, notwithstanding the fact that it was Antonio Jose who voluntarily resigned because of his sickness and it was not the security agency which terminated his employment, the Court held that Jose "deserve[d] the full measure of the law's benevolence" and still granted him separation pay because of his situation, particularly, the fact that he could not have organized with other employees belonging to the same class for the purpose of bargaining with their employer for greater benefits on account of the prohibition under the old law.

In this case, it cannot be said that Padillo belonged to the same class of employees prohibited to self-organize which, at

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Labor Code (which was originally designated as Article 291 in the first version of the Labor Code) read that "[s]ecurity guards and other personnel employed for the protection and security of the person, properties and premises of the employer shall not be eligible for membership in any labor organization." **This provision has now been deleted.** In fact, in the case of *Manila Electric Company v. Secretary of Labor*, G.R. No. 91902, May 20, 1991, 197 SCRA 275, 286, the Court ruled that security guards can now join labor organizations, *viz*:

> x x x [W]hile therefore under the old rules, security guards were barred from joining a labor organization of the rank and file, under RA 6715, they may now freely join a labor organization of the rank and file or that of the supervisory union, depending on their rank. By accommodating supervisory employees, the Secretary of Labor must likewise apply the provisions of RA 6715 to security guards by favorably allowing them free access to a labor organization, whether rank and file or supervisory, in recognition of their constitutional right to self-organization.

In relation, Section 18 of Republic Act No. 6715 reads:

> Sec. 18. Article 245 of the same Code, as amended, is hereby further amended to read as follows:
>
> Art. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees. - Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own.

[29] *Supra* note 16, at 468.

present, consist of: (1) managerial employees;[30] and (2) confidential employees who assist persons who formulate, determine, and effectuate management policies in the field of labor relations.[31] Therefore, absent this equitable peculiarity, termination pay on the ground of disease under Article 297 of the Labor Code and the Court's ruling in *Abaquin* should not be applied.

What remains applicable, however, is the Labor Code provision on retirement. In particular, Article 300 of the Labor Code as amended by Republic Act Nos. 7641[32] and 8558[33] partly provides:

> Art. 300. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.
>
> **In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more,** but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age**,** who has served at least five (5) years in the said establishment, **may retire and shall be entitled to retirement**

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[30] See Article 253 (formerly, Article 245) of the Labor Code, as amended.

[31] See *San Miguel Corporation Supervisors and Exempt Union v. Laguesma*, G.R. No. 110399, August 15, 1997, 277 SCRA 370, 374.

[32] AN ACT AMENDING ARTICLE 287 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, BY PROVIDING FOR RETIREMENT PAY TO QUALIFIED PRIVATE SECTOR EMPLOYEES IN THE ABSENCE OF ANY RETIREMENT PLAN IN THE ESTABLISHMENT.

[33] AN ACT AMENDING ARTICLE 287 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, BY REDUCING THE RETIREMENT AGE OF UNDERGROUND MINE WORKERS FROM SIXTY (60) TO FIFTY(50).

pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one half (½) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves. (Emphasis and underscoring supplied)

Simply stated, in the absence of any applicable agreement, an employee must (1) retire when he is at least sixty (60) years of age and (2) serve at least (5) years in the company to entitle him/her to a retirement benefit of at least one-half (½) month salary for every year of service, with a fraction of at least six (6) months being considered as one whole year. Notably, these age and tenure requirements are cumulative and non-compliance with one negates the employee's entitlement to the retirement benefits under Article 300 of the Labor Code altogether.

In this case, it is undisputed that there exists no retirement plan, collective bargaining agreement or any other equivalent contract between the parties which set out the terms and condition for the retirement of employees, with the sole exception of the Philam Life Plan which premiums had already been paid by the Bank.

Neither was it proven that there exists an established company policy of giving early retirement packages to the Bank's aging employees. In the case of *Metropolitan Bank and Trust Company v. National Labor Relations Commission*, it has been pronounced that to be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate.[34] In this relation, petitioners' bare allegation of the solitary case of Lusan cannot — assuming such fact to be true — sufficiently establish that the Bank's grant of an early retirement package to her (Lusan) evolved into an established company practice precisely because of the palpable lack of the element of consistency. As such,

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[34] G.R. No. 152928, June 18, 2009, 589 SCRA 376, 384.

petitioners' reliance on the Lusan incident cannot bolster their claim.

All told, in the absence of any applicable contract or any evolved company policy, Padillo should have met the age and tenure requirements set forth under Article 300 of the Labor Code to be entitled to the retirement benefits provided therein. Unfortunately, while Padillo was able to comply with the five (5) year tenure requirement — as he served for twenty-nine (29) years — he, however, fell short with respect to the sixty (60) year age requirement given that he was only fifty-five (55) years old when he retired. Therefore, without prejudice to the proceeds due under the Philam Life Plan, petitioners' claim for retirement benefits must be denied.

Nevertheless, the Court concurs with the CA that financial assistance should be awarded but at an increased amount. With a veritable understanding that the award of financial assistance is usually the final refuge of the laborer, considering as well the supervening length of time which had sadly overtaken the point of Padillo's death — an employee who had devoted twenty-nine (29) years of dedicated service to the Bank — the Court, in light of the dictates of social justice, holds that the CA's financial assistance award should be increased from ₱50,000.00 to ₱75,000.00, still exclusive of the ₱100,000.00 benefit receivable by the petitioners under the Philam Life Plan which remains undisputed.

Finally, the Court finds no bad faith in any of respondents' actuations as they were within their right, absent any proof of its abuse, to ignore Padillo's misplaced claim for retirement benefits. Respondents' obstinate refusal to accede to Padillo's request is precisely justified by the fact that there lies no basis under any applicable agreement or law which accords the latter the right to demand any retirement benefits from the Bank. While the Court mindfully notes that damages may be recoverable due to an abuse of right under Article 21[35] in conjunction with

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

Article 19 of the Civil Code of the Philippines,[36] the following elements must, however, obtain: (1) there is a legal right or duty; (2) exercised in bad faith; and (3) for the sole intent of prejudicing or injuring another.[37] Records reveal that none of these elements exists in the case at bar and thus, no damages on account of abuse of right may be recovered.

