PHILIPPINE REPORTS

VOL. 703

FEBRUARY 6, 2013 TO FEBRUARY 13, 2013

VOLUME 703

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 6, 2013 TO FEBRUARY 13, 2013

SUPREME COURT
MANILA
2015

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2015

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

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

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

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

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

MARIA CORAZON RACELA MILLARES
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES

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

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

FIRST DIVISION

Chairperson

Hon. Maria Lourdes P.A. Sereno

Members

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

Division Clerk of Court

Atty. Edgar O. Aricheta

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

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

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Presbitero J. Velasco, Jr.

Members

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

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS

CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 625

IV. CITATIONS 655

PHILIPPINE REPORTS

Page

Alcaraz, Marilou – Government Service
Insurance System *vs.* 91
Alviz *y* Yatco, et al., Linda – People of the Philippines *vs.* 58
Ambassador Hotel, Inc., et al. – Nerie C. Serrano *vs.* 213
Amdengan, etc., Judge Michael M. –
Atty. Manuel J. Jimenez, Jr. *vs.* 448
Bank of the Philippine Islands – Rowena De Leon Cruz *vs.* 504
Bartolome *y* Bajo, Noel – People of the Philippines *vs.* 148
Castro, Eden V. *vs.* Judge Oscar E. Dinopol, etc. 290
Cavite Apparel, Incorporated, et al. *vs.* Michelle Marquez 46
Chiu, Antonio *vs.* Court of Appeals, et al. 201
Chiu, Antonio *vs.* Jasper T. Tan 201
Commissioner of Internal Revenue – Philacor Credit
Corporation *vs.* 26
– Philez Mining Corporation *vs.* 311
– Taganito Mining Corporation *vs.* 310
Commissioner of Internal Revenue *vs.* San Roque
Power Corporation 310
Court of Appeals, et al. – Antonio Chiu *vs.* 201
Cruz, Rowena De Leon *vs.* Bank of the Philippine Islands 504
De Jesus *y* Garcia, Victor – People of the Philippines *vs.* 169
Department of Justice, et al. – Loreli Lim Po *vs.* 201
Dinopol, etc., Judge Oscar E. – Eden V. Castro *vs.* 290
– Engr. Roque C. Facura, et al. *vs.* 290
– Roque C. Facura, et al. *vs.* 289
– Rosalinda G. Farofaldane, et al. 290
– Joewel Palad *vs.* 289
– Eduardo Panes, Jr., et al. *vs.* 289
Eastern Telecommunications Philippines, Inc. –
Philippine Long Distance Telephone Company *vs.* 1
Equator Knights Detective and Security Agency, Inc. –
Jonathan I. Sang-an *vs.* 492
Esguerra, etc., Pedro S. – Erlinda C. Mendoza *vs.* 435
Facura, et al., Engr. Roque C. *vs.* Judge Oscar E.
Dinopol, etc. 290
Facura, et al., Roque C. *vs.* Judge Oscar E. Dinopol, etc. 289
Farofaldane, et al., Rosalinda G. *vs.* Judge Oscar E.
Dinopol, etc. 290

Page

Figuracion-Gerilla, Emilia – Carolina (Carlina) *Vda. de* Figuracion, et al. *vs.* 455
Fortun, Philip Sigfrid A. *vs.* Prima Jesusa B. Quinsayas, et al. 578
Galido *y* Noble, James – People of the Philippines *vs.* 557
Goldkey Development Corporation *vs.* International Exchange Bank 478
Government Service Insurance System *vs.* Marilou Alcaraz 91
Goyanko, Jr., as administrator of the Estate of Joseph Goyanko, Sr., Joseph *vs.* United Coconut Planters Bank, et al. 76
Gregorio Araneta University Foundation – Heirs of Manuel H. Ridad, et al. *vs.* 531
International Exchange Bank – Goldkey Development Corporation *vs.* 478
International Exchange Bank – Heirs of Fe Tan Uy (Represented by her heir, Manling Uy Lim) *vs.* 477
Jimenez, Jr., Atty. Manuel J. *vs.* Judge Michael M. Amdengan, etc. 448
Landbank of the Philippines *vs.* Spouses Placido and Clara Dy Orilla 565
Langcua *y* Daimla, Saiben – People of the Philippines *vs.* 115
Manalao *y* Alauya, Malik – People of the Philippines *vs.* 101
Manlapaz, Victoriano G. *vs.* Judge Manuel T. Sabillo, etc. 441
Mapoy, et al., Rodrigo V. – Office of the Ombudsman *vs.* 600
Marquez, Michelle – Cavite Apparel, Incorporated, et al. *vs.* 46
Martinez *y* Goco/Ramon Goco *y* Martinez @ Mon, Ramon *vs.* People of the Philippines 609
Mendoza, Erlinda C. *vs.* Pedro S. Esguerra, etc. 435
Office of the Ombudsman *vs.* Rodrigo V. Mapoy, et al. 600
Orilla, Spouses Placido and Clara Dy – Landbank of the Philippines *vs.* 565
Palad, Joewel *vs.* Judge Oscar E. Dinopol, etc. 289
Panes, Jr., et al., Eduardo *vs.* Judge Oscar E. Dinopol, etc. 289
People of the Philippines – Ramon Martinez *y* Goco/Ramon Goco *y* Martinez @ Mon *vs.* 609

Page

People of the Philippines – Don Djowel Sales *y* Abalahin *vs.* 133
People of the Philippines *vs.* Linda Alviz *y* Yatco, et al. 58
Noel Bartolome *y* Bajo 148
Victor De Jesus *y* Garcia 169
James Galido *y* Noble 557
Saiben Langcua *y* Daimla 115
Malik Manalao *y* Alauya 101
PO2 Eduardo Valdez, et al. 519
Jonathan "Uto" Veloso *y* Rama 541
Philacor Credit Corporation *vs.* Commissioner of Internal Revenue 26
Philez Mining Corporation *vs.* Commissioner of Internal Revenue 311
Philippine Long Distance Telephone Company *vs.* Eastern Telecommunications Philippines, Inc. 1
Philippine Transmarine Carriers, Inc., and/or SSC Ship Management Pte., Ltd. – Susana R. Sy 190
Po, Loreli Lim *vs.* Department of Justice, et al. 201
Po, Loreli Lim *vs.* Jasper T. Tan 201
Quinsayas, et al., Prima Jesusa B. – Philip Sigfrid A. Fortun *vs.* 578
Re: Request of (Ret.) Chief Justice Artemio V. Panganiban for Re-computation of his Creditable Service for the Purpose of Re-computing his Retirement Benefits 227
Ridad, et al., Heirs of Manuel H. *vs.* Gregorio Araneta University Foundation 531
Sabillo, etc., Judge Manuel T. – Victoriano G. Manlapaz *vs.* 441
Sales *y* Abalahin, Don Djowel *vs.* People of the Philippines 133
Sang-an, Jonathan I. *vs.* Equator Knights Detective and Security Agency, Inc. 492
San Roque Power Corporation – Commissioner of Internal Revenue *vs.* 310
Serrano, Nerie C. *vs.* Ambassador Hotel, Inc., et al. 213

Page

Sy, Susana R. *vs*. Philippine Transmarine Carriers, Inc.,
and/or SSC Ship Management Pte., Ltd. 190
Taganito Mining Corporation *vs*. Commissioner
of Internal Revenue 310
Tan Uy (Represented by her heir, Manling Uy Lim),
Heirs of Fe *vs*. International Exchange Bank 477
Tan, Jasper T. – Antonio Chiu *vs*. 201
Tan, Jasper T. – Loreli Lim Po *vs*. 201
United Coconut Planters Bank, et al. –
Joseph Goyanko, Jr., as administrator of the
Estate of Joseph Goyanko *vs*. 76
Valdez, et al., PO2 Eduardo – People of the Philippines *vs*. 519
Vda. de Figuracion, et al., Carolina (Carlina) *vs*.
Emilia Figuracion-Gerilla 455
Veloso *y* Rama, Jonathan "Uto" –
People of the Philippines *vs*. 541

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 163037. February 6, 2013]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, *petitioner, vs.* **EASTERN TELECOMMUNICATIONS PHILIPPINES, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC PRINCIPLE; A COURT MAY DECLINE JURISDICTION OF A CASE WHERE THERE IS NO JUSTICIABLE CONTROVERSY; CASE AT BAR.— [I]n *Gancho-on v. Secretary of Labor and Employment*, the Court emphatically stated that: "It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition." Applying the above pronouncement, there was no justiciable controversy anymore in the instant petition in view of the expiration of the Compromise Agreement sought to be enforced. There was no longer any purpose in determining whether the Court of Appeals erred in affirming the RTC Orders dated October 31, 2001 and April 10, 2002 since any declaration thereon would be of

no practical use or value. By the very admission of PLDT, it can no longer be compelled to undo its act of blocking the telecommunication calls and data from the Philippines to Hong Kong passing through the REACH-ETPI circuits since, effectively, there were no more circuits to speak of. Clearly, any decision of this Court on the present petition, whether it be an affirmance or a reversal of the Amended Decision of the Court of Appeals, would be equivalent in effect to an affirmance or an invalidation of the challenged Orders of the RTC. But as can be gleaned from the x x x discussion, and as succinctly put by PLDT in its Memorandum, there is nothing more for the RTC to enforce and/or act upon. As such, any discussion on the matter would be a mere surplusage. Although the moot and academic principle admits of certain exceptions, none of them are applicable in the instant case.

APPEARANCES OF COUNSEL

Angara Abello Cocepcion Regala & Cruz for petitioner.
Romulo Mabanta Buenaventura Sayoc & Delos Angeles for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J*.:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeks the reversal of the Amended Decision[2] dated November 19, 2003 and the Resolution[3] dated March 30, 2004 of the Court of Appeals in CA-G.R. SP No. 71103. In the assailed Amended Decision, the appellate court set aside its earlier Decision[4] dated December 26, 2002; while in the assailed

---

[1] *Rollo* (Vol. I), pp. 12-83.

[2] *Id.* at 86-93; penned by Associate Justice Eubulo G. Verzola with Associate Justices Ruben T. Reyes and Amelita G. Tolentino, concurring.

[3] *Id.* at 96-98.

[4] *Id.* at 1000-1017; penned by Associate Justice Candido V. Rivera with Associate Justices Eubulo G. Verzola and Amelita G. Tolentino, concurring.

Resolution, the appellate court denied the Motion for Reconsideration[5] filed by petitioner Philippine Long Distance Telephone Company (PLDT) on the Amended Decision.

The factual and procedural antecedents of the case are as follows:

On February 9, 1990, Judge Zeus Abrogar of the Regional Trial Court (RTC) of Makati City, Branch 150, rendered a Decision[6] in **Civil Case No. 17694**, approving the **Compromise Agreement** dated February 7, 1990 submitted by PLDT and respondent Eastern Telecommunications Philippines, Inc. (ETPI). The relevant portions of the Decision read:

DECISION

Acting on the Compromise Agreement submitted by the parties, assisted by their respective counsels, dated February 7, 1990, which is hereunder quoted as follows:

"COMPROMISE AGREEMENT

x x x x x x x x x

1. In lieu of the revenue sharing provisions in the letter-agreement dated September 29, 1978, the parties hereby agree that the Philippine share of all revenues derived from the incoming and outgoing international public telephone traffic of PLDT using the facilities of ETPI between Singapore-Philippines, Taiwan-Philippines, and Hongkong-Philippines traffic streams, shall be divided as follows:

	PLDT SHARE	ETPI SHARE
January 1, 1987 – To date of this Agreement	42%	58%
Agreement date to December 31, 1990	46%	54%
January 1, 1991 – December 31, 1991	47%	53%
January 1, 1992 – December 31, 1992	48%	52%
January 1, 1993 until termination	60%	40%

---

5 *Id.* at 1048-1094.

6 *Rollo* (Vol. II), pp. 1161-1167.

PLDT shall be responsible for uncollectible revenue billed by it and for any commissions paid to hotels or other similar establishments for originating messages therefrom and any commission paid on messages originating at public telephones covered by the Agreement. It is understood and agreed that report charges for incompleted calls shall belong to PLDT alone.

2. The Philippine share of revenue available for division between the two parties in terms of Philippine currency under paragraph 1 above will be determined in the following manner:

(a) On originating calls the total amounts due to be paid to the foreign administration in terms of U.S. dollars based on established accounting rates will be determined at the end of each month. This amount will be converted at the current rate of exchange prevailing at the end of each month which will then be deducted from the total amount of Philippine charges on originating calls for the month involved. The balance of the charges collected will then be divided in accordance with paragraph 1 above.

(b) On incoming calls, the Philippine share of revenue in terms of U.S. dollars will be determined at the end of each month through correspondence with each foreign administration involved. This amount will then be converted to Philippine currency at the current rate of exchange prevailing at the end of said month and the total resulting revenue will also be available for division in accordance with paragraph 1 above.

3. PLDT agrees and guarantees to course all outgoing telephone traffic to Singapore and Taiwan through the PLDT and ETPI circuits and facilities connecting the Philippines-Singapore and the Philippines-Taiwan streams in the same proportion as the number of circuits provided separately by both PLDT and ETPI to each such country bears to the total number of circuits separately provided by PLDT and ETPI with Singapore-Telecoms for Singapore and ITA-Taiwan under their respective correspondentship agreements. Both parties agree to exert their best efforts to persuade Singapore-Telecoms of Singapore and ITA-Taiwan of Taiwan to course the incoming telephone traffic to the Philippines in the same proportion. Neither party shall undertake any action to frustrate this intent.

PLDT guarantees that all the outgoing telephone traffic to Hongkong destined to ETPI's correspondent therein, Cable &

Wireless Hongkong Ltd., its successors and assigns, shall be coursed by PLDT through the ETPI provided circuits and facilities between the Philippines and Hongkong.

4. The parties hereto agree that the revenue sharing under this Agreement applies only to traffic passing [through] ETPI provided circuits originating or terminating in the Philippines, and to and from the telephone administrations in Hongkong (Cable & Wireless Hongkong Ltd., its successors and assigns), Singapore, (Singapore-Telecoms) and Taiwan (ITA-Taiwan) with which ETPI has and continues to maintain operating agreements involved in the public telephone service during the life of this agreement.

In the event ETPI obtains correspondentships with other telephone administrations, it may enter into separate agreements with PLDT.

x x x x x x x x x

7. During the effectiv[ity] of this Agreement:

(a) The parties agree to adopt a common accounting rate for the existing as well as for all the additional circuits that may be activated after the date of this Agreement in their respective relationships with the foreign administrations with which both parties hereto have correspondentships.

(b) Transit traffic will be allowed the use of the facilities supplied by the parties to optimize the utilization of said facilities. The Philippine share or revenues derived from this traffic, using the circuits provided by ETPI, shall be divided between the parties in accordance with paragraph 1 hereinabove.

x x x x x x x x x

11. **Neither party shall use or threaten to use its gateway or any other facilities to subvert the purposes of this Agreement**.

12. Upon (a) the approval of the respective Boards of ETPI and PLDT, and (b) the approval of this Honorable Court, **this Agreement shall take effect and shall continue in effect until November 28, 2003, provided that a written notice of termination is given by one party to the other not later than November 28, 2001. In the absence of such written notice, this Agreement shall continue in effect beyond November 28, 2003 but may be terminated thereafter by either party by giving to the other a prior two year written notice of termination**.

The parties agree that in the event ETPI commences to operate its own international gateway in the Philippines and PLDT is legally obligated to interconnect ETPI's gateway to PLDT's telecommunications system, this revenue sharing agreement shall be terminated effective upon ETPI and PLDT entering to an agreement on an access charge or other superseding agreement or PLDT being ordered by competent authority to interconnect upon ETPI's paying an access charge in an amount mandated by the proper government agency.

x x x x x x x x x

15. **In the event of breach, the parties may obtain judicial relief, including a writ of execution**.

16. The parties hereto have secured the approval of the resolutions by their respective boards authorizing the signatories hereto to execute this Compromise Agreement and bind the respective companies thereto. The certificates of the respective Corporate Secretaries are attached hereto and made an integral part hereof."

and finding the foregoing Compromise Agreement to be not contrary to law, morals, good customs, public order and public policy, as prayed for, the Court APPROVES the same, and renders judgment ordering the parties thereto to comply with all the terms and conditions of said agreement.

IN VIEW THEREOF, this case is considered CLOSED. No pronouncement as to costs. (Emphases ours.)

Thereafter, on September 4, 1997 and December 24, 1998 ETPI filed, respectively, a Motion for Enforcement/Execution and an Urgent Motion, alleging, among others, that PLDT violated the terms of the above Compromise Agreement. For its part, PLDT filed its Opposition with Compulsory Counter-Motion, claiming that it was ETPI that breached their Compromise Agreement by failing to pay the revenue shares of PLDT and by engaging in toll bypass activities.

Subsequently, PLDT and ETPI jointly moved for a suspension of the proceedings in order for them to explore the possibility of an amicable settlement of the case. The RTC agreed thereto.

Thereafter, on March 29, 1999, PLDT and ETPI arrived at a **Letter-Agreement**, the pertinent terms of which state:

March 29, 1999

Mr. Manuel V. Pangilinan
President and CEO
PHILIPPINE LONG DISTANCE TELEPHONE CO.
7th Flr., Ramon Cojuangco Building
Makati Avenue, Makati City

Dear Mr. Pangilinan:

We appreciate your decision to interconnect our International Gateway Facility (IGF) with your telecommunication systems with a view of providing more adequate and efficient telephone services to the public.

We confirm our agreement to sign PLDT's standard interconnection agreement(s) with a provisional ready for service (PRFS) date of May 1, 1999, as we further agree as follows:

a) Notwithstanding our signing of the Interconnection Agreement(s), **we shall continue to negotiate within the shortest possible time for a mutually acceptable agreement which will amend our existing Compromise Agreement which was approved by the Court on February 9, 1990 in Civil Case No. 17694**.

b) We shall continuously endeavor to improve the quality, capacity and efficiency of our interconnections.

c) In the meantime, PLDT shall continue coursing outbound telephone calls as provided in paragraph 3 of the Compromise Agreement through the ETPI provided circuits. With respect to the issue regarding New World Telephone as embodied in our Urgent Motion dated December 24, 1998 in Civil Case No. 17694, ETPI agrees to withdraw said urgent motion provided PLDT limits traffic passing through its circuits with New World Telephone to calls from Hongkong to the Philippines.

d) PLDT's claims involving alleged uncompensated bypass of PLDT's systems after June 30, 1998 shall be submitted to the National Telecommunications Commission for resolution. Until final resolution is rendered, PLDT's bypass compensation claims after June 30, 1998 shall be held in abeyance.

e) **Without prejudice to other claims of PLDT and ETPI against each other, which they endeavor to settle amicably or through arbitration**,

- ETPI and PLDT agree to submit ETPI's claims for underreporting of ETPI share of revenues under the Compromise Agreement (based on SGV Audit) to arbitration.
- ETPI agrees to pay PLDT the amount of PHP207,900,000 representing PLDT's share under the revenue sharing provisions of the Compromise Agreements as of June 30, 1998. Further, all subsequent settlements would be rendered regularly in accordance with the provisions of the Compromise Agreement.
- PLDT agrees to pay ETPI the amount of PHP67,500,000 representing settlement of ETPI's claim with respect to Philippines-Hongkong traffic shortfall and ETPI's alleged share of revenue generated from the activation of additional or growth circuits in the Philippine-Singapore traffic stream, both up to June 30, 1998.
- Without admitting any liability therefor, but merely in the spirit of cooperation to facilitate the execution of its Interconnection Agreements, ETPI agrees to pay PLDT the amount of PHP40,000,000 for alleged uncompensated network bypass of PLDT's system for the period ending June 30, 1998.

x x x x x x x x x

We likewise agree that to facilitate the resolution of our respective claims and the execution of a new agreement which shall supersede the Compromise Agreement, both PLDT and ETPI shall not take any action that will in any way violate the Compromise Agreement.

x x x x x x x x x

Sincerely yours,

(Signed)
SALVADOR C. HIZON
President
Eastern Telecommunications Philippines, Inc.

CONFORME:

(Signed)
MANUEL V. PANGILINAN
President
Philippine Long Distance Telephone Company[7] (Emphases ours.)

In light of the above agreement, PLDT and ETPI filed a Joint Omnibus Motion to Withdraw[8] ETPI's aforestated Motion for Enforcement/Execution and Urgent Motion, as well as PLDT's Opposition with Compulsory Counter-Motion.

In an Order[9] dated August 11, 1999, the RTC granted the Joint Omnibus Motion to withdraw "without prejudice to the submission to the Court of any arbitral award for enforcement."

In a series of letters[10] dated June 5, 2000, January 4, 2001 and July 31, 2001, ETPI advised PLDT that the former agreed to the proposals of REACH Hong Kong to have the Total Accounting Rate (TAR)[11] for telephone service between the Philippines and Hong Kong reduced.

In a letter[12] dated August 27, 2001, PLDT made known to ETPI its objection to the reduction of accounting rates, stating that it was not consulted thereon. As such, PLDT advised ETPI that the latter should be accountable to the former for any financial impact resulting from the difference in the accounting rate arrangement between PLDT and ETPI and that of ETPI and REACH. PLDT also demanded that ETPI settle its arrears in the amount of ₱10,940,801.76 for the period of January 1999 to June 2000.

---

[7] *Rollo* (Vol. I), pp. 187-189.

[8] *Id.* at 190-193.

[9] *Id.* at 194.

[10] *Id.* at 230-232.

[11] *Id.* at 163. The Total Accounting Rate (TAR) is the amount per minute charged by international carriers for the use of their international lines.

[12] *Id.* at 233.

Subsequently, in a letter[13] dated October 3, 2001, PLDT advised ETPI that it would be implementing a complete blocking of telephone service traffic from REACH Hong Kong carried on the ETPI-REACH circuits effective midnight of October 31, 2001 if the settlement rate arrangements for telephone service between Hong Kong and the Philippines were not resolved on or before said date. PLDT explained that the settlement rate arrangements between ETPI and REACH were causing substantial losses to PLDT and that there were no other recourse available but to completely block all incoming traffic from Hong Kong through the ETPI-REACH circuits.

In the month of October 2001, the parties held several meetings on the issues that needed to be settled but the same apparently did not resolve their differences.

On October 23, 2001, ETPI filed with the RTC an **Urgent Motion for Enforcement (With Prayer for *Status Quo* Order)**.[14] ETPI alleged therein, among others, that due to competition and market forces brought about by the deregulation of the telecommunication industry in Hong Kong, REACH informed ETPI that it had to reduce the TAR for the Philippine-Hong Kong circuits. ETPI allegedly notified PLDT of the reduction in the TAR beforehand. PLDT, however, disputed the reduced TAR that was to take effect on August 1, 2001 (US$ 0.16/minute) and insisted that REACH and ETPI revert to the June 1, 2001 TAR (US$ 0.30/minute for the first 1.8 million minutes [US$ 0.11 in excess of 1.8 million minutes as settlement rate]).

Moreover, contrary to the Compromise Agreement, PLDT allegedly insisted that REACH and ETPI distinguish between On-net and Off-Net traffic from Hong Kong. ETPI averred that PLDT initially defined On-Net traffic as telephone traffic that initiated in Hong Kong and terminated on all fixed and mobile lines of PLDT and its subsidiaries Pilipino Telephone Corporation (Piltel), Smart Communications, Inc. (Smart), Subic

[13] *Id.* at 234.

[14] *Id.* at 236-246.

Telecoms, Inc., Clark Telephone, Inc. and Philippine Association of Private Telephone Companies, Inc. On September 27, 2001, PLDT allegedly excluded Piltel and Smart from its definition of On-Net traffic retroactive on January 1, 2001 and charged ETPI higher accounting rates for calls to Piltel and Smart starting on January 1, 2001. Thereafter, PLDT wanted to push back to October 1, 2000 the effectivity of the higher rates for calls to Piltel and Smart. ETPI claimed that it protested PLDT's distinction between On-Net and Off-Net traffic and the higher accounting rates for Off-Net traffic since the Compromise Agreement did not make any distinction between the two.

Despite negotiations to amicably resolve their issues, PLDT threatened to block on October 31, 2001 all calls to and from the REACH-ETPI circuits unless the TAR between REACH and ETPI was increased and PLDT's higher accounting rate for Off-Net traffic was accepted. ETPI, thus, prayed for the issuance of a *status quo* order to maintain the unrestricted flow of telecommunication calls and data between Hong Kong and the Philippines through the REACH-ETPI circuits and to prevent PLDT from using its gateway and facilities to block telephone calls to and from Hong Kong through the REACH-ETPI circuits. ETPI further prayed for the trial court to direct PLDT to comply with the Compromise Agreement, specifically by settling with ETPI in accordance with the prevailing established TAR with respect to the Philippine-Hong Kong telephone traffic passing through the REACH-ETPI circuits, without any qualification as to On-Net/Off-Net telephone traffic.

In its Opposition,[15] PLDT stated that the subject matter sought to be enjoined by ETPI was beyond the jurisdiction of the RTC. PLDT averred that the Compromise Agreement was novated by the Letter-Agreement dated March 29, 1999, which provided that claims between PLDT and ETPI were to be settled amicably or through arbitration. Furthermore, PLDT contended that the motion for the issuance of a *status quo* order had no actual and/or legal basis as ETPI had not established that there was a

---

[15] *Id.* at 268-304.

clear violation of its right and that PLDT was guilty of bad faith. PLDT also argued that the issuance of the order sought by ETPI would be tantamount to a prejudgment of the accounting rate controversy between the parties.

Claiming that it needed to mitigate its damages, PLDT proceeded to block at midnight of October 31, 2001 the incoming telephone traffic from Hong Kong to the Philippines through the REACH-ETPI circuits.

In an **Order**[16] **dated October 31, 2001**, but which was received by PLDT only on November 5, 2001, the RTC disregarded the contentions of PLDT. The RTC declared that it had jurisdiction on the matter sought to be enjoined by ETPI. The trial court reasoned that the Compromise Agreement was, at that time, still subsisting, as there was no written notice of termination presented therefor. The RTC also ruled that PLDT's Letter dated October 3, 2001, which revealed the company's intent to completely block telephone traffic from REACH Hong Kong effective midnight of October 31, 2001, was held to be in contravention of the Compromise Agreement. In addition, the act of PLDT of making a distinction between On-Net and Off-Net traffic was similarly viewed to be violative of the said agreement. The RTC decreed:

> WHEREFORE, premises considered, the court hereby directs defendant PLDT to comply with all the terms and conditions of the Compromise Agreement, particularly paragraph 3 thereof and to desist from threatening or pursuing its threat to block telecommunication calls and data to and from Hongkong and the Philippines thru REACH-ETPI Circuits.
>
> This, however, does not preclude the parties from availing of the provisions of Republic Act [7925].

Consequently, on November 6, 2001, PLDT filed an Omnibus Motion for Disqualification with Clarification and/or Reconsideration[17] of the above Order. On even date, ETPI filed

---

[16] *Id.* at 161-168; penned by Judge Zeus C. Abrogar.

[17] *Id.* at 403-434.

an Urgent Manifestation,[18] informing the trial court of PLDT's violation of the Order dated October 31, 2001. ETPI prayed that the RTC initiate proceedings to compel PLDT to show cause why the latter, together with its officers and erring personnel, should not be declared in contempt of court.

On November 19, 2001, ETPI filed an Urgent Motion,[19] praying for the court to issue an order requiring the appropriate officer and/or technical personnel of the National Telecommunications Commission (NTC) to be deputized in order that the Order dated October 31, 2001 be executed.

In the RTC Order[20] dated December 12, 2001, Judge Abrogar partially granted the Omnibus Motion for Disqualification with Clarification and/or Reconsideration of PLDT by inhibiting himself from further hearing Civil Case No. 17694. With respect to the other pending incidents of the case, the same were left for the resolution of the court where the case would be re-raffled.

Thereafter, the case was re-raffled to Branch 60 of the RTC of Makati City, which was presided over by Judge Marissa Macaraig-Guillen.

On January 29, 2002, ETPI filed an Urgent Omnibus Motion,[21] reminding the RTC of the pending incidents of the case. ETPI likewise prayed for the issuance of a *status quo* order, directing PLDT not to threaten and/or carry out its threat to block all telecommunication calls and data from the Philippines to Hong Kong passing through the REACH-ETPI circuits. If PLDT already carried out its threat, ETPI prayed for an order commanding PLDT to restore the free flow of telecommunication calls and data in the aforesaid REACH-ETPI circuits.

In the **Order**[22] **dated April 10, 2002**, the RTC resolved the above pending incidents of the case. Contrary to the position

---

[18] *Id.* at 439-442.

[19] *Id.* at 476-479.

[20] *Id.* at 507-508.

[21] *Id.* at 510-522.

[22] *Id.* at 170-177.

of the PLDT, the RTC ruled that it retained jurisdiction over the case as the Letter-Agreement dated March 29, 1999 did not novate or modify the Compromise Agreement dated February 9, 1990. The trial court held that there was nothing in the terms of the Letter-Agreement to justify the inference that the parties intended the same to supersede or substitute the Compromise Agreement. Moreover, the trial court agreed with PLDT that it had no authority to issue a *status quo* order in the case. Be that as it may, the trial court posited that it could enforce compliance with the terms and conditions of the Compromise Agreement upon mere filing of a motion. While Section 6, Rule 39 of the Rules of Court sought to limit the period within which a party may enforce a final and executory decision of a court to five years from the date of the judgment's entry, the trial court stated that said rule was given to several notable exceptions. One exception is when a compromise agreement approved by the court provides for a period within which the parties are to comply with the terms and conditions of the contract.

The trial court was convinced that the parties' intentions were to allow continued access to the trial court for relief in case of breach of any of the terms of the Compromise Agreement during the entire period the said agreement was in full force and effect. Necessarily, the procedure by which a party could seek redress for the alleged injury suffered by reason of the breach would be through the filing of the appropriate motion, which ETPI complied with in the case.

Moreover, since PLDT admitted to blocking the incoming telephone traffic from Hong Kong passing through the REACH-ETPI circuits, even before November 5, 2001, it was clear to the trial court that the same was in violation of paragraph 11 of the Compromise Agreement. As regards the suggestion of PLDT that it was prepared to cut-off the flow of outbound telecommunication calls from the Philippines to Hong Kong passing through the REACH-ETPI circuits, the trial court reminded PLDT of the latter's commitment in paragraph 3 of the Compromise Agreement wherein it guaranteed that "all the outgoing telephone traffic to Hong Kong destined to ETPI's correspondent therein, Cable & Wireless Hong Kong Ltd., its

successors and assigns, shall be coursed by PLDT through the ETPI provided circuits and facilities between the Philippines to Hong Kong."

As regards the dispute of the parties on the appropriate TAR that should be applied, the RTC left the same for the parties to decide whether to present their respective evidence before the trial court on said issue or to submit the same for mediation before the Philippine Mediation Center or arbitration.

In the end, the trial court decreed:

WHEREFORE, in view of the foregoing, [ETPI's] Urgent Omnibus Motion is partially GRANTED, in that defendant PLDT is ordered to comply with the court's Decision of 9 February 1990, specifically Sections 3 and 11 of the Compromise Agreement which served as basis for the judgment.

As a consequence of this ruling, defendant PLDT is ordered to restore the free flow of telecommunication calls and data from the Philippines to Hongkong passing through the REACH-ETPI circuits.

Plaintiff ETPI's prayer for the issuance of a *status quo* Order contained in the said Urgent Omnibus Motion is[,] however, DENIED for lack of merit.

In turn, due to their reasons herein provided for, defendant PLDT's Omnibus Motion for Reconsideration of the Court's 31 October 2001 Order is likewise denied for lack of merit.[23]

Thereafter, the RTC clarified the second paragraph of the above dispositive portion in its subsequent Orders dated June 7, 2002[24] and July 5, 2002.[25] The said paragraph was amended to read:

"As a consequence of this ruling, defendant PLDT is ordered to restore the free flow of telecommunication calls and [data] **from Hong Kong to the Philippines** passing through the REACH-ETPI circuits." (Emphasis ours.)

---

[23] *Id.* at 176.

[24] *Id.* at 745-748.

[25] *Id.* at 790-791.

Proceedings before the Court of Appeals

Undaunted by the unfavorable rulings of the RTC, PLDT filed with the Court of Appeals on June 11, 2002 a Petition for *Certiorari* Under Rule 65 (With Application for the Issuance of a TRO and/or Writ of Preliminary Injunction),[26] which was docketed as **CA-G.R. SP No. 71103**. The petition sought the declaration of nullity of the RTC Orders dated October 31, 2001 and April 10, 2002 in Civil Case No. 17694, which were allegedly issued without jurisdiction and with clear grave abuse of discretion.

In the **Decision dated December 26, 2002**, the Court of Appeals granted the Petition for *Certiorari* of PLDT, disposing thus:

> ***WHEREFORE,*** the Petition is **GRANTED** and the Orders dated October 31, 2001 and April 10, June 7 and July 5, 2002 are hereby declared as **NULL and VOID** for having been issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[27]

The Court of Appeals ruled that the RTC committed grave error in issuing the Orders assailed in PLDT's petition. Contrary to the trial court's judgment, the Court of Appeals opined that the Letter-Agreement modified or novated the prior Compromise Agreement between PLDT and ETPI. According to the appellate court, the Letter-Agreement specified the respective rights and obligations of the parties, particularly "without prejudice to other claims of PLDT and ETPI against each other, which they endeavor to settle amicably or through arbitration." This clearly indicated that both parties agreed to modify paragraph 15 of the Compromise Agreement, which provided that in case of breach, the parties may obtain judicial relief, including a writ of execution. The Court of Appeals likewise disagreed with the finding of the RTC that the Letter-Agreement was merely a provisional arrangement agreed upon by the parties while they tried to settle certain pending issues.

---

[26] *Id.* at 108-160.

[27] *Id.* at 1016.

Furthermore, the Court of Appeals took judicial notice of the fact that Section 18 of Republic Act No. 7925[28] and its implementing rules and regulations, expressly conferred exclusive and original jurisdiction to the NTC to resolve disputes between telecommunications companies regarding settlement of access charge and/or revenue sharing. Therefore, the appellate court ruled that ETPI should have first availed of the administrative remedies afforded it by Republic Act No. 7925 and sought recourse from the NTC, instead of going back to the trial court. ETPI's premature invocation of the trial court was deemed fatal and rendered its motion susceptible of dismissal for lack of cause of action. The trial court should have recognized and enforced the agreement of the parties to submit their claims to arbitration. At the very least, the trial court should have suspended the proceedings to allow the parties to submit to arbitration in accordance with the terms of their agreement.

Lastly, the Court of Appeals agreed with PLDT that a *status quo* order functioned as a temporary restraining order (TRO) or a writ of preliminary injunction. Therefore, in ruling that ETPI was not entitled to a *status quo* order, the trial court should not have directed PLDT to do or undo certain acts, which is tantamount to granting ETPI injunctive relief.

ETPI duly filed a Motion for Reconsideration[29] of the above Court of Appeals Decision and was able to have the same overturned.

In the assailed **Amended Decision dated November 19, 2003**, the Court of Appeals revisited its previous ruling and entered a decree, which stated:

> **ACCORDINGLY**, our Decision dated December 26, 2002 is hereby **RECONSIDERED** and **SET ASIDE**, and the Orders dated October 31, 2001 and April 10, 2002 (as amended by the Order dated June 7, 2002) of the court *a quo* are **AFFIRMED** *in toto*.[30]

---

[28] An Act to Promote and Govern the Development of Philippine Telecommunications and the Delivery of Public Telecommunications Services.

[29] *Id.* at 1019-1028.

[30] *Id.* at 93.

The Court of Appeals stated that after the approval of the Compromise Agreement by the RTC, the decision based on the judicial compromise between the parties became immediately final and executory. On the basis thereof, the appellate court declared that the trial court is clothed with the residual power to have its judgment executed. By virtue of this power, it is inherent with the court to compel obedience to its judgment, orders and processes.

Furthermore, the Court of Appeals ruled that the invocation of the provisions of Republic Act No. 7925, which transferred jurisdiction of the subject matter with the NTC, did not divest the trial court of its jurisdiction to enforce its judgment through the issuance of the necessary writs. The appellate court reiterated the doctrine that jurisdiction once acquired is not removed by law unless express prohibitory words are used. In this case, Republic Act No. 7925 did not contain any such prohibitory words enjoining the RTC from implementing and enforcing its decision.

With respect to the execution of the Letter-Agreement, the Court of Appeals held that the same did not revise, modify or novate the Compromise Agreement. In the Letter-Agreement, PLDT and ETPI agreed to continue working on a new agreement that would supersede the Compromise Agreement. In the meantime, the appellate court observed that the parties continued to be bound by the provisions of the Compromise Agreement. Despite the existence of an arbitration clause, the appellate court stated that the case pending before the trial court should be allowed to proceed in the interest of speedy justice and to avoid multiplicity of suits.

Finally, even assuming that the Letter-Agreement modified the Compromise Agreement, the Court of Appeals ruled that the parties were still bound to comply with paragraph 11 of the Compromise Agreement, which in part required them not to use or threaten to use their gateway or any other facility to subvert the purposes of the Compromise Agreement. For the appellate court, a violation of said paragraph should not be subject to arbitration for to do so would be to allow the offending

party to have a final judgment reopened by violating the Compromise Agreement and then ask that the case be submitted to arbitration. In the words of the appellate court, "[s]uch an occurrence would throw the case into an unending process."

PLDT moved for the reconsideration of the above Amended Decision, but the same was denied in the assailed Court of Appeals Resolution dated March 30, 2004.

Hence, the instant petition.

Before this Court, PLDT set forth the following issues:

ISSUES

A.

WHETHER OR NOT THE RTC-MAKATI CEASED TO HAVE JURISDICTION OVER THE SUBJECT MATTER OF CIVIL CASE NO. 17694 IN VIEW OF THE NOVATION OF THE COMPROMISE AGREEMENT BY THE LETTER-AGREEMENT, WHICH PROVIDED FOR ARBITRATION AS THE MEANS FOR SETTLING DISPUTES BETWEEN PLDT AND ETPI THAT COULD NOT BE SETTLED AMICABLY;

B.

WHETHER OR NOT THERE WAS NOVATION OF THE COMPROMISE AGREEMENT BY THE LETTER-AGREEMENT;

C.

WHETHER OR NOT BY VIRTUE OF R.A. NO. 7925 AND ITS IMPLEMENTING RULES AND REGULATIONS, IT IS THE NTC WHICH HAS PRIMARY AND EXCLUSIVE JURISDICTION OVER SETTLEMENT OF ACCESS CHARGES AND REVENUE SHARING AFFECTING TELECOMMUNICATIONS COMPANIES;

D.

WHETHER OR NOT A JUDICIALLY APPROVED COMPROMISE AGREEMENT CAN STILL BE ENFORCED BY MERE MOTION AFTER THE LAPSE OF FIVE (5) YEARS FROM THE TIME IT BECAME FINAL AND EXECUTORY;

E.

WHETHER OR NOT ETPI WAS ESTOPPED FROM INVOKING THE JURISDICTION OF THE RTC-MAKATI;

F.

WHETHER OR NOT THE ASSAILED AMENDED DECISION, IN COMPELLING PLDT ALONE TO COMPLY WITH THE NOVATED COMPROMISE AGREEMENT, DESPITE THE ESTABLISHED FACT THAT IT IS ETPI WHICH HAD VIOLATED THE SAME, CONTRAVENES THE PRINCIPLE OF CONTRACT LAW THAT CONTRACTS ARE CONSENSUAL AND VOLUNTARY IN NATURE;

G.

WHETHER OR NOT THE RTC-MAKATI CEASED TO HAVE JURISDICTION OVER THE SUBJECT MATTER OF CIVIL CASE NO. 17694 BECAUSE BY ITS OWN TERMS THE COMPROMISE AGREEMENT EXPIRED ON 28 NOVEMBER 2003;

H.

WHETHER OR NOT PLDT'S PETITION IS MOOT; AND

I.

WHETHER OR NOT PLDT SHOULD HAVE IMPLEADED JUDGE GUILLEN AS A NOMINAL PARTY IN THIS CASE.[31]

PLDT ascribes error on the part of the Court of Appeals for ruling that the RTC retained jurisdiction over the subject matter sought to be enjoined by ETPI. The Letter-Agreement allegedly novated the Compromise Agreement when the former expressly provided that the parties' respective claims against each other should be settled amicably or through arbitration. PLDT also argues that ETPI prematurely invoked the intervention of the RTC without first complying with Republic Act No. 7925 and its Implementing Rules. Under the doctrines of primary jurisdiction and exhaustion of administrative remedies, the NTC had primary and exclusive jurisdiction to resolve disputes between telecommunications companies regarding the settlement of access charges and/or revenue sharing.

---

[31] *Rollo* (Vol. II), pp. 1390-1391.

PLDT also claims that the Court of Appeals erred in failing to consider that ETPI should have filed an action, and not a mere motion, to enforce the Compromise Agreement. Furthermore, PLDT alleges that ETPI was estopped from invoking the jurisdiction of the RTC when it partially complied with the provisions of the Letter-Agreement.

On the assumption that the RTC did not lose jurisdiction over the subject matter sought to be enjoined by ETPI, PLDT faults the Court of Appeals for finding that only PLDT violated the Compromise Agreement as ETPI was equally guilty of breaching the said agreement. Similarly, assuming *arguendo* that the RTC retained jurisdiction over the subject matter sought to be enjoined by ETPI, PLDT asserts that the trial court subsequently lost jurisdiction to enforce the Compromise Agreement when, by its own terms, the same expired on November 28, 2003. Nevertheless, PLDT posits that its petition was not moot since there remained other claims to be resolved based on the Letter-Agreement.