Neither can the grant of an early retirement package to Lusan show that Padillo was unfairly discriminated upon. Records show that the same was merely an isolated incident and petitioners have failed to show that any bad faith or motive attended such disparate treatment between Lusan and Padillo. Irrefragably also, there is no showing that other Bank employees were accorded the same benefits as that of Lusan which thereby dilutes the soundness of petitioners' imputation of discrimination and bad faith. Verily, it is axiomatic that bad faith can never be presumed — it must be proved by clear and convincing evidence.[38] This petitioners were unable to prove in the case at bar.

WHEREFORE, the petition is **PARTLY GRANTED.** Accordingly, the assailed Court of Appeals' Decision dated June 28, 2011 Decision and October 27, 2011 Resolution in CA-G.R. SP No. 03669-MIN are hereby **MODIFIED,** increasing the award of financial assistance of ₱50,000.00 to ₱75,000.00, exclusive of the ₱100,000.00 benefit under the Philam Life Plan.

SO ORDERED.

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

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[36] Art. 19. 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.

[37] *Albenson Enterprises Corp. v. Court of Appeals,* G.R. No. 88694, January 11, 1993, 217 SCRA 16, 25.

[38] *Gatmaitan v. Gonzales,* G.R. No. 149226, June 26, 2006, 492 SCRA, 591, 604, citing *Fernando v. Sto. Tomas,* G.R. No. 112309, July 28, 1994, 234 SCRA 546.

[*] Designated Additional Member per Special Order No. 1408 dated January 15, 2013.

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AGENCY

Contract of — The basis for agency is representation. (Sps. Mamaril *vs.* Boy Scouts of the Phils., G.R. No. 179382, Jan. 14, 2013) p. 400

ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/ MATERIALS PILFERAGE ACT OF 1994 (R.A. NO. 7832)

Differential billing — Refers to the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him. (Manila Electric Co. [MERALCO] *vs*. Atty. Castillo, G.R. No. 182976, Jan. 14, 2013) p. 416

Illegal use of electricity — Prior written notice is required before disconnection of electricity can be effected. (Manila Electric Co. [MERALCO] *vs*. Atty. Castillo, G.R. No. 182976, Jan. 14, 2013) p. 416

— To constitute prima facie evidence thereof, the discovery of a tampered electric meter must have been personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board. *(Id.)*

ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (R.A. NO. 9262)

Limiting qualifications — In case there is a sexual or dating relationship, it is immaterial whether the relationship had ceased for as long as there is sufficient evidence showing the past or present existence of such relationship between

the offender and the victim when the physical harm was committed. (Dabalos *y* San Diego *vs*. RTC, Br. 59, Angeles City [Pampanga], G.R. No. 193960, Jan. 07, 2013) p. 56

— Two limiting qualifications for any act or series of acts to be considered as a crime of violence against women through physical harm, namely: 1) it is committed against a woman or her child and the woman is the offender's wife, former wife, or with whom he has or had sexual or dating relationship or with whom he has a common child; and 2) it results in or is likely to result in physical harm or suffering. *(Id.)*

APPEALS

Appeal from interlocutory order — The remedy against an interlocutory order not subject of an appeal is an appropriate special civil action under Rule 65 provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion. (Calderon *vs*. Roxas, G.R. No. 185595, Jan. 09, 2013) p. 301

Factual findings of labor officials — Factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence. (Gan *vs*. Galderma Philippines, Inc., G.R. No. 177167, Jan. 17, 2013) p. 612

Factual findings of the Court of Appeals — Settled is the rule that when supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court; as such, only errors of law are reviewed by the Court in petitions for review of CA decisions; by way of exception, the Court will exercise its equity jurisdiction and re-evaluate, review and re-examine the factual findings of the CA when, as in this case, the same are contradicting with the findings of the labor tribunals. (Valleno *y* Lucito *vs*. People of the Phils., G.R. No. 192050, Jan. 09, 2013) p. 313

Factual findings of the trial court — Findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. (Escalante *vs*. People of the Phils., G.R. No. 192727, Jan. 09, 2013) p. 332

Perfection of — The perfection of an appeal in the manner and within the period prescribed by law is mandatory. (Escalante *vs*. People of the Phils., G.R. No. 192727, Jan. 09, 2013) p. 332

Petition for review on certiorari to the Supreme Court under Rule 45 — As a general rule, only questions of law may be raised in a petition for review on certiorari because the court is not a trier of facts; when supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court; exceptions: 1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; 3) when there is a grave abuse of discretion; 4) when the judgment is based on a misapprehension of facts; 5) when the findings of fact are conflicting; 6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; 7) when the findings are contrary to those of the trial court; 8) when the findings of fact are conclusions without citation of specific evidence on which they are based; 9) when the findings set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and 10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by evidence on record. (Special People, Inc. Foundation *vs*. Canda, G.R. No. 160932, Jan. 14, 2013) p. 365

— Failure to append relevant pleadings submitted to the RTC and to the CA is not sufficient ground to dismiss the petition. (Metropolitan Bank & Trust Co. *vs.* Absolute Management Corp., G.R. No. 170498, Jan. 09, 2013) p. 200

— The Supreme Court relies on the factual findings of the Court of Appeals or of the trial court in the exercise of its power of review; exceptions. (Special People, Inc. Foundation *vs.* Canda, G.R. No. 160932, Jan. 14, 2013) p. 365

ATTORNEYS

Authority to represent — A private counsel may represent a public official in a case where the latter's personal liability could have resulted. (Gontang *vs*. Engr. Cecilia Alayan, G.R. No. 191691, Jan. 16, 2013) p. 606

Gross negligence — Gross negligence in handling case does not bind the client. (Diona *vs*. Balangue, G.R. No. 173559, Jan. 07, 2013) p. 19

ATTORNEY'S FEES

Award of — Factual, legal or equitable justifications for the award must be set forth not only in the *fallo* but also in the text of the decision. (Manila Electric Co. [MERALCO] *vs*. Atty. Castillo, G.R. No. 182976, Jan. 14, 2013) p. 416

BANGKOSENTRAL NG PILIPINAS (BSP)

Central Bank Circular No. 905 — Does not authorize stipulations charging usurious interest. (Advocates for Truth in Lending, Inc. *vs*. Bangko Sentral Monetary Board, G.R. No. 192986, Jan. 15, 2013) p. 483

Monetary Board — Has authority to enforce Central Bank Circular No. 905. (Advocates for Truth in Lending, Inc. *vs*. Bangko Sentral Monetary Board, G.R. No. 192986, Jan. 15, 2013) p. 483

BILL OF RIGHTS

Right to speedy trial — The Constitution prohibits only the delays that are unreasonable, arbitrary and oppressive, and tend to render rights nugatory. (Sps. Dacudao *vs*. Sec. of Justice Raul M. Gonzales of the Dept. of Justice, G.R. No. 188056, Jan. 08, 2013) p. 96

CERTIORARI

Grave abuse of discretion as a ground — A special civil action for certiorari under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist; grave abuse of discretion, as contemplated by the Rules of Court, is "the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power" that is so patent and gross that it "amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law;" such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order. (Tan, Jr. *vs*. Matsuura, G.R. No. 179003, Jan. 09, 2013) p. 236

Petition for —Issues arising from joinder or misjoinder of parties are the proper subject of certiorari. (Aduan Orpiano *vs*. Sps. Tomas, G.R. No. 178611, Jan. 14, 2013) p. 388

— Only questions of law may be entertained by the Court in a petition for review on certiorari; exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and

undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. (Escalante *vs*. People of the Phils., G.R. No. 192727, Jan. 09, 2013) p. 332

— Will not lie as a substitute for the lost remedy of appeal. *(Id.)*

Writ of — Available only when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law; requisites. (Sps. Dacudao *vs*. Sec. of Justice Raul M. Gonzales of the Dept. of Justice, G.R. No. 188056, Jan. 08, 2013) p. 96

— Does not lie against an interlocutory order of a division of the COMELEC. (Gov. Sadikul A. Sahali *vs*. Commission on Elections, G.R. No. 201796, Jan. 15, 2013) p. 503

— May not be availed of against a body created to perform executive functions. (OCAD *vs*. Bacani, A.M. No. P-12-3099, Jan. 15, 2013) p. 470

CLERKS OF COURT

Duties of — Penalty for failure to issue alias writs of execution despite order and failure to file comment thereon as required. (Ong *vs.* Basiya-Saratan, A.M. No. P-12-3090, Jan. 07, 2013) p. 1

COLLECTIVE BARGAINING AGREEMENT (CBA)

Voluntary arbitration — Plenary jurisdiction and authority of the voluntary arbitrator to interpret the CBA, elucidated. (Goya, Inc. *vs*. Goya, Inc. Employees Union-FFW, G.R. No. 170054, Jan. 21, 2013) p. 645

COMMISSION ON ELECTIONS (COMELEC)

Jurisdiction — Jurisdiction over a petition to cancel a certificate of candidacy lies with the COMELEC sitting in Division, not en banc. (Ibrahim *vs*. COMELEC, G.R. No. 192289, Jan. 08, 2013) p. 116

Powers of — COMELEC has the authority to order the technical examination of election paraphernalia. (Gov. Sadikul A. Sahali *vs*. Commission on Elections, G.R. No. 201796, Jan. 15, 2013) p. 503

Rules of procedure — Decision, order or ruling of any of the Constitutional Commissions may be brought for review to the Supreme Court on certiorari within 30 days from receipt of a copy thereof. (Ibrahim *vs*. COMELEC, G.R. No. 192289, Jan. 08, 2013) p. 116

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Illegal possession of dangerous drugs — Elements are: 1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. (Valleno *y* Lucito *vs*. People of the Phils., G.R. No. 192050, Jan. 09, 2013) p. 313

— Mere possession of a prohibited drug constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused in the absence of satisfactory explanation. *(Id.)*

— To sustain a conviction, the evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused. *(Id.)*

CONSPIRACY

Existence of — Direct proof is not essential as it may be inferred from the collective acts of the accused before, during and after the commission of the crime; it can be presumed from and proven by acts of the accused themselves when the

said acts point to a joint purpose, design, concerted action, and community of interests. (People of the Phils. *vs*. Hong Yen E, G.R. No. 181826, Jan. 09, 2013) p. 280

— One need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. (People of the Phils. *vs*. Espiritu, G.R. No. 180919, Jan. 09, 2013) p. 261

— There is conspiracy if two or more persons agree to commit a felony and decide to commit it. *(Id.)*

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC)

Jurisdiction — Claim from the performance bond in relation to a construction contract falls under the CIAC jurisdiction. (Manila Ins. Co., Inc. *vs*. Sps. Amurao, G.R. No. 179628, Jan. 16, 2013) p. 557

CONTEMPT

Contempt of court — An act must be clearly contrary to or prohibited by the order of the court. (Rivulet Agro-Industrial Corp. *vs*. Paruñgao, G.R. No. 197507, Jan. 14, 2013) p. 444

— The power to punish for contempt should be exercised on the preservative, not on the vindictive principle, and only when necessary in the interest of justice. *(Id.)*

CONTRACTS

Contract of adhesion — Considered binding as any other ordinary contract and a party who enters into it is free to reject the stipulations in its entirety. (Sps. Mamaril *vs*. Boy Scouts of the Phils., G.R. No. 179382, Jan. 14, 2013) p. 400

Rescission of contracts — The party who first breached the contract cannot ask for recission thereof. (Mondragon Personal Sales, Inc. *vs*. Sola, Jr., G.R. No. 174882, Jan. 21, 2013) p. 661

Stipulation pour autrui — The following requisites must concur: (1) There is a stipulation in favor of a third person; (2) The stipulation is a part, not the whole, of the contract; (3) The contracting parties clearly and deliberately conferred a favor to the third person – the favor is not merely incidental; (4) The favor is unconditional and uncompensated; (5) The third person communicated his or her acceptance of the favor before its revocation; and (6) The contracting parties do not represent, or are not authorized, by the third party. (Sps. Mamaril *vs*. Boy Scouts of the Phils., G.R. No. 179382, Jan. 14, 2013) p. 400

CORPORATIONS

Board of Directors — Corporation's board of directors is not rendered functus officio by its dissolution. (Aguirre II *vs*. FQB+7, Inc., G.R. No. 170770, Jan. 09, 2013) p. 216

Corporate liquidation — Corporation Code prohibits a dissolved corporation from continuing its business, but allows it to continue with a limited personality in order to settle and close its affairs, including its complete liquidation. (Aguirre II *vs*. FQB+7, Inc., G.R. No. 170770, Jan. 09, 2013) p. 216