On the other hand, ETPI submits that the present petition of PLDT is already moot and academic, given the expiration of the Compromise Agreement between the parties. Assuming that the petition is not moot, ETPI argues that the Court of Appeals correctly ruled that the RTC had jurisdiction to enforce its own Decision based on the Compromise Agreement. ETPI also alleges that the Letter-Agreement did not novate the Compromise Agreement between the parties. Moreover, ETPI contends that the flagrant violation of paragraph 11 of the Compromise Agreement was not arbitrable and that the Compromise Agreement could be enforced by mere motion.

After a thorough review of the facts and issues of the instant petition, the Court finds that, indeed, the same is already moot.

To recapitulate, the instant petition challenged the Amended Decision dated November 19, 2003 and the Resolution dated March 30, 2004 of the Court of Appeals in CA-G.R. SP No. 71103. The assailed decision resolved the Petition for *Certiorari* Under Rule 65 (With Application for the Issuance of a TRO

and/or Writ of Preliminary Injunction) filed by PLDT, which questioned the Orders of the RTC dated October 31, 2001 and April 10, 2002 in Civil Case No. 17694.

The RTC Order dated October 31, 2001 arose from the filing of ETPI of an Urgent Motion for Enforcement (With Prayer for *Status Quo* Order) to prevent PLDT from using its gateway and facilities to block telephone calls to and from Hong Kong through the REACH-ETPI circuits, as well as to direct PLDT to abide by the provisions of the Compromise Agreement. In the Order dated October 31, 2001, the RTC directed PLDT to comply with the terms and conditions of the Compromise Agreement, particularly paragraph 3 thereof, wherein PLDT guaranteed that all outgoing telephone traffic to Hong Kong destined to ETPI's correspondent therein shall be coursed by PLDT through ETPI provided circuits and facilities between the Philippines and Hong Kong. The RTC likewise commanded PLDT to desist from threatening or pursuing its threat to block communication calls and data to and from Hong Kong and the Philippines through the REACH-ETPI circuits.

On the other hand, the RTC Order dated April 10, 2002 resolved, *inter alia*, PLDT's Omnibus Motion for Disqualification with Clarification and/or Reconsideration, insofar as PLDT's motion to have the trial court reconsider the October 31, 2001 Order. In the Order dated April 10, 2002, the RTC directed PLDT to comply with the terms of the Compromise Agreement, particularly the above-stated paragraph 3 thereof, as well as paragraph 11, which provided that "[n]either party shall use or threaten to use its gateway or any other facilities to subvert the purposes of [the Compromise Agreement]."[32] Consequently, the RTC decreed that: "[a]s a consequence of [its] ruling, defendant PLDT is ordered to restore the free flow of telecommunication calls and data from the Philippines to Hong Kong passing through the REACH-ETPI circuits."[33]

---

[32] *Id.* at 1166.

[33] *Rollo* (Vol. I), p. 176.

Thereafter, the dispositive portion of the Order dated April 10, 2002 was clarified in the RTC Orders dated June 7, 2002[34] and July 5, 2002[35] to read:

"As a consequence of this ruling, defendant PLDT is ordered to restore the free flow of telecommunication calls and [data] **from Hong Kong to the Philippines** passing through the REACH-ETPI circuits."[36] (Emphasis ours.)

In the assailed Amended Decision dated November 19, 2003, the Court of Appeals affirmed *in toto* the Orders of the RTC dated October 31, 2001 and April 10, 2002.

Therefore, when PLDT questioned *via* the instant petition the Amended Decision dated November 19, 2003, PLDT essentially asked the Court to determine whether the RTC could validly issue the said Orders, which directed PLDT to unblock and/or restore the telecommunication calls and data from the Philippines to Hong Kong passing through the REACH-ETPI circuits.

In the instant petition, however, PLDT informed the Court that the Compromise Agreement, by its own terms, already expired on November 28, 2003. Furthermore, PLDT insisted in its Memorandum that:

The Compromise Agreement, by its own terms, was effective only until 28 November 2003. The RTC-Makati Decision pertinently states:

"12. Upon (a) approval of the respective Boards of ETPI and PLDT, and (b) approval of this Honorable Court, this **Agreement shall take effect and shall continue in effect until November 28, 2003, provided that a written notice of termination is given by one party to the other not later than November 28, 2001. In the absence of such written notice, this Agreement shall continue in effect beyond November 28, 2003 but may [be] terminated thereafter by**

---

[34] *Id.* at 745-748.

[35] *Id.* at 790-791.

[36] *Id.* at 791.

either party by giving to the other a prior two[-]year notice of termination. x x x."

The conditions for the termination of the Compromise Agreement were complied with in that: (a) both PLDT and ETPI are now coursing traffic through their respective networks; (b) foreign telecommunications companies such as Hong Kong REACH, Singtel and Chung Hua TelCom, were advised about the expiration of the Compromise Agreement; and (c) the parties are negotiating and/or have already concluded their respective agreements.

It is a fact that **there is now nothing to unblock** because circuits have already been deactivated and migrated pursuant to the existing interconnection agreements between PLDT and ETPI.

As a result of the expiration of the Compromise Agreement, there is nothing for the RTC-Makati to enforce and/or act upon. x x x.[37]

Far from controverting the above submissions of PLDT, ETPI sustained the same and insisted on the mootness of PLDT's petition.

Verily, in *Gancho-on v. Secretary of Labor and Employment*,[38] the Court emphatically stated that:

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

Applying the above pronouncement, there was no justiciable controversy anymore in the instant petition in view of the expiration of the Compromise Agreement sought to be enforced. There was no longer any purpose in determining whether the Court of Appeals erred in affirming the RTC Orders dated October

---

[37] *Rollo* (Vol. II), pp. 1433-1434.

[38] 337 Phil. 654, 658 (1997).

31, 2001 and April 10, 2002 since any declaration thereon would be of no practical use or value. By the very admission of PLDT, it can no longer be compelled to undo its act of blocking the telecommunication calls and data from the Philippines to Hong Kong passing through the REACH-ETPI circuits since, effectively, there were no more circuits to speak of.

Clearly, any decision of this Court on the present petition, whether it be an affirmance or a reversal of the Amended Decision of the Court of Appeals, would be equivalent in effect to an affirmance or an invalidation of the challenged Orders of the RTC. But as can be gleaned from the above discussion, and as succinctly put by PLDT in its Memorandum, there is nothing more for the RTC to enforce and/or act upon. As such, any discussion on the matter would be a mere surplusage.

Although the moot and academic principle admits of certain exceptions,[39] none of them are applicable in the instant case.

In light of the foregoing, the other issues invoked by the parties need no longer be discussed.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** for being moot and academic. No costs.

SO ORDERED.

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

---

[39] In *David v. Macapagal-Arroyo* (522 Phil. 705, 754 [2006]), the Court declared that:

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. (Citations omitted.)

SECOND DIVISION

[G.R. No. 169899. February 6, 2013]

PHILACOR CREDIT CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; DOCUMENTARY STAMP TAX; PERSONS PRIMARILY AND SECONDARILY LIABLE. —** Section 173 of the 1997 National Internal Revenue Code (*1997 NIRC*) names those who are primarily liable for the DST and those who would be secondarily liable x x x. The persons primarily liable for the payment of the DST are the person (1) making; (2) signing; (3) issuing; (4) accepting; or (5) transferring the taxable documents, instruments or papers. Should these parties be exempted from paying tax, the other party who is not exempt would then be liable.

2. **ID.; ID.; A PARTY TO A TAXABLE TRANSACTION WHO "ACCEPTS" ANY DOCUMENTS OR INSTRUMENTS IN THE PLAIN AND ORDINARY MEANING OF THE ACT DOES NOT BECOME PRIMARILY LIABLE THEREFOR. —** Philacor did not make, sign, issue, accept or transfer the promissory notes. The acts of making, signing, issuing and transferring are unambiguous. The buyers of the appliances made, signed and issued the documents subject to tax, while the appliance dealer transferred these documents to Philacor which likewise indisputably received or "accepted" them. "Acceptance," however, is an act that is not even applicable to promissory notes, but only to bills of exchange. Under Section 132 of the Negotiable Instruments Law (which provides for how acceptance should be made), the act of acceptance refers solely to bills of exchange. Its object is to bind the drawee of a bill and make him an actual and bound party to the instrument. Further, in a ruling adopted by the BIR as early as 1955, acceptance has already been given a narrow definition with respect to incoming foreign bills of exchange, not the common usage of the word "accepting" as in receiving x x x. This ruling, to our mind, further clarifies that a party to a taxable transaction

who "accepts" any documents or instruments in the plain and ordinary meaning of the act (such as the shipper in the cited case) does not become primarily liable for the tax. In the same way, Philacor cannot be made primarily liable for the DST on the issuance of the subject promissory notes, just because it had "accepted" the promissory notes in the plain and ordinary meaning. In this regard, Section 173 of the 1997 NIRC assumes materiality as it determines liability should the parties who are primarily liable turn out to be exempted from paying tax; the other party to the transaction then becomes liable.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; IMPLEMENTING RULES AND REGULATIONS; CANNOT AMEND A LAW FOR THEY ARE INTENDED TO CARRY OUT, NOT SUPPLANT OR MODIFY, THE LAW. —** Nor can the CIR justify his position that Philacor is liable for the tax by citing Section 42 of Regulations No. 26, which was issued by the Department of Finance on March 26, 1924 x x x. The rule uses the word "can" which is permissive, rather than the word "shall," which would make the liability of the persons named definite and unconditional. In this sense, a person using a promissory note can be made liable for the DST if he or she is: (1) among those persons enumerated under the law — *i.e.*, the person who makes, issues, signs, accepts or transfers the document or instrument; or (2) if these persons are exempt, a non-exempt party to the transaction. Such interpretation would avoid any conflict between Section 173 of the 1997 NIRC and Section 42 of Regulations No. 26 and would make it unnecessary for us to strike down the latter as having gone beyond the law it seeks to interpret. However, we cannot interpret Section 42 of Regulations No. 26 to mean that anyone who "uses" the document, regardless of whether such person is a party to the transaction, should be liable, as this reading would go beyond Section 173 of the 1986 Tax Code — the law that the rule seeks to implement. Implementing rules and regulations cannot amend a law for they are intended to carry out, not supplant or modify, the law. To allow Regulations No. 26 to extend the liability for DST to persons who are not even mentioned in the relevant provisions of any of our Tax Codes, particularly the 1986 Tax Code (the relevant law at the time of the subject transactions) would be a clear breach of the rule that a statute must always be superior to its implementing regulations.

4. **TAXATION; DOCUMENTARY STAMP TAX; AN ASSIGNEE OR TRANSFEREE OF PROMISSORY NOTES IS NOT LIABLE FOR THE ASSIGNMENT OR TRANSFER THEREOF AS THIS TRANSACTION IS NOT TAXED UNDER THE LAW. —** Philacor, as an assignee or transferee of the promissory notes, is not liable for the assignment or transfer of promissory notes as this transaction is not taxed under the law. x x x [T]here are provisions in the 1997 NIRC that specifically impose the DST on the transfer and/or assignment of documents evidencing particular transactions. **Section 176** imposes a DST on the **transfer** of due bills, certificates of obligation, or shares or certificates of stock in a corporation, apart from **Section 175** which imposes the DST on the issuance of shares of stock in a corporation. **Section 178** imposes the DST on certificates of profits, or any certificate or memorandum showing interest in a property or accumulations of any corporation, and on all **transfers** of such certificate or memoranda. **Section 198** imposes the DST on the **assignment or transfer** of any mortgage, lease or policy of insurance, apart from **Sections 183, 184, 185, 194 and 195** which impose it on the issuances of mortgages, leases and policies of insurance. Indeed, the law has set a pattern of expressly providing for the imposition of DST on the transfer and/or assignment of documents evidencing certain transactions. Thus, we can safely conclude that where the law did not specify that such transfer and/or assignment is to be taxed, there would be no basis to recognize an imposition. A good illustrative example is Section 198 of the 1986 Tax Code x x x. If we look closely at this provision, we would find that an assignment or transfer becomes taxable only in connection with mortgages, leases and policies of insurance. The list does not include the assignment or transfer of evidences of indebtedness; rather, it is the renewal of these that is taxable. The present case does not involve a renewal, but a mere transfer or assignment of the evidences of indebtedness or promissory notes. A renewal would involve an increase in the amount of indebtedness or an extension of a period, and not the mere change in person of the payee.

5. **ID.; ID.; IMPOSED ON THE ISSUANCES AND RENEWALS OF PROMISSORY NOTES, BUT NOT ON THEIR ASSIGNMENT OR TRANSFER. —** In BIR Ruling No. 139-97 issued on December 29, 1997, then CIR Liwayway Vinzons-Chato pronounced that the assignment of a loan that

is not for a renewal or a continuance does not result in a liability for DST. Revenue Regulations No. 13-2004, issued on December 23, 2004, states that "[t]he DST on all debt instruments shall be imposed only on every original issue and the tax shall be based on the issue price thereof. Hence, the sale of a debt instrument in the secondary market will not be subject to the DST." Included in the enumeration of debt instruments is a promissory note. The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes. At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. Moreover, the BIR Ruling referred to a transaction entered into in 1992, when the 1986 Tax Code had been in effect. On the other hand, the BIR issued Revenue Regulations No. 13-2004 when Section 180 of the 1986 Tax Code had already been amended. Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 — the part dealing with promissory notes — remained the same; it imposed the DST on the promissory notes' issuances and renewals, but not on their assignment or transfer x x x.

6. **ID.; TAX LAWS; MUST BE CONSTRUED STRICTLY AGAINST THE STATE AND LIBERALLY IN FAVOR OF THE TAXPAYER IN CASE OF DOUBT. —** The settled rule is that in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. The reason for this ruling is not hard to grasp: taxes, as burdens which must be endured by the taxpayer should not be presumed to go beyond what the law expressly and clearly declares. That such strict construction is necessary in this case is evidenced by the change in the subject provision as presently worded, which now expressly levies the tax on shares of stock as against the privilege of issuing certificates of stock as formerly provided.

APPEARANCES OF COUNSEL

Tan Venturanza Valdez for petitioner.
The Solicitor General for respondent.

DECISION

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking the reversal of the decision[2] dated September 23, 2005 of the Court of Tax Appeals (*CTA*) *en banc* in C.T.A. E.B. No. 19 (C.T.A. Case No. 5674). In the assailed decision, the CTA *en banc* affirmed the CTA Division's resolution[3] of April 6, 2004. Both courts held that petitioner Philacor Credit Corporation (*Philacor*), as an assignee of promissory notes, is liable for deficiency documentary stamp tax (*DST*) on (1) the issuance of promissory notes; and (2) the assignment of promissory notes for the fiscal year ended 1993.

The facts are not disputed.

Philacor is a domestic corporation organized under Philippine laws and is engaged in the business of retail financing. Through retail financing, a prospective buyer of a home appliance — with neither cash nor any credit card — may purchase appliances on installment basis from an appliance dealer. After Philacor conducts a credit investigation and approves the buyer's application, the buyer executes a unilateral promissory note in favor of the appliance dealer. The same promissory note is subsequently assigned by the appliance dealer to Philacor.[4]

Pursuant to Letter of Authority No. 17107 dated July 6, 1974, Revenue Officer Celestino Mejia examined Philacor's books of accounts and other accounting records for the fiscal year August 1, 1992 to July 31, 1993. Philacor received tentative computations of deficiency taxes for this year. Philacor's Finance

---

[1] *Rollo*, pp. 31-51.

[2] *Id.* at 8-27; penned by Associate Justice Olga Palanca-Enriquez, and concurred in by Associate Justices Ernesto D. Acosta, Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Caesar A. Casanova.

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

[4] *Id.* at 31, 39-40.

Manager, Leticia Pangan, contested the tentative computations of deficiency taxes (totaling ₱20,037,013.83) through a letter dated April 17, 1995.[5]

On May 16, 1995, Mr. Mejia sent a letter to Philacor revising the preliminary assessments as follows:

Deficiency Income Tax	₱ 9,832,098.22
Deficiency Percentage Tax	866,287.60
Deficiency Documentary Stamp Tax	3,368,169. 45
	===========
Total	₱14,066,555.27[6]
	===========

Philacor then received Pre-Assessment Notices (*PANs*), all dated July 18, 1996, covering the alleged deficiency income, percentage and DSTs, including increments.[7]

On February 3, 1998, Philacor received demand letters and the corresponding assessment notices, all dated January 28, 1998. The assessments, inclusive of increments, cover the following:

Deficiency Income Tax	₱12, 888,085.09
Deficiency Percentage Tax	1,185,977.07
Deficiency DST Tax	3,368,196.45
	===========
Total	₱17,442,231.61[8]
	===========

On March 4, 1998, Philacor protested the PANs, with a request for reconsideration and reinvestigation. It alleged that the assessed **deficiency income tax** was erroneously computed when it failed to take into account the reversing entries of the revenue accounts and income adjustments, such as repossessions, write-offs and legal accounts. Similarly, the Bureau of Internal Revenue (*BIR*) failed to take into account the reversing entries of repossessions,

---

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

[6] *Id.* at 65.

[7] *Ibid.*

[8] *Id.* at 66.

legal accounts, and write-offs when it computed the **percentage tax**; thus, the total income reported, that the BIR arrived at, was not equal to the actual receipts of payment from the customers. As for the **deficiency DST**, Philacor claims that the accredited appliance dealers were required by law to affix the documentary stamps on all promissory notes purchased until the enactment of Republic Act No. 7660, otherwise known as *An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax*,[9] which took effect on January 15, 1994. In addition, Philacor filed, on the following day, a supplemental protest, arguing that the assessments were void for failure to state the law and the facts on which they were based.[10]

On September 30, 1998, Philacor filed a petition for review before the CTA Division, docketed as C.T.A. Case No. 5674.[11]

The CTA Division rendered its decision on August 14, 2003.[12] After examining the documents submitted by the parties, it concluded that Philacor failed to declare part of its income, making it liable for deficiency income tax and percentage tax. However, it also found that the Commissioner of Internal Revenue (*CIR*) erred in his analysis of the entries in Philacor's books thereby considerably reducing Philacor's liability to a deficiency income tax of ₱1,757,262.47 and a deficiency percentage tax of ₱613,987.86. The CTA also ruled that Philacor is liable for the DST on the issuance of the promissory notes and their subsequent transfer or assignment. Noting that Philacor failed to prove that the DST on its promissory notes had been paid for these two transactions, the CTA held Philacor liable for deficiency DST of ₱673,633.88, which is computed as follows:

---

[9] Amending for the Purpose Certain Provisions of the National Internal Revenue Code, as amended, Allocating Funds for Specific Programs and for Other Purposes.

[10] *Id.* at 67-68.

[11] *Id.* at 68.

[12] *Id.* at 122-143.

Total Notes purchased during the taxable year		₱269,453,556.94
Divided by rate under Section 180		200.00
Basis of DST	₱	1,347,267.78
Multiply by DST rate (Section 180, 1993 Tax Code		.20
DST on notes purchased	**₱**	**269,453.55**
Add: Total DST on Notes assigned (Section 180)		**269,453.55**
Deficiency Documentary Stamp Tax	₱	538,907.10
Add: 25% surcharge		
		134,726.78
Total Deficiency Documentary Stamp Tax	₱	673,633.88[13]
		============

All sums for deficiency taxes included surcharge and interest.

Both parties filed their motions for reconsideration. The CIR's motion was denied for having been filed out of time.[14] On the other hand, **the CTA partially granted Philacor's motion in the resolution of April 6, 2004,**[15] **wherein it cancelled the assessment for deficiency income tax and deficiency percentage tax**. These assessments were withdrawn because the CTA found that Philacor had correctly declared its income; the discrepancy of ₱2,180,564.00 had been properly accounted for as proper adjustments to Philacor's net revenues. Nevertheless, the CTA Division **sustained the assessment for deficiency DST** in the amount of ₱673,633.88.

Philacor filed a petition for review before the CTA *en banc*.[16]

In its decision[17] dated September 23, 2005, **the CTA *en banc* affirmed the resolution of April 6, 2004 of the CTA Division**. It reiterated that Philacor is liable for the DST due on two transactions — the issuance of promissory notes and their subsequent assignment in favor of Philacor. With respect to the issuance of the promissory notes, Philacor is liable as the

---

[13] *Id.* at 148.

[14] *Id.* at 163-166.

[15] *Supra* note 3.

[16] *Rollo*, pp. 88-109.

[17] *Supra* note 2.

transferee which "accepted" the promissory notes from the appliance dealer in accordance with Section 180 of Presidential Decree No. 1158, as amended (1986 Tax Code).[18] Further citing Section 42[19] of Regulations No. 26,[20] the CTA *en banc* held that a person "using" a promissory note is one of the persons who can be held liable to pay the DST. Since the subject promissory notes do not bear documentary stamps, Philacor can be held liable for DST. As for the assignment of the promissory notes, the CTA *en banc* held that each and every transaction involving promissory notes is subject to the DST under Section 173 of the 1986 Tax Code; Philacor is liable as the transferee and assignee of the promissory notes.

On November 18, 2005, Philacor filed the present petition, raising the following assignment of errors:

I

"USING" IN REGULATIONS NO. 26 DOES NOT APPEAR IN SECTIONS [SIC] 173 NOR 180 OF THE TAX CODE; AND, THEREFORE WENT BEYOND THE LAW [SIC]

II

"ACCEPTING" IN SECTION 173 OF THE TAX CODE DOES NOT APPLY TO PROMISSORY NOTES

III

THE CTA *EN BANC* DECISION EXTENDED THE WORDS "ASSIGNMENT" AND "TRANSFERRING" IN SECTION 173 TO THE PROMISSORY NOTES; SUCH THAT, THE "ASSIGNMENT"

---

[18] In 1993, the applicable law was the 1986 Tax Code, which has been subsequently amended by the 1997 National Internal Revenue Code (Republic Act No. 8424), also known as the "Tax Reform Act Of 1997," which became effective on January 1, 1998.

[19] Section 42. Responsibility for payment of tax on promissory notes. — The person who signs or issues a promissory note and any person transferring or using a promissory note can be held responsible for the payment of the documentary stamp tax.

[20] Issued on March 26, 1924, entitled "The Revised Documentary Stamp Tax Regulations."

OR "TRANSFERRING" OF PROMISSORY NOTES IS SUBJECT TO DST. HOWEVER SECTIONS 176, 178, AND 198 OF TITLE VII OF THE TAX CODE EXPRESSLY IMPOSES [SIC] DST ON THE TRANSFER/ASSIGNMENT OF CERTAIN DOCUMENTS WHICH REVEALS THE LEGISLATIVE INTENT THAT ONLY THE ASSIGNMENT/TRANSFER OF CERTAIN DOCUMENTS IN SECTIONS 176, 178, AND 198 ARE SUBJECT TO DST

IV

BIR RULING 139-97 RULED THAT THE ASSIGNMENT OF A LOAN, WHICH IN SECTION 180 IS TREATED IN THE SAME BREATH AS A PROMISSORY NOTE, IS NOT SUBJECT TO DST[21]

We find the petition meritorious.

Philacor is not liable for the DST on the issuance of the promissory notes.

Neither party questions that the issuances of promissory notes are transactions which are taxable under the DST. The 1986 Tax Code clearly states that:

> Section 180. **Stamp tax on promissory notes, bills of exchange, drafts, certificates of deposit, debt instruments used for deposit substitutes and others not payable on sight or demand.** — On all bills of exchange (between points within the Philippines), drafts, or certificates of deposits, debt instruments used for deposit substitutes or orders for the payment of any sum of money otherwise than at sight or on demand, <u>on all promissory notes, whether negotiable or non-negotiable except bank notes issued for circulation, and on each renewal of any such note,</u> there shall be collected a documentary stamp tax of twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft certificate of deposit, debt instrument, or note. [emphasis supplied; underscores ours]

Under the undisputed facts and the above law, the issue that emerges is: **who is liable for the tax**?

---

[21] *Rollo*, pp. 43-49.

Section 173 of the 1997 National Internal Revenue Code (*1997 NIRC*) names those who are primarily liable for the DST and those who would be secondarily liable:

> Section 173. **Stamp taxes upon documents, instruments, and papers.** — Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, and at the same time such act is done or transaction had: **Provided**, that wherever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax. [emphases supplied; underscores ours]

The persons primarily liable for the payment of the DST are the person (1) making; (2) signing; (3) issuing; (4) accepting; or (5) transferring the taxable documents, instruments or papers. Should these parties be exempted from paying tax, the other party who is not exempt would then be liable.

Philacor did not make, sign, issue, accept or transfer the promissory notes. The acts of making, signing, issuing and transferring are unambiguous. The buyers of the appliances made, signed and issued the documents subject to tax, while the appliance dealer transferred these documents to Philacor which likewise indisputably received or "accepted" them. "Acceptance," however, is an act that is not even applicable to promissory notes, but only to bills of exchange.[22] Under Section 132[23] of the Negotiable Instruments Law (which provides for how acceptance should be made), the act of acceptance refers solely to bills of exchange.

---

[22] Jose Campos Jr. & Maria Clara Lopez-Campos, "*Notes and Selected Cases on Negotiable Instruments Law*," 1994 edition, p. 520.

[23] Sec. 132. Acceptance; how made, by and so forth. — The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

Its object is to bind the drawee of a bill and make him an actual and bound party to the instrument.[24] Further, in a ruling adopted by the BIR as early as 1955, acceptance has already been given a narrow definition with respect to incoming foreign bills of exchange, not the common usage of the word "accepting" as in receiving:

> The word "accepting" appearing in Section 210 of the National Internal Revenue Code has reference to incoming foreign bills of exchange which are accepted in the Philippines by the drawees thereof. Accordingly, the documentary stamp tax on freight receipts is due at the time the receipts are issued and from the transportation company issuing the same. The fact that the transportation contractor issuing the freight receipts shifts the burden of the tax to the shipper does not make the latter primarily liable to the payment of the tax.[25] (underscore ours)

This ruling, to our mind, further clarifies that a party to a taxable transaction who "accepts" any documents or instruments in the plain and ordinary meaning of the act (such as the shipper in the cited case) does not become primarily liable for the tax. In the same way, Philacor cannot be made primarily liable for the DST on the issuance of the subject promissory notes, just because it had "accepted" the promissory notes in the plain and ordinary meaning. In this regard, Section 173 of the 1997 NIRC assumes materiality as it determines liability should the parties who are primarily liable turn out to be exempted from paying tax; the other party to the transaction then becomes liable.

Revenue Regulations No. 9-2000[26] interprets the law more widely so that all parties to a transaction are primarily liable for the DST, and not only the person making, signing, issuing, accepting or transferring the same becomes liable as the law provides. It provides:

---

[24] *Supra* note 22.

[25] Jose Arañas, "*Annotations and Jurisprudence on the National Internal Revenue Code, as amended*," Volume 3, 1963 edition, p. 2, citing BIR Ruling dated September 13, 1955 and the Quarterly Bull., Vol. IV, No. 3.

[26] Issued on November 22, 2000.

SEC. 2. Nature of the Documentary Stamp Tax and Persons Liable for the Tax. —

(a) In General. — The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against "the person making, signing, issuing, accepting, or transferring" the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. **Any of the parties thereto shall be liable for the full amount of the tax due**: Provided, however, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.

(b) Exception. — Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax. [emphasis ours]

But even under these terms, the liability of Philacor is not a foregone conclusion as from the face of the promissory note itself, Philacor is not a party to the issuance of the promissory notes, but merely to their assignment. On the face of the documents, the parties to the issuance of the promissory notes would be the buyer of the appliance, as the maker, and the appliance dealer, as the payee.

We are aware that while Philacor denies being a party to the issuance of the promissory notes,[27] the appliance buyer is made to sign a promissory note only after Philacor has approved its credit application. Moreover, the note Philacor marked as Annex "J" of its petition for review[28] is the standard *pro forma* promissory note that Philacor uses in all similar transactions;[29] the same document contains the issuance of the notes in favor of the appliance dealer and their assignments to Philacor. The promissory notes are also transferred to Philacor by the appliance dealer on the same date that the appliance buyer issues the promissory note in favor of the appliance buyer. Thus, it would

---

[27] *Rollo*, p. 210.

[28] *Id.* at 167.

[29] *Id.* at 217.

seem that Philacor is the person who ultimately benefits from the issuance of the notes, if not the intended payee of these notes.

These observations, however, pertain to facts and implications that are found outside the terms of the documents under discussion and are contradictory to their outright terms. To consider these externalities would go against the doctrine that the liability for the DST and the amount due are determined from the document itself — examined through its form and face — and cannot be affected by proof of facts outside it.[30]

Nor can the CIR justify his position that Philacor is liable for the tax by citing Section 42 of Regulations No. 26, which was issued by the Department of Finance on March 26, 1924:

> Section 42. *Responsibility for payment of tax on promissory notes*. — The person who signs or issues a promissory note and any person transferring or **using** a promissory note can be held responsible for the payment of the documentary stamp tax. [emphasis ours; italics supplied]

The rule uses the word "can" which is permissive, rather than the word "shall," which would make the liability of the persons named definite and unconditional. In this sense, a person using a promissory note can be made liable for the DST if he or she is: (1) among those persons enumerated under the law — *i.e.*, the person who makes, issues, signs, accepts or transfers the document or instrument; or (2) if these persons are exempt, a non-exempt party to the transaction. Such interpretation would avoid any conflict between Section 173 of the 1997 NIRC and Section 42 of Regulations No. 26 and would make it unnecessary for us to strike down the latter as having gone beyond the law it seeks to interpret.

However, we cannot interpret Section 42 of Regulations No. 26 to mean that anyone who "uses" the document, regardless of whether such person is a party to the transaction, should be liable, as this reading would go beyond Section 173 of the 1986

---

[30] Hector de Leon and Hector de Leon, Jr., "*The National Internal Revenue Code Annotated,* Volume 2, 2003 ed., p. 288, citing *US. v. Isham*, 84 US 496 (1873); and *Danville Building Ass'n v. Pickering* (D. C.) 294 F. 117.

Tax Code — the law that the rule seeks to implement. Implementing rules and regulations cannot amend a law for they are intended to carry out, not supplant or modify, the law.[31] To allow Regulations No. 26 to extend the liability for DST to persons who are not even mentioned in the relevant provisions of any of our Tax Codes, particularly the 1986 Tax Code (the relevant law at the time of the subject transactions) would be a clear breach of the rule that a statute must always be superior to its implementing regulations.

This expansive interpretation of Regulations No. 26 becomes even more untenable when we look at the difference between the way our law has been phrased and the way the Internal Revenue Law of the United States (US) identified the persons liable for its stamp tax. We also note that despite the subsequent amendments to our DST provisions, our Congress never saw it fit to phrase our laws using the US phraseologies.

In Section 110 of our Internal Revenue Code of 1904, the persons liable for the stamp tax are the "persons who shall make, sign or issue the same[.]" Although our 1904 Tax Code was patterned after the then existing US Internal Revenue Code, also known as the Act of Congress of July 13, 1866,[32] the US provisions on the stamp tax provide for a wider set of taxpayers: Section 158 thereof places the burden on "persons who shall make, sign or issue, or *who shall cause to be made, signed or issued* any instrument, document, or paper of any kind or description whatsoever, or shall *accept, negotiate or pay or cause to be accepted, negotiated and paid*, any bill of exchange, draft, or order, or promissory note for the payment of money." It goes on further by extending the liability not only to the parties mentioned but also to "*any party having an interest therein*." Another US law, the War Revenue Act of June 13, 1898, provides in Section 6 thereof a more succinct phrase whose coverage is just as extensive: "any persons

---

[31] *Commissioner of Internal Revenue v. Placer Dome Technical Services (Phils.), Inc.*, G.R. No. 164365, June 8, 2007, 524 SCRA 271, 276.

[32] Hector S. De Leon, "*The National Internal Revenue Code Annotated*," 1991 ed., p. 9.

or party who shall make, sign or issue the same, *or for whose use or benefit the same shall be made, signed or issued*." These provisions have been adopted by various states such as Florida, South Carolina, New Jersey and Pennsylvania.[33]

Under US laws, liability for the DST is placed on any person who has an interest in the transaction or document and whoever may benefit from it. A person who would use it or benefit from it, including parties who are not named in the instrument, would be liable for the tax. In comparison, our legislators chose to limit the DST liability only to "persons who shall make, sign or issue [the document or instrument]."

Notably, our revenue laws regarding persons liable for the DST have been repeatedly amended. In subsequent amendments, the coverage of the liability for DST included persons who "accept" and "transfer" the instrument, document or paper of the taxable transaction. Thereafter, we included the proviso that should any of the parties be exempt, the other party to the transaction would become liable. However, none of these amendments had ever extended the liability to persons who have any interest in or who would benefit from the document or instrument subject to tax. Thus, we cannot allow Regulations No. 26 to be interpreted in such a way as to extend the DST liability to persons who are not the parties named in the taxable document or instrument and are merely using or benefiting from it, against the clear intention of our legislature.

In our view, it makes more sense to include persons who benefit from or have an interest in the taxable document, instrument or transaction. There appears no reason for distinguishing between the persons who make, sign, issue, transfer or accept these documents and the persons who have an interest in these and/or have caused them to be made, signed or issued.

---

[33] See *Choctawhatchee Electric Cooperative, Inc v. Green*, 123 So. 2d 357 (1960); *Loyola Federal Savings and Loan Association v. South Carolina Tax Commission*, 308 S.C. 211 (1992); *Endler v. United States*, 110 F. Supp. 945 (1953); and *Pennsylvania Company for Insurances on Lives and Granting Annuities v. United States*, 39 F. Supp 1019 (1941).

This also limits the opportunities for avoiding tax. Moreover, there are cases when making all relevant parties taxable could help our administrative officers collect tax more efficiently. In this case, the BIR could simply collect from the financing companies, rather than go after each and every appliance buyer or appliance seller. However, **these are matters that are within the prerogatives of Congress so that any interference from the Court, no matter how well-meaning, would constitute judicial legislation**. At best, we can only air our views in the hope that Congress would take notice.

Philacor is not liable for the DST on the assignment of promissory notes.

Philacor, as an assignee or transferee of the promissory notes, is not liable for the assignment or transfer of promissory notes as this transaction is not taxed under the law.

The CIR argues that the DST is levied on the exercise of privileges through the execution of specific instruments, or the privilege to enter into a transaction. Therefore, the DST should be imposed on every exercise of the privilege to enter into a transaction.[34] There is nothing in Section 180 of the 1986 Tax Code that supports this argument; the argument is even contradicted by the way the provisions on DST were drafted.

As Philacor correctly points out, there are provisions in the 1997 NIRC that specifically impose the DST on the transfer and/or assignment of documents evidencing particular transactions. **Section 176** imposes a DST on the **transfer** of due bills, certificates of obligation, or shares or certificates of stock in a corporation, apart from **Section 175** which imposes the DST on the issuance of shares of stock in a corporation. **Section 178** imposes the DST on certificates of profits, or any certificate or memorandum showing interest in a property or accumulations of any corporation, and on all **transfers** of such certificate or memoranda. **Section 198** imposes the DST on the **assignment or transfer** of any mortgage, lease or policy of insurance, apart from **Sections**

---

[34] *Rollo*, p. 72.

183, 184, 185, 194 and 195 which impose it on the issuances of mortgages, leases and policies of insurance. Indeed, the law has set a pattern of expressly providing for the imposition of DST on the transfer and/or assignment of documents evidencing certain transactions. Thus, we can safely conclude that where the law did not specify that such transfer and/or assignment is to be taxed, there would be no basis to recognize an imposition.

A good illustrative example is Section 198 of the 1986 Tax Code which provides that:

> Section 198. Stamp tax on assignments and renewals of certain instruments. — Upon each and every assignment or transfer of any mortgage, lease or policy of insurance, or the renewal or continuance of any agreement, contract, charter, or any evidence of obligation or indebtedness by altering or otherwise, there shall be levied, collected and paid a documentary stamp tax, at the same rate as that imposed on the original instrument.

If we look closely at this provision, we would find that an assignment or transfer becomes taxable only in connection with mortgages, leases and policies of insurance. The list does not include the assignment or transfer of evidences of indebtedness; rather, it is the renewal of these that is taxable. The present case does not involve a renewal, but a mere transfer or assignment of the evidences of indebtedness or promissory notes. A renewal would involve an increase in the amount of indebtedness or an extension of a period, and not the mere change in person of the payee.[35]

In BIR Ruling No. 139-97 issued on December 29, 1997, then CIR Liwayway Vinzons-Chato pronounced that the assignment of a loan that is not for a renewal or a continuance does not result in a liability for DST. Revenue Regulations No. 13-2004, issued on December 23, 2004, states that "[t]he DST on all debt instruments shall be imposed only on every original issue and the tax shall be based on the issue price thereof. Hence, the sale of a debt instrument in the secondary market will not

---

[35] *State of Florida Department of Revenue v. Miami National Bank*, 374 So. 2d 1 (1979).

be subject to the DST." Included in the enumeration of debt instruments is a promissory note.

The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes. At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. Moreover, the BIR Ruling referred to a transaction entered into in 1992, when the 1986 Tax Code had been in effect. On the other hand, the BIR issued Revenue Regulations No. 13-2004 when Section 180 of the 1986 Tax Code had already been amended. Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 — the part dealing with promissory notes — remained the same; it imposed the DST on the promissory notes' issuances and renewals, but not on their assignment or transfer:

Section 180 of the 1986 Tax Code, as amended	**Section 180 of the 1997 NIRC, as amended by Republic Act No. 9243**
Section 180. Stamp tax on promissory notes, bills of exchange, drafts, certificates of deposit, debt instruments used for deposit substitutes and others not payable on sight or demand <u>on all promissory notes, whether negotiable or non-negotiable except bank notes issued for circulation, and on each renewal of any such note</u>, there shall be collected a documentary stamp tax of twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft certificate of deposit, debt instrument, or note.	**Section 180.** *Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand.* — On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments

– On all bills of exchange (between points within the Philippines), drafts, or certificates of deposits, debt instruments used for deposit substitutes or orders for the payment of any sum of money otherwise than at sight or on demand,	and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, <u>on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note</u>, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each Two hundred pesos (₱200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: Provided, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section.

The settled rule is that in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. The reason for this ruling is not hard to grasp: taxes, as burdens which must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares. That such strict construction is necessary in this case is evidenced by the change in the subject provision as presently worded, which now expressly levies the tax on shares of stock as against the privilege of issuing certificates of stock as formerly provided.[36]

WHEREFORE, premises considered, we **GRANT** the petition. The September 23, 2005 Decision of the Court of Tax Appeals *en banc* in C.T.A. E.B. No. 19 (C.T.A. Case No. 5674), ordering Philacor Credit Corporation to pay a deficiency documentary stamp tax in connection with the issuances and transfers or assignments of promissory notes for the fiscal year ended July 31, 1993, is **SET ASIDE.** No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172044. February 6, 2013]

CAVITE APPAREL, INCORPORATED and ADRIANO TIMOTEO, *petitioners, vs.* **MICHELLE MARQUEZ,** *respondent.*

---

[36] *Lincoln Philippine Life Insurance Co. v. CA*, 354 Phil. 896, 904 (1998).

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION. —** [A]s a rule, the Court does not review questions of fact, but only questions of law in an appeal by *certiorari* under Rule 45 of the Rules of Court. The Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are generally binding and conclusive. The rule though is not absolute as the Court may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory. Given the factual backdrop of this case, we find sufficient basis for a review as the factual findings of the LA, on the one hand, and those of the CA and the NLRC, on the other hand, are conflicting.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; NEGLECT OF DUTY; TO BE A GROUND FOR DISMISSAL, IT MUST BE BOTH GROSS AND HABITUAL. —** Neglect of duty, to be a ground for dismissal under Article 282 of the Labor Code, must be both gross and habitual. Gross negligence implies want of care in the performance of one's duties. Habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances. Under these standards and the circumstances obtaining in the case, we agree with the CA that Michelle is not guilty of gross and habitual neglect of duties.

3. **ID.; ID.; ID.; PENALTY OF DISMISSAL; MAY BE DISREGARDED BY THE COURT WHERE ITS IMPOSITION IS UNJUSTIFIED; CASE AT BAR. —** In *Caltex Refinery Employees Association v. NLRC* and in the subsequent case of *Gutierrez v. Singer Sewing Machine Company,* we held that "[e]ven when there exist some rules agreed upon between the employer and employee on the subject of dismissal, x x x the same cannot preclude the State from inquiring on whether [their] rigid application would work too harshly on the employee." This Court will not hesitate to disregard a penalty that is manifestly disproportionate to the infraction committed. Michelle might have been guilty of

violating company rules on leaves of absence and employee discipline, still we find the penalty of dismissal imposed on her unjustified under the circumstances. x x x Michelle had been in Cavite Apparel's employ for six years, with no derogatory record other than the four absences without official leave in question, not to mention that she had already been penalized for the first three absences, the most serious penalty being a six-day suspension for her third absence on April 27, 2000.

4. **ID.; ID.; MANAGEMENT PREROGATIVE; THE EXERCISE OF MANAGEMENT'S PREROGATIVE TO DISCIPLINE ITS EMPLOYEES SHOULD BE REASONABLE AND TEMPERED WITH COMPASSION AND UNDERSTANDING.** — While previous infractions may be used to support an employee's dismissal from work in connection with a subsequent similar offense, we cautioned employers in an earlier case that although they enjoy a wide latitude of discretion in the formulation of work-related policies, rules and regulations, their directives and the implementation of their policies must be fair and reasonable; at the very least, penalties must be commensurate to the offense involved and to the degree of the infraction. x x x [W]hile we recognize management's prerogative to discipline its employees, the exercise of this prerogative should at all times be reasonable and should be tempered with compassion and understanding. Dismissal is the ultimate penalty that can be imposed on an employee. Where a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe for what is at stake is not merely the employee's position, but his very livelihood and perhaps the life and subsistence of his family.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioners.
Rogee Mayteen B. Espinosa-Datudacula for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioners Cavite Apparel, Incorporated (*Cavite Apparel*) and Adriano Timoteo to nullify the decision[2] dated January 23, 2006 and the resolution[3] dated March 23, 2006 of the Court of Appeals (*CA*) in C.A.-G.R. SP No. 89819 insofar as it affirmed the disposition[4] of the National Labor Relations Commission (*NLRC*) in NLRC CA No. 029726-01. The NLRC set aside the decision[5] of Labor Arbiter (*LA*) Cresencio G. Ramos in NLRC NCR Case No. RAB-IV-7-12613-00-C dismissing the complaint for illegal dismissal filed by respondent Michelle Marquez against the petitioners.

The Factual Antecedents

Cavite Apparel is a domestic corporation engaged in the manufacture of garments for export. On August 22, 1994, it hired Michelle as a regular employee in its Finishing Department. Michelle enjoyed, among other benefits, vacation and sick leaves of seven (7) days each per *annum*. Prior to her dismissal on June 8, 2000, Michelle committed the following infractions (with their corresponding penalties):

a. First Offense: Absence without leave (AWOL) on December 6, 1999 – written warning

---

[1] Dated May 9, 2006 and filed under Rule 45 of the Rules of Court; *rollo*, pp. 11-29.

[2] *Id.* at 11-18; penned by Associate Justice Renato C. Dacudao, and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Celia C. Librea-Leagogo.

[3] *Id.* at 9.

[4] *Id.* at 76-81 and 87-88, respectively. Decision of the NLRC First Division dated May 7, 2003 and its resolution dated March 30, 2005.

[5] *Id.* at 57-62; dated April 28, 2001.

b.	Second Offense:	AWOL on January 12, 2000 – stern warning with three (3) days suspension
c.	Third Offense:	AWOL on April 27, 2000 – suspension for six (6) days.[6]

On May 8, 2000, Michelle got sick and did not report for work. When she returned, she submitted a medical certificate. Cavite Apparel, however, denied receipt of the certificate.[7] Michelle did not report for work on May 15-27, 2000 due to illness. When she reported back to work, she submitted the necessary medical certificates. Nonetheless, Cavite Apparel suspended Michelle for six (6) days (June 1-7, 2000). When Michelle returned on June 8, 2000, Cavite Apparel terminated her employment for habitual absenteeism.

On July 4, 2000, Michelle filed a complaint for illegal dismissal with prayer for reinstatement, backwages and attorney's fees with the NLRC, Regional Arbitration Branch No. IV.

The LA Ruling

In a decision dated April 28, 2001,[8] LA Ramos dismissed the complaint. He noted that punctuality and good attendance are required of employees in the company's Finishing Department. For this reason, LA Ramos considered Michelle's four absences without official leave as habitual and constitutive of gross neglect of duty, a just ground for termination of employment. LA Ramos also declared that due process had been observed in Michelle's dismissal, noting that in each of her absences, Cavite Apparel afforded Michelle an opportunity to explain her side and dismissed her only after her fourth absence. LA Ramos concluded that Michelle's dismissal was valid.[9]

---

[6] *Id.* at 12, 16-17 and 79.

[7] *Id.* at 12, 17, 79 and 186. Cavite Apparel denied receiving Michelle's medical certificate. See Petition, Cavite Apparel's Reply, and Annex G-1 of its Position Paper, Annex "A" to the Petition; at 17, 186 and 43, respectively.

[8] *Supra* note 5.

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

The NLRC Decision

On appeal by Michelle, the NLRC referred the case to Executive LA Vito C. Bose for review, hearing and report.[10] Adopting LA Bose's report, the NLRC rendered a decision[11] dated May 7, 2003 reversing LA Ramos' decision. The NLRC noted that for Michelle's first three absences, she had already been penalized ranging from a written warning to six days suspension. These, the NLRC declared, should have precluded Cavite Apparel from using Michelle's past absences as bases to impose on her the penalty of dismissal, considering her six years of service with the company. It likewise considered the penalty of dismissal too severe. The NLRC thus concluded that Michelle had been illegally dismissed and ordered her reinstatement with backwages.[12] When the NLRC denied Cavite Apparel's motion for reconsideration in a resolution[13] dated March 30, 2005, Cavite Apparel filed a petition for *certiorari* with the CA to assail the NLRC ruling.

The CA Ruling

Cavite Apparel charged the NLRC with grave abuse of discretion when it set aside the LA's findings and ordered Michelle's reinstatement. It disagreed with the NLRC's opinion that Michell's past infractions could no longer be used to justify her dismissal since these infractions had already been penalized and the corresponding penalties had been imposed.

The CA found no grave abuse of discretion on the part of the NLRC and accordingly dismissed Cavite Apparel's petition on January 23, 2006.[14] While it agreed that habitual absenteeism without official leave, in violation of company rules, is sufficient reason to dismiss an employee, it nevertheless did not consider Michelle's four absences as habitual. It especially noted that

---

[10] *Id.* at 77.

[11] *Id.* at 76-80.

[12] *Ibid.*

[13] *Id.* at 87-88.

[14] *Supra* note 2.

Michelle submitted a medical certificate for her May 8, 2000 absence, and thus disregarded Cavite Apparel's contrary assertion. The CA explained that Michelle's failure to attach a copy of the medical certificate in her initiatory pleading did not disprove her claim.

The CA agreed with the NLRC that since Cavite Apparel had already penalized Michelle for her three prior absences, to dismiss her for the same infractions and for her May 8, 2000 absence was unjust. Citing jurisprudence, The CA concluded that her dismissal was too harsh, considering her six years of employment with Cavite Apparel; it was also a disproportionate penalty as her fourth infraction appeared excusable.

In its March 23, 2006 resolution,[15] the CA denied Cavite Apparel's motion for reconsideration; hence, Cavite Apparel's present recourse.

The Petition

Cavite Apparel imputes grave abuse of discretion against the CA when:

1. it did not find that the NLRC committed grave abuse of disretion in setting aside the decision of the CA;

2. it failed to consider Michelle's four (4) AWOLs over a period of six months, from December 1999 to May 2000, habitual; and

3. it ruled that the series of violations of company rules committed by Michelle were already meted with the corresponding penalties.[16]

Cavite Apparel argues that it is its prerogative to discipline its employees. It thus maintains that when Michelle, in patent violation of the company's rules of discipline, deliberately, habitually, and without prior authorization and despite warning did not report for work on May 8, 2000, she committed serious misconduct and gross neglect of duty. It submits that dismissal for violation of company rules and regulations is a dismissal

---

[15] *Supra* note 3.

[16] *Rollo*, pp. 18-27.

for cause as the Court stressed in *Northern Motors, Inc., v. National Labor Union, et al.*[17]

The Case for the Respondent

Michelle asserts that her dismissal was arbitrary and unreasonable. For one, she had only four absences in her six (6) years of employment with Cavite Apparel. She explains that her absence on May 8, 2000 was justified as she was sick and had sick leave benefits against which Cavite Apparel could have charged her absences. Also, it had already sanctioned her for the three prior infractions. Under the circumstances, the penalty of dismissal for her fourth infraction was very harsh. Finally, as the CA correctly noted, Cavite Apparel terminated her services on the fourth infraction, without affording her prior opportunity to explain.

The Court's Ruling

The case poses for us the issue of whether the CA correctly found no grave abuse of discretion when the NLRC ruled that Cavite Apparel illegally terminated Michelle's employment.

We stress at the outset that, as a rule, the Court does not review questions of fact, but only questions of law in an appeal by *certiorari* under Rule 45 of the Rules of Court.[18] The Court is not a trier of facts and will not review the factual findings of the lower tribunals as these are generally binding and conclusive.[19] The rule though is not absolute as the Court may review the facts in labor cases where the findings of the CA and of the labor tribunals are contradictory.[20] Given the factual

---

[17] 102 Phil. 958, 960 (1958).

[18] *DUP Sound Philippines v. Court of Appeals*, G.R. No. 168317, November 21, 2011, 660 SCRA 461,467, citing *Union Industries, Inc. v. Vales*, 517 Phil. 247 (2006).

[19] *Iglesia Evangelista Metodista en las Islas Filipinas (IEMELIF), Inc. v. Juane*, G.R. Nos. 172447 and 179404, September 18, 2009, 600 SCRA 555, 567.

[20] *DUP Sound Philippines v. Court of Appeals*, *supra* note 18, at 467; citation omitted.

backdrop of this case, we find sufficient basis for a review as the factual findings of the LA, on the one hand, and those of the CA and the NLRC, on the other hand, are conflicting.

After a careful review of the merits of the case, particularly the evidence adduced, we find no reversible error committed by the CA when it found no grave abuse of discretion in the NLRC ruling that Michelle had been illegally dismissed.

Michelle's four absences were not habitual; "totality of infractions" doctrine not applicable

Cavite Apparel argues that Michelle's penchant for incurring unauthorized and unexcused absences despite its warning constituted gross and habitual neglect of duty prejudicial to its business operations. It insists that by going on absence without official leave four times, Michelle disregarded company rules and regulations; if condoned, these violations would render the rules ineffectual and would erode employee discipline.

Cavite Apparel disputes the CA's conclusion that Michelle's four absences without official leave were not habitual since she was able to submit a medical certificate for her May 8, 2000 absence. It asserts that, on the contrary, no evidence exists on record to support this conclusion. It maintains that it was in the exercise of its management prerogative that it dismissed Michelle; thus, it is not barred from dismissing her for her fourth offense, although it may have previously punished her for the first three offenses. Citing the Court's ruling in *Mendoza v. NLRC,*[21] it contends that the totality of Michelle's infractions justifies her dismissal.

We disagree and accordingly consider the company's position unmeritorious.

Neglect of duty, to be a ground for dismissal under Article 282 of the Labor Code, must be both gross and habitual.[22] Gross

[21] G.R. No. 94294, March 22, 1991, 195 SCRA 606, 613.

[22] *Nissan Motor Phils., Inc. v. Angelo*, G.R. No. 164181, September 14, 2011, 657 SCRA 520, 530.

negligence implies want of care in the performance of one's duties. Habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances.[23] Under these standards and the circumstances obtaining in the case, we agree with the CA that Michelle is not guilty of gross and habitual neglect of duties.

Cavite Apparel faults the CA for giving credit to Michelle's argument that she submitted a medical certificate to support her absence on May 8, 2000; there was in fact no such submission, except for her bare allegations. It thus argues that the CA erred in holding that since doubt exists between the evidence presented by the employee and that presented by the employer, the doubt should be resolved in favor of the employee. The principle, it contends, finds no application in this case as Michelle never presented a copy of the medical certificate. It insists that there was no evidence on record supporting Michelle's claim, thereby removing the doubt on her being on absence without official leave for the fourth time, an infraction punishable with dismissal under the company rules and regulations.

Cavite Apparel's position fails to convince us. Based on what we see in the records, there simply cannot be a case of gross and habitual neglect of duty against Michelle. Even assuming that she failed to present a medical certificate for her sick leave on May 8, 2000, the records are bereft of any indication that apart from the four occasions when she did not report for work, Michelle had been cited for any infraction since she started her employment with the company in 1994. Four absences in her six years of service, to our mind, cannot be considered gross and habitual neglect of duty, especially so since the absences were spread out over a six-month period.

Michelle's penalty of dismissal too harsh or not proportionate to the infractions she commited

---

[23] *Valiao v. Court of Appeals*, 479 Phil. 459, 469 (2004), citing *JGB & Associates, Inc. v. NLRC*, 324 Phil. 747, 754 (1996).

Although Michelle was fully aware of the company rules regarding leaves of absence, and her dismissal might have been in accordance with the rules, it is well to stress that we are not bound by such rules. In *Caltex Refinery Employees Association v. NLRC*[24] and in the subsequent case of *Gutierrez v. Singer Sewing Machine Company,*[25] we held that "[e]ven when there exist some rules agreed upon between the employer and employee on the subject of dismissal, x x x the same cannot preclude the State from inquiring on whether [their] rigid application would work too harshly on the employee." This Court will not hesitate to disregard a penalty that is manifestly disproportionate to the infraction committed.

Michelle might have been guilty of violating company rules on leaves of absence and employee discipline, still we find the penalty of dismissal imposed on her unjustified under the circumstances. As earlier mentioned, Michelle had been in Cavite Apparel's employ for six years, with no derogatory record other than the four absences without official leave in question, not to mention that she had already been penalized for the first three absences, the most serious penalty being a six-day suspension for her third absence on April 27, 2000.

While previous infractions may be used to support an employee's dismissal from work in connection with a subsequent similar offense,[26] we cautioned employers in an earlier case that although they enjoy a wide latitude of discretion in the formulation of work-related policies, rules and regulations, their directives and the implementation of their policies must be fair and reasonable; at the very least, penalties must be commensurate to the offense involved and to the degree of the infraction.[27]

---

[24] 316 Phil. 335, 343-344 (1995).

[25] 458 Phil. 401, 413 (2003).

[26] *De Guzman v. National Labor Relations Commission*, 371 Phil. 192, 204 (1999), citing *Filipro, Inc. v. Hon. Minister Ople*, 261 Phil. 104 (1990).

[27] *Moreno v. San Sebastian College-Recoletos Manila*, G.R. No. 175283, March 28, 2008, 550 SCRA 414, 429; citation omitted.

As we earlier expressed, we do not consider Michelle's dismissal to be commensurate to the four absences she incurred for her six years of service with the company, even granting that she failed to submit on time a medical certificate for her May 8, 2000 absence. We note that she again did not report for work on May 15 to 27, 2000 due to illness. When she reported back for work, she submitted the necessary medical certificates. The reason for her absence on May 8, 2000 — due to illness and not for her personal convenience — all the more rendered her dismissal unreasonable as it is clearly disproportionate to the infraction she committed.

Finally, we find no evidence supporting Cavite Apparel's claim that Michelle's absences prejudiced its operations; there is no indication in the records of any damage it sustained because of Michelle's absences. Also, we are not convinced that allowing Michelle to remain in employment even after her fourth absence or the imposition of a lighter penalty would result in a breakdown of discipline in the employee ranks. What the company fails to grasp is that, given the unreasonableness of Michelle's dismissal — *i.e.*, one made after she had already been penalized for her three previous absences, with the fourth absence imputed to illness — confirming the validity of her dismissal could possibly have the opposite effect. It could give rise to belief that the company is heavy-handed and may only give rise to sentiments against it.

In fine, we hold that Cavite Apparel failed to discharge the burden of proving that Michelle's dismissal was for a lawful cause.[28] We, therefore, find her to have been illegally dismissed.

As a final point, we reiterate that while we recognize management's prerogative to discipline its employees, the exercise of this prerogative should at all times be reasonable and should be tempered with compassion and understanding.[29] Dismissal is the ultimate penalty that can be imposed on an employee. Where

---

[28] Labor Code, Article 277(b).

[29] *Philippine Long Distance Company v. Teves*, G.R. No. 1435511, November 15, 2010, 634 SCRA 538, 552.

a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe for what is at stake is not merely the employee's position, but his very livelihood and perhaps the life and subsistence of his family.[30]

WHEREFORE, premises considered, the petition is **DENIED.** The assailed January 23, 2006 decision and March 23, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 89819 are **AFFIRMED.** Costs against Cavite Apparel, Incorporated.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 177158. February 6, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LINDA ALVIZ *Y* YATCO and ELIZABETH DE LA VEGA *Y* BAUTISTA,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURTS THEREON ARE GENERALLY ACCORDED RESPECT; RATIONALE.—** It is a fundamental rule that factual findings of the trial courts involving credibility are accorded respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the

---

[30] *Ibid.*

trial court is in a better position to decide the credibility of witnesses having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals, such as in this case. The Court, therefore, has no reason to deviate from this rule.

2. **CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; THE SUCCESSFUL PROSECUTION THEREOF REQUIRES THE CONSUMMATION OF THE SELLING TRANSACTION WHICH HAPPENS THE MOMENT THE EXCHANGE OF MONEY AND DRUGS BETWEEN THE BUYER AND THE SELLER TAKES PLACE.—** Jurisprudence has identified the elements that must be established for the successful prosecution of illegal sale of dangerous drugs, *viz*: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for the same. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. In other words, the commission of the offense of illegal sale of dangerous drugs, like *shabu*, merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES ON TRIVIAL MATTERS ONLY SERVE TO STRENGTHEN THE CREDIBILITY OF WITNESSES FOR THEY ERASE THE SUSPICION OF REHEARSED TESTIMONY.—** Time and again, the Court has steadfastly ruled that inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses for they erase the suspicion of rehearsed testimony. Furthermore, the Court cannot expect the testimonies of different witnesses to be completely identical and to coincide with each other since they have different impressions and recollections of the incident. Hence, it is only natural that their testimonies are at variance on some minor details.

4. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED DRUGS; THE FAILURE OF THE POLICE OFFICERS TO MAKE AN INVENTORY REPORT AND TO PHOTOGRAPH THE DRUGS SEIZED FROM THE ACCUSED ARE NOT AUTOMATICALLY FATAL TO THE PROSECUTION'S CASE; CASE AT BAR.—** Elizabeth argues that the police officers blatantly ignored the mandatory provisions of Section 21, paragraph 1 of Republic Act No. 9165, particularly, the requirements on making an inventory report and taking photographs of the seized drugs in the presence of the accused or the latter's representative or counsel. x x x The above rule is implemented by Section 21(a) of the Implementing Rules and Regulations which expounds on how it is to be applied, and notably, also provides for a saving mechanism in case the procedure laid down in the law was not strictly complied with x x x. The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing Republic Act No. 9165, defines chain of custody x x x. Given the law, rules, and jurisprudence, the failure of the police officers to make an inventory report and to photograph the drugs seized from Linda and Elizabeth, as required by Article II, Section 21, paragraph 1 of Republic Act No. 9165, are not automatically fatal to the prosecution's case, as it was able to trace and prove the chain of custody of the same: after arresting Linda and Elizabeth during the buy-bust operation, the police officers brought the two women to the police station; at the police station, PO2 Ibasco, who acted as the poseur-buyer, marked the sachet of suspected *shabu* he received from Linda and Elizabeth during the buy-bust with his initials "EV-LA" and turned over the same to P/Insp. Villanueva; P/Insp. Villanueva prepared the Request for Laboratory Examination of the contents of the sachet; PO2 Ibasco delivered the Request for Laboratory Examination and the sachet of suspected *shabu* to the PNP Crime Laboratory, CPDCLO, Quezon City, where the Request and specimen were received by PO2 Plau; the contents of the sachet were examined by Forensic Analyst Jabonillo, who prepared Chemistry Report No. D-198-2003, confirming that the specimen tested positive for *shabu*; and lastly, during the

trial, the marked sachet of *shabu*, as well as the marked money used in purchasing the same, were presented as evidence and identified by PO2 Ibasco and SPO4 Reburiano.

5. **ID.; ID.; CHAIN OF CUSTODY; WHEN SUFFICIENTLY ESTABLISHED.—** In several cases, the Court found that the chain of custody of the seized drugs in a buy-bust operation had been sufficiently established when there was proof of the following: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

6. **ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; PENALTY.—** [T]here is no reason for the Court to disturb the findings of the RTC, as affirmed by the Court of Appeals, that Elizabeth is guilty beyond reasonable doubt of illegal sale of dangerous drug, as defined and penalized under Article II, Section 5 of Republic Act No. 9165. According to said provision, "[t]he penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as broker in any such transactions." Consequently, the penalty of life imprisonment and a fine of ₱500,000.00 imposed upon Elizabeth by the RTC and affirmed by the Court of Appeals are in accordance with law.

APPEARANCES OF COUNSEL

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

DECISION

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated September 27, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00489, which affirmed the Decision[2] dated December 7, 2004 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 103, Quezon City, in Criminal Case No. Q-03-114964, finding accused-appellants Linda Y. Alviz *aka* "Peking" (Linda) and Elizabeth B. de la Vega *aka* "Beth" (Elizabeth) guilty of violating Section 5, Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

The Information[3] charging both Linda and Elizabeth, filed before the RTC, reads:

> That on or about the 4th day of Feb., 2003, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero two (0.02) gram of methylamphetamine hydrochloride, a dangerous drug.

When arraigned on March 21, 2003, both Linda and Elizabeth pleaded not guilty to the crime charged and stipulated that they were arrested without a warrant of arrest.[4]

At the trial, the prosecution presented as witnesses Police Officer (PO) 2 Edsel Ibasco (Ibasco), the poseur-buyer, and Senior Police Officer (SPO) 4 Edgardo Reburiano (Reburiano),

---

[1] *Rollo*, pp. 2-11; penned by Associate Justice Marina L. Buzon with Associate Justices Regalado E. Maambong and Japar B. Dimaampao, concurring.

[2] Records, pp. 66-69; penned by Presiding Judge Jaime N. Salazar, Jr.

[3] *Id.* at 1.

[4] *Id.* at 16.

a member of the buy-bust team. The prosecution dispensed with the testimony of Forensic Analyst Leonard Jabonillo (Jabonillo), Chemist II of the Philippine National Police (PNP) Central Police District Crime Laboratory Office (CPDCLO), as the defense already admitted (1) the Memorandum[5] dated February 4, 2003 of Police Inspector (P/Insp.) Oliver Magtibay Villanueva (Villanueva) requesting laboratory examination of a small heat-sealed transparent plastic sachet, containing an undetermined quantity of white crystalline substance, suspected as *shabu*; and (2) Chemistry Report No. D-198-2003[6] prepared by Forensic Analyst Jabonillo stating that the examined specimen positively tested for methylamphetamine hydrochloride, a dangerous drug.[7]

Accused-appellants Linda and Elizabeth and Linda's daughter, Ronalyn Alviz (Ronalyn), took the witness stand for the defense.

The RTC promulgated its Decision on December 7, 2004, convicting and sentencing Linda and Elizabeth as follows:

> **ACCORDINGLY**, judgment is hereby rendered finding both accused Linda Alviz *y* Yatco and Elizabeth dela Vega *y* Bautista **GUILTY** beyond reasonable doubt for drug pushing penalized under Section 5, Article II, R.A. 9165 and each is hereby sentenced to suffer **LIFE IMPRISONMENT** and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos.
>
> The drug involved in this case weighing zero point zero two (0.02) gram is ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) thru the Dangerous Drugs Board for proper disposition.[8]

Linda and Elizabeth appealed to the Court of Appeals which reviewed the parties' conflicting versions of the events of February 4, 2003, when Linda and Elizabeth were arrested.

The Court of Appeals summarized the evidence for the prosecution, as follows:

---

[5] *Id.* at 10.

[6] *Id.* at 8.

[7] *Id.* at 29; RTC Order dated August 5, 2003.

[8] *Id.* at 69.

The evidence for the prosecution shows that at about 4:00 o'clock in the afternoon of February 4, 2003, a confidential informant arrived at Police Station 1, La Loma, Quezon City and talked to the Officer-in-Charge. Thereafter, the Officer-in-Charge formed a team to conduct surveillance and buy-bust operations at Isarog Street, Sta. Teresita, Quezon City. PO2 Edsel Ibasco was designated as the poseur-buyer with SPO4 Edgardo Rebu[r]iano and other policemen as back-up.

Upon arrival at Isarog Street, PO2 Ibasco and the confidential informant approached Linda Alviz outside her house. The confidential informant told Linda that PO2 Ibasco was deeply in need of *shabu*. Linda asked for the money and PO2 Ibasco gave a ₱100.00 bill on which he earlier placed his initials "EI." Linda called for Elizabeth dela Vega, who was inside the house, and the two talked. Elizabeth then went inside the house. After a while, Elizabeth came out and handed a plastic sachet to Linda. Linda gave the ₱100.00 bill to Elizabeth and the plastic sachet to PO2 Ibasco. PO2 Ibasco then gave the pre-arranged signal by scratching his head. SPO4 Rebu[r]iano, who was only two (2) meters away, rushed to the group, arrested Elizabeth and recovered from the latter the buy-bust money, while PO2 Ibasco arrested Linda. The police officers brought Linda and Elizabeth to the police station. PO2 [Ibasco] placed the letters "EV-LA" on the plastic sachet containing white crystalline substance.

A request for laboratory examination of the white crystalline substance was made by the La Loma Police Station 1 to the PNP Central Police District Crime Laboratory Office (CPDCLO). Forensic Analyst Leonard M. Jabonillo submitted a Report stating that the qualitative examination conducted on the specimen gave positive result to methylamphetamine hydrochloride, a dangerous drug. The defense admitted the request for examination, the Report and the specimen, for which reason, the prosecution dispensed with the testimony of the Forensic Analyst.[9] (Citations omitted.)

The appellate court similarly summed up the evidence for the defense, to wit:

Linda Alviz and Elizabeth dela Vega are sisters-in-law and reside in the same house at 17 Isarog Street, Sta. Teresita, Quezon City. They denied the accusations against them, claiming that they are vendors of native baskets.

---

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

Linda and Elizabeth tried to show that they and their children were on board a passenger jeepney on their way to Quintos Street to see a *magtatawas* because Linda's daughter was sick. Upon reaching Dr. Alejos Street, the jeepney was flagged down by two men in civilian clothes who asked them to alight. However, the jeepney driver and two (2) other passengers were not bothered by the two men. Linda, Elizabeth and their three children were asked to board a Ford Fiera and were taken to the police station. Linda and Elizabeth were frisked and Linda's ₱500.00, which was meant as payment to the *magtatawas*, and Elizabeth's ₱200.00 were taken by the two men, who turned out to be PO2 Ibasco and SPO4 Rebu[r]iano. PO2 Ibasco and SPO4 Rebu[r]iano told Linda and Elizabeth that they have *shabu*, which the two denied. Linda and Elizabeth were then brought to the Prosecutor's Office for inquest.

Ronalyn Alviz, the ten-year old daughter of Linda Alviz, corroborated the testimonies of her mother, Linda, and aunt, Elizabeth, that they were asked by two (2) men to alight from the passenger jeepney, boarded in another vehicle and brought to the police station. Linda and Elizabeth were detained while she, her younger brother, Allan, and cousin, Marlyn, were allowed to go home.[10]

In its Decision dated September 27, 2006, the Court of Appeals affirmed *in toto* the judgment of conviction of the RTC against Linda and Elizabeth. The appellate court found that the testimonies of PO2 Ibasco and SPO4 Reburiano were credible and deserved full faith and credit; that the defenses of denial and frame-up of Linda and Elizabeth could not prevail over their positive identification as the persons who sold a sachet of *shabu* for ₱100.00 to PO2 Ibasco during the buy-bust operation; that the defense failed to overcome the presumption of regularity in the police officers' performance of official duty as there was no proof establishing improper motive on the part of said police officers in effecting the arrest of Linda and Elizabeth, with the latter two even admitting that they did not know the police officers prior to their arrest; and that the police team properly observed the procedure outlined by Section 21 of Republic Act No. 9165.

---

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

Initially, both Linda and Elizabeth appealed before the Court. However, Linda executed a Motion for Withdrawal of Appeal on August 14, 2007.

The Resolution dated September 3, 2007[11] granted Linda's Motion for Withdrawal of Appeal, and the case insofar as she was concerned was considered closed and terminated. The judgment against Linda was accordingly recorded in the Book of Entries of Judgments on October 24, 2007.[12]

Now, only Elizabeth's appeal is left for consideration by the Court. In her Brief[13] filed before the Court of Appeals, Elizabeth assigned the following errors purportedly committed by the RTC:

I

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANTS WERE ILLEGALLY ARRESTED.

II

THE LOWER COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCONSISTENT STATEMENTS OF THE POLICE OFFICERS.

III

THE LOWER COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT 9165.[14]

There is no merit in the instant appeal.

Elizabeth insists that there was no buy-bust operation and what actually took place was an unlawful warrantless arrest. She claims that none of the circumstances justifying an arrest without a warrant under Rule 113, Section 5 of the Rules of

---

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

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

[13] CA *rollo*, pp. 33-46.

[14] *Id.* at 35.

Court[15] was present. When she was arrested, she was neither committing nor was about to commit any crime, and she was not acting in any manner that would engender a reasonable ground to believe that she was committing a crime. Elizabeth argues that whatever evidence was obtained from her and Linda on occasion of their arrest is inadmissible being the fruit of a poisonous tree.

The People, represented by the Office of the Solicitor General (OSG), asserts that the warrantless arrest of Linda and Elizabeth was lawful because the police officers caught them *in flagrante delicto* selling *shabu* to PO2 Ibasco in exchange for ₱100.00.

As to which of the foregoing versions is more credible, given the evidence presented at trial by both parties, especially the witnesses' testimonies, the Court generally relies upon the assessment and factual findings of the RTC.

It is a fundamental rule that factual findings of the trial courts involving credibility are accorded respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals,[16] such as

---

[15] Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has personal cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

[16] *People v. Concepcion,* G.R. No. 178876, June 27, 2008, 556 SCRA 421, 440.

in this case. The Court, therefore, has no reason to deviate from this rule.

Jurisprudence has identified the elements that must be established for the successful prosecution of illegal sale of dangerous drugs, *viz*: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for the same. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused. In other words, the commission of the offense of illegal sale of dangerous drugs, like *shabu*, merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place.[17]

The RTC found, and the Court of Appeals eventually affirmed, that all these elements have been amply proven by the prosecution. The prosecution, through the detailed testimonies of PO2 Ibasco and SPO4 Reburiano, established that there was a consummated sale of *shabu* by Linda and Elizabeth to PO2 Ibasco during the buy-bust operation. The police officers' testimonies reveal that the buy-bust operation was planned and conducted following a report from a confidential informant (CI);[18] PO2 Ibasco, accompanied by the CI, approached Linda outside the latter's house at Isarog St., Sta. Teresita, Quezon City; PO2 Ibasco pretended that he was looking for a "score;" Linda immediately demanded payment and PO2 Ibasco handed to her the ₱100.00 marked money; Linda called Elizabeth, who stepped out of the house; after a brief conversation between the two women, Elizabeth went inside the house to return with a plastic sachet of *shabu*; Elizabeth handed the sachet to Linda, who, in turn, handed the same to PO2 Ibasco; upon PO2 Ibasco's signal, the

---

[17] *People v. Arriola,* G.R. No. 187736, February 8, 2012, 665 SCRA 581, 591-592.

[18] TSN, June 19, 2003, pp. 2-3.

other members of the buy-bust team came forward and arrested Linda and Elizabeth; and SPO4 Reburiano recovered the marked money from Elizabeth. Forensic testing would subsequently confirm that the contents of the sachet from Linda and Elizabeth were indeed *shabu*. The defense was not able to impeach the police officers' testimonies.

There is little credence in Elizabeth's assertion that she and Linda were mere victims of a frame-up. As the Court declared in *People v. Capalad*:[19]

> Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit. (Citations omitted.)

In this case, there is absolute lack of evidence that the members of the buy-bust team were stirred by illicit motive or had improperly performed their duties in arresting Linda and Elizabeth. Both Linda and Elizabeth admitted that they did not know the police officers prior to their arrest. Hence, there could not have been any bad blood between them and said police officers.[20] The Court further quotes with approval the following observations of the RTC on the matter:

> It is (sic) appears remote that the police officers, in so far as the circumstances obtaining in this case, could openly do the act being attributed to them by the accused. That, Ibasco and Reburiano, for no reason at all, would instantly flagged (sic) down a passenger jeepney and forcibly drag and then frisked (sic) some of its passengers, herein accused and their children, and thereafter, transferred them into another vehicle.

---

[19] G.R. No. 184174, April 7, 2009, 584 SCRA 717, 727.

[20] *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305, 336.

According to the accused, the incident happened at Alejos St., along Dapitan and it was about 4:00 p.m. while they were on their way to a "*magtatawas*" together with their children, on board a jeepney. They were together with three (3) other passengers and the driver. Considering the scenario described by the accused, the rest of the passengers who were likewise innocently seated would have also been the victim of the indiscriminate and rampant arrest of the police. But, to the court's surprise, these police officers, from the very own testimonies of the accused, spared their fellow passengers by allowing them to leave the area. This vital circumstance renders unbelievable the defense version in this case.

It is also the court's observation that if indeed the incident happened as it was demonstrated by the accused, certainly, a commotion should have taken place right there and then. The other passengers of the jeepney should have panicked or at least have sought the help of others but unfortunately, there was none. In fact, even Linda herself admitted that she did not bother to ask the reason why the police who were in civilian clothes, suddenly flagged down their vehicle. The speculation of Linda that the jeepney will be hired by those policemen is, to the mind of the court, an afterthought of a cock-and-bull story.

Aside from the incredulity of the testimonies of the accused, both accused made inconsistent statements, which are significant and material in nature. Accused Linda denied that the police conducted an investigation but according to Beth, both of them were asked questions by the police. Also, according to Beth, her daughter was crying when the police were arresting them but Linda made no allegation about it, which is very unusual and unnatural.[21]

The only other witness for the defense, presented to corroborate the testimonies of Linda and Elizabeth, was Ronalyn, Linda's daughter and Elizabeth's niece. However, the RTC did not give much weight to her testimony for the following reasons:

The Court finds the testimony of Ronalyn to be a mere sounding board of the testimonies of her mother and her auntie. The Court finds her testimony to be a rehearsed one in view of Ronalyn's demeanor while testifying. Her manner of testifying was significantly

---

[21] Records, pp. 68-69.

mechanical and unfeeling. There was no touch at all of a hurt emotion or color of disgust in her, were her version true.[22]

As a result of the finding that a buy-bust operation actually took place and that Linda and Elizabeth were apprehended *in flagrante delicto*, the evidence gathered and presented by the prosecution on the occasion of their lawful arrest without warrant cannot be deemed as the "fruits of a poisonous tree," but are admissible and competent proof of their guilt.

Elizabeth also harps on purported contradictions and improbabilities in the testimonies of PO2 Ibasco and SPO4 Reburiano, specifically, as to: (1) the composition of the buy-bust team; (2) the existence of a pre-operation report and coordination with the Philippine Drug Enforcement Agency (PDEA); and (3) the markings made by PO2 Ibasco on the sachet of *shabu*.

The Court is not swayed. The inconsistencies adverted to by Elizabeth are trivial and insignificant and refer only to minor details. Time and again, the Court has steadfastly ruled that inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses for they erase the suspicion of rehearsed testimony. Furthermore, the Court cannot expect the testimonies of different witnesses to be completely identical and to coincide with each other since they have different impressions and recollections of the incident. Hence, it is only natural that their testimonies are at variance on some minor details.[23] As this Court ruled in *People v. Madriaga*:[24]

Settled is the rule that discrepancies on minor matters do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty. These inconsistencies, which may be caused by the natural fickleness of memory, even tend to strengthen rather than weaken the credibility of the prosecution witnesses because

---

[22] *Id.* at 69.

[23] *People v. Santiago,* 465 Phil. 151, 161-162 (2004).

[24] G.R. No. 82293, July 23, 1992, 211 SCRA 698, 712-713.

they erase any suspicion of rehearsed testimony. What is important is that the testimonies agree on the essential facts and that the respective versions corroborate and substantially coincide with each other to make a consistent and coherent whole. (Citations omitted.)

Indeed, in a prosecution for illegal sale of dangerous drugs, what is material is the proof that the accused peddled illicit drugs, coupled with the presentation in court of the *corpus delicti*,[25] both of which were satisfactorily complied with by the prosecution in this case.

Finally, Elizabeth argues that the police officers blatantly ignored the mandatory provisions of Section 21, paragraph 1 of Republic Act No. 9165, particularly, the requirements on making an inventory report and taking photographs of the seized drugs in the presence of the accused or the latter's representative or counsel.

Once more, the Court is not swayed.

Article II, Section 21, paragraph 1 of Republic Act No. 9165 provides:

Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically 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[.] (Emphases supplied.)

---

[25] *People v. Chua Tan Lee*, 457 Phil. 443, 449 (2003).

The above rule is implemented by Section 21(a) of the Implementing Rules and Regulations which expounds on how it is to be applied, and notably, also provides for a saving mechanism in case the procedure laid down in the law was not strictly complied with:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said item[**.] (Emphasis ours).

The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing Republic Act No. 9165, defines chain of custody as follows:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *Malillin v. People*,[26] the Court discussed how the chain of custody of seized items should be established, thus:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. (Citations omitted.)

In several cases, the Court found that the chain of custody of the seized drugs in a buy-bust operation had been sufficiently established when there was proof of the following: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[27]

Given the law, rules, and jurisprudence, the failure of the police officers to make an inventory report and to photograph the drugs seized from Linda and Elizabeth, as required by Article II, Section 21, paragraph 1 of Republic Act No. 9165, are not automatically fatal to the prosecution's case, as it was able to trace and prove the chain of custody of the same: after arresting

---

[26] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[27] *People v. Jakar Mapan Le*, G.R. No. 188976, June 29, 2010, 622 SCRA 571, 583; *People v. Kamad,* G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308; *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 272-275.

Linda and Elizabeth during the buy-bust operation, the police officers brought the two women to the police station; at the police station, PO2 Ibasco, who acted as the poseur-buyer, marked the sachet of suspected *shabu* he received from Linda and Elizabeth during the buy-bust with his initials "EV-LA" and turned over the same to P/Insp. Villanueva; P/Insp. Villanueva prepared the Request for Laboratory Examination of the contents of the sachet; PO2 Ibasco delivered the Request for Laboratory Examination and the sachet of suspected *shabu* to the PNP Crime Laboratory, CPDCLO, Quezon City, where the Request and specimen were received by PO2 Plau; the contents of the sachet were examined by Forensic Analyst Jabonillo, who prepared Chemistry Report No. D-198-2003, confirming that the specimen tested positive for *shabu*;[28] and lastly, during the trial, the marked sachet of *shabu*, as well as the marked money used in purchasing the same, were presented as evidence and identified by PO2 Ibasco and SPO4 Reburiano.

All told, there is no reason for the Court to disturb the findings of the RTC, as affirmed by the Court of Appeals, that Elizabeth is guilty beyond reasonable doubt of illegal sale of dangerous drug, as defined and penalized under Article II, Section 5 of Republic Act No. 9165. According to said provision, "[t]he penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as broker in any such transactions." Consequently, the penalty of life imprisonment and a fine of ₱500,000.00 imposed upon Elizabeth by the RTC and affirmed by the Court of Appeals are in accordance with law.

WHEREFORE, the instant appeal of Elizabeth de la Vega is **DENIED** and the Decision dated September 27, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00489 convicting

---

[28] Records, p. 8.

her for violation of Article II, Section 5 of Republic Act No. 9165 is **AFFIRMED** *in toto.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179096. February 6, 2013]

JOSEPH GOYANKO, JR., as administrator of the Estate of Joseph Goyanko, Sr., *petitioner, vs.* **UNITED COCONUT PLANTERS BANK, MANGO AVENUE BRANCH,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; RESOLVES ONLY QUESTIONS OF LAW.—** We stress the settled rule that a petition for review on *certiorari* under Rule 45 of the Rules of Court resolves only questions of law, not questions of fact. A question, to be one of law, must not examine the probative value of the evidence presented by the parties; otherwise, the question is one of fact. Whether an express trust exists in this case is a question of fact whose resolution is not proper in a petition under Rule 45. Reinforcing this is the equally settled rule that factual findings of the lower tribunals are conclusive on the parties and are not generally reviewable by this Court, especially when, as here, the CA affirmed these findings. The plain reason is that this Court is not a trier of facts. While this Court has, at times, permitted exceptions from the

restriction, we find that none of these exceptions obtain in the present case.

2. **ID.; ID.; ID.; A PARTY IS NOT ALLOWED TO CHANGE THE THEORY OF HIS CASE ON APPEAL; CASE AT BAR.—** [W]e find that the petitioner changed the theory of his case. The petitioner argued before the lower courts that an express trust exists between PALII as the trustee and the HEIRS as the trustor-beneficiary. The petitioner now asserts that the express trust exists between PALII as the trustor and UCPB as the trustee, with the HEIRS as the beneficiaries. At this stage of the case, such change of theory is simply not allowed as it violates basic rules of fair play, justice and due process. Our rulings are clear — "a party who deliberately adopts a certain theory upon which the case was decided by the lower court will not be permitted to change [it] on appeal"; otherwise, the lower courts will effectively be deprived of the opportunity to decide the merits of the case fairly. Besides, courts of justice are devoid of jurisdiction to resolve a question not in issue.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; TRUST; NATURE. —** A trust, either express or implied, is the fiduciary relationship "x x x between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter."

4. **ID.; ID.; EXPRESS OR DIRECT TRUSTS; THE CREATION OF AN EXPRESS TRUST MUST BE FIRMLY SHOWN.—** Express or direct trusts are created by the direct and positive acts of the trustor or of the parties. No written words are required to create an express trust. This is clear from Article 1444 of the Civil Code, but, the creation of an express trust must be firmly shown; it cannot be assumed from loose and vague declarations or circumstances capable of other interpretations.

5. **ID.; ID.; ID.; ELEMENTS; NOT PRESENT IN CASE AT BAR. —** In *Rizal Surety & Insurance Co. v. CA*, we laid down the requirements before an express trust will be recognized: "Basically, **these elements include a competent trustor and trustee, an ascertainable trust *res*, and sufficiently certain beneficiaries. x x x each of the above elements is required**

to be established, and, if any one of them is missing, it is fatal to the trusts (sic). Furthermore, there must be a present and complete disposition of the trust property, notwithstanding that the enjoyment in the beneficiary will take place in the future. It is essential, too, that the purpose be an active one to prevent trust from being executed into a legal estate or interest, and one that is not in contravention of some prohibition of statute or rule of public policy. **There must also be some power of administration other than a mere duty to perform a contract although the contract is for a third-party beneficiary. A declaration of terms is essential, and these must be stated with reasonable certainty in order that the trustee may administer**, and that the court, if called upon so to do, may enforce, the trust." Under these standards, we hold that no express trust was created. **First**, while an ascertainable trust *res* and sufficiently certain beneficiaries may exist, a competent trustor and trustee do not. **Second**, UCPB, as trustee of the ACCOUNT, was never under any equitable duty to deal with or given any power of administration over it. On the contrary, it was PALII that undertook the duty to hold the title to the ACCOUNT for the benefit of the HEIRS. **Third**, PALII, as the trustor, did not have the right to the beneficial enjoyment of the ACCOUNT. **Finally**, the terms by which UCPB is to administer the ACCOUNT was not shown with reasonable certainty. While we agree with the petitioner that a trust's beneficiaries need not be particularly identified for a trust to exist, **the intention to create an express trust must first be firmly established**, along with the other elements laid above; absent these, no express trust exists.