Stocks and stockholders — A party's stockholdings in a corporation, whether existing or dissolved, is a property right which he may vindicate against another party who has deprived him thereof. (Aguirre II *vs*. FQB+7, Inc., G.R. No. 170770, Jan. 09, 2013) p. 216

COURT PERSONNEL

Clerks of Court — Failure to deposit cash collections on time and shortages in the remittances of collections amounts to gross neglect of duty and dishonesty. (OCAD *vs.* Bacani, A.M. No. P-12-3099, Jan. 15, 2013) p. 470

— Failure to issue alias writs of execution despite order and failure to file comment thereon as required, is refusal to perform official duty. *(Id.)*

— The chief administrative officers of their respective courts; they perform a sensitive function as designated custodians of the court's funds, revenues, records, properties, and premises. *(Id.)*

Court stenographer — A temporary court stenographer seeking to be appointed in a permanent position must prove that she has met the prescribed qualification standard for the position. (Magtagñob *vs*. Judge Genie G. Gapas-Agbada, OCAI.P.I. No. 11-3631-RTJ, Jan. 16, 2013) p. 522

CRIMINAL LIABILITY

Extinction of — Upon the death of the accused pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; by the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment. (People of the Phils. *vs*. Agacer, G.R. No. 177751, Jan. 07, 2013) p. 37

DAMAGES

Actual damages — Award thereof requires that the amount of loss be capable of proof and must actually be proven with reasonable degree of certainty. (Manila Electric Co. [MERALCO] *vs*. Atty. Castillo, G.R. No. 182976, Jan. 14, 2013) p. 416

— Must be proved with reasonable degree of certainty and a party is entitled only to such compensation for the pecuniary loss that was duly proven. (Sps. Mamaril *vs*. Boy Scouts of the Phils., G.R. No. 179382, Jan. 14, 2013) p. 400

Award of — Attendance of bad faith in the breach of contract justifies the award of moral and exemplary damages; award of attorney's fees and costs of suit, proper. (Sps. Castro *vs*. Palenzuela, G.R. No. 184698, Jan. 21, 2013) p. 673

— Bad faith can never be presumed, it must be proved by clear and convincing evidence. (Padillo *vs*. Rural Bank of Nabunturan, Inc., G.R. No. 199338, Jan. 21, 2013) p. 697

— When death occurs due to a crime, the following may be recovered: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. (People of the Phils. *vs*. Rarugal alias "Amay Bisaya," G.R. No. 188603, Jan. 16, 2013) p. 592

Exemplary damages — Imposed by way of example or correction for the public good. (Manila Electric Co. [MERALCO] *vs*. Atty. Castillo, G.R. No. 182976, Jan. 14, 2013) p. 416

Moral damages — Award of moral damages in cases where the rights of individuals, including the right against deprivation of property without due process of law, are violated. (Manila Electric Co. [MERALCO] *vs*. Atty. Castillo, G.R. No. 182976, Jan. 14, 2013) p. 416

— Requisites for the award of moral damages: (1) there is an injury whether physical, mental or psychological, which was clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code. *(Id.)*

Temperate damages — Article 2224 of the Civil Code provides that temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty; even if the pecuniary loss suffered by the claimant is capable of proof, an award of temperate damages is not precluded; the grant thereof is drawn from equity to provide relief to those definitely injured. (Manila Electric Co. [MERALCO] *vs*. Atty. Castillo, G.R. No. 182976, Jan. 14, 2013) p. 416

DANGEROUS DRUGS ACT (R.A. NO. 6425)

Chain of custody rule — Not violated as long as the integrity and evidentiary value of the seized items had been preserved. (People of the Phils. *vs*. Hong Yen E, G.R. No. 181826, Jan. 09, 2013) p. 280

Illegal possession of dangerous drugs — Elements of illegal possession are: (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the prohibited drug. (People of the Phils. *vs*. Hong Yen E, G.R. No. 181826, Jan. 09, 2013) p. 280

(People of the Phils. *vs*. Espiritu, G.R. No. 180919, Jan. 09, 2013) p. 261

Illegal sale of dangerous drugs — Essential requisites for illegal sale of shabu are: (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 and the following material requirements: (1) proof that the transaction or sale actually took place and (2) presentation in court of the *corpus delicti* as evidence. (People of the Phils. *vs*. Hong Yen E, G.R. No. 181826, Jan. 09, 2013) p. 280

— Police officer's act of soliciting drugs from appellant during the buy-bust operation, or what is known as the "decoy solicitation," is not prohibited by law. (People of the Phils. *vs*. Espiritu, G.R. No. 180919, Jan. 09, 2013) p. 261

— Receipt of the marked money, whether done before delivery of the drugs or after, is required. (People of the Phils. *vs*. Hong Yen E, G.R. No. 181826, Jan. 09, 2013) p. 280

DEPARTMENT OF JUSTICE (DOJ)

DOJ Order No. 182 — Validity thereof, upheld. (Sps. Dacudao *vs*. Sec. of Justice Raul M. Gonzales of the Dept. of Justice, G.R. No. 188056, Jan. 08, 2013) p. 96

Jurisdiction — Department of Justice not a quasi-judicial office and its preliminary investigation of cases is not a quasi-judicial proceeding. (Sps. Dacudao *vs*. Sec. of Justice Raul M. Gonzales of the Dept. of Justice, G.R. No. 188056, Jan. 08, 2013) p. 96

DUE PROCESS

Concept — The essence of due process is simply the opportunity to be heard; as applied to administrative proceedings, due process is the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of; a formal or trial-type hearing is not at all times and in all instances essential; the requirement is satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand; there is no denial of due process where there is opportunity to be heard, either through oral arguments or pleadings. (Gov. Sadikul A. Sahali *vs*. Commission on Elections, G.R. No. 201796, Jan. 15, 2013) p. 503

ELECTION LAWS

Electoral Reform Law of 1987 (R.A. No. 6646) — The Municipal Board of Canvassers has no authority to suspend proclamation of a winning candidate. (Ibrahim *vs*. COMELEC, G.R. No. 192289, Jan. 08, 2013) p. 116

ELECTIONS

Election disputes — COMELEC is not bound to notify and direct the party therein to file an opposition to the motion. (Gov. Sadikul A. Sahali *vs*. Commission on Elections, G.R. No. 201796, Jan. 15, 2013) p. 503