6. **ID.; ID.; SIMPLE LOAN; SAVINGS DEPOSIT AGREEMENT; THE BANK'S FIDUCIARY RELATIONSHIP WITH ITS DEPOSITORS DOES NOT CONVERT THE CONTRACT BETWEEN THE BANK AND ITS DEPOSITORS FROM A SIMPLE LOAN TO A TRUST AGREEMENT.—** UCPB did not become a trustee by the mere opening of the ACCOUNT. While this may seem to be the case, by reason of the fiduciary nature of the bank's relationship with its depositors, this fiduciary relationship does not "convert the contract between the bank and its depositors from a simple loan to a trust agreement, whether express or implied." It simply means that the bank is obliged to observe "high standards of integrity

and performance" in complying with its obligations under the contract of simple loan. Per Article 1980 of the Civil Code, a creditor-debtor relationship exists between the bank and its depositor. The savings deposit agreement is between the bank and the depositor; by receiving the deposit, the bank impliedly agrees to pay upon demand and only upon the depositor's order.

7. **ID.; ID.; ID.; ID.; THE BANK'S DUTY IS TO ITS CREDITOR-DEPOSITOR AND NOT TO THIRD PERSONS.—** Since the records and the petitioner's own admission showed that the ACCOUNT was opened by PALII, UCPB's receipt of the deposit signified that it agreed to pay PALII upon its demand and only upon its order. Thus, when UCPB allowed PALII to withdraw from the ACCOUNT, it was merely performing its contractual obligation under their savings deposit agreement. No negligence or bad faith can be imputed to UCPB for this action. As far as UCPB was concerned, PALII is the account holder and not the HEIRS. As we held in *Fulton Iron Works Co. v. China Banking Corporation*, the bank's duty is to its creditor-depositor and not to third persons. Third persons, like the HEIRS here, who may have a right to the money deposited, cannot hold the bank responsible unless there is a court order or garnishment. The petitioner's recourse is to go before a court of competent jurisdiction to prove his valid right over the money deposited.

APPEARANCES OF COUNSEL

Villanueva Gabionza & De Santos for petitioner.
Balbin & Associates for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner Joseph Goyanko, Jr., administrator of the Estate of

---

[1] Dated September 25, 2007 and filed on September 24, 2007 under Rule 45 of the 1997 Rules of Civil Procedure; *rollo*, pp. 24-42.

Joseph Goyanko, Sr., to nullify the decision[2] dated February 20, 2007 and the resolution[3] dated July 31, 2007 of the Court of Appeals *(CA)* in CA-G.R. CV. No. 00257 affirming the decision[4] of the Regional Trial Court of Cebu City, Branch 16 *(RTC)* in Civil Case No. CEB-22277. The RTC dismissed the petitioner's complaint for recovery of sum of money against United Coconut Planters Bank, Mango Avenue Branch *(UCPB)*.

The Factual Antecedents

In 1995, the late Joseph Goyanko, Sr. *(Goyanko)* invested Two Million Pesos (₱2,000,000.00) with Philippine Asia Lending Investors, Inc. *(PALII)*; he died before the investment matured. Goyanko's legitimate family, represented by the petitioner, and his illegitimate family presented conflicting claims to PALII for the release of the investment. Pending the investigation of the conflicting claims, PALII deposited the proceeds of the investment with UCPB on October 29, 1996[5] under the name "Phil Asia: ITF (In Trust For) The Heirs of Joseph Goyanko, Sr." *(ACCOUNT)*. On September 27, 1997, the deposit under the ACCOUNT was ₱1,509,318.76.

On December 11, 1997, UCPB allowed PALII to withdraw One Million Five Hundred Thousand Pesos (₱1,500,000.00) from the Account, leaving a balance of only ₱9,318.76. When UCPB refused the demand to restore the amount withdrawn plus legal interest from December 11, 1997, the petitioner filed a complaint before the RTC. In its answer to the complaint,

---

[2] Penned by Associate Justice Priscilla Baltazar-Padilla, and concurred in by Executive Justice Arsenio J. Magpale and Associate Justice Romeo F. Barza; *id.* at 9-17.

[3] *Id.* at 19-20.

[4] Dated August 27, 2003 per the CA decision; *id* at 9.

[5] The amount deposited was ₱1,485,685.09 per the CA decision dated February 20, 2007. Per the attached copy of UCPB's record pertaining to the ACCOUNT, and UCPB's comment, the ACCOUNT was opened on May 31, 1996. Also, per UCPB's comment, the initial deposit on the ACCOUNT was ₱173,250.00, with subsequent deposits made in the succeeding months, the last of which was on October 28, 1996; *id.* at 60 and 77.

UCPB admitted, among others, the opening of the ACCOUNT under the name "ITF (In Trust For) The Heirs of Joseph Goyanko, Sr.," *(ITF HEIRS)* and the withdrawal on December 11, 1997.

The RTC Ruling

In its August 27, 2003 decision, the RTC dismissed the petitioner's complaint and awarded UCPB attorney's fees, litigation expenses and the costs of the suit.[6] The RTC did not consider the words "ITF HEIRS" sufficient to charge UCPB with knowledge of any trust relation between PALII and Goyanko's heirs *(HEIRS)*. It concluded that UCPB merely performed its duty as a depository bank in allowing PALII to withdraw from the ACCOUNT, as the contract of deposit was officially only between PALII, in its own capacity, and UCPB. The petitioner appealed his case to the CA.

The CA's Ruling

Before the CA, the petitioner maintained that **by opening the ACCOUNT, PALII established a trust by which it was the "trustee" and the HEIRS are the "trustors-beneficiaries;"** thus, UCPB should be liable for allowing the withdrawal.

The CA partially granted the petitioner's appeal. It affirmed the August 27, 2003 decision of the RTC, but deleted the award of attorney's fees and litigation expenses. The CA held that no express trust was created between the HEIRS and PALII. For a trust to be established, the law requires, among others, a competent trustor and trustee and a clear intention to create a trust, which were absent in this case. Quoting the RTC with approval, the CA noted that the contract of deposit was only between PALII in its own capacity and UCPB, and the words "ITF HEIRS" were insufficient to establish the existence of a trust. The CA concluded that as no trust existed, expressly or impliedly, UCPB is not liable for the amount withdrawn.[7]

---

[6] From the dispositive portion of the RTC decision, as quoted by the CA; *id.* at 10.

[7] *Id.* at 15.

In its July 31, 2007 resolution,[8] the CA denied the petitioner's motion for reconsideration. Hence, the petitioner's present recourse.

The Petition

The petitioner argues in his petition that: *first*, an express trust was created, as clearly shown by PALII's March 28, 1996 and November 15, 1996 letters.[9] Citing jurisprudence, the petitioner emphasizes that from the established definition of a trust,[10] PALII is clearly the trustor as it created the trust; UCPB is the trustee as it is the party in whom confidence is reposed as regards the property for the benefit of another; and the HEIRS are the beneficiaries as they are the persons for whose benefit the trust is created.[11] Also, quoting *Development Bank of the Philippines v. Commission on Audit,*[12] the petitioner argues that the naming of the *cestui que trust* is not necessary as it suffices that they are adequately certain or identifiable.[13]

Second, UCPB was negligent and in bad faith in allowing the withdrawal and in failing to inquire into the nature of the ACCOUNT.[14] The petitioner maintains that the surrounding facts, the testimony of UCPB's witness, and UCPB's own records showed that: (1) UCPB was aware of the trust relation between PALII and the HEIRS; and (2) PALII held the ACCOUNT in a trust capacity. *Finally*, the CA erred in affirming the RTC's dismissal of his case for lack of cause of action. The petitioner insists that since an express trust clearly exists, UCPB, the trustee, should not have allowed the withdrawal.

---

[8] *Supra* note 3.

[9] *Rollo*, pp. 33-35, 113-114; copy of the letters at pp. 59 and 61.

[10] The petitioner cites the Court's ruling in *Estate of Edward Grimm v. Estate of Charles Parsons and Patrick C. Parsons*, G.R. No. 159810, October 9, 2006, 504 SCRA 67; *id.* at 36. The petitioner also cites *Galvez v. Court of Appeals,* 485 SCRA 346; *id.* at 115-116.

[11] *Rollo*, pp. 34-36, 115-116.

[12] G.R. No. 144516, February 11, 2004, 422 SCRA 459.

[13] *Rollo*, pp. 35, 116-117.

[14] *Id.* at 36-40, 119-123.

The Case for UCPB

UCPB posits, in defense, that the ACCOUNT involves an ordinary deposit contract between PALII and UCPB only, which created a debtor-creditor relationship obligating UCPB to return the proceeds to the account holder-PALII. Thus, it was not negligent in handling the ACCOUNT when it allowed the withdrawal. The mere designation of the ACCOUNT as "ITF" is insufficient to establish the existence of an express trust or charge it with knowledge of the relation between PALII and the HEIRS.

UCPB also argues that the petitioner changed the theory of his case. Before the CA, the petitioner argued that the HEIRS are the trustors-beneficiaries, and PALII is the trustee. Here, the petitioner maintains that PALII is the trustor, UCPB is the trustee, and the HEIRS are the beneficiaries. Contrary to the petitioner's assertion, the records failed to show that PALII and UCPB executed a trust agreement, and PALII's letters made it clear that PALII, on its own, intended to turn-over the proceeds of the ACCOUNT to its rightful owners.

The Court's Ruling

The issue before us is whether UCPB should be held liable for the amount withdrawn because a trust agreement existed between PALII and UCPB, in favor of the HEIRS, when PALII opened the ACCOUNT with UCPB.

We rule in the negative.

We first address the procedural issues. We stress the settled rule that a petition for review on *certiorari* under Rule 45 of the Rules of Court resolves only questions of law, not questions of fact.[15] A question, to be one of law, must not examine the

---

[15] *Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011, 644 SCRA 1, 8-9; *Philippine Commercial International Bank v. Balmaceda,* G.R. No. 158143, September 21, 2011, 658 SCRA 33, 42-43; *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38, 46-47; and *Republic v. De Guzman,* G.R. No. 175021, June 15, 2011, 652 SCRA 101, 113.

probative value of the evidence presented by the parties;[16] otherwise, the question is one of fact.[17] Whether an express trust exists in this case is a question of fact whose resolution is not proper in a petition under *Rule 45*. Reinforcing this is the equally settled rule that factual findings of the lower tribunals are conclusive on the parties and are not generally reviewable by this Court,[18] especially when, as here, the CA affirmed these findings. The plain reason is that this Court is not a trier of facts.[19] While this Court has, at times, permitted exceptions from the restriction,[20] we find that none of these exceptions obtain in the present case.

---

[16] *Lorzano v. Tabayag, Jr., supra* note 15, at 46-47; *Republic v. De Guzman, supra* note 15, at 113. See also *Heirs of Pacencia Racaza, etc. v. Spouses Florencio Abay-abay, et al.*, G.R. No. 198402, June 13, 2012.

[17] *Lorzano v. Tabayag, Jr., supra* note 15, at 46-47; Republic *v. De Guzman, supra* note 15, at 113.

[18] See *Heirs of Pacencia Racaza, etc. v. Spouses Florencio Abay-abay, supra* note 16.

[19] *Id.*

[20] Among the recognized exceptions to the restriction are:

(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 CA 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 CA's findings are contrary to those by the trial court;
(h) When the findings are conclusions without specific citation of specific evidence on which they are based;
(i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
(j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
(k) When the CA manifestly overlooked certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion.

Second, we find that the petitioner changed the theory of his case. The petitioner argued before the lower courts that an express trust exists between PALII as the trustee and the HEIRS as the trustor-beneficiary.[21] The petitioner now asserts that the express trust exists between PALII as the trustor and UCPB as the trustee, with the HEIRS as the beneficiaries.[22] At this stage of the case, such change of theory is simply not allowed as it violates basic rules of fair play, justice and due process. Our rulings are clear — "a party who deliberately adopts a certain theory upon which the case was decided by the lower court will not be permitted to change [it] on appeal";[23]otherwise, the lower courts will effectively be deprived of the opportunity to decide the merits of the case fairly.[24] Besides, courts of justice are devoid of jurisdiction to resolve a question not in issue.[25] For these reasons, the petition must fail. Independently of these, the petition must still be denied.

No express trust exists; UCPB exercised the required diligence in handling the ACCOUNT; petitioner has no cause of action against UCPB

A trust, either express or implied,[26] is the fiduciary relationship "x x x between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain

---

[21] See *rollo*, pp. 12-13.

[22] *Id.* at 34-36, 115-116.

[23] *Morla v. Belmonte,* G.R. No. 171146, December 7, 2011, 661 SCRA 717, 727.

[24] *Peña v. Tolentino,* G.R. Nos. 155227-28, February 9, 2011, 642 SCRA 310, 323.

[25] *Id.* at 324.

[26] *Estate of Margarita D. Cabacungan v. Laigo,* G.R. No. 175073, August 15, 2011, 655 SCRA 366, 376. See also *Philippine National Bank v. Aznar,* G.R. Nos. 171805 and 172021, May 30, 2011, 649 SCRA 214, 230; and *Torbela v. Rosario,* G.R. Nos. 140528 and 140553, December 7, 2011, 661 SCRA 633, 661.

powers by the latter."[27] Express or direct trusts are created by the direct and positive acts of the trustor or of the parties.[28] No written words are required to create an express trust. This is clear from Article 1444 of the Civil Code,[29] but, the creation of an express trust must be firmly shown; it cannot be assumed from loose and vague declarations or circumstances capable of other interpretations.[30]

In *Rizal Surety & Insurance Co. v. CA*,[31] we laid down the requirements before an express trust will be recognized:

> Basically, **these elements include a competent trustor and trustee, an ascertainable trust *res*, and sufficiently certain beneficiaries. xxx each of the above elements is required to be established, and, if any one of them is missing, it is fatal to the trusts (sic). Furthermore, there must be a present and complete disposition of the trust property, notwithstanding that the enjoyment in the beneficiary will take place in the future.** It is essential, too, that the purpose be an active one to prevent trust from being executed into a legal estate or interest, and one that is not in contravention of some prohibition of statute or rule of public policy. **There must also be some power of administration other than a mere duty to perform a contract although the contract is for a third-party beneficiary. A declaration of terms is essential, and these must be stated with reasonable certainty in order that the trustee may administer**, and that the court, if called upon so to do, may enforce, the trust. [emphasis ours]

---

[27] *Estate of Margarita D. Cabacungan v. Laigo, supra*, at 376. See also *Philippine National Bank v. Aznar, supra*; *Torbela v. Rosario, supra*; and *Metropolitan Bank & Trust Company, Inc. v. Board of Trustees of Riverside Mills Corporation Provident and Retirement Fund,* G.R. No. 176959, September 8, 2010, 630 SCRA 350, 357.

[28] *Torbela v. Rosario, supra* note 26; and *PNB v. Aznar, supra* note 26.

[29] Art. 1444. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.

[30] *Philippine National Bank v. Aznar, supra* note 26, at 230.

[31] 329 Phil. 789, 805-806, citing *Mindanao Development Authority v. Court of Appeals,* No. L-49087, April 5, 1982, 113 SCRA 429, 436-437.

Under these standards, we hold that no express trust was created. **First**, while an ascertainable trust *res* and sufficiently certain beneficiaries may exist, a competent trustor and trustee do not. **Second**, UCPB, as trustee of the ACCOUNT, was never under any equitable duty to deal with or given any power of administration over it. On the contrary, it was PALII that undertook the duty to hold the title to the ACCOUNT for the benefit of the HEIRS. **Third**, PALII, as the trustor, did not have the right to the beneficial enjoyment of the ACCOUNT. **Finally**, the terms by which UCPB is to administer the ACCOUNT was not shown with reasonable certainty. While we agree with the petitioner that a trust's beneficiaries need not be particularly identified for a trust to exist, **the intention to create an express trust must first be firmly established**, along with the other elements laid above; absent these, no express trust exists.

Contrary to the petitioner's contention, PALII's letters and UCPB's records established UCPB's participation as a mere depositary of the proceeds of the investment. In the March 28, 1996 letter, PALII manifested its intention to pursue an active role in and up to the turnover of those proceeds to their rightful owners,[32] while in the November 15, 1996 letter, PALII begged the petitioner to trust it with the safekeeping of the investment proceeds and documents.[33] Had it been PALII's intention to create a trust in favor of the HEIRS, it would have relinquished any right or claim over the proceeds in UCPB's favor as the trustee. As matters stand, PALII never did.

---

[32] *Rollo*, p. 59. The letter stated: "In the meantime, the **monthly interest that will accrue to said investments will be, at the instance of our client, deposited in a bank under the account name, 'Heirs of Joseph Goyanko, Sr.**, x x x.

x x x **our client will be constrained to bring an action before the court for interpleader** to compel the claimants to interplead and litigate their several claims among themselves.' (emphasis ours)

[33] *Id.* at 61. To quote PALII: "Since the money is intact and safe in the bank ready for turn-over to the righteous owner, so with all the documents of the investment in our possession, **we would like to request your goodself to please trust us for its safekeeping**." (emphasis ours)

UCPB's records and the testimony of UCPB's witness[34] likewise lead us to the same conclusion. While the words "ITF HEIRS" may have created the impression that a trust account was created, a closer scrutiny reveals that it is an ordinary savings account.[35] We give credence to UCPB's explanation that the word "ITF" was merely used to distinguish the ACCOUNT from PALII's other accounts with UCPB. A trust can be created without using the word "trust" or "trustee," but the mere use of these words does not automatically reveal an intention to create a trust.[36] If at all, these words showed a trustee-beneficiary relationship between PALII and the HEIRS.

Contrary to the petitioner's position, UCPB did not become a trustee by the mere opening of the ACCOUNT. While this may seem to be the case, by reason of the fiduciary nature of the bank's relationship with its depositors,[37] this fiduciary relationship does not "convert the contract between the bank and its depositors from a simple loan to a trust agreement, whether express or implied."[38] It simply means that the bank is obliged to observe "high standards of integrity and performance" in complying with its obligations under the contract of simple loan.[39] Per Article 1980 of the Civil Code,[40] a creditor-debtor relationship

---

[34] *Id.* at 62-64. UCPB's witness testified that the ACCOUNT was owned by PALII and that he was not personally aware of any trust relation between PALII and the HEIRS since he was not yet the bank's branch manager at that time.

[35] *Id.* at 60. In the copy of the UCPB's record, UCPB Form No. 4-1118, under the heading "TYPE OF ACCOUNT," the option "Savings Account" bears a check mark. Also, on the reverse side, under the heading "TYPE OF ACCT." "Savings Acct." was written. Also the ACCOUNT's authorized signatory was only Crisanto Pescadero, PALII's general manager.

[36] See *Torbela v. Rosario, supra* note 26, at 661.

[37] See *BPI Family Bank v. Franco,* G.R. No. 123498, November 23, 2007, 538 SCRA 184, 198.

[38] *Consolidated Bank and Trust Corporation v. Court of Appeals,* G.R. No. 138569, September 11, 2003, 457 Phil. 688, 707.

[39] *Id.* at 705.

[40] Article 1980 of the Civil Code provides:

exists between the bank and its depositor.[41] The savings deposit agreement is between the bank and the depositor;[42] by receiving the deposit, the bank impliedly agrees to pay upon demand and only upon the depositor's order.[43]

Since the records and the petitioner's own admission showed that the ACCOUNT was opened by PALII, UCPB's receipt of the deposit signified that it agreed to pay PALII upon its demand and only upon its order. Thus, when UCPB allowed PALII to withdraw from the ACCOUNT, it was merely performing its contractual obligation under their savings deposit agreement. No negligence or bad faith[44] can be imputed to UCPB for this action. As far as UCPB was concerned, PALII is the account holder and not the HEIRS. As we held in *Fulton Iron Works Co. v. China Banking Corporation,*[45] the bank's duty is to its creditor-depositor and not to third persons. Third persons, like the HEIRS here, who may have a right to the money deposited,

---

Art. 1980. Fixed, **savings**, and current **deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan**. (emphasis ours)

[41] See *Central Bank of the Philippines v. Citytrust Banking Corporation,* G.R. No. 141835, February 4, 2009, 578 SCRA 27, 32, quoting *Consolidated Bank and Trust Corporation v. Court of Appeals, supra* note 38 at, 574-575; *Lucman v. Malawi*, 540 Phil. 289, 300 (2006); and *Allied Banking Corporation v. Lim Sio Wan,* G.R. No. 133179, March 27, 2008, 549 SCRA 504, 515. See *Samsung Construction Co. Phils., Inc. v. FEBTC*, 480 Phil. 39, 49 (2004).

[42] *Consolidated Bank and Trust Corporation v. Court of Appeals, supra* note 38, at 705.

[43] *Samsung Construction Co. Phils., Inc. v. FEBTC*, *supra* note 41, at 49; and *Central Bank of the Philippines v. Citytrust Banking Corporation, supra* note 41, at 32.

[44] Article 1173, Civil Code of the Philippines provides: "Negligence consists in the omission of that diligence which is required by the nature of the obligation, and corresponds with the circumstances of the persons, of the time and of the place." Bad faith implies a conscious or intentional design to do a wrongful act for a dishonest purpose or moral obliquity. (*Arenas v. CA,* G.R. No. 126466, January 14, 1999, 345 SCRA 617).

[45] 55 Phil. 208, 216-217 (1930).

cannot hold the bank responsible unless there is a court order or garnishment.[46] The petitioner's recourse is to go before a court of competent jurisdiction to prove his valid right over the money deposited.

In these lights, we find the third assignment of error mooted. A cause of action requires that there be a right existing in favor of the plaintiff, the defendant's obligation to respect that right, and an act or omission of the defendant in breach of that right.[47] We reiterate that UCPB's obligation was towards PALII as its creditor-depositor. While the HEIRS may have a valid claim over the proceeds of the investment, the obligation to turn-over those proceeds lies with PALII. Since no trust exists, the petitioner's complaint was correctly dismissed and the CA did not commit any reversible error in affirming the RTC decision. One final note, the burden to prove the existence of an express trust lies with the petitioner.[48] For his failure to discharge this burden, the petition must fail.

WHEREFORE, in view of these considerations, we hereby **DENY** the petition and **AFFIRM** the decision dated February 20, 2007 and the resolution dated July 31, 2007 of the Court of Appeals in CA-G.R. CV. No. 00257. Costs against the petitioner.

SO ORDERED.

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

---

[46] *Ibid.*

[47] *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011, 661 SCRA 328, 338-339; and *Manalo v. PAIC Savings Bank*, 493 Phil. 854, 859 (2005).

Section 2 of the Rules of Court provides:

SEC. 2. Cause of action, defined. — A cause of action is the act or omission by which a party violates a right of another.

[48] *Cañezo v. Rojas,* G.R. No. 148788, November 23, 2007, 538 SCRA 242, 253; and *Duran v. Court of Appeals*, 522 Phil. 399, 407 (2006).

SECOND DIVISION

[G.R. No. 187474. February 6, 2013]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **MARILOU ALCARAZ,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION COMMISSION; OCCUPATIONAL DISEASES; CARDIO-VASCULAR DISEASE, WHEN COMPENSABLE; CASE AT BAR.— The CA x x x is correct in holding that there is substantial evidence supporting the conclusion that myocardial infarction in Bernardo's case is work-related. x x x The CA's conclusion is bolstered by the fact that the ECC itself, the government agency tasked by law to implement the employees compensation program (together with the GSIS in the public sector and the Social Security System [SSS] in the private sector), included cardio-vascular diseases in the list of occupational diseases, making them compensable, subject to any of the conditions stated in its enabling Resolution No. 432. With the resolution, it should be obvious that by itself, a heart disease, such as myocardial infarction, can be considered work-related, with or without the complicating factors of other non-occupational illnesses. Thus, the Court so ruled in *Rañises v. ECC*, where it emphasized that the incidence of acute myocardial infarction, whether or not associated with a non-listed ailment, is enough basis for compensation. Resolution No. 432 provides (as one of the conditions) that a heart disease is compensable if it was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain **by reason of the nature of his work**. Based on the evidence on record, we find as the CA did, that the nature of Bernardo's duties and the conditions under which he worked were such as to eventually cause the onset of his myocardial infarction. The stresses, the strain, and the exposure to street pollution and to the elements that Bernardo had to bear for almost 29 years are all too real to be ignored. They cannot but lead to a deterioration of health, particularly with the

contributing factors of diabetes and pulmonary disease. Bernardo had in fact been a walking time bomb ready to explode towards the end of his employment days. Records show that the debilitating effect of Bernardo's working conditions on his health manifested itself several months before his death. As early as May 3, 2004, Bernardo was already complaining of shortness of breath and dizziness. From May 13 to 19, 2004, he had to be confined at the Ospital ng Makati and was diagnosed with acute myocardial infarction which caused his death on January 15, 2005 while he was at work. To be sure, a reasonable mind analyzing these facts cannot but arrive at the conclusion that the risks present in his work environment for the entire duration of his employment precipitated the acute myocardial infarction that led to his death.

APPEARANCES OF COUNSEL

GSIS Law Office for petitioner.
UP Office of Legal Aid for respondent.

D E C I S I O N

BRION, *J*.:

Before the Court is the petition for review on *certiorari*[1] to annul the decision[2] dated December 12, 2008 and the resolution[3] dated April 7, 2009 of the Court of Appeals (*CA*) in CA-G.R. SP No. 100381. These CA rulings reversed the decision[4] of the Employees' Compensation Commission (*ECC*) denying the claim for death benefits filed by petitioner Marilou Alcaraz following the death of her husband Bernardo Alcaraz.

---

[1] *Rollo*, pp. 9-22.

[2] *Id*. at 26-34; penned by Associate Justice Sesinando E. Villon, and concurred in by Associate Justices Andres B. Reyes, Jr. and Jose Catral Mendoza (now a member of this Court).

[3] *Id*. at 35.

[4] *Id*. at 36-39.

The Antecedents

Bernardo was employed for almost twenty-nine (29) years[5] by the Metro Manila Development Authority (*MMDA*) in Makati City. He worked at the MMDA as laborer, Metro Aide and Metro Aide I.

Sometime in February 2004, Bernardo was diagnosed with Pulmonary Tuberculosis (*PTB*) and Community Acquired Pneumonia (*CAP*). On May 13, 2004, he was confined at the Ospital ng Makati. He was discharged on May 19, 2004 with the following diagnosis: Acute Diffuse Anterolateral Wall Myocardial Infarction, Killips IV-1, CAP High Risk, PTB III and Diabetes Mellitus Type 2.[6]

On January 15, 2005, Bernardo was found dead at the basement of the MMDA building. His body was brought to the Southern Police District Crime Laboratory in Makati City for an autopsy. Medico-Legal Officer Ma. Cristina B. Freyra performed the autopsy and concluded that Bernardo died of Myocardial Infarction, old and recent.[7] Bernardo's widow, Marilou, subsequently filed a claim for death benefits with the Govenment Service Insurance System (*GSIS*).

The GSIS Ruling and Related Incidents

The GSIS denied the claim for death benefits on the ground that myocardial infarction, the cause of Bernardo's death, was directly related to diabetes which is not considered a work-connected illness; hence, its complications, such as myocardial infarction, are not work-related.

Marilou appealed to the ECC which affirmed the GSIS ruling. Aggrieved, she sought relief from the CA through a petition for review under Rule 43 of the Rules of Court, contending that (1) the ECC misappreciated the facts. She argued that even if the underlying cause of Bernardo's death was diabetes,

---

[5] From July 1, 1976 to January 15, 2005; *id.* at 11.

[6] *Ibid.*

[7] *Ibid.*

the illness was acquired in the course of his employment and was further aggravated by the nature of his work; and (2) the ECC gravely abused its discretion for giving scant consideration to the medical findings on Bernardo's true condition prior to his death.

The GSIS, on the other hand, prayed that the petition be denied, contending that in the absence of satisfactory evidence that Bernardo's nature of employment predisposed him to contract the ailment, the widow's claim must fail.

The CA Decision

In its challenged decision, the CA granted the petition and set aside the ECC ruling. It opined that while myocardial infarction is not among the occupational diseases listed under Annex "A" of the Amended Rules on Employees Compensation, the ECC, pursuant to Resolution No. 432, laid down conditions under which cardio-vascular diseases can be considered as work-related and therefore compensable, as follows:

18. CARDIO-VASCULAR DISEASES. Any of the following conditions:

> a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his/her work.
>
> b) The strain of work that brings about an acute attack must be of sufficient severity and must be followed within twenty-four hours by the clinical signs of a cardiac insult to constitute causal relationship.
>
> c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his/her work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

It pointed out that, as this Court held in *Salmone v. Employees' Compensation Commission*,[8] "[t]he claimant must show, at least,

[8] 395 Phil. 341, 347 (2000).

by substantial evidence that the development of the disease is brought largely by the conditions present in the nature of the job."

The CA found sufficient proof of work-connection between Bernardo's ailment and his working conditions. It believed that his work as laborer and metro aide must have substantially contributed to his illness.

The CA ordered the GSIS to pay Bernardo's heirs the proper benefits for his death consistent with the State policy to extend the applicability of the employees compensation law, Presidential Decree No. 626, to a greater number of employees who can avail of the benefits under the law, in consonance with the avowed policy of the State to give maximum aid and protection to labor.[9]

The GSIS moved for, but failed to obtain, a reconsideration of the CA decision; hence, the petition.

The Petition

In asking for a reversal of the CA decision, the GSIS submits that the appellate court erred in: (1) finding that Bernardo's illness was work-connected and/or the risk of contracting the illness was increased by the nature of his work; and (2) reversing the factual findings of the GSIS and of the ECC which are accorded respect by the courts.

The GSIS insists that myocardial infarction which caused Bernardo's death cannot be said to have been aggravated by the nature of his duties. It stresses that on the contrary, there was no evidence showing that it was the performance of his duties that caused the development of myocardial infarction as it was a mere complication of diabetes mellitus, a non-occupational disease. His heart ailment, therefore, cannot be considered an occupational disease.

It faults the CA for disregarding its factual findings, as well as those of the ECC when the appellate court awarded death benefits to Bernardo's heirs.

---

[9] *Carbajal v. GSIS (San Julian, Eastern Samar),* 247 Phil. 167, 173 (1988).

The Case for Marilou

In her Comment,[10] dated September 24, 2009, Marilou asks that the petition be denied for "utter lack of merit," arguing that the CA did not err in finding that Bernardo's illness was compensable as it was work-related. She takes exception to the GSIS' argument that there was no evidence showing that the nature of Bernardo's work had increased the risk of his contracting myocardial infarction. She maintains that the GSIS failed to consider that while diabetes mellitus does increase the risk of the development of the illness, the same thing is true with CAP, a compensable disease that Bernardo had been earlier diagnosed with. She adds that **stress** is another predisposing factor for heart diseases as this Court recognized in *Government Service Insurance System (GSIS) v. Cuanang*.[11] Marilou thus insists that the GSIS erred in singly attributing the occurrence of Bernardo's fatal heart attack to diabetes mellitus, when Bernardo had been suffering from CAP and experiencing physical stress at the same time. She argues further that the Court had previously held that the incidence of acute myocardial infarction, whether or not associated with a non-listed ailment, is enough basis for requiring compensation.[12]

Finally, she maintains that the GSIS hastily concluded that myocardial infarction was a mere complication of diabetes mellitus as there was no explicit finding that it was solely caused by his diabetic condition.

Our Ruling

Diabetes mellitus not the sole predisposing factor to myocardial infarction

Bernardo died after almost three decades of service with the MMDA (July 1, 1976 to January 15, 2005). His death occurred

---

[10] *Rollo*, pp. 49-58.

[11] G.R. No. 158846, June 3, 2004, 430 SCRA 639.

[12] *Rañises v. Employees Compensation Commission*, 504 Phil. 340, 345 (2005), citing *GSIS v. Gabriel*, 368 Phil. 187, 195 (1999).

within his employer's premises, at the basement of the MMDA building while he was at work. The GSIS and the ECC denied the claim of his widow for death benefits on the ground that his death was due to myocardial infarction which they declared to be non-compensable; they opined that it is not work-related as it is simply a complication of diabetes mellitus. They pointed out that diabetes mellitus is not in the list of occupational diseases[13] and, for this reason, its complications such as myocardial infarction, are not work-related.

We disagree with the GSIS's position. The conclusions of the two agencies totally disregarded the stressful and strenuous conditions under which Bernardo toiled for almost 29 long years as a laborer and as a metro aide. By so doing, they closed the door to other influences that caused or contributed to Bernardo's fatal heart problem — an ailment aggravated with the passage of time by the risks present in the difficult working conditions that Bernardo had to bear from day to day in his employment.

The CA vividly captured Bernardo's hazardous working environment (the streets of Makati City) and its effects on his health when it stated:

> Petitioner contends that the ECC erred in ruling that petitioner is not entitled to claim benefits for her husband's death. She pointed out that as early as May 3, 2004, the deceased was already complaining of shortness of breath and dizziness; that despite such condition, he still continued performing his work until he was confined at the Ospital ng Makati from May l3 to 19, 2004 where he was diagnosed with Acute Diffuse Anterlateral Wall Myocardial Infarction; that the short intervening period between his confinement at the hospital and his last day of duty with the MMDA on January 14, 2005, indicate that he had been suffering from such disease at the time that he was employed; that his [everyday] exposure under the sweltering heat of the sun during summer and his constant exposure to rain during the rainy season, aggravated by his contact to smoke emitted by vehicles passing as he cleaned the streets of Makati, are enough proofs of the strenuous nature of his work; that his everyday exposure to these elements not only resulted to his developing myorcardial

[13] Annex "A" of the Amended Rules on Employees Compensation.

infarction, but also aggravated pre-existing illness which were pulmonary tuberculosis and community acquired pneumonia.[14]

While diabetes mellitus was indeed a complicating factor in Bernardo's health condition and indisputably aggravated his heart problem, we cannot discount other employment factors, mental and physical, that had been indisputably present; they contributed, if not as a direct cause of the heart condition itself, as aggravation that worsened and hastened his fatal myocardial infarction.

For instance, it is undisputed that Bernardo was earlier diagnosed with CAP which could also be a predisposing factor to myocardial infarction.[15] There is also **stress** due to the nature of Bernardo's work. As Marilou pointed out, this Court recognized that stress could influence the onset of myocardial infarction. The Court declared in *Goverment Service Insurance System (GSIS) v. Cuanang:*[16] *"Myocardial infarction, also known as coronary occlusion or just a 'coronary,' is a life threatening condition. Predisposing factors for myocardial infarction are the same for all forms of Coronary Artery Disease, and these factors include stress. Stress appears to be associated with elevated blood pressure."*[17]

The CA, therefore, is correct in holding that there is substantial evidence supporting the conclusion that myocardial infarction in Bernardo's case is work-related.

Cardio-vascular disease compensable

The CA's conclusion is bolstered by the fact that the ECC itself, the government agency tasked by law[18] to implement the

---

[14] *Rollo*, p. 29.

[15] Ramirez, J., *et al.,* Acute Myocardial Infarction in hospitalized patients with CAP. Clin Infect Dis, 2008 July 15, 47 (2): 182-7, Abstract available at http.//www.ncbi.nih.gov/sites/entrez.

[16] *Supra* note 11.

[17] *Id*. at 647, citing Luckman and Sorensen, Medical-Surgical Nursing, 3rd Edition, pp. 929, 934.

[18] Presidential Decree No. 626, amending Book IV of the Labor Code.

employees compensation program (together with the GSIS in the public sector and the Social Security System [SSS] in the private sector), included cardio-vascular diseases in the list of occupational diseases, making them compensable, subject to any of the conditions stated in its enabling Resolution No. 432.[19] With the resolution, it should be obvious that by itself, a heart disease, such as myocardial infarction, can be considered work-related, with or without the complicating factors of other non-occupational illnesses. Thus, the Court so ruled in *Rañises v. ECC,*[20] where it emphasized that the incidence of acute myocardial infarction, whether or not associated with a non-listed ailment, is enough basis for compensation.

Resolution No. 432 provides (as one of the conditions) that a heart disease is compensable if it was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain **by reason of the nature of his work**. Based on the evidence on record, we find as the CA did, that the nature of Bernardo's duties and the conditions under which he worked were such as to eventually cause the onset of his myocardial infarction. The stresses, the strain, and the exposure to street pollution and to the elements that Bernardo had to bear for almost 29 years are all too real to be ignored. They cannot but lead to a deterioration of health, particularly with the contributing factors of diabetes and pulmonary disease.

Bernardo had in fact been a walking time bomb ready to explode towards the end of his employment days. Records show that the debilitating effect of Bernardo's working conditions on his health manifested itself several months before his death. As early as May 3, 2004, Bernardo was already complaining of shortness of breath and dizziness. From May 13 to 19, 2004, he had to be confined at the Ospital ng Makati and was diagnosed with acute myocardial infarction which caused his death on January 15, 2005 while he was at work. To be sure, a reasonable

---

[19] Annex "A", No. 18, Amended Rules on Employees Compensation.

[20] *Supra* note 12.

mind analyzing these facts cannot but arrive at the conclusion that the risks present in his work environment for the entire duration of his employment precipitated the acute myocardial infarction that led to his death.

We thus find no merit in the petition. The CA committed no reversible error nor any grave abuse of discretion in awarding death benefits to Bernardo's heirs. As a final point, we take this occasion to reiterate that as an agency charged by law with the implementation of social justice guaranteed and secured by the Constitution — the ECC (as well as the GSIS and the SSS) — should adopt a liberal attitude in favor of the employees in deciding claims for compensability, especially where there is some basis in the facts for inferring a work-connection to the accident or to the illness.[21] This is what the Constitution dictates.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The assailed decision and resolution of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

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

---

[21] C. A. Azucena, Jr., *The Labor Code, with Comments and Cases*, Volume I, Sixth Edition, 2007, citing *Lazo v. Employees Compensation Commission,* 264 Phil. 953, 959 (1990).

FIRST DIVISION

[G.R. No. 187496. February 6, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MALIK MANALAO *Y* ALAUYA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS.—** The elements necessary to successfully prosecute an illegal sale of drugs case are: "(1) [T]he identity of the buyer and the seller, the object, and the consideration; and (2) [T]he delivery of the thing sold and the payment therefor." Simply put, the prosecution must establish that the illegal sale of the dangerous drugs actually took place together with the presentation in court of the *corpus delicti* or the dangerous drugs seized in evidence.

2. **ID.; ID.; CUSTODY OF SEIZED DANGEROUS DRUGS; FAILURE TO STRICTLY COMPLY WITH THE PROCEDURE ON THE CHAIN OF CUSTODY OF SEIZED DANGEROUS DRUGS WILL NOT RENDER AN ARREST ILLEGAL OR THE ITEMS SEIZED FROM THE ACCUSED INADMISSIBLE IN EVIDENCE.—** Paragraph 1, Section 21, Article II of Republic Act No. 9165 outlines the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs x x x. The foregoing is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 x x x. A perusal of the law reveals that failure to strictly comply with Section 21 of Republic Act No. 9165 will not render an arrest illegal or the items seized from the accused inadmissible in evidence. What is crucial is that the integrity and evidentiary value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused.

3. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** When prosecuting an illegal possession of dangerous drugs case, the following elements must be established: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession

is not authorized by law; and (3) the accused freely and consciously possessed the drug.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal[1] of the November 27, 2008 Decision[2] of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR.-H.C. No. 00173-MIN, which affirmed the Regional Trial Court's (RTC) July 26, 2005 Consolidated Decision[3] in Criminal Case Nos. 056-07-2004 and 057-07-2004, wherein accused-appellant **MALIK MANALAO *y* ALAUYA** (Manalao) was found guilty beyond reasonable doubt of violating **Sections 5 and 11, Article II of Republic Act No. 9165**.

In two separate Informations filed before Branch 7, RTC of Lanao del Norte, Manalao was charged with violating Sections 5 and 11, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The pertinent portions of the Informations, both dated June 15, 2004, are hereby quoted as follows:

Criminal Case No. 056-07-2004:

That on or about the 15th day of June 2004, Purok 6, Barangay Poblacion, Tubod, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law did, then and there willfully and feloniously sell and deliver one (1) Deck of Methamphetamine Hydrochloride

---

[1] *Rollo*, p. 12.

[2] *Id.* at 4-11; penned by Associate Justice Edgardo T. Lloren with Associate Justices Edgardo A. Camello and Jane Aurora C. Lantion, concurring.

[3] CA *rollo*, pp. 49-62; penned by Presiding Judge Alan L. Flores.

or *SHABU* weighing more or less 0.1 gram to a Police Poseur/Buyer in the amount of ₱200.00, said accused knowing the same to be Methamphetamine Hydrochloride or *SHABU*, a dangerous [drug].[4]

Criminal Case No. 057-07-2004:

That on or about the 15th day of June 2004, Purok 6, Barangay Poblacion, Tubod, Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law did, then and there willfully and feloniously have in his possession and control Three (3) Decks of Methamphetamine Hydrochloride or *SHABU* weighing more or less 0.4 [grams], said accused knowing the same to be Methamphetamine Hydrochloride or *SHABU*, a dangerous [drug].[5]

Manalao pleaded not guilty to both charges upon his arraignment[6] on August 9, 2004.

During the pre-trial conference, the parties agreed on a joint trial of the cases as filed.[7]

During the trial, the prosecution put on the witness stand Senior Police Inspector Mary Leocy Jabonillo Mag-abo, the Forensic Chemist who conducted the qualitative examination of the items seized from Manalao;[8] and Police Officer 1 (PO1) Michael Solarta, a detached member of the Philippine Drug Enforcement Agency (PDEA) assigned with the Provincial Intelligence and Investigation Division of the Philippine National Police (PNP) in Pigcarangan, Tubod, Lanao del Norte, who was part of the team that conducted the buy-bust operation against Manalao.[9]

PO1 Solarta said that their office had received reports of Manalao's drug pushing and using activities in the area of

---

[4] Records (Crim. Case No. 056-07-2004), p. 1.