Election protest — Nature. (Gov. Sadikul A. Sahali *vs*. Commission on Elections, G.R. No. 201796, Jan. 15, 2013) p. 503

Pre-proclamation controversy — Refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of parties before the board or directly with the Commission, or any matter

raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns. (Ibrahim *vs*. COMELEC, G.R. No. 192289, Jan. 08, 2013) p. 116

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogatives — Subject to the limitations found in law, collective bargaining agreement or the general principles of fair play and justice. (Goya, Inc. *vs.* Goya, Inc. Employees Union-FFW, G.R. No. 170054, Jan. 21, 2013) p. 645

EMPLOYMENT, TERMINATION OF

Constructive dismissal and resignation — Distinguished; constructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits; resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. (Gan *vs*. Galderma Philippines, Inc., G.R. No. 177167, Jan. 17, 2013) p. 612

Disease as a ground — Does not contemplate a situation where it is the employee who severs his employment ties. (Padillo *vs*. Rural Bank of Nabunturan, Inc., G.R. No. 199338, Jan. 21, 2013) p. 697

Reinstatement of the employee — Only employees who were not found guilty of an illegal strike and have signed the membership resolution attached to the petition should be reinstated and given backwages. (Automotive Engine Rebuilders, Inc. [AER] *vs*. Progresibong Unyon ng mgaManggagawa sa AER, G.R. No. 160138, Jan. 16, 2013) p. 535

Resignation — Resignation is the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, such that he has no other choice but to disassociate himself from his employment. (Cervantes *vs.* PAL Maritime Corp. and/or Western Shipping Agencies, PTE., LTD., G.R. No. 175209, Jan. 16, 2013) p. 546

— The filing of the complaint one year after his alleged termination, coupled with the clear tenor of his resignation letter should be taken to mean that petitioner's filing of the illegal dismissal case was a mere afterthought. *(Id.)*

— Where a managerial employee submitted a resignation letter, it is incumbent upon him to prove with clear, positive, and convincing evidence that his resignation was not voluntary but was actually a case of constructive dismissal. (Gan *vs*. Galderma Philippines, Inc., G.R. No. 177167, Jan. 17, 2013) p. 612

Retirement — Absent any applicable agreement, the retirement benefits under Article 300 of the Labor Code applies; age and tenure requirements, elucidated. (Padillo *vs*. Rural Bank of Nabunturan, Inc., G.R. No. 199338, Jan. 21, 2013) p. 697

ENVIRONMENT IMPACT SYSTEM LAW (P.D. NO. 1586)

Environmental Compliance Certificate — The grant or denial of an application for ECC/CNC is not an act that is purely ministerial in nature, but one that involves the exercise of judgment and discretion by the Environmental Management Bureau Director or Regional Director. (Special People, Inc. Foundation *vs*. Canda, G.R. No. 160932, Jan. 14, 2013) p. 365

EQUAL PROTECTION CLAUSE

Classification — The equal protection clause of the Constitution does not require the universal application of the laws to all persons or things without distinction; what it requires is simply equality among equals as determined according

to a valid classification. (Sps. Dacudao *vs*. Sec. of Justice Raul M. Gonzales of the Dept. of Justice, G.R. No. 188056, Jan. 08, 2013) p. 96

ESTOPPEL

Doctrine of estoppel by laches — A party may be estopped from raising a jurisdictional question if he has actively taken part in the very proceeding which he questions; belatedly objecting to the court's jurisdiction in the event that the judgment or order subsequently rendered is adverse to him is based on the doctrine of estoppel by laches. (Ibrahim *vs.* COMELEC, G.R. No. 192289, Jan. 08, 2013) p. 116

EVIDENCE

Dying declaration — Requisites. (People of the Phils. *vs*. Rarugal alias "AmayBisaya," G.R. No. 188603, Jan. 16, 2013) p. 592

Weight and sufficiency of — The omission to rebut that which would have naturally invited an immediate, pervasive and stiff opposition creates an adverse inference that either the controverting evidence presented will only prejudice its case, or that the uncontroverted evidence indeed speaks of the truth. (Sps. Castro *vs*. Palenzuela, G.R. No. 184698, Jan. 21, 2013) p. 673

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — A party who seeks the intervention of a court of law upon an administrative concern should first avail himself of all the remedies afforded by administrative processes. (Special People, Inc. Foundation *vs*. Canda, G.R. No. 160932, Jan. 14, 2013) p. 365

FINANCIAL REHABILITATION AND INSOLVENCY ACT OF 2010 (FRIA)

Rules of Procedure on Corporate Rehabilitation — Rehabilitation Court has no authority to suspend foreclosure proceedings against properties of a third-party mortgagor. (Situs Dev. Corp. *vs*. Asiatrust Bank, G.R. No. 180036, Jan. 16, 2013) p. 569

Sec. 146 of — Applicable to all further proceedings in insolvency, suspension of payments and rehabilitation cases; presupposes a prospective application. (Situs Dev. Corp. *vs*. Asiatrust Bank, G.R. No. 180036, Jan. 16, 2013) p. 569

FORUM SHOPPING

Certificate of non-forum shopping — Guidelines for non-compliance with or submission of defective certificate, elucidated. (Anderson *vs*. Ho, G.R. No. 172590, Jan. 07, 2013) p. 6

— Must be executed by the party-pleader, not by his counsel. *(Id.)*

Concept — A willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case, and may also constitute direct contempt; forum shopping is defined as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for certiorari. (Aduan Orpiano *vs*. Sps. Tomas, G.R. No. 178611, Jan. 14, 2013) p. 388

FRAME-UP

Defense of — Requires strong proof when offered as evidence. (People of the Phils. *vs*. Hong Yen E, G.R. No. 181826, Jan. 09, 2013) p. 280

INFORMATION

Allegations — What is controlling in an information is the description of the crime charged and particular facts therein recited. (People of the Phils. *vs*. Amistoso *y* Broca, G.R. No. 201447, Jan. 09, 2013) p. 345

Amendment of — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made; an information may be amended, in form or in substance, without leave of court, at any time before the

accused enters his plea. (Dabalos *y* San Diego *vs*. RTC, Br. 59, Angeles City (Pampanga), G.R. No. 193960, Jan. 07, 2013) p. 56