[5] Records (Crim. Case No. 057-07-2004), p. 1.

[6] Records (Crim. Case No. 056-07-2004), p. 15 and Records (Crim. Case No. 057-07-2004), p. 15.

[7] *Id.* at 18-19.

[8] TSN, October 4, 2004.

[9] TSN, December 14, 2004, pp. 4-5.

Poblacion, Tubod, Lanao del Norte. Thus, upon instructions of their Officer-in-Charge,[10] Police Inspector (P/Insp.) Renato Salazar, they prepared to conduct an entrapment or buy-bust operation against Manalao. PO1 Solarta narrated that on June 15, 2004, the buy-bust operation team composed of P/Insp. Salazar, Senior Police Officer 3 (SPO3) Expedito Daulong, and himself, prepared two ₱100.00 bills as drug money by having them signed by P/Insp. Salazar and then photocopying them. At around seven in the evening, the team, together with a civilian agent who was to act as the poseur-buyer, proceeded to the *carenderia* of Josephine Tamarong, located along the national highway, Poblacion, Tubod, Lanao del Norte. At the *carenderia*, the team pretended to be customers and had some coffee while waiting for Manalao, who arrived at around 8:00 p.m. PO1 Solarta, who claimed to have been only around three to four meters away from the scene, testified that when Manalao arrived, the civilian agent immediately established contact with him. Following a brief conversation, the civilian agent handed Manalao the buy-bust money and in turn, Manalao "got something from his pocket, opened it, and gave something" to the civilian agent. After the "give and take" transaction, the civilian agent approached the buy-bust team, who without delay arrested Manalao. During the arrest, the buy-bust team introduced themselves to Manalao and bodily searched him, from which three decks of *shabu* and money, including the buy-bust money of two pieces of ₱100.00 bills, were recovered. Manalao, together with the items seized from him, were brought to the police station. Thereafter, P/Insp. Salazar marked the seized items in front of the other apprehending officers and Manalao. PO1 Solarta, aside from narrating his account of the entrapment operation, also identified the certificate of inventory of the items seized from Manalao, which he enumerated to be one deck of *shabu*, three decks of *shabu*, two ₱100.00 bills, and one small, black and white, lady's purse. He likewise identified the *shabu* presented in court to be the same one recovered from Manalao and examined by Forensic Chemist Mag-abo.[11]

---

[10] Records (Crim. Case No. 056-07-2004), p. 3.

[11] TSN, December 14, 2004, pp. 4-14.

For the defense, Manalao testified that it was on June 9, 2004 and not June 15, 2004 that he was arrested. He claimed that in the evening of June 9, 2004, he went to take his supper at a restaurant at Purok 6, Tubod, Lanao del Norte. Before he could enter the restaurant, his friend, Paquito Pido, along with two more companions, arrived. His nephew likewise arrived. Manalao said that his nephew was asking for money, thus he requested Paquito to have his ₱500.00 bill changed into smaller bills. Paquito did so, but in return, he asked Manalao to hand a wrapped item to a certain Mr. Posadas, who at that time was shouting from a distance. Manalao obliged Paquito, who by then had already left with his companions towards Poblacion. Five minutes later, Manalao saw P/Insp. Salazar's vehicle approaching, who after passing by him, alighted from the vehicle together with PO1 Solarta. Thereafter, Manalao said that he was cuffed, brought to the police station, and then frisked. Manalao then admitted that more than ₱600.00 was taken from him, including the ₱500.00 Paquito had changed into ₱100.00 bills.[12]

On July 26, 2005, the RTC convicted Manalao in a Consolidated Decision on Criminal Case Nos. 056-07-0224 and 057-07-2004, the dispositive portion of which reads:

WHEREFORE, the Court finds accused MALIK MANALAO *y* ALAUYA guilty beyond reasonable doubt of the crime in violation of Section 5, Article II, of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002, and sentences him to a penalty of Life Imprisonment and to pay a fine of ₱500,000.00, without subsidiary imprisonment in case of insolvency. And accused is also found guilty beyond reasonable doubt [of] having violated Section 11, Article II, of the same Act, and imposes upon him the indeterminate penalty of imprisonment of Six (6) Years and One (1) Day of *Prision Mayor* as minimum to Twelve (12) Years and One (1) Day of *Reclusion Temporal* as maximum, and as fine of ₱300,000.00, without subsidiary imprisonment in case of insolvency. If in case of possible commutation of sentences or not, he is entitled to the benefits of Article 29 of the Revised Penal Code, for his preventive imprisonment that he suffered.

---

[12] TSN, March 28, 2005, pp. 3-8.

The subject Methamphetamine Hydrochloride and/or paraphernalia are ordered confiscated in favor of the government and to be turn[ed] over to the Dangerous Drugs Board within 15 days from date hereof.

The Warden of the BJMP, Tubod, Lanao del Norte, is ordered to bring and deliver the living body of accused to the Bureau of Corrections or National Penitentiary, Muntinlupa City, Metro Manila, within 15 days from the date of the promulgation of decision.[13]

Aggrieved, Manalao appealed[14] to the Court of Appeals, arguing that the RTC failed to prove his guilt beyond reasonable doubt. The Court of Appeals was not persuaded, and on November 27, 2008, it affirmed *in toto*[15] the RTC in its Decision in CA-G.R. CR.-H.C. No. 00173-MIN.

Issue

Manalao is now before this Court, assigning[16] the same lone error he raised before the Court of Appeals, to wit:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[17]

In support of his assigned error, Manalao posits the following arguments:

1. The sale of the drugs was not established;[18] and
2. The chain of custody of evidence of the drugs was not established.[19]

---

[13] CA *rollo*, p. 61.

[14] Records (Crim. Case No. 056-07-2004), p. 72 and Records (Crim. Case No. 057-07-2004), p. 73.

[15] *Rollo*, p. 11.

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

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

[18] *Id.* at 40.

[19] *Id.* at 43.

Manalao asseverates that the prosecution failed to establish that the sale of the dangerous drug ever took place since none of the prosecution witnesses saw the alleged transaction between him and the civilian agent. Manalao contends that the civilian agent who posed as the buyer should have been presented in court because PO1 Solarta, the only one who testified to witnessing the buying and selling of the *shabu*, did not even see what the civilian agent supposedly bought from him as PO1 Solarta could only see Manalao giving "something" to the civilian agent, as he said so during his testimony.[20]

Manalao also claims that the buy-bust team did not follow the proper procedure in the custody and control of seized drugs as they failed to mark, make an inventory, and photograph the confiscated drugs immediately and at the place of the incident.[21]

This Court's Ruling

This Court has reviewed with scrutiny the records of the case and has found no reason to overturn the courts *a quo*.

Manalao was charged and convicted for the sale and possession of dangerous drugs in violation of Sections 5 and 11, Article II of Republic Act No. 9165 or the Dangerous Drugs Act of 2002. The law provides:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred

[20] *Id.* at 40-41.

[21] *Id.* at 43-44.

thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x x x x x x

SEC. 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine

hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

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

Illegal Sale of Dangerous Drugs

The elements necessary to successfully prosecute an illegal sale of drugs case are:

(1) [T]he identity of the buyer and the seller, the object, and the consideration; and

(2) [T]he delivery of the thing sold and the payment therefor.[22] (Citation omitted.)

---

[22] *People v. Tiu*, 469 Phil. 163, 173 (2004).

Simply put, the prosecution must establish that the illegal sale of the dangerous drugs actually took place together with the presentation in court of the *corpus delicti* or the dangerous drugs seized in evidence.[23]

It is clear from the records that the prosecution was able to establish the above elements.

Manalao was positively identified by PO1 Solarta, who knew him even before the operation, as the one who sold the seized *shabu* subject of this case to the poseur-buyer. Manalao was caught *in flagrante delicto* in the entrapment operation conducted by the PNP of Tubod, Lanao del Norte. Moreover, the *corpus delicti* of the crime was also established with certainty and conclusiveness. Manalao handed to the poseur-buyer one deck of *shabu* upon his receipt of the ₱200.00 buy-bust money. In *People v. Legaspi*, [24] this Court said:

> The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction between the entrapping officers and Legaspi. (Citation omitted.)

Manalao's insistence that the non-presentation of the civilian agent, who posed as the buyer, weakens the prosecution's case is without merit. In *People v. Berdadero*,[25] this Court, presented with the exact query, held:

> The appellant's final contention that the failure to present the poseur-buyer is fatal and entitles him to an acquittal, again fails to impress. The non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction. The testimonies of PO3 Balmes and PO2 Villas sufficiently established that the appellant is guilty of selling a dangerous drug. Their referral to the *shabu* handed by the appellant to the poseur-buyer as "something" merely indicates that at the time of the sale, they could only presume

---

[23] *People v. Berdadero*, G.R. No. 179710, June 29, 2010, 622 SCRA 196, 202.

[24] G.R. No. 173485, November 23, 2011, 661 SCRA 171, 185.

[25] *Supra* note 23 at 208-209.

that the specimen sold by the appellant was *shabu* since they were conducting a buy-bust operation. They still had to submit the specimen to the crime laboratory for testing which later tested positive for *shabu*. Thus, the fact that the poseur-buyer was not presented does not weaken the evidence for the prosecution. (Citation omitted.)

This Court would also like to emphasize the fact that Manalao himself testified that when the police officers recovered some money from him, P/Insp. Salazar, immediately, without leaving his sight, took out the photocopy of the buy-bust money and told him to compare it to the two ₱100.00 bills found on him.[26] Manalao admitted, both in his direct and cross-examination, that the serial numbers of the bills obtained from him matched the serial numbers of the bills in the photocopy.[27] Moreover, while he claimed that he only had ₱500.00 with him, with ₱400.00 meant for his nephew and ₱100.00 meant for him, he contradicted himself by saying that the police officers recovered more than ₱600.00 of his money on his person.[28]

Chain of Custody of Evidence

Paragraph 1, Section 21, Article II of Republic Act No. 9165 outlines the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs, *viz*:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically

---

[26] TSN, March 28, 2005, p. 8.

[27] *Id.* at 8-9.

[28] *Id.* at 8.

inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

The foregoing is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, to wit:

SEC. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.] (Emphasis supplied.)

A perusal of the law reveals that failure to strictly comply with Section 21 of Republic Act No. 9165 will not render an arrest illegal or the items seized from the accused inadmissible in evidence. What is crucial is that the integrity and evidentiary

value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused.[29]

In *People v. Llanita and Buar*,[30] this Court elucidated on the concept of "chain of custody" and, quoting *People v. Kamad*,[31] enumerated the different links that must be proven to establish it:

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.

In the case of *People v. Kamad,* the Court had the opportunity to enumerate the different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. (Citations omitted.)

In the case at bar, the Court finds that the prosecution was able to establish that the integrity and evidentiary value of the confiscated illegal drugs had been maintained. P/Insp. Salazar,

---

[29] *People v. De Leon*, G.R. No. 186471, January 25, 2010, 611 SCRA 118, 133.

[30] G.R. No. 189817, October 3, 2012.

[31] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

who was one of the apprehending officers, marked the seized items in front of Manalao and the other apprehending officers. P/Insp. Salazar, who was also the investigating officer, thereafter signed a request for the laboratory examination of the seized drugs, which was received by Forensic Chemist Mag-abo, together with the items enumerated therein. She then testified in open court on how her examination confirmed that the seized items, which she submitted in court, tested positive for *shabu*.

Besides, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered or meddled with, the presumptions that the integrity of such evidence had been preserved and that the police officers who handled the seized drugs had discharged their duties properly and with regularity remain.[32] The burden to overcome such presumptions lies on Manalao, and this Court finds that he failed to do so.

Illegal Possession of Dangerous Drugs

When prosecuting an illegal possession of dangerous drugs case, the following elements must be established: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[33]

The prosecution was able to satisfy all the foregoing elements during the joint trial of the cases. The three decks of *shabu* subject of the case for illegal possession of drugs were validly obtained upon searching Manalao after he was arrested *in flagrante delicto* for the illegal sale of dangerous drugs. The following section in Rule 126 of the Rules of Court provides:

> **Section 13.** *Search incident to lawful arrest*. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

---

[32] *People v. Castro*, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 406.

[33] *People v. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 342-343.

Mere possession of a prohibited drug, without legal authority, is punishable under Republic Act No. 9165.[34] Since Manalao failed to adduce any evidence showing that he had legal authority to possess the seized drugs, then he was correctly charged with its illegal possession.

We have time and again looked upon the defense of denial with disfavor for being easily fabricated. Since Manalao failed to give this Court anything more than his bare assertions, his defense of denial must necessarily be rejected.[35]

WHEREFORE, premises considered, the Court hereby **AFFIRMS** the November 27, 2008 Decision of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR.-H.C. No. 00173-MIN.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 190343. February 6, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAIBEN LANGCUA *Y* DAIMLA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002);

---

[34] *People v. Mariacos*, G.R. No. 188611, June 21, 2010, 621 SCRA 327, 344-345.

[35] *People v. Mendoza,* G.R. No. 189327, February 29, 2012, 667 SCRA 357, 374.

SALE OF ILLEGAL DRUGS; WHEN CONSUMMATED.— What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*. The commission of illegal sale merely consummates the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by seller, followed by the delivery of the dangerous drugs to the former, the crime is already consummated.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY WITNESSES' TESTIMONIES ON MINOR DETAILS IN THE COMMISSION OF THE CRIME.—** As held in the case of *People v. Gonzaga,* minor inconsistencies do not negate or dissolve the eyewitnesses' positive identification of the appellant as the perpetrator of the crime. "[M]inor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable. Inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed. Witnesses are not expected to remember every single detail of an incident with perfect or total recall." "[T]he witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime." The inconsistencies in the recollection of facts of PO1 Domingo, PO3 Nicolas and P/I Rosqueta regarding the street where the accused came from, the position of the motorcycle as well as the operational condition of the cellular phone, are not material elements in establishing an illegal sale of dangerous drug. It is not irregular for police officers to have inconsistent statements in the narration of details of the buy-bust operation, as, indeed the inconsistency can indicate truthfulness. What is important is for them to recount the material facts constituting sale of dangerous drug such as the exchange of the illegal drug for buy-bust money and identification of the buyer, seller and illegal drug in court as the object of the sale. The three witnesses corroborated each other on material points which added to the confidence placed on their testimonies.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY OF SEIZED DANGEROUS DRUGS; CHAIN**

OF CUSTODY; DEFINED. — "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

4. **ID.; ID.; ID.; ID.; DIFFERENT LINKS THAT THE PROSECUTION MUST PROVE TO ESTABLISH THE CHAIN OF CUSTODY IN A BUY-BUST OPERATION.—** In the case of *People v. Kamad,* the Court had the opportunity to enumerate the different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely: *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

5. **ID.; ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE WITH THE PROCEDURE TO ESTABLISH A CHAIN OF CUSTODY IS SANCTIONED AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** The prosecution has properly established the continuous whereabouts of the exhibit at least from the time it came into possession of the police officers, during its testing in the laboratory to determine its composition and up to the time it was offered in evidence. Be it granted that there was no strict observance of the procedure; the substantial compliance thereof is well sanctioned for in Section 21 (a) of the Implementing Rules and Regulations of R.A. No. 9165 x x x. The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence

are removed. As long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers, substantial compliance with the procedure to establish a chain of custody is sanctioned.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Ferdinand Menor Agustin for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

For review through this appeal[1] is the decision[2] dated 16 October 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03462 which affirmed the conviction of herein accused-appellant SAIBEN LANGCUA *y* DAIMLA (Langcua) of illegal sale of dangerous drugs in violation of Section 5, Article II[3] of Republic

---

[1] CA *rollo*, pp. 201-202. Via a notice of appeal, pursuant to Section 2 (c) of Rule 122 of the Rules of Court.

[2] *Rollo*, pp. 2-20. Penned by Associate Justice Andres B. Reyes, Jr. (now the Presiding Justice of the Court of Appeals) with Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison, concurring.

[3] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.
The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) year and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x x x x x x

Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The factual rendition of the prosecution follows:

The first witness presented by the prosecution was PO1 Jonie Domingo (PO1 Domingo). He testified that he has been a member of the Philippine National Police since 16 December 2003 and assigned at the Provincial Anti-Illegal Drugs Special Operations (PAID-SO) at Camp Valentin Juan, Laoag City on the day of the busy-bust operation on 4 October 2006.[4]

On the day of the buy-bust, at about 1:45 o'clock in the afternoon, one of their police informants came to their office and reported to their team leader Police Inspector Teddy Rosqueta (P/I Rosqueta) the selling of drugs by the accused Langcua. He was just beside P/I Rosqueta when the report was made.[5] Thereupon, P/I Rosqueta instructed the informant to contact Langcua and place an order for ₱11,000.00-worth of *shabu.*

The informant did what he was told to do. Langcua agreed to deliver the ordered *shabu* at *Barangay* 7-B, Laoag City near City Employment Center.[6]

A team composed of P/I Rosqueta, PO3 Rousel Albano, PO3 Marlon Nicolas (PO3 Nicolas), PO2 Jonathan Pasamonte, PO1 Alizer Cabotage, PO1 Rona Gaoiran, PO1 Domingo and the informant was formed to conduct a buy-bust operation with PO1 Domingo as the poseur-buyer, and the other members of the team as back-up perimeter security. PO3 Nicolas recorded in the Police Blotter the pre-operation activity, including the marking of the buy-bust money and the circumstances leading to the report of the informant.[7] The buy-bust money was eight (8) pieces of ₱1,000.00 bills and six (6) pieces of ₱500.00 bills[8]

---

[4] TSN, 31 July 2007, pp. 7-8.

[5] *Id.* at 9.

[6] *Id.* at 11.

[7] *Id.* at 12-13.

[8] *Id.* at 19.

all marked with letter "J" at the upper right portion by PO1 Domingo.[9]

PO1 Domingo and the informant proceeded to the agreed place of the transaction on board a motorcycle, while the rest of the team followed on board an unmarked vehicle.[10] PO1 Domingo and the informant waited for Langcua[11] at the agreed place. After a few minutes, Langcua arrived on board a motorcycle and approached them. He then asked the informant "*SINO NAMAN YONG KASAMA MO*?"[12] The informant replied, "*HUWAG KANG MAG-ALALA, KASAMA YAN*." Langcua then asked, "*Yong balance mo pa, kailan mo babayaran*?" to which the latter replied, "*SA SUSUNOD NALANG*."[13]

Langcua initiated the sale by asking, "*SAAN NA YONG PERA NYO*?" PO1 Domingo replied, "*HETO*," and handed the marked money to Langcua. Langcua put the money in his pocket and thereafter handed out to PO1 Domingo one (1) light blue colored folded paper coming from the right portion of his pants.[14]

Upon receipt, PO1 Domingo opened the folded paper and found one (1) big heat-sealed plastic sachet containing white crystalline substance. He then secured the plastic sachet and called the cellular phone of P/I Rosqueta. After the call, he then grabbed the right arm of Langcua who was already starting to accelerate his motorcycle but was stopped by the other police officers acting as back-up.[15]

He also testified that one of the members of the buy-bust team, PO3 Nicolas conducted a body search and recovered the buy-bust money, cellular phone and wallet from Langcua.[16]

---

[9] *Id.* at 15.

[10] *Id.* at 16.

[11] *Id.* at 17.

[12] *Id.*

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

[14] *Id.* at 19.

[15] *Id.* at 20.

[16] *Id.* at 20-21.

In open court, PO1 Domingo identified the money recovered from Langcua as the same marked money used in the operation through the markings letter "J" on the upper right portion of the paper bills as well as their serial numbers recorded in the police blotter.[17] He also identified the white crystalline substance contained in the plastic sachet handed over by Langcua to him in the sale and pointed out the marking "JD" on one side and "SL" on the other side.[18]

Afterwards, PAID-SO made a letter request to the Provincial Crime Laboratory for the examination of the confiscated white crystalline substance.[19]

PO3 Nicolas and P/I Rosqueta corroborated the direct testimony of PO1 Domingo on material points constituting the buy-bust operation conducted by them.[20]

The presentation of evidence on the authenticity, genuineness and due execution of the initial laboratory report issued by Police Senior Inspector and Forensic Chemical Officer Mary Ann Cayabyab, (PSI Cayabyab), with regard to the specimen subjected for examination, was dispensed with following the agreement of the prosecution and defense as evidenced by the Pre-Trial Order.[21]

On the other hand, the factual version of the defense follows:

Langcua in his defense testified that on the date of the alleged sale of illegal drug on 4 October 2006, he just came from the mosque for his noon prayer.[22] Upon returning home, he saw his wife already waiting for him. At around 12:30-1:00 o'clock in the afternoon she instructed him to buy medicines for their child who then had fever.[23]

---

[17] *Id.* at 21.

[18] *Id.* at 26.

[19] *Id.* at 27.

[20] TSNs, 12 September 2007, pp. 58-81 and 6 November 2007, pp. 96-133.

[21] Records, pp. 52-54.

[22] TSN, 20 November 2007, p. 154.

[23] *Id.* at 155-156.

While he was setting his motorcycle, he saw Ombawa Ali (Ali) whom he asked to go with him.[24] Upon approaching Rizal corner Guerrero Streets, three male persons on board a car flagged them to stop. The three men introduced themselves as police officers and asked both of them if they were Muslims.[25] When Langcua answered in the affirmative, they asked him and Ali to move to the side of the street and go with them. When he asked the police officers what was their fault, they replied *"just come with us if you don't want to get hurt."*[26] He eventually complied with the police officers after one of them kicked his motorcycle and strangled him. Ali ran away when he saw this.[27]

The police officers pulled him towards the direction of Guerrero Street where several armed men were already waiting for them. One of them boxed him and handcuffed his hands.[28] Upon boarding the car of the police officers, he saw a man he knew as Danny Domingo inside and both of them were brought to the police station.[29] He added that he was again physically maltreated inside the vehicle until they reached the station.[30]

While inside the police station, the police officers frisked him and recovered his wallet containing money worth ₱11,000.00. When asked why he had such amount, he explained that he and his wife owned a carinderia and were saving to go home to Mindanao. A male person then showed a plastic sachet of *shabu* and claimed that it came from his motorcycle. He denied the allegation. The police officers maltreated him again.[31] He also denied possession of the cellular phone recovered by the police officers.

---

[24] *Id.* at 156.

[25] *Id.* at 157.

[26] *Id.* at 158-159.

[27] *Id.* at 159.

[28] *Id.* at 159-160.

[29] *Id.* at 160-161.

[30] *Id.* at 162.

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

His statements were corroborated by his wife Naimah Sultan and Ali.[32]

Eventually, an Information[33] was filed by Laoag City Prosecutor Angel G. Rubio as follows:

> That on or about the 4th day of October 2006, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the [above] herein accused[,] did then and there[,] willfully, unlawfully and feloniously sell and deliver to a police officer who acted as poseur buyer one (1) big plastic sachet of Methamphetamine Hydrochloride, a dangerous drug popularly known as "*shabu*[,]" with net weight of 1.7257 gram, without any license or authority, in violation of the aforecited law.
>
> CONTRARY TO LAW.

Upon arraignment on 16 April 2007,[34] the accused-appellant, with the assistance of counsel, pleaded NOT GUILTY to the offense charged.

On 7 March 2008, the trial court found the accused-appellant GUILTY of violation of Section 5, Article II, of R.A. No. 9165 under Criminal Case No. 13295-13. The disposition reads:

> WHEREFORE, judgment is hereby rendered finding the accused Saibern Langcua *y* Daimla GUILTY beyond reasonable doubt as charged of the offense of illegal sale of *shabu* and is therefore sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of ₱2,000,000.00.
>
> The *shabu* subject of this case consisting of 1.7257 grams is ordered confiscated, the same to be disposed of as the law prescribes.[35]

On appeal to the CA, the accused-appellant argued that the trial court erred in holding that the buy-bust operation was

---

[32] TSNs, 13 November 2007, pp. 140-151 and 8 January 2008, pp. 187-201.

[33] Records, pp. 1-2.

[34] *Id.* at 49.

[35] *Id.* at 132-146.

sufficiently established; in finding credible the testimonies of the police officers; and in relying on the presumption of regularity of the performance of official duties. He argued that the *corpus delicti* of the crime was not established.[36]

The CA affirmed the ruling of the trial court. The dispositive portion reads:

WHEREFORE, the Decision of the Regional Trial Court of Laoag City, Branch 13, in Criminal Case No. 132925-13 dated 7 March 2008 is hereby AFFIRMED.[37]

In this appeal, accused-appellant adopted his arguments before the appellate court:

I. THE APPELLATE COURT ERRED IN HOLDING THAT THE INITIAL CONTACT ON THE ALLEGED BUY-BUST OPERATION WAS SUFFICIENTLY ESTABLISHED.

II. THE APPELLATE COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE POLICE OFFICERS AND THE APPLICATION OF PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY.

III. THE APPELLATE COURT ERRED IN HOLDING THAT THE *CORPUS DELICTI* OF THE CRIME CHARGED HAS BEEN PROPERLY ESTABLISHED BY THE PROSECUTION.

We do not agree.

On the first assigned error, the focus is on the alleged inconsistency of recollection of events of PO1 Domingo and PO3 Nicolas as compared to the statement of P/I Rosqueta. PO1 Domingo and PO3 Nicolas testified that the police informant relayed to them the telephone conversation regarding an illegal sale. On the other hand, P/I Rosqueta recalled that he himself heard the telephone conversation because he placed his ear on the cellular phone of the informant. This inconsistency, according to the defense, tainted the initial contact of the buy-bust operation.

---

[36] CA *rollo*, p. 104. Brief of the Accused-appellant.

[37] *Rollo*, p. 20. CA Decision.

The argument is misplaced.

What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*.[38] The commission of illegal sale merely consummates the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by seller, followed by the delivery of the dangerous drugs to the former, the crime is already consummated.[39]

In this case, the prosecution has adequately proven all the elements constituting sale of illegal drug. This is evident from the testimony of PO1 Domingo, we quote:

x x x x x x x x x

Q: And after that, what happened next?

A: And after that, Saiben Langcua asked: "*SAN NA YUNG PERA NYO*?" [(]Where is your money then[?")]

x x x x x x x x x

Q: What was your reply, if any?

A: "*HETO*," I answered, "here[.]"

Q: And after that, what next transpired?

A: I showed to the subject person the money and I handed it to him, sir.

Q: You said money, what money are you referring to that you handed to the subject person?

A: The buy-bust money used in the buy-bust operation, sir.

Q: What is that money in relation to the one that you have recorded in the police blotter?

A: It is the one to be used in the buy-bust operation, sir.

---

[38] *People v. Unisa*, G.R. No. 185721, 28 September 2011, 658 SCRA 305, 324; *People v. Gaspar*, G.R. No. 192816, 6 July 2011, 653 SCRA 673, 686.

[39] *Id.* at 324-325.

Q: And after handling the money, what next transpired?

A: Subject person Saiben Langcua accounted the peso bills and after he accounted the money, he immediately pocketed it in his left front pocket of his short pants, sir.

Q: By the way, Mr. Witness, what denominations are those money that were used in the buy-bust operation?

A: Eight (8) pieces of ₱1,000,000.00 bills and Six (6) pieces of ₱500.00 bills, sir.

Q: After pocketing them, what did the accused do, if any?

A: The accused brought out one (1) folded paper colored light blue from the right front of his short pants and he handed it to me, sir.

Q: And did you actually receive that?

A: Yes, sir.

Q: What did you with it after receiving the same?

A: I immediately opened the folded paper containing one (1) big heat-sealed plastic sachet containing white crystalline substance, sir.

Q: After determining that it is a big plastic sachet containing white crystalline substance, what did you do, if any?

A: I secured the plastic sachet containing alleged *shabu* and I immediately miss called the cell phone of Police Inspector Teddy Rosqueta, sir.[40] (Emphasis supplied)

x x x x x x x x x

PO1 Domingo in open court identified the white crystalline substance contained in the plastic sachet as the one handed by Langcua to him during the buy-bust operation. The substance yielded positive result for methamphetamine hydrochloride, a dangerous drug, as evidenced by the Chemistry Report given by PSI Cayabyab.[41]

---

[40] TSN, 31 July 2007, pp. 18-20.

[41] Records, p. 57. Chemistry Report.

Further, the defense cited several inconsistencies on the part of the police officers. One instance was the disagreement on the name of the street where the accused-appellant came from when he approached the Employment Center. Another inconsistency was whether he was riding a motorcycle when he was arrested or was just standing near the same. A question on whether the cellular phone confiscated from him was operational or not was also put in issue. Further, the defense doubted the lower court's finding that there is no significance in the non-indication of the marking "J" in the buy-bust money in the pre-operation blotter and the absence of the confiscated cellular phone in the list of the Certificate of Seized Items.

We cannot subscribe to the arguments of the defense.

As held in the case of *People v. Gonzaga,*[42] minor inconsistencies do not negate or dissolve the eyewitnesses' positive identification of the appellant as the perpetrator of the crime.[43] "[M]inor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable. Inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed. Witnesses are not expected to remember every single detail of an incident with perfect or total recall."[44] "[T]he witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime."[45]

The inconsistencies in the recollection of facts of PO1 Domingo, PO3 Nicolas and P/I Rosqueta regarding the street where the accused came from, the position of the motorcycle as well as the operational condition of the cellular phone, are not material elements in establishing an illegal sale of dangerous drug. It is

---

[42] G.R. No. 184952, 11 October 2010, 632 SCRA 551, 570.

[43] *People v. Daen, Jr.*, 314 Phil. 280, 292 (1995).

[44] *People v. Alas*, 340 Phil. 423, 432 (1997).

[45] *People v. Cruz*, G.R. No. 185381, 16 December 2009, 608 SCRA 350, 364.

not irregular for police officers to have inconsistent statements in the narration of details of the buy-bust operation, as, indeed the inconsistency can indicate truthfulness. What is important is for them to recount the material facts constituting sale of dangerous drug such as the exchange of the illegal drug for buy-bust money and identification of the buyer, seller and illegal drug in court as the object of the sale. The three witnesses corroborated each other on material points which added to the confidence placed on their testimonies.

As last attempt to persuade this Court of his innocence, the accused-appellant relied on the allegation of broken chain of custody of evidence.

The contention of the defense suggests that the non-marking of the seized illegal drug at the place where the same was confiscated is enough to exonerate the accused-appellant. The reason is that this allegedly places in doubt the authenticity of the drug delivered to the crime laboratory for examination.

A review of the records and pleadings failed to convince us to overturn the ruling of conviction.

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[46]

In the case of *People v. Kamad,*[47] the Court had the opportunity to enumerate the different links that the prosecution must prove

---

[46] Section 1(b) of the Dangerous Drug Board Regulation No. 1, Series of 2002.

[47] G.R. No. 174198, 19 January 2010, 610 SCRA 295, 307-308; *See* also *People v. Arriola*, G.R. No. 187736, 8 February 2012, 665 SCRA 581, 598.

in order to establish the chain of custody in a buy-bust operation, namely:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[48]

The Court finds that the different links to establish the chain of custody are sufficiently established.

PO1 Domingo in his testimony identified the confiscated white crystalline substance and its turnover to the crime laboratory for examination. We quote the portion of his testimony:

x x x x x x x x x

Q: Now, Mr. Witness, with respect to the white crystalline substance contained in the plastic sachet that you claimed to have been handed to you by the accused Saiben Langcua, if shown to you again, Mr. Witness, would you be able to identify it?

A: Yes, sir.

Q: What could make you identify it?

A: I put markings, sir, my initial "JD" and the other is the initial of the accused, I put "SL" on the other side.

Q: I have here a plastic sachet with markings that corresponds to what you have just mentioned, Mr. Witness, kindly look over the same and tell what is the relation of that to that which was handed to you by the accused?

A: This is the plastic sachet handed to me by the accused, sir. (The witness identified the heat-sealed plastic sachet sealed

---

[48] *People v. Arriola*, G.R. No. 187736, 8 February 2012, 665 SCRA 581, 598.

with masking tape with markings containing white crystalline substance. On one side were the markings "JD." October 4, 2006 and the other side bearing the initial "SL[,]" October 4, 2006).

Q: After taking custody of that, after it was delivered to you by the accused, what did you do with it, if any?

A: We made a letter request to the crime laboratory and we delivered that heat-sealed plastic sachet containing alleged *shabu* to the Provincial Crime Laboratory for examination, sir.[49]

x x x x x x x x x

The Request for Laboratory Examination[50] dated 4 October 2006 also stated that PO1 Domingo delivered the heat-sealed plastic sachet, containing white crystalline substance with markings "JD" representing his initials and "SL" at the other side of the plastic sachets representing the initials of the arrested suspect Langcua, to PSI Cayabyab.

The laboratory examination yielded positive result for methamphetamine hydrochloride, an illegal drug.[51] The testimony of PSI Cayabyab was dispensed with by both parties hence, the appreciation of the report was left to the sound discretion of the court for evaluation.

In his cross testimony, P/I Rosqueta explained why the marking was not made at the place of the buy-bust operation, we quote:

Q: And because there were other people in the area from the time that you were able to confiscate the items from the accused, you immediately ordered the accused to be brought to your office because you were afraid that the incident might invite commotion?

A: Yes, sir, because after the confiscation of the items, there were many people gathering near and they were shouting.

---

[49] TSN, 31 July 2007, pp. 26-27.

[50] Records, p. 55.

[51] *Id.* at 57. Chemistry Report.

Q: And it was because of this reason that you did not longer (sic) order the marking of the confiscated items on the buybust?

A: Not anymore, sir, because after showing me the confiscated item. I told them to bring it to the camp and when were already at the camp, the *shabu* that was bought from Saiben is the same that was sold and that is also the same that was brought to the crime laboratory.[52]

The prosecution has properly established the continuous whereabouts of the exhibit at least from the time it came into possession of the police officers, during its testing in the laboratory to determine its composition and up to the time it was offered in evidence.

Be it granted that there was no strict observance of the procedure; the substantial compliance thereof is well sanctioned for in Section 21 (a) of the Implementing Rules and Regulations of R.A. No. 9165 which reads:

Sec. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given copy thereof. Provided, that the physical inventory and the photograph shall be conducted at the place where the search warrant is served; or at least the nearest police station or at the nearest office of the apprehending officer/team, whichever is

---

[52] TSN, 6 November 2007, pp. 131-132.

practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending team/officer, shall not render void and invalid such seizures of and custody over said items.** (Emphasis supplied)

The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.[53] As long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers, substantial compliance with the procedure to establish a chain of custody is sanctioned.

This Court in *People v. Lorena*[54] held that:

> *People v. Pringas* teaches that non-compliance by the apprehending/buy-bust team with Section 21 is not necessarily fatal. Its non- compliance will not automatically 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. We recognize that the strict compliance with the requirements of Section 21 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence.[55]

WHEREFORE, the instant appeal is **DENIED.** Accordingly, the decision of the Court of Appeals dated 16 October 2009 in CA-G.R. CR-H.C. No. 03462 is hereby **AFFIRMED.** No costs.

SO ORDERED.

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

---

[53] *People v. Dela Rosa*, G.R. No. 185166, 26 January 2011, 640 SCRA 635, 653 citing *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 521. *People v. Unisa*, *supra* note 38.

[54] G.R. No. 184954, 10 January 2011, 639 SCRA 139.

[55] *Id.* at 151

FIRST DIVISION

[G.R. No. 191023. February 6, 2013]

DON DJOWEL SALES *Y* ABALAHIN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** In a prosecution for illegal possession of dangerous drugs, the following facts must be proven with moral certainty: (1) that the accused is in possession of the object identified as prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.

2. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; ITEMS SEIZED DURING A VALID SEARCH PURSUANT TO ROUTINE AIRPORT SECURITY PROCEDURE ARE ADMISSIBLE IN EVIDENCE.—** In this case, the prosecution has satisfactorily established that airport security officers found in the person of petitioner the marijuana fruiting tops contained in rolled paper sticks during the final security check at the airport's pre-departure area. Petitioner at first refused to show the contents of his short pants pocket to Soriano who became suspicious when his hand felt the "slightly bulging" item while frisking petitioner. In *People v. Johnson*, which also involved seizure of a dangerous drug from a passenger during a routine frisk at the airport, this Court ruled that such evidence obtained in a warrantless search was acquired legitimately pursuant to airport security procedures x x x. We find no irregularity in the search conducted on petitioner who was asked to empty the contents of his pockets upon the frisker's reasonable belief that what he felt in his hand while frisking petitioner's short pants was a prohibited or illegal substance. Such search was made pursuant to routine airport security procedure, which is allowed under Section 9 of R.A. No. 6235. x x x The search of the contents of petitioner's short pants pockets being a valid search pursuant to routine airport security procedure, the illegal

substance (marijuana) seized from him was therefore admissible in evidence. Petitioner's reluctance to show the contents of his short pants pocket after the frisker's hand felt the rolled papers containing marijuana, and his nervous demeanor aroused the suspicion of the arresting officers that he was indeed carrying an item or material subject to confiscation by the said authorities.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY OF SEIZED DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; ELUCIDATED.—** As a mode of authenticating evidence, the chain of custody rule requires that the presentation and admission of the seized prohibited drug as an exhibit be preceded by evidence to support a finding that the matter in question is what the proponent claims it to be. This requirement is essential to obviate the possibility of substitution as well as to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements and custody of the seized prohibited item, from the accused, to the police, to the forensic laboratory for examination, and to its presentation in evidence in court. Ideally, the custodial chain would include testimony about every link in the chain or movements of the illegal drug, from the moment of seizure until it is finally adduced in evidence. It cannot be overemphasized, however, that a testimony about a perfect chain is almost always impossible to obtain.

4. **ID.; ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO COMPLY WITH THE PROCEDURE TO ESTABLISH A CHAIN OF CUSTODY IS NOT FATAL; CONDITION.—** The identity of the seized substance in dangerous drug cases is thus established by showing its chain of custody. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defined the concept of "chain of custody" x x x. The rule on chain of custody under R.A. No. 9165 and its implementing rules and regulations (IRR) expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. We have held, however, that the failure of the prosecution to show compliance with the procedural requirements provided

in Section 21, Article II of R.A. No. 9165 and its IRR is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. As long as the chain of custody remains unbroken, the guilt of the accused will not be affected.

APPEARANCES OF COUNSEL

Barbers Molina and Molina for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on certiorari assailing the Decision[1] dated September 30, 2009 and Resolution[2] dated January 27, 2010 of the Court of Appeals (CA) in CA-G.R. CR No. 31942. The CA upheld the judgment[3] of the Regional Trial Court (RTC) of Pasay City, Branch 231 finding petitioner Don Djowel Sales *y* Abalahin guilty beyond reasonable doubt of illegal possession of marijuana.

Petitioner was charged with violation of Section 11, Article II, Republic Act (R.A.) No. 9165 (Comprehensive Dangerous Drugs Act of 2002) under an Information which states:

That on or about the 24th day of May 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused DON DJOWEL A. SALES, without authority of law, did then and there wilfully, unlawfully and feloniously

---

[1] *Rollo*, pp. 27-41. Penned by Associate Justice Rosmari D. Carandang with Associate Justices Arturo G. Tayag and Michael P. Elbinias concurring.

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

[3] CA *rollo*, pp. 18-28. Penned by Judge Pedro B. Corales

have in his possession, custody and control 0.23 gram of dried Marijuana fruiting tops, a dangerous drug.

Contrary to law. x x x[4]

Upon arraignment, petitioner duly assisted by counsel *de oficio*, pleaded not guilty to the charge.

Evidence adduced by the prosecution at the trial established that on May 24, 2003, petitioner was scheduled to board a Cebu Pacific plane bound for Kalibo, Aklan at its 9:45 a.m. flight. He arrived at the old Manila Domestic Airport (now Terminal 1), Domestic Road, Pasay City at around 8:30 in the morning. As part of the routine security check at the pre-departure area, petitioner passed through the Walk-Thru Metal Detector Machine and immediately thereafter was subjected to a body search by a male frisker on duty, Daniel M. Soriano, a non-uniformed personnel (NUP) of the Philippine National Police (PNP) Aviation Security Group (ASG).[5]

While frisking petitioner, Soriano felt something slightly bulging inside the right pocket of his short pants. When Soriano asked petitioner to bring the item out, petitioner obliged but refused to open his hands. Soriano struggled with petitioner as the latter was nervous and reluctant to show what he brought out from his pocket. Soriano then called the attention of his supervisor, PO1 Cherry Trota-Bartolome who was nearby.[6]

PO1 Trota-Bartolome approached petitioner and asked him to open his hands. Petitioner finally opened his right hand revealing two rolled paper sticks with dried marijuana leaves/fruiting tops. After informing petitioner of his constitutional rights, PO1 Trota-Bartolome brought petitioner and the seized evidence to the 2nd Police Center for Aviation Security (2nd PCAS), PNP-ASG Intelligence and Investigation Branch and immediately turned over petitioner to the Philippine Drug Enforcement Agency

---

[4] Records, p. 1.

[5] *Rollo*, p. 30.

[6] *Id.* at 30-31.