INSTIGATION

Concept of — Distinguished from entrapment; instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him; instigation differs from entrapment which is the employment of ways and means in order to trap or capture a criminal. (People of the Phils. *vs.* Espiritu, G.R. No. 180919, Jan. 09, 2013) p. 261

INSURANCE

Suretyship — A contract of suretyship is defined as an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of a third party, called the obligee. (Manila Ins. Co., Inc. *vs.* Sps. Amurao, G.R. No. 179628, Jan. 16, 2013) p. 557

JUDGES

Administrative complaint against — While an administrative case against a judge was dismissed, she was reminded to be circumspect in her actuations. (Magtagñob *vs*. Judge Gapas-Agbada, OCAI.P.I. No. 11-3631-RTJ, Jan. 16, 2013) p. 522

JUDGMENT, ANNULMENT OF

Petition — Final judgment may still be set aside if patently null. (Diona *vs*. Balangue, G.R. No. 173559, Jan. 07, 2013) p. 19

JUDGMENTS

Immutability of final judgments — Once a judgment becomes final, it may not be modified in any respect even if the modification is meant to correct what is perceived to be erroneous conclusions of law and fact. (Escalante *vs*. People of the Phils., G.R. No. 192727, Jan. 09, 2013) p. 332

Interlocutory and final orders — Distinguished. (Calderon *vs*. Roxas, G.R. No. 185595, Jan. 09, 2013) p. 301

Relief from judgment — Courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party. (Diona *vs*. Balangue, G.R. No. 173559, Jan. 07, 2013) p. 19

— Effect of failure to plead; extent of relief to be awarded, elucidated. *(Id.)*

JUDICIAL DEPARTMENT

Judicial review — Courts have the power to review findings of prosecutors in preliminary investigations in exceptional cases showing grave abuse of discretion. (Tan, Jr. *vs*. Matsuura, G.R. No. 179003, Jan. 09, 2013) p. 236

JUDICIAL REVIEW

Legal standing/Locus standi — Defined as a right of appearance in a court of justice on a given question. (Advocates for Truth in Lending, Inc. *vs*. Bangko Sentral Monetary Board, G.R. No. 192986, Jan. 15, 2013) p. 483

JURISDICTION

Hierarchy of courts — Unduly disregarded when petitioners went directly to the Supreme Court with their petition for certiorari, prohibition and mandamus without tendering therein any special, important or compelling reason to justify the direct filing of the petition. (Sps. Dacudao *vs*. Sec. of Justice Raul M. Gonzales of the Dept. of Justice, G.R. No. 188056, Jan. 08, 2013) p. 96

Jurisdiction over the defendant — Acquired by its voluntary appearance in court. (Optima Realty Corp. *vs*. Hertz Phil. Exclusive Cars, Inc., G. R. No. 183035, Jan. 09, 2013) p. 288

JUSTICES

Knowingly rendering unjust judgment — Administrative liability will only attach upon proof that the actions of the Justices were motivated by bad faith, dishonesty or hatred, or

attended by fraud or corruption. (*Re*: Verified Complaint of Ama Land, Inc. Against Hon. Danton Q. Bueser, A.M. OCAIPI No. 12-202-CA-J, Jan. 15, 2013) p. 462

Sandiganbayan Justices — Lapse in judgment on the part of the Sandiganbayan Justices deserves admonition. (*Re*: Complaint of Leonardo A. Velasco against Associate Justices Francisco H. Villaruz, Jr., A.M. OCAIPI No. 10-25-SB-J, Jan. 15, 2013) p. 455

LAND TITLES AND DEEDS

Patents — A party in whose name sales patents has been issued cannot feign ignorance of the law which reserves certain lands for recreation and health purposes. (Rep. of the Phils. *vs*. AFP Retirement and Separation Benefits System, G.R. No. 180463, Jan. 16, 2013) p. 574

— Sales patents issued after the land had lost its alienable and disposable character are null and void. *(Id.)*

— Title issued covering non-disposable lot shall be cancelled. *(Id.)*

— Where possession since time immemorial becomes irrelevant and cannot support a claim of ownership or application for a patent. *(Id.)*

LEASE

Contract of — Obligations of the lessor: (1) to deliver the thing which is the object of the contract in such a condition as to render it fit for the use intended; (2) to make on the same during the lease all the necessary repairs in order to keep it suitable for the use to which it has been devoted, unless there is a stipulation to the contrary; and (3) to maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract. (Sps. Mamaril *vs*. Boy Scouts of the Phils., G.R. No. 179382, Jan. 14, 2013) p. 400

— The act of parking a vehicle in a garage, upon payment of a fixed amount, is a lease. *(Id.)*

— The expiry of the period agreed upon by the parties is a ground for judicial ejectment. (Optima Realty Corp. *vs*. Hertz Phils. Exclusive Cars, Inc., G. R. No. 183035, Jan. 09, 2013) p. 288

— The lessee's adoption of the lessor's demand letter charging additional rent, as their own evidence in seeking a reduction in the trial court's award of unpaid rent, constitutes an admission of liability to the extent of such lesser amount. (Sps. Castro *vs*. Palenzuela, G.R. No. 184698, Jan. 21, 2013) p. 673

— The lessor may judicially eject the lessee for failure to pay timely rentals and utility charges. *(Id.)*

LEGAL ETHICS

Misconduct — Means intentional wrongdoing or deliberate violation of a rule of law or a standard of behaviour; to constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions of a public officer. (*Re*: Complaint of Leonardo A. Velasco against Associate Justices Francisco H. Villaruz, Jr., A.M. OCAIPI No. 10-25-SB-J, Jan. 15, 2013) p. 455

LITIS PENDENTIA

Doctrine of — Elements of *litis pendentia* are: (1) Identity of parties, or at least their representation of the same interests in both actions; (2) Identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (3) Identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other case. (Optima Realty Corp. *vs*. Hertz Phil. Exclusive Cars, Inc., G.R. No. 183035, Jan. 09, 2013) p. 288

LOANS

Interests — The Central Bank Monetary Board merely suspended the effectivity of the usury law when it issued CB Circular No. 905. (Advocates for Truth in Lending, Inc. *vs*. Bangko Sentral Monetary Board, G.R. No. 192986, Jan. 15, 2013) p. 483

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Term of office of elective local officials — Involuntary interruption of office term, elucidated. (Mayor Abelardo Abundo, Sr. *vs*. COMELEC, G.R. No. 201716, Jan. 08, 2013) p. 135

— Service less than the full three years term by an elected official declared as such upon an election protest is not full service of the term for purposes of applying the three consecutive term limit for elective local officials. *(Id.)*

— Three-term limit rule; interruption of a term that would prevent the operation of the rule involves no less than the involuntary loss of title to office or at least an effective break from holding office; preventive suspension is an involuntary imposition, what it affects is merely the authority to discharge the functions of an office that the suspended local official continues to hold. (Mayor Abelardo Abundo, Sr. *vs*. COMELEC, G.R. No. 201716, Jan. 08, 2013; *Brion, J., separate opinion*) p. 135

— Three-term limit rule; prevailing jurisprudence, elucidated. (Mayor Abelardo Abundo, Sr. *vs*. COMELEC, G.R. No. 201716, Jan. 08, 2013) p. 135

— Three-term limit rule; requisites are: (1) that the official concerned has been elected for three consecutive terms in the same local government post; and (2) that he has fully served three consecutive terms. *(Id.)*

MANDAMUS

Petition for — Available only when there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. (Special People, Inc. Foundation *vs*. Canda, G.R. No. 160932, Jan. 14, 2013) p. 365

— Lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary. *(Id.)*

— Will issue only when the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same. *(Id.)*

MARRIAGES

Concept — Marriage is an inviolable social institution protected by the State. (Rep. of the Phils. *vs*. Encelan, G.R. No. 170022, Jan. 09, 2013) p. 192

MITIGATING CIRCUMSTANCES

Privileged mitigating — Minority; appreciated even if belatedly presented for consideration. (People of the Phils. *vs.* Agacer, G.R. No. 177751, Jan. 07, 2013) p. 37

MOOT AND ACADEMIC CASES

Concept — For clarification of a legal principle, the Court should still resolve the case despite the occurrence of a supervening event. (Goya, Inc. *vs*. Goya, Inc. Employees Union-FFW, G.R. No. 170054, Jan. 21, 2013) p. 645

MOTION FOR RECONSIDERATION

Grant or denial of — The Trial Court possesses sufficient discretion to grant or deny the hearing sought by the parties for their motion for reconsideration. (Sps. Castro *vs*. Palenzuela, G.R. No. 184698, Jan. 21, 2013) p. 673

NATIONAL LABOR RELATIONS COMMISSION

Rules of procedure — Where late submission of the joint declaration on appeal considered as substantial compliance. (Cervantes *vs*. PAL Maritime Corp. and/or Western Shipping Agencies, PTE., LTD., G.R. No. 175209, Jan. 16, 2013) p. 546

OBLIGATIONS, EXTINGUISHMENT OF

Legal compensation — Requires the concurrence of the following conditions: (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) That the two debts be due; (4) That they be liquidated and demandable; (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. (Mondragon Personal Sales, Inc. *vs*. Sola, Jr., G.R. No. 174882, Jan. 21, 2013) p. 661

PARTIES TO CIVIL ACTIONS

Misjoinder and non-joinder of parties — Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. (Aduan Orpiano *vs*. Sps. Tomas, G.R. No. 178611, Jan. 14, 2013) p. 388

PENALTIES

Imposition of — Proper penalty for murder committed by a minor; elucidated. (People of the Phils. *vs*. Agacer, G.R. No. 177751, Jan. 07, 2013) p. 37

PRELIMINARY INJUNCTION

Writ of—Injunction will not issue on the mere possibility that a litigant will sustain damage, without proof of a clear legal right entitling the litigant to protection. (Exec. Sec. *vs*. Forerunner Multi Resources, Inc., G.R. No. 199324, Jan. 07, 2013) p. 64

— The sole object of a preliminary injunction is to preserve the status quo of the parties until the merits of the case can be heard; a writ of preliminary injunction may be issued only upon clear showing by the applicant of the existence of the following: 1) a right in esse or a clear and unmistakable right to be protected; 2) a violation of that

right; and 3) an urgent and paramount necessity for the writ to prevent serious damage; in the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. *(Id.)*

(TML Gasket Industries, Inc. *vs*. BPI Family Savings bank, Inc., G.R. No. 188768, Jan. 07, 2013) p. 44

PRELIMINARY INVESTIGATION

Probable cause — Private individuals may be indicted for violation of Article 171(2) of the Revised Penal Code only if it is shown that they conspired with a public officer, employee or notary public in the commission thereof. (Tan, Jr. *vs*. Matsuura, G.R. No. 179003, Jan. 09, 2013) p. 236

— Probable cause can only find support in facts and circumstances that would lead a reasonable mind to believe that the person being charged warrants a prosecution. *(Id.)*

— Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof. *(Id.)*

PRESUMPTIONS

Presumption of in the performance of official duties — The testimonies of the police officers in dangerous drugs cases carry with it the presumption of regularity in the performance of official functions. (Valleno *y* Lucito *vs*. People of the Phils., G.R. No. 192050, Jan. 09, 2013) p. 313

PROCEDURAL RULES

Retroactive application — Laws shall have no retroactive effect, and one such exception concerns a law that is procedural in nature. (Sps. Dacudao *vs*. Sec. of Justice Raul M. Gonzales of the Dept. of Justice, G.R. No. 188056, Jan. 08, 2013) p. 96

PROVISIONAL REMEDIES

Nature — Provisional remedies are writs and processes available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case. (Calderon *vs.* Roxas, G.R. No. 185595, Jan. 09, 2013) p. 301

PUBLIC UTILITIES

Manila Electric Company — Discontinuance of service; forty eight-hour notice rule, when applied. (Manila Electric Co. [MERALCO] vs. Atty. Castillo, G.R. No. 182976, Jan. 14, 2013) p. 416

QUALIFYING CIRCUMSTANCES

Minority and relationship to the victim — Both minority and actual relationship must be alleged and proved; otherwise, conviction for rape in its qualified form will be barred. (People of the Phils. *vs.* Buado, Jr. *y* Cipriano, G.R. No. 170634, Jan. 08, 2013) p. 72

Treachery — Treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. (People of the Phils. *vs.* Rarugal alias "Amay Bisaya," G.R. No. 188603, Jan. 16, 2013) p. 592