(PDEA) Airport Team at the Ramp Area, Ninoy Aquino International Airport (NAIA) Complex, Pasay City.[7] The investigating officer, POII Samuel B. Hojilla,[8] placed the markings on the two marijuana sticks: "SBH-A" and "SBH-B."[9]

The specimens marked "SBH-A" and "SBH-B" when subjected to chemical analysis at the PNP Crime Laboratory in Camp Crame, Quezon City yielded positive results for the presence of marijuana, a dangerous drug.[10]

Denying the charge against him, petitioner testified that on May 24, 2003, he, together with his girl friend and her family were headed to Boracay Island for a vacation. While he was queuing to enter the airport, he was frisked by two persons, a male and a female. The two asked him to empty his pockets since it was bulging. Inside his pocket were a pack of cigarettes and cash in the amount of ₱8,000.00 in 500 peso-bills. His girl friend told him to get a boarding pass but he asked her to wait for him as he will still use the comfort room. On the way to the comfort room, he was blocked by a male person who frisked him for a second time, asking for his boarding pass. This male person wearing a white shirt without an ID card, asked petitioner to empty his pockets which he did. The male person then said it was "okay" but as petitioner proceeded to go inside the comfort room, the male person called him again saying that "this fell from you" and showing him two "small white wrappings which seemed to be marijuana." Petitioner told the male person that those items were not his but the latter said they will talk about it in the comfort room.[11]

At that point, petitioner claimed that his girl friend was already shouting ("*Ano 'yan, ano 'yan*?") as she saw PO1 Trota-Bartolome approaching them. PO1 Trota-Bartolome then told

---

[7] Exhibit "I" (Booking Sheet/Arrest Report), folder of exhibits, pp. 9-10.

[8] Also referred to as Hubilla in some parts of the records.

[9] TSN, February 2, 2005, pp. 7-8, 12-13.

[10] Exhibits "E" and "F," folder of exhibits, pp. 7-8.

[11] TSN, April 16, 2008, pp. 3-12.

petitioner to explain at the ground floor while the male person (Soriano) was showing to her the marijuana sticks saying "Ma'am, I saw this from him." Petitioner went back to the comfort room and there he saw his girlfriend's father (the Mayor of their hometown, Camiling, Tarlac) talking with a police officer. However, his girlfriend and her family left him and he was investigated by the police officers.[12]

The prosecution presented the testimonies of the following: PO1 Trota-Bartolome, P/Insp. Sandra Decena-Go (Forensic Officer, Chemistry Division, PNP-Crime Laboratory) and NUP Soriano.

After trial, the RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, all the foregoing considered, the Court finds the accused, Don Djowel Sales *y* Abalahin, GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165, also known as The Comprehensive Dangerous Drugs Act of 2002. Accordingly, he is hereby sentenced to suffer indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum, to fourteen (14) years, eight (8) months and one (1) day, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00) without subsidiary imprisonment in case of insolvency.
>
> The 0.23 gram of dried marijuana fruiting tops confiscated from the accused is hereby ordered forfeited in favor of the government. The officer-in-charge of this Court is hereby ordered to immediately turnover the same to the appropriate government agency for proper disposition in accordance with law.
>
> Cost against the accused.
>
> SO ORDERED.[13]

On appeal, the CA ruled that the body search conducted on petitioner is a valid warrantless search made pursuant to a routine airport security procedure allowed by law. It found no merit in petitioner's theory of frame-up and extortion. On the issue of

---

[12] *Id.* at 12-16.

[13] CA *rollo*, p. 28.

the integrity and probative value of the evidence used to convict petitioner, the CA held that there is no hiatus or confusion that the marijuana that was marked at the airport, then subjected to qualitative examination on the same day and eventually introduced as evidence against petitioner, is the same prohibited drug that was found in his custody and possession when he was apprehended at the pre-departure area of the airport in the morning of May 24, 2003.

The CA also explained that while the "marijuana leaves" referred to by Soriano in his testimony was otherwise called by the public prosecutor and the Forensic Chemical Officer as "dried marijuana fruiting tops" in both the criminal information and the Laboratory Report, these do not refer to different items. Both marijuana leaves with fruiting tops were rolled in two papers which were actually found and seized from petitioner's possession in the course of a routine security search and frisking.

With the denial of his motion for reconsideration, petitioner is now before us alleging that the CA failed to address the following assigned errors:

IT HAS NOT BEEN ESTABLISHED WITH COMPETENT EVIDENCE THAT THE ITEMS SUPPOSEDLY TAKEN FROM THE APPELLANT WERE THE VERY SAME ITEMS THAT REACHED THE CHEMIST FOR ANALYSIS;

THIS, ESPECIALLY IN LIGHT OF THE PROSECUTION'S IMPROBABLE SCENARIO AT THE AIRPORT WHERE, FOR NO SPECIAL REASON GIVEN, THE APPELLANT HAD TO BE METICULOUSLY BODILY SEARCHED EVEN AFTER HE HAD TWICE SUCCESSFULLY PASSED THROUGH THE DETECTOR.[14]

The petition has no merit.

In a prosecution for illegal possession of dangerous drugs, the following facts must be proven with moral certainty: (1) that the accused is in possession of the object identified as prohibited or regulated drug; (2) that such possession is not authorized by

---

[14] *Rollo*, p. 18.

law; and (3) that the accused freely and consciously possessed the said drug.[15]

In this case, the prosecution has satisfactorily established that airport security officers found in the person of petitioner the marijuana fruiting tops contained in rolled paper sticks during the final security check at the airport's pre-departure area. Petitioner at first refused to show the contents of his short pants pocket to Soriano who became suspicious when his hand felt the "slightly bulging" item while frisking petitioner.

In *People v. Johnson*,[16] which also involved seizure of a dangerous drug from a passenger during a routine frisk at the airport, this Court ruled that such evidence obtained in a warrantless search was acquired legitimately pursuant to airport security procedures, thus:

> Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.[17]

---

[15] *People v. Del Norte,* G.R. No. 149462, March 29, 2004, 426 SCRA 383, 388.

[16] 401 Phil. 734 (2000).

[17] *Id.* at 743.

Petitioner concedes that frisking passengers at the airport is a standard procedure but assails the conduct of Soriano and PO1 Trota-Bartolome in singling him out by making him stretch out his arms and empty his pockets. Petitioner believes such meticulous search was unnecessary because, as Soriano himself testified, there was no beep sound when petitioner walked past through the metal detector and hence nothing suspicious was indicated by that initial security check. He likewise mentioned the fact that he was carrying a bundle of money at that time, which he said was not accounted for.

We find no irregularity in the search conducted on petitioner who was asked to empty the contents of his pockets upon the frisker's reasonable belief that what he felt in his hand while frisking petitioner's short pants was a prohibited or illegal substance.

Such search was made pursuant to routine airport security procedure, which is allowed under Section 9 of R.A. No. 6235. Said provision reads:

> SEC. 9. Every ticket issued to a passenger by the airline or air carrier concerned shall contain among others the following condition printed thereon: "*Holder hereof and his hand-carried luggage(s) are subject to search for, and seizure of, prohibited materials or substances. Holder refusing to be searched shall not be allowed to board the aircraft,*" which shall constitute a part of the contract between the passenger and the air carrier. (Italics in the original)

The ruling in *People v. Johnson* was applied in *People v. Canton*[18] where the accused, a female passenger was frisked at the NAIA after passing through the metal detector booth that emitted a beeping sound. Since the frisker noticed something bulging at accused's abdomen, thighs and genital area, which felt like packages containing rice granules, accused was subjected to a thorough physical examination inside the ladies' room. Three sealed packages were taken from accused's body which when submitted for laboratory examination yielded positive results for methamphetamine hydrochloride or *shabu*. Accused was

---

[18] 442 Phil. 743 (2002).

forthwith arrested and prosecuted for illegal possession of a regulated drug.

Affirming accused Canton's conviction for the crime of illegal possession of *shabu*, we ruled that accused-appellant was lawfully arrested without a warrant after being caught in *flagrante delicto.* We further held that the scope of a search pursuant to airport security procedure is not confined only to search for weapons under the "Terry search"[19] doctrine. The more extensive search conducted on accused Canton was necessitated by the discovery of packages on her body, her apprehensiveness and false statements which aroused the suspicion of the frisker that she was hiding something illegal. Thus:

> x x x. It must be repeated that R.A. No. 6235 authorizes **search for prohibited materials or substances**. To limit the action of the airport security personnel to simply refusing her entry into the aircraft and sending her home (as suggested by appellant), and thereby depriving them of "the ability and facility to act accordingly, including to further search without warrant, in light of such circumstances, would be to sanction impotence and ineffectivity in law enforcement, to the detriment of society." Thus, the strip search in the ladies' room was justified under the circumstances.[20] (Emphasis supplied)

The search of the contents of petitioner's short pants pockets being a valid search pursuant to routine airport security procedure, the illegal substance (marijuana) seized from him was therefore admissible in evidence. Petitioner's reluctance to show the contents of his short pants pocket after the frisker's hand felt the rolled

---

[19] From the US Supreme Court decision in *Terry v. Ohio,* 392 U.S. 1, 20 L. Ed. 2nd 889 (1968) cited in *People v. Canton*, *id.* at 756-757.

The *Terry* search or the "stop and frisk" situation refers to a case where a police officer approaches a person who is acting suspiciously, for purposes of investigating possibly criminal behavior in line with the general interest of effective crime prevention and detection. To assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him, he could validly conduct a carefully limited search of the outer clothing of such person to discover weapons which might be used to assault him.

[20] *People v. Canton*, *id.* at 757-758.

papers containing marijuana, and his nervous demeanor aroused the suspicion of the arresting officers that he was indeed carrying an item or material subject to confiscation by the said authorities.

The trial and appellate courts correctly gave credence to the straightforward and candid testimonies of PO1 Trota-Bartolome and NUP Soriano on the frisking of petitioner at the pre-departure area, during which the two rolled papers containing dried marijuana fruiting tops were found in his possession, and on petitioner's immediate arrest and investigation by police officers from the 2nd PCAS and PDEA teams stationed at the airport. As a matter of settled jurisprudence on illegal possession of drug cases, credence is usually accorded the narration of the incident by the apprehending police officers who are presumed to have performed their duties in a regular manner.[21]

Petitioner reiterates his defense of being a victim of an alleged frame-up and extortion. However, the CA found his claim unworthy of belief considering that there is no evidence that the apprehending police authorities had known petitioner before he was caught and arrested for possession of marijuana. The CA aptly observed:

> It bears stressing that while the defense of Sales is anchored heavily on his theory of purported frame-up and extortion, nonetheless Sales' testimony is without any allegation that the police and security personnel who participated in his arrest, investigation and detention have demanded money in exchange for his freedom, the withdrawal of the drugs charge against him, or otherwise their desistance from testifying against him in court. True enough, Sales himself admitted in the course of the trial that the security and police personnel demanded him to turn over and surrender all his possessions, to wit: cellular phone, pla[n]e ticket and boarding pass, **<u>except his money</u>** (TSN, April 16, 2008, p. 18). This, to the mind of this Court, strongly belied Sales' imputation of frame-up by the police to secure monetary gain.[22] (Emphasis and underscoring in the original)

---

[21] *Castro v. People,* G.R. No. 193379, August 15, 2011, 655 SCRA 431, 441.

[22] *Rollo,* p. 37.

Petitioner questions the integrity of the drug specimen supposedly confiscated from him at the airport by PO1 Trota-Bartolome. He maintains that there was no evidence adduced to assure that those items that reached the Chemist were the same items which were taken from him. This is crucial since the Chemist had said that the items were brought to her, not by the PNP officer, but another person (SPO2 Rosendo Olandesca of PDEA) who was not presented as witness.

As a mode of authenticating evidence, the chain of custody rule requires that the presentation and admission of the seized prohibited drug as an exhibit be preceded by evidence to support a finding that the matter in question is what the proponent claims it to be. This requirement is essential to obviate the possibility of substitution as well as to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements and custody of the seized prohibited item, from the accused, to the police, to the forensic laboratory for examination, and to its presentation in evidence in court. Ideally, the custodial chain would include testimony about every link in the chain or movements of the illegal drug, from the moment of seizure until it is finally adduced in evidence. It cannot be overemphasized, however, that a testimony about a perfect chain is almost always impossible to obtain.[23]

The identity of the seized substance in dangerous drug cases is thus established by showing its chain of custody. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defined the concept of "chain of custody" as follows:

> b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody

---

[23] *Castro v. People*, *supra* note 21, at 440.

were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

The rule on chain of custody under R.A. No. 9165 and its implementing rules and regulations (IRR) expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court.[24] We have held, however, that the failure of the prosecution to show compliance with the procedural requirements provided in Section 21, Article II of R.A. No. 9165 and its IRR is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible.[25] What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[26] As long as the chain of custody remains unbroken, the guilt of the accused will not be affected.[27]

After a thorough review of the records, we hold that the prosecution in this case has established by facts proved at the trial that the chain of custody requirement was not broken.

During her direct-examination, PO1 Trota-Bartolome narrated clearly and consistently how she obtained initial custody of the seized dangerous drug while on duty at the airport's pre-departure area. Said witness identified Exhibits "G" and "H" with markings "SBH-A" and "SBH-B" presented in court to be the same dried marijuana fruiting tops in two rolled papers that they found in

---

[24] *People v. Bautista,* G.R. No. 177320, February 22, 2012, 666 SCRA 518, 533.

[25] *People v. Rosialda,* G.R. No. 188330, August 25, 2010, 629 SCRA 507, 520-521, citing *People v. Rivera*, G.R. No. 182347, October 17, 2008, 569 SCRA 879, 897-898.

[26] *Id.* at 521, citing *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636.

[27] *People v. Manlangit,* G.R. No. 189806, January 12, 2011, 639 SCRA 455, 469-470, citing *People v. Rosialda, supra* note 25, at 522.

the possession of petitioner while the latter was being frisked by Soriano. She also testified that petitioner and the confiscated marijuana were promptly brought to the PDEA team stationed at the airport where it was marked in her presence by the assigned officer, Samuel B. Hojilla, using his own initials.[28] The two rolled papers containing marijuana fruiting tops with markings "SBH-A" and "SBH-B" was submitted to the PNP Crime Laboratory on the same day by SPO2 Rosendo Olandesca.[29] Police Inspector Engr. Sandra Decena-Go, Forensic Chemical Officer at the PNP Crime Laboratory likewise testified that on the same day, she personally received from SPO2 Olandesca the letter-request together with the seized dried marijuana fruiting tops in two rolled papers (sheet cigarette wrapper) like improvised cigarette sticks, marked as "SBH-A" and "SBH-B" and wrapped in white bond paper.[30] After describing the condition of the specimen at the time she received it, P/Insp. Decena-Go confirmed the findings of the chemical analysis of the said substance already presented in court, and identified her Initial Laboratory Report and Certification, both dated May 24, 2003, stating that the qualitative examination gave positive results for the presence of Marijuana.[31]

We find no merit in petitioner's argument that the non-presentation of SPO2 Olandesca and PO2 Hojilla as witnesses is fatal to the prosecution's case. As this Court held in *People v. Amansec*:[32]

> x x x there is nothing in Republic Act No. 9165 or in its implementing rules, which requires each and everyone who came into contact with the seized drugs to testify in court. "As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every

---

[28] TSN, February 2, 2005, pp. 6-10, 12-14.

[29] Exhibit "D", folder of exhibits, p. 6.

[30] Exhibit "D-2", *id.*; TSN, August 16, 2005, pp. 11-16, 33-43, 51-52, 58-60.

[31] Exhibits "E" and "F", *id.* at 7-8; *id.* at 18-22.

[32] G.R. No. 186131, December 14, 2011, 662 SCRA 574.

person who came into possession of the drugs should take the witness stand." This Court, in *People v. Hernandez,*[33] citing *People v. Zeng Hua Dian,*[34] ruled:

> After a thorough review of the records of this case we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.[35]

In the light of the testimonial, documentary and object evidence on record, the CA correctly concluded that the identity, integrity and probative value of the seized marijuana were adequately preserved. The prosecution has proved with moral certainty that the two pieces of rolled papers containing dried marijuana fruiting tops presented in court were the same items seized from petitioner during the routine frisk at the airport in the morning of May 24, 2003. Its presentation in evidence as part of the *corpus delicti* was therefore sufficient to convict petitioner.

As to the penalty imposed by the RTC, we find the same in order and proper.

WHEREFORE, the petition for review on *certiorari* is **DENIED.** The Decision dated September 30, 2009 and Resolution dated January 27, 2010 of the Court of Appeals in CA-G.R. CR No. 31942 are hereby **AFFIRMED and UPHELD.**

With costs against the petitioner.

SO ORDERED.

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

---

[33] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 647-648.

[34] G.R. No. 145348, June 14, 2004, 432 SCRA 25, 32.

[35] *People v. Amansec*, *supra* note 32, at 595.

FIRST DIVISION

[G.R. No. 191726. February 6, 2013]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL BARTOLOME *Y* BAJO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; WHAT IS MATERIAL IN THE PROSECUTION OF THE CRIME IS THE PROOF SHOWING THAT THE SALE ACTUALLY TOOK PLACE, COUPLED WITH THE PRESENTATION IN COURT OF THE THING SOLD AS EVIDENCE OF THE *CORPUS DELICTI*.—** To establish the crime of illegal sale of *shabu*, the Prosecution must prove beyond reasonable doubt (*a*) the identity of the buyer and the seller, the identity of the object and the consideration of the sale; and (*b*) the delivery of the thing sold and of the payment for the thing. The commission of the offense of illegal sale of dangerous drugs, like *shabu*, requires simply the consummation of the selling transaction, which happens at the moment the buyer receives the drug from the seller. In short, what is material is the proof showing that the transaction or sale actually took place, coupled with the presentation in court of the thing sold as evidence of the *corpus delicti.* If a police officer goes through the operation as a buyer, the crime is consummated when the police officer makes an offer to buy that is accepted by the accused, and there is an ensuing exchange between them involving the delivery of the dangerous drugs to the police officer.
2. **REMEDIAL LAW; EVIDENCE; FRAME-UP AND EXTORTION; MUST BE ESTABLISHED WITH CLEAR AND CONVINCING EVIDENCE. —** [T]he accused's claim of being the victim of a vicious frame-up and extortion is unworthy of serious consideration. The fact that frame-up and extortion could be easily concocted renders such defenses hard to believe. Thus, although drug-related violators have commonly tendered such defenses to fend off or refute valid prosecutions of their

drug-related violations, the Court has required that such defenses, to be credited at all, must be established with clear and convincing evidence. But the accused did not adduce such evidence here, for all he put up were self-serving denials. Had the version of the Defense been what really transpired, there was no reason for the accused and his brother not to have formally charged the police officers with the severely penalized offense of planting of evidence under Section 29 of Republic Act No. 9165 and extortion. Thereby, the allegations of frame-up and extortion were rendered implausible.

3. **ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL JUDGE'S ASSESSMENT THEREON IS ENTITLED TO RESPECT.—** The trial judge and the CA agreed in their findings on the arrest of the accused being the result of a legitimate entrapment procedure. Such findings were based on the credible testimonies of the poseur buyer and other competent witnesses of the Prosecution. We concur with their findings. Indeed, the trial judge's assessment of the credibility of the witnesses is entitled to respect. This is because of the trial judge's unique opportunity to observe the demeanor of the witnesses as they testified before him. The rule applies even more if, like here, the trial judge's assessment was affirmed by the CA upon review. This rule should be obeyed here.

4. **ID.; ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; BECOMES CONCLUSIVE IN THE ABSENCE OF CLEAR AND CONVINCING INDICATION OF THE LAWMEN'S ILL MOTIVE AND IRREGULAR PERFORMANCE OF DUTY.—** [W]e find no glaring errors or misapprehension of facts committed by the RTC in not according credence to the version of the accused and his brother. In this regard, it is significant that the accused did not ascribe any ill motive to Paras that could have made the officer testify falsely against him. Considering that the records were patently bereft of any indicium of ill motive or of any distorted sense of duty on the part of the apprehending team, particularly Paras as the poseur buyer, full credence was properly accorded to the Prosecution's evidence incriminating the accused. Without the clear and convincing indication of the lawmen's ill motive and irregular performance of duty, it is always good law to presume them to have performed their official duties in a regular

manner. That presumption became conclusive for lack of contravention.

5. **CRIMINAL LAW; ENTRAPMENT; DULY ESTABLISHED IN CASE AT BAR.—** [W]e declare that the accused was not arrested following an instigation for him to commit the crime. Instead, he was caught *in flagrante delicto* during an entrapment through buy-bust. In a buy-bust operation, the pusher sells the contraband to another posing as a buyer; once the transaction is consummated, the pusher is validly arrested because he is committing or has just committed a crime in the presence of the buyer. Here, Paras asked the accused if he could buy *shabu*, and the latter, in turn, quickly transacted with the former, receiving the marked bill from Paras and turning over the sachet of *shabu* he took from his pocket. The accused was shown to have been ready to sell the *shabu* without much prodding from Paras. There is no question that the idea to commit the crime originated from the mind of the accused.

6. **ID.; ID.; BUY-BUST OPERATION; PRIOR SURVEILLANCE IS NOT NECESSARY TO RENDER THE BUY-BUST OPERATION LEGITIMATE.—** We have held that prior surveillance is not necessary to render a buy-bust operation legitimate, especially when the buy-bust team is accompanied to the target area by the informant. That was what precisely happened here.

7. **REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; THE PRESENTATION OF AN INFORMANT AS A WITNESS IS NOT INDISPENSABLE TO THE SUCCESS OF A PROSECUTION OF A DRUG-DEALING ACCUSED.—** [T]he presentation of an informant as a witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit arrested through his efforts. Thereby, the confidentiality of the informant's identity is protected in deference to his invaluable services to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded. Here, however, the informant's testimony as a witness against the accused would only be corroborative of

the sufficient testimony of Paras as the poseur-buyer; hence, such testimony was unnecessary.

8. **ID.; CIVIL PROCEDURE; APPEALS; MATTERS NOT TAKEN UP DURING THE TRIAL CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.—** Although it appears that the buy-bust team did not literally observe all the requirements, like photographing the confiscated drugs in the presence of the accused, of a representative from the media and from the Department of Justice, and of any elected public official who should be required to sign the copies of the inventory and be given a copy of it, whatever justification the members of the buy-bust team had to render in order to explain their non- observance of all the requirements would remain unrevealed because the accused did not assail such non-compliance during the trial. He raised the matter for the first time only in the CA. As such, the Court cannot now dwell on the matter because to do so would be against the tenets of fair play and equity.

9. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY OF SEIZED DANGEROUS DRUGS; THE NON-ADHERENCE TO THE PROCEDURE ON THE SEIZURE AND CUSTODY OF DANGEROUS DRUGS DOES NOT MAKE THE ARREST OF THE ACCUSED ILLEGAL OR THE SEIZED ITEM INADMISSIBLE IN EVIDENCE; CONDITION. —** We point out that the non-adherence to Section 21, Article II of Republic Act No. 9165 was not a serious flaw that would make the arrest of the accused illegal or that would render the *shabu* subject of the sale by him inadmissible as evidence against him. What was crucial was the proper preservation of the integrity and the evidentiary value of the seized *shabu*, inasmuch as that would be significant in the determination of the guilt or innocence of the accused. The State showed here that the chain of custody of the *shabu* was firm and unbroken. The buy-bust team properly preserved the integrity of the *shabu* as evidence from the time of its seizure to the time of its presentation in court. Immediately upon the arrest of the accused, Paras marked the plastic sachet containing the *shabu* with the accused's initials of *NBB*. Thereafter, Paras brought the sachet and the contents to the ADSOU, where his superior officer, Insp. Cruz, prepared and signed the request for the laboratory examination of the contents

of the marked sachet. P02 De Ocampo handcarried the request and the evidence to the PNP Crime Laboratory. SPOI Bugabuga of that office recorded the delivery of the request and the marked sachet, which were all received by Chemist Dela Rosa. In turn, Chemist Dela Rosa examined the contents of the marked sachet, and executed Physical Sciences Report No. D-1038-03 confirming that the marked sachet contained 0.06 gram of *shabu*. In this regard, the accused did not deny that Paras and Chemist Dela Rosa affirmed the sequence of custody of the *shabu* during the trial.

10. **ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; PENALTY.—** The CA and the RTC correctly imposed life imprisonment and fine of ₱500,000.00. Section 5, Article II of Republic Act No. 9165 states that the penalty for the illegal sale of dangerous drugs, like *shabu*, regardless of the quantity and purity, shall be life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00.

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.*:

A buy-bust operation has been recognized in this jurisdiction as a legitimate form of entrapment of the culprit. It is distinct from instigation, in that the accused who is otherwise not predisposed to commit the crime is enticed or lured or talked into committing the crime. While entrapment is legal, instigation is not.

This final appeal is taken by the accused from the decision promulgated on January 29, 2010,[1] whereby the Court of Appeals

---

[1] *Rollo*, pp. 2-18; penned by Associate Justice Antonio L. Villamor (retired), and concurred in by Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Normandie B. Pizarro.

(CA) affirmed his conviction for illegal sale of methampethamine hydrochloride or *shabu* in violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) handed down by the Regional Trial Court, Branch 120, in Caloocan City (RTC) through its decision dated July 12, 2006.[2]

Antecedents

On August 13, 2003, the City Prosecutor's Office of Caloocan City charged the accused with illegally selling methamphetamine hydrochloride or *shabu* in violation of Section 5, Article II, of Republic Act No. 9165 through the information reading thus:

> That on or about the 10th day of August 2003 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 Borban Paras, who posed as poseur buyer, one (1) heat sealed transparent plastic sachet containing 0.06 gram of Methylamphetamine Hydrochloride (*shabu*), knowing the same to be dangerous drug.
>
> Contrary to Law.[3]

After the accused pleaded *not guilty*, trial ensued.

The evidence for the State was as follows.

On August 10, 2003, at around 1:00 a.m., an informant went to the Anti-Illegal Drugs Special Operations Unit (ADSOU) in Caloocan City to report the illicit drug dealings of the accused on Reparo Street, Bagong Barrio, Caloocan City. Acting on the report, Police Inspector Cesar Cruz of ADSOU immediately instructed some of his men to conduct a buy-bust operation against the accused. During the pre-operation briefing, the buy-bust team designated PO1 Borban Paras as the poseur-buyer. Paras was given a ₱100.00 bill that he marked with his initials *BP*. It was agreed that the informant would drop a cigarette

---

[2] CA *rollo,* pp. 12-22.

[3] Records, p. 1.

butt in front of the suspect to identify him to Paras; and that Paras would scratch his head to signal to the buy-bust team that the transaction with the suspect had been consummated. The operation was coordinated with the Philippine Drug Enforcement Agency.

Upon arriving at the target area at around 2:00 a.m. of August 10, 2003, the team members positioned themselves in the vicinity of a store. The informant then approached a person who was standing in front of the store and dropped a cigarette butt in front of the person. Paras, then only two meters away from the informant, saw the dropping of the cigarette butt. Paras went towards the suspect and said to him: *Pre pa-iskor nga.* The suspect responded: *Pre, piso na lang tong hawak magkano ba kukunin mo?* Paras replied: *Ayos na yan, piso lang naman talaga ang kukunin ko*, after which he handed the marked ₱100.00 bill to the suspect, who in turn drew out a plastic sachet containing white substances from his pocket and gave the sachet to Paras. With that, Paras scratched his head to signal the consummation of the sale. As the other members of the team were approaching, Paras grabbed the suspect. PO3 Rodrigo Antonio, another member of the team, confiscated the marked ₱100.00 bill from the suspect, who was identified as Noel Bartolome *y* Bajo. Paras immediately marked the sachet at the crime scene with Bartolome's initials *NBB*.[4]

Insp. Cruz later requested in writing the PNP Crime Laboratory in Caloocan City to conduct a laboratory examination of the contents of the plastic sachet seized from Bartolome.[5] PO2 Rolando De Ocampo, another member of the buy-bust team, brought the request and the sachet and its contents to the laboratory. In due course, Forensic Chemical Officer Jesse Abadilla Dela Rosa of the PNP Crime Laboratory confirmed in Physical Science Report No. D-1038-03 that the plastic sachet contained 0.06 gram of methamphetamine hydrocholoride or *shabu*, a dangerous drug.[6]

---

[4] *Id.* at 82.

[5] *Id.* at 83.

[6] *Id.* at 84.

On his part, the accused claimed that the arresting officers had framed him up because they wanted to extort a substantial amount from him in exchange for his release. The version of the accused tended to show the following.

On August 9, 2003, at about 12:00 in the afternoon, the accused went to his brother's house located on Zapote Street, Bagong Barrio, Caloocan City, to take a rest from his work as a construction worker. While he and his brother were watching the television show *Eat Bulaga* inside the house, two policemen suddenly entered the house. One of the policemen, whom the accused later identified as PO3 Antonio, frisked the accused but spared his brother because the latter was asthmatic. The policemen then brought the accused to the police station and detained him. At the police station, PO3 Antonio inquired from the accused if he was selling *shabu*, but the accused denied doing so. It was then that PO3 Antonio demanded ₱20,000.00 from the accused in exchange for his freedom. The accused refused to pay because he did not have the money.[7]

Ruling of the RTC

As stated, the RTC convicted Bartolome of the crime charged,[8] to wit:

> WHEREFORE, premises considered, the Court finds and so holds that accused NOEL BARTOLOME *Y* BAJO is GUILTY beyond reasonable doubt for violation of Section 5, Article II, Republic Act No. 9165 and imposes upon him the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00).
>
> The one (1) piece of heat-sealed transparent plastic sachet containing 0.06 gram of Methylamphetamine Hydrochloride is hereby ordered confiscated in favor of the government to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.
>
> SO ORDERED.

---

[7] TSN, July 20, 2005, pp. 2-12.

[8] *Supra* note 2.

Ruling of the CA

On appeal, the accused assailed his conviction, stating:

I

ASSUMING THAT THE ACCUSED-APPELLANT PARTICIPATED IN THE SELLING OF ILLEGAL DRUGS, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF THE CRIME CHARGED SINCE HE WAS MERELY INSTIGATED BY THE POLICE INTO DOING IT.

II

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE POLICE'S FAILURE TO COMPLY WITH THE PROCEDURE IN THE CUSTODY OF SEIZED PROHIBITED AND REGULATED DRUGS PRESCRIBED UNDER THE IMPLEMENTING RULES AND REGULATION OF REPUBLIC ACT NO. 9165 WHICH CASTS SERIOUS DOUBT ON THE IDENTITY OF THE SEIZED DRUG CONSTITUTING THE *CORPUS DELICTI* OF THE OFFENSE.

The accused argued that the operation mounted against him was not an entrapment but an instigation, contending that without the proposal and instigation made by poseur buyer Paras no transaction would have transpired between them; that the police team did not show that its members had conducted any prior surveillance of him; and that the Prosecution should have presented the informant as a witness against him.

On January 29, 2010, the CA promulgated its assailed decision,[9] rejecting the assigned errors of the accused, and affirmed his conviction. It held that the operation against him was not an instigation but an entrapment, considering that the criminal intent to sell dangerous drugs had originated from him, as borne out by the *shabu* being inside his pocket prior to the transaction with Paras; that the accused did not show that Paras had any ill motive to falsely testify against him; that the conduct of a prior surveillance and the presentation of the informant as a witness were not necessary to establish the validity of the entrapment; and that the non-compliance by the buy-bust team

[9] *Supra* note 1.

with the requirements under Section 21 of the Implementing Rules and Regulations for Republic Act No. 9165 (IRR) was not fatal because there was a justifiable ground for it, and because the apprehending team properly preserved the integrity and evidentiary value of the confiscated drugs.

Hence, the accused is now before the Court in a final bid for acquittal.

Ruling

The appeal lacks merit.

To establish the crime of illegal sale of *shabu*, the Prosecution must prove beyond reasonable doubt (*a*) the identity of the buyer and the seller, the identity of the object and the consideration of the sale; and (*b*) the delivery of the thing sold and of the payment for the thing. The commission of the offense of illegal sale of dangerous drugs, like *shabu*, requires simply the consummation of the selling transaction, which happens at the moment the buyer receives the drug from the seller. In short, what is material is the proof showing that the transaction or sale actually took place, coupled with the presentation in court of the thing sold as evidence of the *corpus delicti*. If a police officer goes through the operation as a buyer, the crime is consummated when the police officer makes an offer to buy that is accepted by the accused, and there is an ensuing exchange between them involving the delivery of the dangerous drugs to the police officer.[10]

The concurrence of the foregoing elements was conclusively established herein.

To start with, Paras, as the poseur-buyer, testified that the accused sold to him *shabu* during the buy-bust operation, to wit:

Q – So when the informant proceeded to the place of Noel Bartolome, what did the informant do?

A – After he threw cigarette in front of Noel Bartolome, I approached him.

---

[10] *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305.

x x x x x x x x x

Q – What happened next?

A – When I approached the accused, I told him.
"*Pre-paiskor nga*" and he said
"*Pre, piso na lang tong hawak ko
Magkano ba ang kukunin mo*" and he said
"*ayos nay an, piso lang naman talaga ang kukunin ko*."

Q – Who handed first you or the accused?

A – I was the one who handed the buy bust money.

Q – After giving him the ₱100.00 pesos to Noel Bartolome where did he place it?

A – Then after that he placed it on his front pocket and then after that he got one (1) plastic sachet from his left front pocket.

Q – And then after giving you the plastic sachet containing illegal drug, what did you do?

A – I scratched my head, sir.

Q – After scratching your head, what transpired if any?

A – When I saw my companions approaching me, I grabbed Noel Bartolome, sir.[11]

Secondly, the transmission of the plastic sachet and its contents from the time of their seizure until they were delivered to the PNP Crime Laboratory for chemical examination was properly documented, starting with the marking of the plastic sachet at the crime scene by Paras. This was followed by the preparation of the written request by Insp. Cruz at the ADSOU. PO2 De Ocampo then personally brought the plastic sachet and its contents, together with the written request, to the PNP Crime Laboratory, where the delivery of the request and of the sachet and its contents was recorded by SPO1 Bugabuga of that office. In Physical Sciences Report No. D-1038-03, Chemist Dela Rosa of the PNP Crime Laboratory ultimately certified that the contents

---

[11] TSN, March 1, 2004, pp. 13-14.

of the plastic sachet were examined and found to be 0.06 grams of methamphetamine hydrochloride or *shabu*, a dangerous drug.[12]

And, thirdly, the Prosecution presented the *shabu*, the marked ₱100.00 bill, and Chemist Dela Rosa's Physical Sciences Report No. D-1038-03 at the trial.[13]

On the other hand, the accused's claim of being the victim of a vicious frame-up and extortion is unworthy of serious consideration. The fact that frame-up and extortion could be easily concocted renders such defenses hard to believe. Thus, although drug-related violators have commonly tendered such defenses to fend off or refute valid prosecutions of their drug-related violations, the Court has required that such defenses, to be credited at all, must be established with clear and convincing evidence.[14] But the accused did not adduce such evidence here, for all he put up were self-serving denials. Had the version of the Defense been what really transpired, there was no reason for the accused and his brother not to have formally charged the police officers with the severely penalized offense of planting of evidence under Section 29[15] of Republic Act No. 9165 and extortion. Thereby, the allegations of frame-up and extortion were rendered implausible.

Yet, the accused discredits the validity of his arrest by contending that the arrest resulted from an instigation, not from a legitimate entrapment. He insists that the evidence of the Prosecution did not show him to be then looking for buyers of *shabu* when Paras and the informant approached him; that it was Paras who proposed to buy *shabu* from him; and that

---

[12] *Supra* note 6.

[13] Records, pp. 84-86.

[14] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

[15] Section 29. *Criminal Liability for Planting of Evidence*. — Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

consequently Paras instigated him to sell *shabu*. He submits that the transaction would not have transpired without the proposal and instigation by Paras; that Paras initiated the commission of the crime by offering to him ₱100.00 for the purchase of the *shabu*; and that he should be acquitted due to the absolutory cause of instigation.[16]

The Court is not persuaded to side with the accused.

The trial judge and the CA agreed in their findings on the arrest of the accused being the result of a legitimate entrapment procedure. Such findings were based on the credible testimonies of the poseur buyer and other competent witnesses of the Prosecution. We concur with their findings. Indeed, the trial judge's assessment of the credibility of the witnesses is entitled to respect. This is because of the trial judge's unique opportunity to observe the demeanor of the witnesses as they testified before him.[17] The rule applies even more if, like here, the trial judge's assessment was affirmed by the CA upon review.[18] This rule should be obeyed here.

Moreover, we find no glaring errors or misapprehension of facts committed by the RTC in not according credence to the version of the accused and his brother. In this regard, it is significant that the accused did not ascribe any ill motive to Paras that could have made the officer testify falsely against him. Considering that the records were patently bereft of any indicium of ill motive or of any distorted sense of duty on the part of the apprehending team, particularly Paras as the poseur buyer, full credence was properly accorded to the Prosecution's evidence incriminating the accused. Without the clear and convincing indication of the lawmen's ill motive and irregular performance of duty, it is always good law to presume them to

---

[16] CA *rollo*, pp. 36-37.

[17] *People v. Encila*, G.R. No. 182419, February 10, 2009, 578 SCRA 341, 355; *People v. Pringas* , G.R. No. 175928, April 31, 2007, 531 SCRA 828, 845.

[18] *Id.*

have performed their official duties in a regular manner.[19] That presumption became conclusive for lack of contravention.

To be clear, then, the insistence by the accused that he was entitled to the benefit of an absolutory cause as the result of an instigation is unwarranted.

There is a definite distinction between instigation and entrapment. The Court highlighted the distinction in *People v. Bayani*,[20] *viz*:

> Instigation is the means by which the accused is lured into the commission of the offense charged in order to prosecute him. On the other hand, entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. Thus, in instigation, officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense which he or she would otherwise not commit and has no intention of committing. But in entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused, and law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes; thus, the accused cannot justify his or her conduct. In instigation, where law enforcers act as co-principals, the accused will have to be acquitted. But entrapment cannot bar prosecution and conviction. As has been said, instigation is a "trap for the unwary innocent," while entrapment is a "trap for the unwary criminal."
>
> As a general rule, a buy-bust operation, considered as a form of entrapment, is a valid means of arresting violators of Republic Act No. 9165. It is an effective way of apprehending law offenders in the act of committing a crime. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense.
>
> A police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a "decoy solicitation," is not prohibited by law and does not render invalid the buy-bust

---

[19] *People v. Abedin*, G.R. No. 179936, April 11, 2012, 669 SCRA 322, 336.

[20] G.R. No. 179150, June 17, 2008, 554 SCRA 741, 748-751.

operations. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct. In *People v. Sta. Maria*, the Court clarified that a "decoy solicitation" is not tantamount to inducement or instigation:

It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the office is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct.

> As here, the solicitation of drugs from appellant by the informant utilized by the police merely furnishes evidence of a course of conduct. The police received an intelligence report that appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with appellant. There was no showing that the informant induced the appellant to sell illegal drugs to him.

Conversely, the law deplores instigation or inducement, which occurs when the police or its agent devises the idea of committing the crime and lures the accused into executing the offense. Instigation absolves the accused of any guilt, given the spontaneous moral revulsion from using the powers of government to beguile innocent but ductile persons into lapses that they might otherwise resist.

People v. Doria enumerated the instances when this Court recognized instigation as a valid defense, and an instance when it was not applicable:

> In *United States v. Phelps*, we acquitted the accused from the offense of smoking opium after finding that the government employee, a BIR personnel, actually induced him to commit the crime in order to persecute him. Smith, the BIR agent, testified that Phelps' apprehension came after he overheard Phelps in a saloon say that he like smoking opium on some occasions. Smith's testimony was disregarded. We accorded significance to the fact that it was Smith who went to the accused three times to convince him to look for an opium den where both of them could smoke this drug. The conduct of the BIR

> agent was condemned as "most reprehensible." In *People v. Abella*, we acquitted the accused of the crime of selling explosives after examining the testimony of the apprehending police officer who pretended to be a merchant. The police officer offered "a tempting price, x x x a very high one" causing the accused to sell the explosives. We found there was inducement, "direct, persistent and effective" by the police officer and that outside of his testimony, there was no evidence sufficient to convict the accused. In *People v. Lua Chu and Uy Se Tieng*, [W]e convicted the accused after finding that there was no inducement on the part of the law enforcement officer. We stated that the Customs secret serviceman smoothed the way for the introduction of opium from Hong Kong to Cebu after the accused had already planned its importation and ordered said drug. We ruled that the apprehending officer did not induce the accused to import opium but merely entrapped him by pretending to have an understanding with the Collector of Customs of Cebu to better assure the seizure of the prohibited drug and the arrest of the surreptitious importers.

In recent years, it has become common practice for law enforcement officers and agents to engage in buy-bust operations and other entrapment procedures in apprehending drug offenders, which is made difficult by the secrecy with which drug-related offenses are conducted and the many devices and subterfuges employed by offenders to avoid detection. On the other hand, the Court has taken judicial notice of the ugly reality that in cases involving illegal drugs, corrupt law enforcers have been known to prey upon weak, hapless and innocent persons. The distinction between entrapment and instigation has proven to be crucial. The balance needs to be struck between the individual rights and the presumption of innocence on one hand, and ensuring the arrest of those engaged in the illegal traffic of narcotics on the other.

Applying the foregoing, we declare that the accused was not arrested following an instigation for him to commit the crime. Instead, he was caught *in flagrante delicto* during an entrapment through buy-bust. In a buy-bust operation, the pusher sells the contraband to another posing as a buyer; once the transaction is consummated, the pusher is validly arrested because he is committing or has just committed a crime in the presence of the buyer. Here, Paras asked the accused if he could buy *shabu*,

and the latter, in turn, quickly transacted with the former, receiving the marked bill from Paras and turning over the sachet of *shabu* he took from his pocket. The accused was shown to have been ready to sell the *shabu* without much prodding from Paras. There is no question that the idea to commit the crime originated from the mind of the accused.

The accused argues that the absence of a prior surveillance cast doubt on the veracity of the buy-bust operation; and that the failure to present the informant as a witness against him, as well as the buy-bust team's failure to comply with the requirements under Section 21, Article II, of Republic Act No.9165, were fatal to the cause of the Prosecution.[21]

The argument of the accused lacks merit. We have held that prior surveillance is not necessary to render a buy-bust operation legitimate, especially when the buy-bust team is accompanied to the target area by the informant.[22] That was what precisely happened here.

Similarly, the presentation of an informant as a witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit arrested through his efforts. Thereby, the confidentiality of the informant's identity is protected in deference to his invaluable services to law enforcement.[23] Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded. Here, however, the informant's testimony as a witness against the accused would only be corroborative of the sufficient testimony of Paras as the poseur-buyer; hence, such testimony was unnecessary.[24]

---

[21] CA *Rollo*, pp. 38-43.

[22] *Supra* note 19, at 338.

[23] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 445-446.

[24] *People v. Lazaro*, *supra* note 14, at 272.

We consider as unwarranted the contention of the accused about the non-compliance by the buy-bust team with the requirements of the law for the proper seizure and custody of dangerous drugs.

The requirements are imposed by Section 21, paragraph 1, Article II of Republic Act No. 9165, whose pertinent portion reads as follows:

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

To implement the requirements of Republic Act No. 9165, Section 21 (a), Article II of the IRR relevantly states:

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 and photograph shall be conducted at the place where the search

warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

It is notable that pursuant to the IRR, *supra*, the non-observance of the requirements may be excused if there is a justification, provided the integrity of the seized items as evidence is "properly preserved by the apprehending officer/team."

Although it appears that the buy-bust team did not literally observe all the requirements, like photographing the confiscated drugs in the presence of the accused, of a representative from the media and from the Department of Justice, and of any elected public official who should be required to sign the copies of the inventory and be given a copy of it, whatever justification the members of the buy-bust team had to render in order to explain their non-observance of all the requirements would remain unrevealed because the accused did not assail such non-compliance during the trial. He raised the matter for the first time only in the CA. As such, the Court cannot now dwell on the matter because to do so would be against the tenets of fair play and equity. That is what the Court said in *People v. Sta. Maria*, [25] to wit:

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping

[25] G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

We point out that the non-adherence to Section 21, Article II of Republic Act No. 9165 was not a serious flaw that would make the arrest of the accused illegal or that would render the *shabu* subject of the sale by him inadmissible as evidence against him. What was crucial was the proper preservation of the integrity and the evidentiary value of the seized *shabu*, inasmuch as that would be significant in the determination of the guilt or innocence of the accused.[26]

The State showed here that the chain of custody of the *shabu* was firm and unbroken. The buy-bust team properly preserved the integrity of the *shabu* as evidence from the time of its seizure to the time of its presentation in court. Immediately upon the arrest of the accused, Paras marked the plastic sachet containing the *shabu* with the accused's initials of *NBB*. Thereafter, Paras brought the sachet and the contents to the ADSOU,[27] where his superior officer, Insp. Cruz, prepared and signed the request for the laboratory examination of the contents of the marked sachet.[28] PO2 De Ocampo handcarried the request and the evidence to the PNP Crime Laboratory.[29] SPO1 Bugabuga of that office recorded the delivery of the request and the marked sachet, which were all received by Chemist Dela Rosa.[30] In turn, Chemist Dela Rosa examined the contents of the marked sachet, and executed Physical Sciences Report No. D-1038-03 confirming that the marked sachet contained 0.06 gram of *shabu*.[31] In this

---

[26] *Supra* note 19, at 337.

[27] TSN, March 1, 2004, p. 15.

[28] Records, p. 83.

[29] *Id.*

[30] *Id.*

[31] *Id.* at 84.

regard, the accused did not deny that Paras and Chemist Dela Rosa affirmed the sequence of custody of the *shabu* during the trial.[32]

The CA and the RTC correctly imposed life imprisonment and fine of ₱500,000.00. Section 5, Article II of Republic Act No. 9165 states that the penalty for the illegal sale of dangerous drugs, like *shabu*, regardless of the quantity and purity, shall be life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00.[33]

WHEREFORE, we **AFFIRM** the decision promulgated by the Court of Appeals on January 29, 2010; and **ORDER** the accused to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

---

[32] TSN, March 1, 2004, p. 15; records, p. 24.

[33] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

FIRST DIVISION

[G.R. No. 198794. February 6, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICTOR DE JESUS *Y* GARCIA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREON IS GENERALLY NOT DISTURBED ON APPEAL.—** [T]he trial court's assessment of the credibility of the witnesses and their testimonies is entitled to great weight and will not be disturbed on appeal. Such rule will not apply only when it appears that a fact of weight and substance has been overlooked, misapprehended, or misapplied by the Court. After an exhaustive review and examination of the records of this case, the Court finds no cogent reason to reverse the consistent ruling of the RTC and the Court of Appeals.
2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SALE OF DANGEROUS DRUGS; ELEMENTS.—** Expounding on the necessaries for the successful prosecution of an illegal sale of dangerous drugs case, this Court, in *People v. Del Rosario*, held: "In a prosecution for the sale of a dangerous drug, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Simply put, '[in] prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.'" To reiterate, the prosecution must establish the actual occurrence of the transaction between the buyer and seller of the dangerous drug, simultaneous with the presentation of the very same dangerous drug in court as evidence. This burden, the prosecution was able to successfully discharge.
3. **ID.; ID.; CUSTODY OF SEIZED DRUGS; FAILURE TO CONDUCT A PHYSICAL INVENTORY AND TO PHOTOGRAPH THE ITEMS SEIZED WILL NOT**

RENDER THE ARREST OF THE ACCUSED ILLEGAL OR THE ITEMS CONFISCATED FROM HIM INADMISSIBLE IN EVIDENCE.— Section 21 of Republic Act No. 9165 outlines the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs x x x. It was held, however, that "a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain." The arresting officers' failure to conduct a physical inventory and to photograph the items seized from De Jesus will not render his arrest illegal or the items confiscated from him inadmissible in evidence as they were able to nonetheless preserve the integrity and the evidentiary value of the said items. This is what is of utmost importance as the seized items are what would be used in the determination of De Jesus' guilt or innocence.

4. **ID.; ID.; THE EXACT DATE OF THE COMMISSION OF THE CRIME NEED NOT BE PROVED.—** PO2 Bernardo's x x x mistake as to the exact date of the buy-bust operation will not render his testimony incredible. It must be remembered that aside from the fact that these police officers handle numerous cases everyday, the first hearing held for this case was years after the date of De Jesus' arrest. Besides, it is settled that the exact date of the commission of the crime need not be proved unless it is an essential element of the crime. What is significant is that the links in the chain of custody were all accounted for by the prosecution, from the time the items were confiscated from De Jesus, up to the time they were presented in court during trial as proof of the *corpus delicti*.

5. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** In prosecuting cases for illegal possession of dangerous drugs, the prosecution must establish the following elements: "1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug."

6. **ID.; ID.; ID.; 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.—** Upon such search, De Jesus was found to be in possession of eight heat-sealed sachets

of *shabu*, an item identified to be a prohibited or regulated drug. De Jesus failed to show that he had authority to possess them. Moreover, 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.

7. **REMEDIAL LAW; EVIDENCE; DENIAL AND FRAME-UP; MUST BE PROVEN WITH STRONG AND CONVINCING EVIDENCE.—** De Jesus' defense theory, which is mainly of denial and frame-up are inherently weak and are not favored upon by the courts for being easily concocted. For such defenses to succeed they must be proven with strong and convincing evidence. This, De Jesus failed to do.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For review is the March 24, 2011 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 03671, which affirmed the Regional Trial Court's (RTC) November 4, 2008 Joint Judgment[2] in Criminal Case Nos. 1091-M-2003 and 1092-M-2003, wherein accused-appellant Victor de Jesus *y* Garcia (De Jesus) was found guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165.

On April 1, 2003, De Jesus was charged before the Malolos, Bulacan RTC, Branch 76 for violating Sections 5 and 11, Article II of Republic Act No. 9165 or the Comprehensive Dangerous

---

[1] *Rollo*, pp. 2-18; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante, concurring.

[2] CA *rollo*, pp. 63-83; penned by Presiding Judge Albert R. Fonacier.

Drugs Act of 2002. The pertinent portions of the respective Informations are quoted as follows:

Criminal Case No. 1091-M-2003:

> That on or about the 31st day of March, 2003, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug (*sic*) consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine Hydrochloride weighing 0.022 gram.[3]

Criminal Case No. 1092-M-2003:

> That on or about the 31st day of March, 2003, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in [his] possession and control dangerous drug (*sic*) consisting of [e]ight (8) heat-sealed transparent plastic sachets of Methamphetamine Hydrochloride weighing 0.027 gram, 0.019 gram, 0.020 gram, 0.017 gram, 0.021 gram, 0.018 gram, 0.020 gram and 0.146 gram respectively.[4]

De Jesus pleaded not guilty to both charges upon his arraignment[5] on June 16, 2003. During the pre-trial conference[6] held on August 5, 2003, counsel for De Jesus admitted "the qualification and competence of Forensic Chemical Officer Nellson C. Sta. Maria as an expert witness; the existence of the request for laboratory examination, the affidavit of the Police Officers, Chemistry Report No. D-241-2003 and the attached specimen subject of these cases with qualification that said specimen were not taken from the possession of the accused." After the prosecution marked its exhibits, the pre-trial conference

---

[3] Records, p. 2.

[4] *Id.* at 5.

[5] *Id.* at 19.

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

was terminated and the testimony of the Forensic Chemical Officer was thereby dispensed with.

The testimonies of Police Officer (PO) 3 Tomas Nachor, Jr.,[7] the police investigator stationed at the Provincial Drug Enforcement Group, Bulacan (Bulacan PDEG) at that time and PO1 Joven Quizon,[8] a member of the Bulacan PDEG, were also dispensed with by the parties in view of the following stipulations:

With respect to PO3 Tomas Nachor, Jr. the parties stipulated:

1. That PO3 Tomas Nachor, Jr. was the police investigator at the time of the commission of the alleged offenses;
2. That being the investigator in these cases, PO2 Carlito Bernardo and the other police operatives who conducted the drug operation turned over to him the specimen subject of these cases, which consisted of eight (8) pieces of heat-sealed transparent plastic sachets with markings B-P-1 "CB" to B-P-8 "CB";
3. That as an investigator, he prepared the documentation of these cases including the request for laboratory examination and the request for drug test examination; and
4. That he was the one who turned over the specimen as well as the person of the accused to the Crime Laboratory Office for laboratory examination of the specimen as well as for the urine drug test of the accused.[9]

With respect to PO1 Joven Quizon:

1. That PO1 Joven Quizon was a member of the Bulacan PDEG during the subject incident;
2. That he only served as back-up to the poseur-buyer, PO[2] Carlito Bernardo, during the buy-bust operation; and

---

[7] *Id.* at 127.

[8] *Id.* at 133.

[9] *Id.* at 127.

3. That he can identify the accused as well as the joint affidavit of arrest he executed in relation to these charges.[10]

The trial ensued with the presentation of PO2 Carlito Bernardo as the lone witness for the prosecution, while De Jesus himself and his daughter, Victoria Angelica de Jesus, testified for the defense.

The events, as put forward by the prosecution, through PO2 Bernardo's testimony, were summarized by the Office of the Solicitor General (OSG) in its brief[11] as follows:

On March 28, 2003, a report reached the office of the [Bulacan PDEG] about the alleged drug selling activities of one *alias* Vic, herein appellant Victor De Jesus *y* Garcia, along Mabini St., Barangay Poblacion, Baliuag, Bulacan. Upon instructions of the chief of the PDEG, a surveillance was conducted in the area by SPO2 Violago, as the team leader, together with PO1 Quizon, PO1 Dimla, and PO2 Carlito Bernardo[,] as members.

The surveillance team proceeded to Barangay Poblacion, particularly observing the perimeter of [De Jesus'] abode along Mabini Street from 1:30 p.m. to 5:00 p.m. Various persons were noticed to have been coming in and out of the said house.

A buy bust operation was instructed by the PDEG chief with the assistance of a confidential agent, known as *alias* "Erap". PO2 Carlito Bernardo was designated as the poseur buyer with SPO2 Violago, PO1 Jacinto, and PO1 Quizon as back up. The former was given two (2) pieces of marked one hundred peso bills of which he placed his initials CB on the center of the seal of the Bangko Sentral ng Pilipinas of each bill.

At around 12:15 p.m. of March 31[,] 2002, the buy-bust team proceeded to the house of their confidential agent at Barangay Poblacion, merely 70 meters away from the house of [De Jesus]. The team conducted a briefing on the procedure of their operation at their confidential agent's house.

---

[10] *Id.* at 132.

[11] CA *rollo*, pp. 149-175.

Around 1:00 p.m., PO2 Carlito Bernardo and the confidential agent proceeded to the house of [De Jesus] in the guise of buying sachets of *shabu*. Upon arrival thereat, the confidential agent introduced PO2 Carlito Bernardo to [De Jesus]. [De Jesus] then asked about the money. PO2 Carlito Bernardo handed the money to [De Jesus] consisting of two (2) pieces of marked one hundred peso bills. [De Jesus], in turn, received the money and took out a white colored cylindrical plastic film case. From the film case, [De Jesus] took out a medium sized transparent plastic sachet and gave it to PO2 Carlito Bernardo. After receiving the sachet, the latter held [De Jesus] and introduced himself as a police officer. PO2 Carlito Bernardo recovered the film case from the right hand of [De Jesus]. The film case contained two (2) medium sized and six (6) small sized transparent plastic sachets. The marked money was recovered from the pocket of [De Jesus]. After asking [De Jesus] to bring out the contents of his pocket, a sachet of marijuana was likewise recovered. [De Jesus] was then informed of his constitutional rights.

While still at the scene of the incident, PO2 Carlito Bernardo marked the medium sized transparent plastic sachet handed by [De Jesus] to him as A-BB and CB. The other sachets found inside the film case [were] marked and initialed as follows: two (2) medium sized sachets were marked as B-P1-CB and B-P8-CB[,] while the six (6) small sachets were marked BP2-CB to BP7-CB. The sachet of marijuana recovered from [De Jesus'] pocket was marked as C-P9-CB.

[De Jesus] was immediately taken to the police station for proper investigation. The incident was logged and the evidence were turned over to the station's investigator, PO2 Tomas Nachor. PO2 Tomas Nachor, in turn prepared the request for the laboratory examination of the recovered specimen and personally submitted the same to the crime laboratory office, which were later found positive for *shabu* and marijuana.[12] (Citations omitted.)

On the other hand, De Jesus, in his brief,[13] denied the charges and claimed that he was framed by the confidential agent for personal reasons, to wit:

---

[12] *Id.* at 154-156.

[13] *Id.* at 94-113.

On 28 March 2003, at around 12:00 o'clock in the afternoon, VICTOR DE JESUS was sleeping inside his house, while his children were watching television, when seven (7) persons suddenly entered and woke him up. The trespassers were a police asset named Marvin Crisostomo, police officers Quizon, Bernardo, Magona, Jacinto, and Chan. He knew the police officers because Crisostomo, a police asset, used to stay in his house. Whenever there would be a police operation, the group [would] usually gather inside his house. Crisostomo was formerly his friend but their relationship turned sour, because of the former's illicit relationship with his sister-in-law, Sweet. Since then, Crisostomo held a grudge against him. When the group entered his house, they searched his room and his person but nothing illegal was found. The police officers merely planted the evidence against him and no buy-bust operation took place.

VICTORIA ANGELICA DE JESUS corroborated her father's account. She was watching television when [the] police officers suddenly barged inside their house. The police officers were with Marvin Crisostomo, a police asset. [Her] father was handcuffed and they conducted a search in his room. The police officers then brought her father to the comfort room where he was bodily searched. When the police officers entered the children's room, they suddenly declared that they have found something.[14] (Citations omitted.)

On November 4, 2008, the RTC convicted De Jesus in a Joint Judgment on Criminal Case Nos. 1091-M-2003 and 1092-M-2003, the *fallo* of which reads:

WHEREFORE, finding the accused **GUILTY** beyond reasonable doubt, accused **VICTOR DE JESUS *y* GARCIA @ Vic** is hereby **CONVICTED:**

[A] in Criminal Case No. 1091-M-2003, which charges accused with sale of dangerous drug consisting of one (1) heat sealed transparent plastic sachet of methylamphetamine hydrochloride commonly known as *shabu*, weighing 0.022 gram and a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", and is **SENTENCED** to suffer **LIFE IMPRISONMENT**, and to pay the **FINE** of Five Hundred Thousand Pesos (₱500,000.00);

---

[14] *Id.* at 101-102.

[B] in Criminal Case No. 1092-M-2003, which charges accused for possession and control of dangerous drug consisting of eight (8) heat sealed transparent plastic sachets of methamphetamine hydrochloride commonly known as *shabu*, weighing 0.027, 0.019, 0.020, 0.017, 0.021, 0.018, 0.020, and 0.146 gram and are all dangerous drugs, in violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", and is **SENTENCED** to suffer the imprisonment of, applying the Indeterminate Sentence Law, **TWELVE (12) YEARS AND ONE DAY, AS THE MINIMUM TERM, TO THIRTEEN (13) YEARS, AS THE MAXIMUM TERM,** and to pay the **FINE** of Three Hundred Thousand Pesos (₱300,000.00);

As to the specimen subject of these cases and which are listed in Chemistry Report No. D-241-2003, the same are hereby confiscated in favor of the government. The Clerk of Court is directed to dispose of the said specimen in accordance with the existing procedure, rules and regulations.

Furnish both parties of this joint judgment and the Provincial Jail Warden.[15] (Citation omitted.)

On appeal,[16] the Court of Appeals, in its March 24, 2011 Decision, affirmed the RTC, to wit:

WHEREFORE, in view of the foregoing, the instant appeal is ***DISMISSED.*** The Joint Decision of the Regional Trial Court of Malolos City, Branch 76 dated 4 November 2008 finding accused-appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is ***AFFIRMED***.[17]

The Court of Appeals ruled that the prosecution was able to establish the chain of custody and preserve the integrity and identity of the confiscated drugs. It found De Jesus' testimony as self-serving, and his daughter's as biased, since there was no evidence presented to substantiate their claims. Moreover, the Court of Appeals noted that the improper motive imputed

---

[15] *Id.* at 82-83.

[16] Records, p. 209.

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

by De Jesus was against the confidential informant and not the police officers who apprehended him.[18]

Anent the discrepancy on the date the buy-bust operation took place, the Court of Appeals held that there was no discrepancy as March 29, 2003 was the date the operation was "supposed" to be carried out as opposed to the categorical statement from PO2 Bernardo that the actual buy-bust operation occurred on March 31, 2003.[19]

Aggrieved, De Jesus appealed[20] the above ruling to this Court, assigning the same errors he assigned before the Court of Appeals,[21] *viz*:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE APPREHENDING OFFICERS' FAILURE TO PRESERVE THE INTEGRITY AND IDENTITY OF THE SEIZED *SHABU*.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[22]

Discussing the two errors jointly, De Jesus claims that the prosecution failed to ensure that unnecessary doubts concerning the identity of the evidence were removed, as the police officers did not observe the proper procedure in the handling of seized articles.[23] De Jesus states:

---

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

[19] *Id.* at 16.

[20] CA *rollo*, pp. 195-197.

[21] *Rollo*, pp. 26-29.

[22] CA *rollo*, p. 96.

[23] *Id.* at 103-104.

[T]he mere fact of unauthorized sale or possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. The fact that the substance illegally sold and possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt.[24]

De Jesus also questions the discrepancy on the date of the buy-bust operation made by the prosecution's lone witness, PO2 Bernardo. In his May 19, 2005 testimony, PO2 Bernardo declared that the buy-bust operation was conducted on March 29, 2003, which was two days earlier than the March 31, 2003 date he stated in his joint affidavit and the date in the Informations filed against De Jesus.

This Court's Ruling

This Court would like to state at the outset that it is a settled rule that the trial court's assessment of the credibility of the witnesses and their testimonies is entitled to great weight and will not be disturbed on appeal. Such rule will not apply only when it appears that a fact of weight and substance has been overlooked, misapprehended, or misapplied by the Court.[25] After an exhaustive review and examination of the records of this case, the Court finds no cogent reason to reverse the consistent ruling of the RTC and the Court of Appeals.

De Jesus was charged and convicted for the sale and possession of dangerous drugs in violation of Sections 5 and 11, Article II of Republic Act No. 9165 or the Dangerous Drugs Act of 2002. The law provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00)

---

[24] *Id.* at 108.

[25] *People v. Salcena*, G.R. No. 192261, November 16, 2011, 660 SCRA 349, 358.

shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

Section 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred

thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride,

marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

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

Illegal Sale of Dangerous Drugs

Expounding on the necessaries for the successful prosecution of an illegal sale of dangerous drugs case, this Court, in *People v. Del Rosario*,[26] held:

In a prosecution for the sale of a dangerous drug, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Simply put, "[in] prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence." (Citations omitted.)

To reiterate, the prosecution must establish the actual occurrence of the transaction between the buyer and seller of the dangerous drug, simultaneous with the presentation of the

---

[26] G.R. No. 188107, December 5, 2012.

very same dangerous drug in court as evidence. This burden, the prosecution was able to successfully discharge.

Section 21 of Republic Act No. 9165 outlines the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs:

Section 21 of Republic Act No. 9165, provide as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided,*

however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

Its Implementing Rules and Regulations state:

SEC. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**;

(b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/

paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(c) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, that when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, that a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(d) After the filing of the criminal case, the court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall, within twenty-four (24) hours thereafter, proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, that those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes; Provided, further, that a representative sample, duly weighed and recorded is retained;

(e) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In cases of seizures where no person is apprehended and no criminal case is filed, the PDEA may order the immediate destruction or burning of seized dangerous drugs and controlled precursors and essential chemicals under guidelines set by the Board. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(f) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(g) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(h) Transitory Provision:

h.1) Within twenty-four (24) hours from the effectivity of the Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel; and

h.2) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

In the meantime that the PDEA has no forensic laboratories and/or evidence rooms, as well as the necessary personnel of its own in any area of its jurisdiction, the existing National Bureau of Investigation (NBI) and Philippine National Police (PNP) forensic laboratories shall continue to examine or conduct screening and confirmatory tests on the seized/surrendered evidence whether these be dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments, paraphernalia and/or laboratory equipment; and the NBI and the PNP shall continue to have custody of such evidence for use in court and until disposed of, burned or destroyed in accordance with the foregoing rules: Provided, that pending appointment/designation of the full complement of the representatives from the media, DOJ, or elected

public official, the inventory of the said evidence shall continue to be conducted by the arresting NBI and PNP operatives under their existing procedures unless otherwise directed in writing by the DOH or PDEA, as the case may be. (Emphasis supplied.)

It was held, however, that "a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain."[27] The arresting officers' failure to conduct a physical inventory and to photograph the items seized from De Jesus will not render his arrest illegal or the items confiscated from him inadmissible in evidence as they were able to nonetheless preserve the integrity and the evidentiary value of the said items. This is what is of utmost importance as the seized items are what would be used in the determination of De Jesus' guilt or innocence.[28]

Verily, the prosecution was able to demonstrate that the integrity and the evidentiary value of the evidence had been preserved. PO2 Bernardo's testimony as to how they learned of De Jesus' drug dealing activities up to the time they arrested him and confiscated the items subject of this case was clear and positive. He was also categorical in his statements on how he marked the seized items and to whom he turned them over. His mistake as to the exact date of the buy-bust operation will not render his testimony incredible. It must be remembered that aside from the fact that these police officers handle numerous cases everyday, the first hearing held for this case was years after the date of De Jesus' arrest. Besides, it is settled that the exact date of the commission of the crime need not be proved unless it is an essential element of the crime.[29] What is significant is that the links in the chain of custody were all accounted for by the prosecution, from the time the items were confiscated from De Jesus, up to the time they were presented in court during trial as proof of the *corpus delicti*.

---

[27] *Asiatico v. People*, G.R. No. 195005, September 12, 2011, 657 SCRA 443, 451-452.

[28] *People v. Amansec*, G.R. No. 186131, December 14, 2011, 662 SCRA 574, 594.

[29] *People v. Chua Tan Lee*, 457 Phil. 443, 450 (2003).

In any case, unless De Jesus can show that there was bad faith, ill will, or tampering with the evidence, the presumption that the integrity of the evidence has been preserved, and that the police officers discharged their duties properly and with regularity, will remain.[30] It is worthy to note that the ill motive De Jesus speaks of is imputed against the informant and not the police officers. This Court agrees with the Court of Appeals when it said that it is highly incredible that the arresting officers would waste their time and effort,[31] and even run the risk of losing their jobs and tainting their reputations just so they could accommodate an informant with a grudge against De Jesus.

Illegal Possession of Dangerous Drugs

In prosecuting cases for illegal possession of dangerous drugs, the prosecution must establish the following elements:

1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug;

(2) such possession is not authorized by law; and

(3) the accused freely and consciously possessed the drug.[32]

The above elements were all duly established by the prosecution. After De Jesus was validly arrested for the illegal sale of drugs, he was searched and frisked, pursuant to Section 13, Rule 126 of the Rules of Court, to wit:

SEC. 13. *Search incident to lawful arrest*. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

Upon such search, De Jesus was found to be in possession of eight heat-sealed sachets of *shabu*, an item identified to be a prohibited or regulated drug. De Jesus failed to show that he

---

[30] *People v. Mendoza*, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 369.

[31] *Rollo*, p. 16.

[32] *Asiatico v. People*, *supra* note 27 at 450.

had authority to possess them. Moreover, 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.[33]

De Jesus' defense theory, which is mainly of denial and frame-up are inherently weak and are not favored upon by the courts for being easily concocted. For such defenses to succeed they must be proven with strong and convincing evidence.[34] This, De Jesus failed to do.

In light of the foregoing, we find no reason to disturb the lower courts' ruling.

WHEREFORE, premises considered, the Court hereby **AFFIRMS** the March 24, 2011 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03671.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191740. February 11, 2013]

SUSANA R. SY, *petitioner, vs.* **PHILIPPINE TRANSMARINE CARRIERS, INC., and/or SSC SHIP MANAGEMENT PTE., LTD.,** *respondents.*

---

[33] *Id.* at 451.

[34] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION; 2000 STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON BOARD OCEAN-GOING VESSELS; COMPENSATION AND BENEFITS FOR DEATH; WHEN GRANTED.—** [T]o be entitled for death compensation benefits from the employer, the death of the seafarer (1) must be work-related; and (2) must happen during the term of the employment contract. Under the Amended POEA Contract, work-relatedness is now an important requirement. The qualification that death must be work-related has made it necessary to show a causal connection between a seafarer's work and his death to be compensable.

2. **ID.; ID.; ID.; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION AMENDED EMPLOYMENT CONTRACT; WORK-RELATED INJURY; DEFINED.—** Under the *2000 POEA Amended Employment Contract,* work-related injury is defined as an injury(ies) resulting in disability or death arising out of and in the course of employment. Thus, there is a need to show that the injury resulting to disability or death must arise (1) out of employment, and (2) in the course of employment.

3. **ID.; ID.; ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; HOW CONSTRUED.—** While we commiserate with petitioner, we cannot grant her claim for death compensation benefits in the absence of substantial evidence to prove her entitlement thereto, since to do so will cause an injustice to the employer. Otherwise stated, while it is true that labor contracts are impressed with public interest and the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated September 17, 2009 and the Resolution[2] dated February 26, 2010 of the Court of Appeals issued in CA-G.R. SP No. 107379.

The antecedent facts are as follows:

On June 23, 2005, Alfonso N. Sy (Sy) was hired by respondent Philippine Transmarine Carriers Incorporated for and in behalf of its foreign principal, co-respondent SSC Ship Management Pte. Ltd. In their contract of employment, Sy was assigned to work as Able Seaman (AB) on board the vessel M/V Chekiang for the duration of ten months, with a basic monthly salary of US$512.00. Considered incorporated in AB Sy's Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) is a set of standard provisions established and implemented by the POEA, called the *Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.*

On October 1, 2005, while the vessel was at the Port of Jakarta, Indonesia, AB Sy went on shore leave and left the vessel at about 1300 hours. At 1925 hours, the vessel's agent from Jardine received an advice from the local police that one of the vessel's crew members died ashore. At 1935 hours, the agent advised the vessel's master, Capt. Norman C. Marquez, about the incident.

---

[1] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), with Associate Justices Japar B. Dimaampao and Antonio L. Villamor, concurring; *rollo*, pp. 30-39.

[2] *Id.* at 21-29.

At 2050 hrs., Capt. Marquez and his 3 crew members went to Cipto Mangunkusumo Hospital where they confirmed the cadaver to be that of AB Sy.[3]

Based on the initial investigation conducted by the local police, AB Sy was riding on a motorcycle when he stopped the driver to urinate at the riverside of the road. Since AB Sy had not returned after a while, the motorcycle driver went to look for him at the riverside, but the former was nowhere to be found.[4] At 1830 hrs., AB Sy's corpse was found.[5] A forensic pathologist certified that AB Sy's death was an accident due to drowning, and that there was "alcohol 20mg%" in his urine.[6]

AB Sy's body was repatriated to the Philippines. On October 8, 2005, the Medico-Legal Officer of the National Bureau of Investigation (NBI) conducted a post-mortem examination on AB Sy's body and certified that the cause of death was Asphyxia by drowning.[7]

Petitioner Susana R. Sy, widow of AB Sy, demanded from respondents payment of her husband's death benefits and compensation. Respondents denied such claim, since AB Sy's death occurred while he was on a shore leave, hence, his death was not work-related and, therefore, not compensable. As her repeated demands were denied, petitioner filed, on March 1, 2006, a complaint against respondents for death benefits, burial assistance, moral and exemplary damages, and attorney's fees.

On August 28, 2007, the Labor Arbiter (LA) rendered a Decision,[8] the dispositive portion of which reads:

> WHEREFORE, premises considered, respondent is ordered to pay complainant the Philippine Currency equivalent to Fifty Thousand

---

[3] *Id.* at 52.

[4] *Id.*

[5] CA *rollo*, p. 82

[6] *Id.* at 83.

[7] *Id.* at 85.

[8] *Id.* at 50-57; per Labor Arbiter Patricio P. Libo-on.

US Dollars (US$50,000.00) as death benefit and an additional amount of Philippine Currency equivalent to One Thousand U.S. Dollars (US$1,000.00) as burial expenses at the exchange rate prevailing at the time of payment.

SO ORDERED.[9]

The LA found that AB Sy was still under the respondents' employ at the time he drowned although he was on shore leave; that while on shore leave, he was still under the control and supervision of the master or captain of the vessel as it was provided under Section 13 of the Contract that the seafarer before taking a shore leave must secure the consent of the master of the vessel; and his leave was conditioned on "considerations of operations and safety" of the vessel; that another indication that a seafarer is considered to be doing work-related functions even when on shore leave is found in subparagraph 4, paragraph B, Section 1 of the Contract where the duties of the seafarer are not limited to his stay while on board, but extend to his stay ashore.

The LA then ruled that since AB Sy was doing work-related functions during the term of his contract, only a finding that his death was self-inflicted or attributable to him would bar the payment of death benefits. It found that respondents' evidence, which consisted of the Indonesia Police Autopsy Report, stating that the cause of death was drowning, did not establish the circumstance of death which would show that the death was the result of AB Sy's willful act on his own life; that there were traces of alcohol in his blood did not make him "intoxicated" as there was no proof that he was; and granting that he was intoxicated, such was accidental drowning and not an intentional taking of his own life.

Respondents filed their appeal with the National Labor Relations Commission (NLRC), reiterating that AB Sy's death was not work-related, hence, there was no basis for the LA's award. Petitioner also filed her appeal claiming that she was entitled to attorney's fees as well as moral and exemplary damages.

---

[9] *Id.* 57.

On October 17, 2008, the NLRC rendered its Resolution,[10] the decretal portion of which reads:

WHEREFORE, premises considered, Respondent's appeal is **DISMISSED** for lack of merit, while Complainant's appeal is partly **GRANTED**. The Labor Arbiter's assailed decision in the above-entitled case is hereby **MODIFIED**.

In addition to the award of FIFTY THOUSAND U.S. DOLLARS (US$50,000.00) as death benefits and ONE THOUSAND U.S. DOLLARS (US$1,000.00) as burial expenses, Respondents are jointly and severally liable to Complainant for attorney's fees equivalent to ten percent (10%) of her total monetary award, to be paid in Philippine Currency equivalent to the exchange rate prevailing during the time of payment.[11]

The NLRC affirmed the LA's finding that AB Sy's death was compensable, saying that if not for his employment with respondents, he would have been in some other place and would not have been enjoying any employment benefit of shore leave in Jakarta, Indonesia on that fateful day; that if not for said employment, he would not have gone to the riverside and urinate, and would not have accidentally fallen into the river and drowned. It found petitioner entitled to an award of attorney's fees, since she was constrained to hire the services of a lawyer to protect her rights but found no basis for the grant of moral and exemplary damages.

Respondents filed their Motion for Reconsideration, which the NLRC denied in a Resolution[12] dated December 8, 2008.

Respondents filed a petition for *certiorari* with the CA to which petitioner was required to file her Comment, but failed to do so.

In the meantime, petitioner moved for the execution of the NLRC Resolution. On March 5, 2009, petitioner executed an

---

[10] *Id.* at 40-48; per Commissioner Victoriano R. Calaycay, concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[11] *Id.* at 47-48. (Emphasis in the original).

[12] *Id.* at 58; Commissioner Gacutan took no part.

Affidavit[13] stating that she had received from respondents the sum of two million six hundred ninety-one thousand one hundred seventy-three pesos and 10/100 (₱2,691,173.10) as conditional payment of all her claims against respondents; and that the payment was made to prevent further execution proceedings she initiated with the NLRC and without prejudice to respondents' petition then pending with the CA.

On September 17, 2009, the CA rendered its assailed Decision, the dispositive portion of which reads:

> WHEREFORE, the petition is hereby ***GRANTED***. The NLRC's Decision dated October 17, 2008 and Resolution dated December 8, 2008 in NLRC LAC No. 10-000256-07 are hereby ***REVERSED***.
>
> Accordingly, the complaint in NLRC NCR OFW Case No. (M) 06-03-00821-00 is hereby ***dismissed***.
>
> The application for issuance of a temporary restraining order and/or preliminary mandatory injunction is hereby declared *moot and academic*.
>
> The private respondent, Susana R. Sy, is hereby ordered to return to the petitioners the full amount of Two Million Six Hundred Ninety-One Thousand One Hundred Seventy-Three pesos and 10/100 (₱2,691,173.10) pursuant to her undertaking in the Conditional Satisfaction of Judgment with Urgent Motion to Cancel Appeal Bond dated March 5, 2009 and Affidavit executed by her also on March 5, 2009.[14]

In reversing the NLRC, the CA found AB Sy's death not work-related based on the following evidence, to wit: (1) AB Sy was on a shore leave at the time of the incident; (2) he was found dead by the police authorities in Indonesia and upon autopsy, the cause of death was established as drowning; (3) he was intoxicated when he died due to traces of alcohol in his urine; and (4) the Philippine government authorities, namely, the Department of Foreign Affairs and the NBI, confirmed the cause of his death was drowning. The CA said that under Section 20

---

[13] *Id.* at 240-241.

[14] *Rollo*, p. 38. (Citations omitted) (Emphasis in the original).

(A) of POEA Memorandum Circular No. 9, series of 2000, it was not sufficient to establish that AB Sy's death had occurred during the term of his contract, but there must be a causal connection between his death and the work for which he had been contracted. In this case, when AB Sy died, he was on a shore leave and left the vessel, and his death neither occurred at his workplace nor while performing an act within the scope of his employment.

Petitioner filed her Motion for Reconsideration, which the CA denied in a Resolution dated February 26, 2010.

Hence, this petition where the sole issue raised is:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING RESPONDENTS' PETITION FOR *CERTIORARI* AND DENYING PETITIONER'S MOTION FOR RECONSIDERATION BY REVERSING AND SETTING ASIDE THE NATIONAL LABOR RELATIONS [COMMISSION'S] DECISION IN AWARDING DEATH BENEFITS UNDER THE POEA STANDARD CONTRACT[15]

We find the petition devoid of merit.

The terms and conditions of a seafarer's employment is governed by the provisions of the contract he signs with the employer at the time of his hiring, and deemed integrated in his contract is a set of standard provisions set and implemented by the POEA, called the *Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels*, which provisions are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels.[16] The issue raised of whether petitioner is entitled to death compensation benefits from respondents is best resolved by the provisions of their Employment Contract which incorporated the *2000 Standard Terms and Conditions Governing the*

---

[15] *Id.* at 14.

[16] *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009, 593 SCRA 668, 693.

Employment of Filipino Seafarers on Board Ocean-Going Vessels.[17] Section 20 (A) of the Contract provides:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. In the case of work-related death of the seafarer during the term of his contract, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

x x x x x x x x x.

Clearly, to be entitled for death compensation benefits from the employer, the death of the seafarer (1) must be work-related; and (2) must happen during the term of the employment contract. Under the Amended POEA Contract, work-relatedness is now an important requirement. The qualification that death must be work-related has made it necessary to show a causal connection between a seafarer's work and his death to be compensable.

Under the *2000 POEA Amended Employment Contract,* work-related injury is defined as an injury(ies) resulting in disability or death arising out of and in the course of employment. Thus, there is a need to show that the injury resulting to disability or death must arise (1) out of employment, and (2) in the course of employment.

In *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission,*[18] we explained the phrase "arising out of and in the course of employment" in this wise:

x x x The two components of the coverage formula — "arising out of" and "in the course of employment" — are said to be separate tests which must be independently satisfied; however, it should not

---

[17] Department Order No. 4, series of 2000, as amended by Memorandum Circular No. 9, series of 2000.

[18] No. L-26341, November 27, 1968, 26 SCRA 102; 135 Phil. 95, 110-113 (1968).

be forgotten that the basic concept of compensation coverage is unitary, not dual, and is best expressed in the word, "work-connection," because an uncompromising insistence on an independent application of each of the two portions of the test can, in certain cases, exclude clearly work-connected injuries. The words "arising out of" refer to the origin or cause of the accident, and are descriptive of its character, while the words "in the course of" refer to the time, place and circumstances under which the accident takes place.

As a matter of general proposition, an injury or accident is said to arise "in the course of employment" when it takes place within the period of the employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto.[19]

AB Sy was hired as a seaman on board M/V Chekiang on June 23, 2005 and was found dead on October 1, 2005, with drowning as the cause of death. Notably, at the time of the accident, AB Sy was on shore leave and there was no showing that he was doing an act in relation to his duty as a seaman or engaged in the performance of any act incidental thereto. It was not also established that, at the time of the accident, he was doing work which was ordered by his superior ship officers to be done for the advancement of his employer's interest. On the contrary, it was established that he was on shore leave when he drowned and because of the 20% alcohol found in his urine upon autopsy of his body, it can be safely presumed that he just came from a personal social function which was not related at all to his job as a seaman. Consequently, his death could not be considered work-related to be compensable.

Petitioner argues that AB Sy's death happened in the course of employment, because if not for his employment he could be somewhere else and was not on shore leave; and that he would not be in the riverside of Jakarta, Indonesia and had not answered the call of nature and fell into the river and drowned.

We are not persuaded.

While AB Sy's employment relationship with respondents did not stop but continues to be in force even when he was on

[19] *Id.* at 105-106.

shore leave, their contract clearly provides that it is not enough that death occurred during the term of the employment contract, but must be work-related to be compensable. There is a need to show the connection of AB Sy's death with the performance of his duty as a seaman. As we found, AB Sy was not in the performance of his duty as a seaman, but was doing an act for his own personal benefit at the time of the accident. The cause of AB Sy's death at the time he was on shore leave, which was drowning, was not brought about by a risk which was only peculiar to his employment as a seaman. In fact, he was in no different circumstance with other people walking along the riverside who might also drown if no due care to one's safety is exercised. Petitioner failed to establish by substantial evidence her right to the entitlement of the benefits provided by law.

Petitioner's claim that AB Sy's death was by accident, thus, not willfully done which would negate compensability, has no relevance in this case based on our aforementioned disquisition.

While we commiserate with petitioner, we cannot grant her claim for death compensation benefits in the absence of substantial evidence to prove her entitlement thereto, since to do so will cause an injustice to the employer. Otherwise stated, while it is true that labor contracts are impressed with public interest and the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, still the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence.[20]

WHEREFORE, the petition is **DENIED.** The Decision dated September 17, 2009 and the Resolution dated February 26, 2010 of the Court of Appeals are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

---

[20] See *Panganiban v. Tara Trading Shipmanagement, Inc.*, G.R. No. 187032, October 18, 2010, 633 SCRA 353, 369.

FIRST DIVISION

[G.R. No. 195198. February 11, 2013]

LORELI LIM PO, *petitioner, vs.* **DEPARTMENT OF JUSTICE and JASPER T. TAN,** *respondents.*

[G.R. No. 197098. February 11, 2013]

ANTONIO NG CHIU, *petitioner, vs.* **COURT OF APPEALS, DEPARTMENT OF JUSTICE and JASPER T. TAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN APPEAL TAKEN EITHER TO THE SUPREME COURT OR THE COURT OF APPEALS BY THE WRONG OR INAPPROPRIATE MODE SHALL BE DISMISSED.—** Chiu filed his petition under Rule 65 of the Rules of Court when he should have resorted instead to Rule 45 thereof. An appeal taken either to us or the CA by the wrong or inappropriate mode shall be dismissed. Even if we were to be liberal and consider his petition as having been filed under Rule 45, it would still be susceptible of dismissal for non-compliance with Section 2 of the same rule. Chiu's counsel received a copy of the CA's resolution finally denying his petition on April 8, 2011. The petition now before us was filed on June 23, 2011, way beyond the 15-day period prescribed by Section 2 of Rule 45. Besides, what the petition essentially seeks is for us to re-evaluate the evidence upon which Secretary Agra anchored his findings in holding that probable cause exists to indict Chiu. The foregoing was affirmed by the CA. It is settled that a re-calibration of evidence cannot be done in a petition filed under Rule 45.