QUASI-CONTRACTS

Concept — A quasi-contract involves a juridical relation that the law creates on the basis of certain voluntary, unilateral and lawful acts of a person, to avoid unjust enrichment. (Metropolitan Bank & Trust Co. *vs.* Absolute Management Corp., G.R. No. 170498, Jan. 09, 2013) p. 200

QUASI-DELICT

Proximate cause — Has been defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury or loss, and without which the result would not have occurred. (Sps. Mamaril *vs*. Boy Scouts of the Phils., G.R. No. 179382, Jan. 14, 2013) p. 400

Vicarious liability — The vicarious liability of an employer does not apply in the absence of an employer-employee relationship. (Sps. Mamaril *vs*. Boy Scouts of the Phils., G.R. No. 179382, Jan. 14, 2013) p. 400

RAPE

Commission of — Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief; the victim may choose to keep quiet rather than expose her defilement to the cruelty of public scrutiny; only when the delay is unreasonable or unexplained may it work to discredit the complainant. (People of the Phils. *vs.* Buado, Jr. *y* Cipriano, G.R. No. 170634, Jan. 08, 2013) p. 72

— Presence or absence of injury or laceration in the genitalia of the victim is not decisive of whether rape has been committed or not. *(Id.)*

Prosecution for — In reviewing rape convictions, the Court has been guided by three principles, namely: (a) that an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime of rape as involving only two persons, the rapist and the victim, the testimony of the complainant must be scrutinized with extreme caution; and (c) that the evidence for the Prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. (People of the Phils. *vs*. Buado, Jr. *y* Cipriano, G.R. No. 170634, Jan. 08, 2013) p. 72

Qualified rape — Death penalty proper for qualified rape but is modified to *reclusion perpetua* without eligibility for parole under R.A. No. 9346. (People of the Phils. *vs.* Buado, Jr. *y* Cipriano, G.R. No. 170634, Jan. 08, 2013) p. 72

— Elements are: (a) the victim is a female over 12 years but under 18 years of age; (b) 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; and (c) the offender has carnal knowledge of the victim either through force, threat, or intimidation. (People of the Phils. *vs.* Amistoso *y* Broca, G.R. No. 201447, Jan. 09, 2013) p. 345

REGIONAL TRIAL COURT

Jurisdiction — The Regional Trial Court designated as a Family Court shall have original and exclusive jurisdiction over cases of violence against women and their children under this law; in the absence of such court in the place where the offense was committed, the case shall be filed in the Regional Trial Court where the crime or any of its elements was committed at the option of the complainant. (Dabalos *y* San Diego *vs.* RTC, Br. 59, Angeles City (Pampanga), G.R. No. 193960, Jan. 07, 2013) p. 56

SEARCH AND SEIZURE

Validity of search — A search may be conducted even in the absence of the lawful occupant provided that two witnesses are present. (Valleno *y* Lucito *vs.* People of the Phils., G.R. No. 192050, Jan. 09, 2013) p. 313

SECURITIES REGULATION CODE (R.A. NO. 8799)

Intra-corporate dispute — As long as the nature of the controversy is intra-corporate, the designated Regional Trial Courts have the authority to exercise jurisdiction over such cases. (Aguirre II *vs.* FQB+7, Inc., G.R. No. 170770, Jan. 09, 2013) p. 216

SETTLEMENT OF ESTATE OF DECEASED PERSON

Claims against estate — For claims against the deceased, specific provisions therein prevail against general provisions for ordinary claims. (Metropolitan Bank & Trust Co. *vs*. Absolute Management Corp., G.R. No. 170498, Jan. 09, 2013) p. 200

— Includes quasi-contracts. *(Id.)*

SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTIVE DECREE (P.D. NO. 957)

Scope — Includes complaints for annulment of mortgages of condominium or subdivision units. (Phil. Bank of Communications *vs.* Pridisons Realty Corp., G.R. No. 155113, Jan. 09, 2013) p. 178

Section 1 — Section 1 of P.D. No. 957 limits the HLURB's jurisdiction to three kinds of cases: (a) Unsound real estate business practices; (b) Claims involving refund and any other claims filed by subdivision lot or condominium unit buyers against the project owner, developer, dealer, broker or salesman; and (c) Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, dealer, broker or salesman. (Phil. Bank of Communications *vs*. Pridisons Realty Corp., G.R. No. 155113, Jan. 09, 2013) p. 178

Section 18 — Section 18 of P.D. No. 957 applies to mortgages constituted over existing condominium or subdivision projects. (Phil. Bank of Communications *vs*. Pridisons Realty Corp., G.R. No. 155113, Jan. 09, 2013) p. 178

SUPPORT

Support pendente lite — Orders relative to the incident of support *pendente lite* are interlocutory. (Calderon *vs*. Roxas, G.R. No. 185595, Jan. 09, 2013) p. 301

SUPREME COURT

Jurisdiction — Jurisdiction of the Supreme Court in cases brought before it from the Court of Appeals via Rule 45 is generally limited to reviewing errors of law or jurisdiction. (Gan *vs*. Galderma Philippines, Inc., G.R. No. 177167, Jan. 17, 2013) p. 612

VOID MARRIAGES

Psychological incapacity — Elucidated. (Rep. of the Phils. *vs*. Encelan, G.R. No. 170022, Jan. 09, 2013) p. 192

— Interpersonal problems with co-workers, not equated with psychological incapacity. *(Id.)*

— Sexual infidelity and abandonment of the conjugal dwelling do not necessarily constitute psychological incapacity. *(Id.)*

WITNESSES

Credibility of — Assessment of the trial courts are entitled to respect unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case. (People of the Phils. *vs*. Buado, Jr. *y* Cipriano, G.R. No. 170634, Jan. 08, 2013) p. 72

— Factual findings of the trial court, especially when affirmed by the Court of Appeals are entitled to great weight and respect since the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions. (People of the Phils. *vs*. Rarugal alias "Amay Bisaya," G.R. No. 188603, Jan. 16, 2013) p. 592

— Not adversely affected by alleged motives of family feuds, resentment, or revenge in rape cases. (People of the Phils. *vs*. Amistoso *y* Broca, G.R. No. 201447, Jan. 09, 2013) p. 345

— Testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence. (Valleno *y* Lucito *vs*. People of the Phils., G.R. No. 192050, Jan. 09, 2013) p. 313

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