2. **ID.; COURTS; CANNOT INTERFERE WITH THE DETERMINATION OF PROBABLE CAUSE FOR THE PURPOSE OF FILING AN INFORMATION IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION.—** [E]ven if we were to take exception of Chiu's case by giving due course

to his petition either under Rule 45 or Rule 65, still, the result is its dismissal. In *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III,* we stated that: "Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government, or to substitute their own judgments for that of the Executive Branch, represented in this case by the Department of Justice. The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion. x x x In this regard, we stress that a preliminary investigation for the purpose of determining the existence of probable cause is not part of a trial. At a preliminary investigation, the investigating prosecutor or the Secretary of Justice only determines whether the act or omission complained of constitutes the offense charged. Probable cause refers to facts and circumstances that engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. There is no definitive standard by which probable cause is determined except to consider the attendant conditions; the existence of probable cause depends upon the finding of the public prosecutor conducting the examination, who is called upon not to disregard the facts presented, and to ensure that his finding should not run counter to the clear dictates of reason."

3. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NATURE. — [I]n a preliminary investigation, the prosecutor is bound to determine merely the existence of probable cause that a crime has been committed and that the accused has committed the same. The rules do not require that a prosecutor has moral certainty of the guilt of a person for the latter to be indicted for an offense after the conduct of a preliminary investigation. Further, we have repeatedly ruled that the determination of probable cause, for purposes of preliminary investigation, is an executive function. Such determination should be free from the court's interference save only in exceptional cases where the DOJ gravely abuses its discretion in the issuance of its orders or resolutions.

APPEARANCES OF COUNSEL

Villanueva Tabucanon & Associates Law Offices for Loreli Lim Po.

Tanco & Partners and *Alexius P. Tang* for Antonio Ng Chiu.

The Solicitor General for public respondent.

De Leon & Desiderio for private respondent.

R E S O L U T I O N

REYES, *J.*:

Herein private respondent, Jasper T. Tan (Tan), is a stockholder of Coastal Highpoint Ventures, Inc. (CHVI), a real estate development company. Antonio Ng Chiu[1] (Chiu) is its President. Tan claimed that Loreli Lim Po[2] (Po) is Chiu's personal accountant. Po asserted otherwise and instead alleged that she is merely a consultant for CHVI.

Tan lamented that pertinent information relative to CHVI's operations were withheld from him. His repeated requests for copies of financial statements and allowance to inspect corporate books proved futile. Consequently, he filed before the Office of the City Prosecutor of Cebu a complaint against Chiu and Po for violation of Section 74(2),[3] in relation to

---

[1] Petitioner in G.R. No. 197098.

[2] Petitioner in G.R. No. 195198.

[3] Sec. 74. Books to be kept; stock transfer agent. — x x x.

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which

Section 144[4] of the Corporation Code of the Philippines, the origin of the two consolidated petitions now before us.

On October 16, 2008, Assistant City Prosecutor Anna Lou B. Fernandez-Cavada (Prosecutor Fernandez-Cavada) issued a Resolution[5] finding probable cause to indict Chiu and Po based on the following grounds:

> Complainant, as a stockholder, is entitled to inspect the corporate books and records of the CHVI. The record clearly shows that complainant had been demanding to inspect the corporate books, records of business and corporate reports since 13 June 2007. Noticeably, though several demands/requests for inspection of corporate records have been made by the complainant, the same werenot (sic) granted until after the month of April 2008 or roughly 10 months thereafter. The December 15, 2007 collective inspection cannot be regarded as compliance with the request as complainant has never agreed thereto.

---

shall be punishable under Section 144 of this Code: Provided, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand. (Underlining ours)

[4] Sec. 144. Violations of the Code. — Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code. (190 1/2 a)

[5] *Rollo* (G.R. No. 197098), pp. 227-233.

x x x x x x x x x

The allegation of the respondent Chiu that the complainant could easily secure copies of the corporate records for (sic) the Securities and Exchange Commission cannot justify the refusal of the latter's demand for inspection. As beneficial owner of the business, the complainant has the right to know not only the financial condition of the corporation but also how the corporate affairs are being managed, so that if they find the conditions unsatisfactory, they may be able to take the necessary measures to protect their investment.

Moreover, "records of all business transaction[s]" contemplated in Section 74 covers more than the reportorial requirements mandated by the SEC. "*Records of all business transaction[s]*" include books of inventories and balances, business correspondence, letters, telegrams, contracts, memoranda, *etc*.[,] as well as journals, ledgers and supporting documents fro (sic) tax purposes such as income tax returns, vouchers and receipts, financial statements and voting trust agreements.

From *records of business transaction[s]*, the stockholder can find out how his investment is being used and the actual financial condition of the corporation. x x x Considering that the records may be voluminous and that a stockholder may find it difficult to interpret them, the Supreme Court has held that a stockholder may make copies, extracts and memoranda of such records. x x x.

x x x [I]t is quite inexplicable why the complainant is not made to inspect the corporate records to the extent that is satisfactory to him. While the respondent alleged that complainant through the inspection team was allowed to view/inspect the following records, to wit:

x x x x x x x x x

No proof has been shown by respondents that these books/documents were indeed shown to the inspection team. A simple minute of the meeting/inspection signed by the inspection team would have conveniently supported this assertion. x x x.

x x x [T]he assertion of the complainant that the inspection team was limited to see the books of accounts for 2006 to 2007 with carry forward balances and not detailed schedules of accounts except for bank reconciliation, lapsing schedule and deposit on subscription has to be given credence considering that this was based on the communication sent by and (sic) independent accounting company

which has no interest in the corporation and which does not stand to benefit from whatever transaction that the corporation may have.[6] (Citations omitted and underlining ours)

On April 30, 2009, Prosecutor Fernandez-Cavada issued a Resolution[7] denying Chiu and Po's motions to reconsider the foregoing.

A petition for review was filed before the Department of Justice (DOJ). On March 2, 2010, then Undersecretary Ricardo R. Blancaflor issued a resolution reversing Prosecutor Fernandez-Cavada's findings.

On April 30, 2010, then Acting DOJ Secretary Alberto C. Agra (Secretary Agra) issued a Resolution[8] granting Tan's motion for reconsideration. Secretary Agra reversed the Resolution dated March 2, 2010 and instead affirmed Prosecutor Fernandez-Cavada's earlier disquisition. Chiu and Po's motions for reconsideration were denied by Secretary Agra through a Resolution[9] dated June 21, 2010.

Chiu and Po each filed before the Court of Appeals (CA) a Petition for *Certiorari* under Rule 65 of the Rules of Court.[10] Po and Chiu's petitions were docketed as CA-G.R. SP Nos. 05351 and 05352, respectively.

On December 15, 2010, the CA dismissed with finality Po's petition on technical grounds,[11] *viz*:

While petitioner had complied with the requirement on competent evidence of her identity, she still failed to comply with the requirement on proper proof of service. Proper proof of personal service requires that the affidavit of the party serving must contain a full statement

---

[6] *Id.* at 231-232.

[7] *Id.* at 212-218.

[8] *Id.* at 67-72.

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

[10] *Id.* at 75-126; *rollo* (G.R. No. 195198), pp. 40-82.

[11] *Rollo* (G.R. No. 195198), pp. 37-39.

of the date, place and manner of service. Petitioner's attached affidavit of service lacked these pertinent details. As for the proof of service by registered mail, post office receipts do not suffice for it is stated, specifically in Section 10, Rule 13 of the Rules of Court, that service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever is earlier. Verily, registry receipts cannot be considered as sufficient proof of service; they are merely evidence of the mail matter with the post office of the sender, not the delivery of said mail matter by the post office to the addressee.[12] (Citations omitted and underlining ours)

On the other hand, Chiu's petition was denied for lack of merit.[13] The CA declared that:

Grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the DOJ was not shown in the present case.

Here, the petitioner was criminally charged for violating Section 74 of the Corporation Code in relation to Section 144 of the same Code. The requisites in order for the penal provision under Section 144 of the Corporation Code to apply in a case of violation of a stockholder or member's right to inspect the corporate books/records as provided for under Section 74 of the Corporation Code, are enumerated in the recent case of *Sy Tiong Shiou, et al. v[.] Sy Chim, et al.,* citing *Ang-Baya, et al. v[.] Ang*:

First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;

Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;

x x x x x x x x x

The Court has reviewed the records and the pleadings of the parties and found that the requisites mentioned above are present. It is noted that private respondent on several occasions had expressed in writing his request to inspect CHVI's corporate books and records

---

[12] *Id.* at 38.

[13] *Rollo* (G.R. No. 197098), pp. 50-64.

but his written requests were turned down on the pretext that the petitioner needed more time to prepare the documents requested by the private respondent. The initial written demand was made on October 10, 2007 but it was only on April 24, 2008 that the audit team sent by the private respondent was able to inspect some of the documents of CHVI. However, it appears that the inspection was ineffective since the petitioner and Loreli Lim Po refused to present the other documents demanded by the inspection team. PO even prevented the team from copying the corporate books and records.

Petitioner repeatedly insists that private respondent's representatives were not refused inspection of the corporate book or records and the latter were even allowed to make copies of the documents during the meeting on April 24, 2008. These are defenses which could be properly threshed out in a full-blown trial. x x x [T]he purpose of determining probable cause is to ascertain that the person accused of the crime is probably guilty thereof and should be held for trial. A finding of probable cause needs only to rest on evidence showing that more likely than not[,] a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely, not on evidence establishing absolute certainty of guilt.

Finally, it is once more appropriate to apply the Supreme Court's general policy of non-interference with the prosecutor's discretion to file or not to file a criminal case. x x x The courts try and absolve or convict the accused but, as a rule, have no part in the initial decision to prosecute him. The possible exception to this rule is where there is an unmistakable showing of a grave abuse of discretion amounting to lack or excess of jurisdiction that will justify judicial intrusion into the precincts of the executive which is not the case herein.[14] (Citations omitted and underlining ours)

Po is before us now with a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court ascribing grave error on the part of the CA in (a) allegedly imposing upon her "an additional requirement of proof of service by registered mail of the actual receipt thereof by the addressee,"[15] and (b) "invoking

---

[14] *Id.* at 61-63.

[15] *Rollo* (G.R. No. 195198), p. 12.

Section 10,[16] Rule 13 of the Rules of Court on proof of service by registered mail when the applicable rule should have been Section 13[17] of the said Rule 13."[18]

On his part, Chiu filed before us a Petition for *Certiorari* under Rule 65 of the Rules of Court alleging that the CA gravely abused its discretion in denying his petition "considering that there are clear and sufficient elements allowing the courts to conduct a judicial review."[19]

We deny the instant consolidated petitions.

Chiu's petition is procedurally-flawed.

Chiu filed his petition under Rule 65 of the Rules of Court when he should have resorted instead to Rule 45 thereof. An appeal taken either to us or the CA by the wrong or inappropriate mode shall be dismissed.[20]

Even if we were to be liberal and consider his petition as having been filed under Rule 45, it would still be susceptible

---

[16] Sec. 10. *Completeness of service*. — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier. (Underlining ours)

[17] Sec. 13. *Proof of service.* — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. (Underlining ours)

[18] *Rollo* (G.R. No. 195198), p. 12.

[19] *Rollo* (G.R. No. 197098), p. 26.

[20] Please see Circular No. 2-90 (Re: Guidelines to be Observed in Appeals to the Court of Appeals and to the Supreme Court) effective March 9, 1990.

of dismissal for non-compliance with Section 2[21] of the same rule. Chiu's counsel received a copy of the CA's resolution finally denying his petition on April 8, 2011.[22] The petition now before us was filed on June 23, 2011, way beyond the 15-day period prescribed by Section 2 of Rule 45.[23] Besides, what the petition essentially seeks is for us to re-evaluate the evidence upon which Secretary Agra anchored his findings in holding that probable cause exists to indict Chiu. The foregoing was affirmed by the CA. It is settled that a re-calibration of evidence cannot be done in a petition filed under Rule 45. Thus, ***Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.***[24] is emphatic that:

> This rule [Rule 45] provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. **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, unless the case falls under any of the recognized exceptions**[.][25] (Emphasis supplied and underlining ours)

Again, even if we were to take exception of Chiu's case by giving due course to his petition either under Rule 45 or Rule 65, still, the result is its dismissal. In *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III,*[26] we stated that:

> Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority

---

[21] Sec. 2. *Time for filing; extension*. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. (Underlining ours)

[22] *Rollo* (G.R. No. 197098), pp. 65-66.

[23] *Id.* at 3-49.

[24] G.R. No. 190515, June 6, 2011, 650 SCRA 656.

[25] *Id.* at 660.

[26] G.R. No. 177780, January 25, 2012, 664 SCRA 165.

has been delegated to the Executive Branch of the Government, or to substitute their own judgments for that of the Executive Branch, represented in this case by the Department of Justice. The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion. That abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. x x x.

In this regard, we stress that a preliminary investigation for the purpose of determining the existence of probable cause is not part of a trial. At a preliminary investigation, the investigating prosecutor or the Secretary of Justice only determines whether the act or omission complained of constitutes the offense charged. Probable cause refers to facts and circumstances that engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. There is no definitive standard by which probable cause is determined except to consider the attendant conditions; the existence of probable cause depends upon the finding of the public prosecutor conducting the examination, who is called upon not to disregard the facts presented, and to ensure that his finding should not run counter to the clear dictates of reason.[27] (Citations omitted and underlining ours)

In the case at bar, we find no grave abuse of discretion on the part of the CA when it rendered its Decision[28] dated January 11, 2011.

There is ample evidence on record to support the said decision. To name one, accountants Creest O. Morales and Jay Arr T. Hernandez, who were part of the Inspection Team sent by Tan to CHVI, executed a Joint Affidavit[29] stating that the documents made available to them for inspection were limited. Further, they claimed that on the day of the inspection, they brought a

[27] *Id.* at 176-178.

[28] *Rollo* (G.R. No. 197098), pp. 50-63.

[29] *Id.* at 209-211.

portable photocopying machine to CHVI's premises but they were not allowed to use the same. The offense punishable under Section 74, in relation to Section 144 of the Corporation Code, for which Chiu was indicted, requires the unjustified disallowance or refusal by a suspect, of a stockholder's written request to examine or copy excerpts of a corporation's books or minutes. The absence of any ascribed ill motives on the part of the aforementioned accountants to make statements adverse or unfavorable to Chiu lends credibility to their declarations.

Besides, as we ruled in *Metrobank*,[30] in a preliminary investigation, the prosecutor is bound to determine merely the existence of probable cause that a crime has been committed and that the accused has committed the same. The rules do not require that a prosecutor has moral certainty of the guilt of a person for the latter to be indicted for an offense after the conduct of a preliminary investigation. Further, we have repeatedly ruled that the determination of probable cause, for purposes of preliminary investigation, is an executive function. Such determination should be free from the court's interference save only in exceptional cases where the DOJ gravely abuses its discretion in the issuance of its orders or resolutions.

We likewise find no compelling reason to grant Po's petition.

Even if we were to declare that it was error to dismiss Po's petition on the ground that the registry return cards were not attached thereto, still, remanding the case to the CA would only prove circuitous. The crux of Po's petition filed with the CA was to seek for a review of Secretary Agra's findings. The CA had already done so in resolving Chiu's petition on the merits and no ground exists for us to once again review the same.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant consolidated petitions are **DENIED.** The Decision and Resolution of the Court of Appeals dated January 11, 2011 and April 8, 2011, respectively, relative to CA- G.R. SP No. 05352, and Resolutions issued on September 15, 2010 and December 15, 2010, relative to CA-G.R. SP No. 05351, are **AFFIRMED** ***in toto***.

---

[30] *Supra* note 26.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197003. February 11, 2013]

NERIE C. SERRANO, *petitioner, vs*. **AMBASSADOR HOTEL, INC. and YOLANDA CHAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; BAR BY PRIOR JUDGMENT; REQUISITES.—** By the doctrine of *res judicata*, "a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit." To apply this doctrine in the form of a "bar by prior judgment," there must be identity of parties, subject matter, and causes of action as between the first case where the first judgment was rendered and the second case that is sought to be barred.

2. **ID.; ID.; ID.; IMMUTABILITY OF FINAL JUDGMENTS; FINAL JUDGMENT MAY NO LONGER BE MODIFIED IN ANY RESPECT, EVEN IF THE MODIFICATION IS MEANT TO CORRECT ERRONEOUS CONCLUSIONS OF FACT AND LAW.—** It need not be stressed that a final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law. In *Gallardo-Corro v. Gallardo*, We explained that this principle of the immutability of final judgments is an important aspect of the administration of justice as it ensures an end to litigations x x x. This precept has been reiterated,

time and again, in countless cases. Hence, to ensure against judicial confusion and the seeming conflict in the judiciary's decisions, courts must be constantly vigilant in extending their judicial gaze to cases related to the matters submitted for their resolution. Certainly, to ignore the concept of judicial notice and disregard a finding previously made by this Court and/or by a court of equal rank in a related case on the same issue, as here, is ridiculous and illogical. Not only will it add to the clogged dockets of the courts, but worse, it will cause the cruel and unnecessary repeated vexation of a person on the same cause that could have otherwise been avoided by the simple expedience of consolidating the cases.

3. **ID.; INTERNAL RULES OF THE COURT OF APPEALS; CONSOLIDATION OF CASES; PROCEDURE.—** The procedure on consolidation of cases in the CA is embodied in Sec. 3, Rule III of the Internal Rules of the CA which reads: "Sec. 3. *Consolidation of Cases.* —When related cases are assigned to different Justices, they shall be consolidated and assigned to one Justice. (a) Upon motion of a party with notice to the other party/ies, or at the instance of the Justice to whom any of the related cases is assigned, upon notice to the parties, consolidation shall ensue when the cases involve the same parties and/or related questions of fact and/or law. "x x x While Sec. 3(a) above appears to be a sound rule, perhaps a better and more effective system can be set up to preclude the recurrence of conflicting decisions involving the same case or parties and cause of action emanating from two CA divisions. It is suggested that the CA consider the procedure in this Court that the duty to determine whether consolidation is necessary or mandatory falls on the shoulders of the Clerk of Court (COC) and the Division Clerks of Court. Rather than rely on the interested party to register a motion to consolidate or the Justice to whom the case is assigned, it is best that it should be the Clerk of Court and the Division Clerks of Court of the CA who should be responsible for the review and consolidation of similarly intertwined cases. The *rollo*s of cases are initially transmitted to them for verification of the requirements of the petition, more particularly the certification against forum shopping where parties state the pendency of related cases and are in a better position to identify and determine if consolidation of cases is proper. Once there exists two related cases, the Division Clerks of Court shall immediately inform the COC of such fact. The

COC, in turn, shall posthaste inform the two Justices of the need for consolidation and that said cases shall be referred to the Justice who was assigned the lower numbered case. This will hopefully prevent a Division from deciding a case which has already been decided by another division.

APPEARANCES OF COUNSEL

Jose Antonio J. Gallo for petitioner.
Rodriguez Casila & Associates for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 assailing and seeking to set aside the Decision[1] and Resolution[2] dated March 26, 2010 and May 19, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 100612, affirming with modification the May 24, 2007 Resolution[3] of the National Labor Relations Commission (NLRC), Third Division, in NLRC Case No. 040480-04 (NCR Case No. 00-04-04580-03).

Records yield the following facts:

Petitioner Nerie C. Serrano (Serrano) was hired by respondent Ambassador Hotel, Inc. (AHI) in 1969 as an accountant[4] when the hotel was still under construction. When hotel operations began in 1971, AHI installed Serrano as the head of the accounting department.[5] In 1972, Serrano was tasked to assist in the canvass

---

[1] *Rollo*, pp. 60-69. Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Celia C. Librea-Leagogo and Ramon R. Garcia.

[2] *Id.* at 70-73.

[3] *Id.* at 39-46. Penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Tito F. Genilo and Gregorio O. Bilog III.

[4] *Id.* at 61.

[5] *Id.* at 9.

and purchase of merchandise, as well as handle the random checking of foodstuff and bar stock inventories, as additional duties.[6]

Sometime in 1998, an intra-corporate controversy erupted within AHI. At the time, respondent Yolanda Chan (Chan), then the general cashier of AHI, brought to the attention of AHI's President, her father Simeon Nicolas Chan (Simeon), the alleged commission by Serrano of acts of misappropriation.[7] Thereafter, the AHI board met and passed several resolutions, namely: (1) Resolution No. 6, Series of 1998, dismissing Simeon as the President and declaring all executive positions vacant and abolished; (2) Resolution No. 7, Series of 1998, designating Chan as the new president of AHI; and (3) Resolution No. 10, Series of 1998, dismissing Serrano for insubordination and loss of trust and confidence.[8]

Simeon, however, refused to honor the foregoing resolutions and instead barred Yolanda Chan from entering the hotel premises.[9] Chan, in turn, invoked her right as a stockholder of AHI and demanded to be given the right to inspect the books and records of the hotel. Upon the order of Simeon, Serrano resisted Chan's demand,[10] prompting the latter to file a case before the Securities and Exchange Commission (SEC). Chan's right to inspect the books was sustained by the SEC and finally by this Court in G.R. No. 156574, entitled *Nerie Serrano v. Yolanda Chan*, on March 17, 2003.[11] In the meantime, the Regional Trial Court of Manila, Branch 46, issued a Decision sustaining the legality of AHI's Board Resolutions.[12]

---

[6] *Id.* at 10, 40.

[7] *Id.* at 40.

[8] *Id.* at 41.

[9] *Id.*

[10] *Id.* at 10-11.

[11] *Id.* at 41.

[12] *Id.* at 42.

On April 10, 2001, Chan assumed the presidency of, and brought her own staff to work in AHI. Soon after, she issued Memo No. YCC-2001-2002 dated April 16, 2001, directing Serrano to prepare a detailed account report of AHI's assets, to turn over all of AHI's cash and bank accounts to Chan, and to stop dealing and/or transacting for and in behalf of the hotel.[13] Other than the preparation of the account report, Serrano alleged that she was not given any job assignment but was told to report directly and daily to Chan. Due to this new working arrangement, Serrano, so she claimed, was forced to file her retirement on July 31, 2001, 30 days before its effectivity. Thereafter, she prepared all the necessary accounting documents for a smooth turnover.[14]

On August 7, 2001, Serrano received a letter from Chan stating that the former can no longer avail of her retirement pay from AHI, since she had already received a lump sum amount of PhP 137,205.07, and has been receiving monthly pensions, from the Social Security System (SSS) for retiring in May 2000.[15] Serrano claimed that she was not paid her 13th month pay for the years 1999, 2000, and 2001.[16] Even her salary from March 1, 2000 up to August 31, 2001, she added, was not paid, together with allowances from May 16, 2000 to February 28, 2001, service charge from August 2000 to April 2001, and service incentive leave pay for the year 2001.[17]

It is upon the foregoing factual backdrop that Serrano had filed a complaint against AHI and/or Chan for the nonpayment of salaries, 13th month pay, separation pay, retirement benefits, and damages before the labor arbiter.[18]

---

[13] *Id.*

[14] *Id.* at 11.

[15] *Id.* at 11, 42.

[16] *Id.* at 11.

[17] *Id.*

[18] *Id.* at 20.

Finding that AHI failed to discharge the burden to prove that Serrano had been paid her salaries and other monetary benefits[19] inclusive of her retirement pay,[20] Labor Arbiter Fatima Jambaro-Franco ruled for Serrano. By a Decision dated April 28, 2004, the labor arbiter awarded Serrano the total amount of PhP 1,323,693.36 representing her retirement benefits and other monetary awards,[21] viz:

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents **Ambassador Hotel, Inc.** and/or **Yolanda Chan** to jointly and severally pay complainant **Nerie C. Serrano** the amount of **ONE MILLION THREE HUNDRED TWENTY THREE THOUSAND SIX HUNDRED NINETY THREE PESOS & 36/100 (₱1,323,693.36)** representing her retirement benefits and other monetary award as earlier computed plus attorney's fees.

On appeal, the NLRC modified the labor arbiter's Decision by deleting the award representing Serrano's retirement pay, thereby reducing the award to only PhP 324,680.40. The NLRC gave credence to respondents' claim that the SSS had already paid Serrano her retirement pay so that she is no longer entitled to receive the same monetary benefit awarded by the labor arbiter.[22] The dispositive portion of the NLRC Decision provided, thus:

PREMISES CONSIDERED, the Decision of May 7, 2004 is hereby MODIFIED by deletion of the award representing retirement pay. Respondents are directed to pay complainant the following:

13th month pay	
1999	
2000	
2001	₱98,388.00
Unpaid salary	
3/1/01 – 8/31//01 = 6 months	

[19] *Id.* at 34.

[20] *Id.* at 35-36.

[21] *Id.* at 32-37.

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

₱32,796 x 6 mos.	-	₱ 196,776.00
		₱ 295,164.00
10% attorney's fees	-	29,516.40
	-	₱324,680.40[23]

Petitioner Serrano and respondents AHI and Chan interposed separate petitions for *certiorari* assailing the NLRC Decision, after their respective motions for reconsideration were denied.[24] At the CA, Serrano's petition docketed as CA-G.R. SP No. 100569, entitled *Nerie Serrano v. National Labor Relations Commission (Third Division), Ambassador Hotel, Inc. and Yolanda Chan*, was raffled to the CA's Special Eighth (8th) Division, while that of respondents AHI and Chan's, docketed as CA-G.R. SP No. 100612, entitled *Ambassador Hotel, Inc. and Yolanda Chan in her capacity as President of Ambassador Hotel, Inc. v. NLRC and Nerie C. Serrano*, went to the CA's Special Fourth (4th) Division.

On November 4, 2008 in CA-G.R. SP No. 100569, **the appellate court's Special 8th Division issued a Decision**[25] **reversing the NLRC's Decision and reinstating and affirming the labor arbiter's Decision**. The CA Special 8th Division declared the deletion of the retirement pay award by the NLRC erroneous, the retirement pay under Article 287 of the Labor Code, as amended, being separate from the retirement benefits claimable by a qualified employee under the Social Security Law. It explained that respondents Chan and AHI failed to prove that Serrano already received all her salaries and benefits.[26] Thus, the CA Special 8th Division disposed:

WHEREFORE, the decision of the NLRC is hereby ***REVERSED*** and that of the Labor Arbiter dated 28 April 2004 is ***REINSTATED and AFFIRMED***.[27]

---

[23] *Id.* at 45.

[24] *Id.* at 48-49.

[25] *Id.* at 50-56. Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) and concurred in by Associate Justices Mariflor Punzalan Castillo and Apolinario D. Bruselas, Jr.

[26] *Id.* at 54-55; citing *G&M (Phil.), Inc. v. Batomalaque*, G.R. No. 151849, June 23, 2005, 461 SCRA 111, 118.

[27] *Id.* at 55-56.

In its August 24, 2009 Resolution,[28] the former CA Special 8th Division denied respondents' motion for reconsideration. Hence, respondents Chan and AHI filed before this Court a Petition for Review on *Certiorari* dated October 15, 2009, docketed as G.R. No. 189313, praying that the November 4, 2008 and August 24, 2009 Decision and Resolution of the CA Special 8th Division be annulled and set aside.[29]

In a Resolution dated December 16, 2009,[30] this Court dismissed respondents' petition stating that:

> Acting on the petition for review on *certiorari* assailing the Decision dated 04 November 2008 and Resolution dated 24 August 2009 of the Court of Appeals in CA-G.R. SP No. 100569, the Court resolves to ***DENY*** the petition for failure to sufficiently show that the appellate court committed any reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction.[31]

In its March 17, 2010 Resolution,[32] the Court denied with finality respondents Chan and AHI's motion for reconsideration.[33] On May 14, 2010, the Resolution of this Court in G.R. No. 189313 became final and executory,[34] thereby effectively **reinstating with finality the Decision of the labor arbiter**.

Meanwhile, in their petition for *certiorari* under consideration by the appellate court's Special 4th Division, respondents AHI and Chan argued against Serrano's entitlement to any monetary award and, thus, faulted the NLRC for granting her the reduced amount of PhP 324,680.40.

---

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

[29] *Rollo* (G.R. No. 189313), pp. 14-51.

[30] *Id.* at 303-304.

[31] *Id.* at 303.

[32] *Id.* at 324.

[33] *Id.* at 305-323.

[34] *Id.* at 324; *rollo*, p. 59.

Sustaining for the most part the respondents' arguments, **the CA Special 4th Division issued the presently assailed Decision dated March 26, 2010, which affirms with modification the NLRC Decision** by deleting the award of unpaid salaries and thereby further reducing the monetary award to PhP 27,376.80. The CA Special 4th Division tagged Serrano's unilateral computation of her salaries and benefits as self-serving. To the CA Special 4th Division, the NLRC should have considered the Bureau of Internal Revenue documents and payslips presented by respondents AHI and Chan, which proved that Serrano's monthly salary was only PhP 12,444, and not PhP 32,796.[35] As for the claimed unpaid salaries from March 1, 2001 to August 1, 2001, the CA Special 4th Division was of the position that there is no dispute that Serrano already retired in 2000 and she failed to prove her allegation that she rendered services for AHI thereafter. Hence, the appellate court found that NLRC's grant of unpaid salary is erroneous.[36] The *fallo* of the CA Special 4th Division assailed Decision declared, thus:

> **WHEREFORE**, premises considered, the NLRC's Decision dated May 24, 2007 is hereby **MODIFIED** in that Ambassador Hotel is directed to pay private respondent the following:
>
> a.) 13th month pay: x x x
>
> b.) Attorney's fees equivalent to 10% of the judgment award in the amount of ₱2,488.80.
>
> The award of unpaid salaries representing six months, from 3/1/01 to 8/31/01 at ₱32,796.00 or a total of ₱196,776.00 is hereby deleted for lack of merit.[37]

Petitioner's motion for reconsideration having been denied, she now comes to this Court via the instant petition praying, in the main, that the Decision in CA-G.R. SP No. 100612 of the Special 4th Division be declared without legal effect for effectively contradicting a final and executory Decision of this Court in G.R. No. 189313.

---

[35] *Rollo*, pp. 66-67.

[36] *Id.* at 67.

[37] *Id.* at 67-68.

The petition is meritorious.

This Court's December 16, 2009[38] Resolution and March 17, 2010 Resolution[39] denying the motion for reconsideration with finality in G.R. No. 189313 should have immediately written finis to the controversy between the parties regarding the benefits of petitioner Serrano. The appellate court's Special 4th Division ought to have immediately dismissed respondents' *certiorari* petition docketed as CA-G.R. SP No. 100612 in view of this Court's final pronouncements in G.R. No. 189313. The principle of "bar by prior judgment," one of the two concepts embraced in the doctrine of *res judicata*, the other being labeled as "conclusiveness of judgment," demands such action. Section 47(b), Rule 39 of the Rules of Court on the effect of a former judgment is clear:

> SEC. 47. *Effect of final judgments or final orders.* — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x x x x x x
>
> (b) x x x **[T]he judgment or final order is, with respect to the matter directly adjudged** or as to any other matter that could have been raised in relation thereto, **conclusive between the parties** and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity x x x. (Emphasis supplied.)

By the doctrine of *res judicata*, "a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit."[40] To apply this doctrine in the form of a "bar by prior judgment," there

---

[38] *Rollo* (G.R. No. 189313), p. 303.

[39] *Id.* at 324.

[40] *Taganas v. Emulsan*, G.R. No. 146980, September 2, 2003, 410 SCRA 237, 241-242.

must be identity of parties, subject matter, and causes of action as between the first case where the first judgment was rendered and the second case that is sought to be barred.[41] All these requisites are present in the case at bar:

First, the parties in both G.R. No. 189313 and CA-G.R. SP No. 100612, which is the subject of Our present review, are petitioner Serrano and respondents Chan and AHI.

Second, G.R. No. 189313 and CA-G.R. SP No. 100612 both deal with the same subject matter: Serrano's entitlement to monetary benefits under the pertinent labor laws as an employee of respondents AHI and Chan.

Lastly, both G.R. No. 189313 and CA-G.R. SP No. 100612 originated from one and the same complaint lodged before the labor arbiter where Serrano alleged the nonpayment of her salaries, 13th month pay, and retirement benefits as the cause of action.

Our ruling in G.R. No. 189313 affirming in essence the Decision of the labor arbiter that granted Serrano's claimed unpaid salary, 13th month pay, and retirement benefits, among others, is, therefore, **conclusive** on Serrano and respondents Chan and AHI on the matter of the former's entitlement or non-entitlement to the benefits thus awarded. As a necessary corollary, it was a grave error on the part of the appellate court to render a decision in CA-G.R. SP No. 100612 that runs counter to the final ruling in G.R. No. 189313. Said CA Decision offends the principle of *res judicata*—a basic postulate to the end that controversies and issues once decided on the merits by a court of competent jurisdiction shall remain in repose. As it were, the decision in G.R. No. 189313, the prior judgment, constitutes in context an absolute bar to any subsequent action not only as to every matter which was offered to sustain or defeat Serrano's

---

[41] *Antonio v. Sayman Vda. de Monje*, G.R. No. 149624, September 29, 2010, 631 SCRA 471, 480; *Hacienda Bigaa, Inc. v. Chavez*, G.R. No. 174160, April 20, 2010, 618 SCRA 559, 576-577; *Agustin v. Delos Santos*, G.R. No. 168139, January 20, 2009, 576 SCRA 576, 585; *Chris Garments Corporation v. Sto. Tomas*, G.R. No. 167426, January 12, 2009, 576 SCRA 13, 21-22; *Heirs of Abadilla v. Galarosa*, 527 Phil. 264, 277 (2006).

demand or claim but also as to any other admissible matter which might have been offered.[42]

It need not be stressed that a final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law.[43] In *Gallardo-Corro v. Gallardo*, We explained that this principle of the immutability of final judgments is an important aspect of the administration of justice as it ensures an end to litigations:

> **Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable**. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[44] (Emphasis supplied.)

This precept has been reiterated, time and again, in countless cases.[45] Hence, to ensure against judicial confusion and the seeming conflict in the judiciary's decisions, courts must be constantly vigilant in extending their judicial gaze to cases related

---

[42] See *Tiongson v. Court of Appeals*, No. L-35059, February 27, 1973, 49 SCRA 429, 434.

[43] *Ramos v. Ramos*, 447 Phil. 114, 119 (2003).

[44] G.R. No. 136228, January 30, 2001, 350 SCRA 568, 578.

[45] See *Montemayor v. Millora*, G.R. No. 168251, July 27, 2011, 654 SCRA 580, 587-588; citing *Bongcac v. Sandiganbayan*, G.R. Nos. 156687-88, May 21, 2009, 588 SCRA 64, 71. See also *Land Bank of the Philippines v. Arceo*, G.R. No. 158270, July 21, 2008, 559 SCRA 85, 94-95.

to the matters submitted for their resolution. Certainly, to ignore the concept of judicial notice and disregard a finding previously made by this Court and/or by a court of equal rank in a related case on the same issue, as here, is ridiculous and illogical.[46] Not only will it add to the clogged dockets of the courts, but worse, it will cause the cruel and unnecessary repeated vexation of a person on the same cause[47] that could have otherwise been avoided by the simple expedience of consolidating the cases.[48]

The Court has observed that in some instances, two separate petitions brought before it arose from two (2) conflicting decisions rendered by two (2) divisions of the CA when said decisions arose from one case or actually involve the same parties and cause of action or common questions of facts or law. This is a bane to the efficient, effective and expeditious administration of justice which should be addressed at the earliest possible time.

The procedure on consolidation of cases in the CA is embodied in Sec. 3, Rule III of the Internal Rules of the CA which reads:

> Sec. 3. *Consolidation of Cases*.—When related cases are assigned to different Justices, they shall be consolidated and assigned to one Justice.
>
> (a) Upon motion of a party with notice to the other party/ies, or at the instance of the Justice to whom any of the related cases is assigned, upon notice to the parties, consolidation shall ensue when the cases involve the same parties and/or related questions of fact and/or law.
>
> (b) Consolidated cases shall pertain to the Justice —
>
> (1) To whom the criminal case with the lowest docket number is assigned, if they are of the same kind;

---

[46] *Marcelo Steel Corporation v. Court of Appeals*, No. L-35851, October 8, 1974, 60 SCRA 167, 171.

[47] *Villarica Pawnshop, Inc. v. Gernale*, G.R. No. 163344, March 20, 2009, 582 SCRA 67, 78.

[48] *Id.* at 84; see also *People v. Antonio*, 339 Phil. 519 (1997); *Active Wood Products Co. v. CA*, 260 Phil. 825, 828-829 (1990).

(2) To whom the criminal case with the lowest docket number is assigned, if two or more of the cases are criminal and the others are civil or special;

(3) To whom the criminal case is assigned and the others are civil or special; and

(4) To whom the civil case is assigned, or to whom the civil case with the lowest docket number is assigned, if the cases involved are civil and special.

While Sec. 3(a) above appears to be a sound rule, perhaps a better and more effective system can be set up to preclude the recurrence of conflicting decisions involving the same case or parties and cause of action emanating from two CA divisions. It is suggested that the CA consider the procedure in this Court that the duty to determine whether consolidation is necessary or mandatory falls on the shoulders of the Clerk of Court (COC) and the Division Clerks of Court. Rather than rely on the interested party to register a motion to consolidate or the Justice to whom the case is assigned, it is best that it should be the Clerk of Court and the Division Clerks of Court of the CA who should be responsible for the review and consolidation of similarly intertwined cases. The *rollo*s of cases are initially transmitted to them for verification of the requirements of the petition, more particularly the certification against forum shopping where parties state the pendency of related cases and are in a better position to identify and determine if consolidation of cases is proper. Once there exists two related cases, the Division Clerks of Court shall immediately inform the COC of such fact. The COC, in turn, shall posthaste inform the two Justices of the need for consolidation and that said cases shall be referred to the Justice who was assigned the lower numbered case. This will hopefully prevent a Division from deciding a case which has already been decided by another division.

WHEREFORE, the Court **GRANTS** the petition and **SETS ASIDE** the Decision and Resolution dated March 26, 2010 and May 19, 2011, respectively, of the CA in CA-G.R. SP No. 100612. The CA is ordered to adopt immediately a more effective system in its Internal Rules to avoid two (2) divisions independently

and separately deciding two (2) cases which originated from a case decided by a court *a quo* or which involved the same parties and cause of action or common questions of law or facts to prevent the rendition of conflicting decisions by two divisions which should otherwise have been consolidated in the first place.

SO ORDERED.

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

EN BANC

[A.M. No. 10-9-15-SC. February 12, 2013]

RE: REQUEST OF (RET.) CHIEF JUSTICE ARTEMIO V. PANGANIBAN FOR RE-COMPUTATION OF HIS CREDITABLE SERVICE FOR THE PURPOSE OF RE-COMPUTING HIS RETIREMENT BENEFITS.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 910 AS AMENDED BY REPUBLIC ACT NO. 9946; RETIREMENT BENEFITS; SERVICES AS LEGAL COUNSEL TO THE DEPARTMENT OF EDUCATION AND AS CONSULTANT TO THE BOARD OF NATIONAL EDUCATION CONSIDERED AS CREDITABLE GOVERNMENT SERVICE FOR PURPOSES OF RETIREMENT BENEFITS COMPUTATION EVEN WITHOUT SPECIFIC POSITION IN THE GOVERNMENT STRUCTURE.—** A careful perusal of the actual functions and responsibilities of CJ Panganiban as outlined in his compliance with attached Sworn Statements of Former Education Secretary Roces and Retired Justice Pardo reveal that he performed actual works and was assigned multifarious tasks necessary and desirable to the main purpose of the DepEd

and the BNE. x x x His services both as Legal Counsel to the DepEd and its Secretary and as Consultant to the BNE during the period 1962-1965 was corroborated by Retired Justice Pardo who, in his affidavit, certified that in his "capacity as Solicitor assigned by the Office of Solicitor General to the Department of Education and Board of National Education" he and CJ Panganiban "collaborated in many cases representing both the Board of National Education and Department of Education, particularly then Secretary of Education Alejandro R. Roces, as well as in rendering legal opinions to such offices." CJ Panganiban performed work ranging from high level assignments involving policy development and implementation to the more humble tasks of selection and distribution of educational materials and setting of school calendars. x x x Associate Justice Arturo D. Brion (Justice Brion) is not persuaded by the evidence. He holds the view that there must be an appointment to a position that is part of a government organizational structure before any work rendered can be considered government service. Under the old Administrative Code (Act No. 2657), a government "employee" includes any person in the service of the Government or any branch thereof of whatever grade or class. A government "officer," on the other hand, refers to officials whose duties involve the exercise of discretion in the performance of the functions of government, **whether such duties are precisely defined or not**. Clearly, the law, then and now, did not require a specific job description and job specification. Thus, the absence of a specific position in a governmental structure is not a hindrance for the Court to give weight to CJ Panganiban's government service as legal counsel and consultant.

2. **ID.; ID.; ID.; ID.; LIBERAL TREATMENT IN PASSING UPON RETIREMENT CLAIMS, APPLIED.—** [N]otwithstanding the absence of any other record of CJ Panganiban's appointment to a position or item within the DepEd and the BNE, his actual service to these government agencies must be regarded as no less than government service and should, therefore, be credited in his favor consistent with the Court's liberal rulings in the cases of CJ Narvasa and Justice Sarmiento. The Supreme Court has unquestionably followed the practice of liberal treatment in passing upon retirement claims of judges and justices, thus: (1) waiving the lack of required length of service in cases of disability or death while in actual service or distinctive service;

(2) adding accumulated leave credits to the actual length of government service in order to qualify one for retirement; (3) tacking post-retirement service in order to complete the years of government service required; (4) extending the full benefits of retirement upon compassionate and humanitarian considerations; and (5) considering legal counselling work for a government body or institution as creditable government service. x x x In the instant case, no liberal construction is even necessary to resolve the merits of CJ Panganiban's request. The Court need only observe consistency in its rulings.

LEONARDO DE CASTRO, *J., dissenting opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 910 AS AMENDED BY REPUBLIC ACT NO. 9946; RETIREMENT BENEFITS; CONSULTANCY SERVICES RENDERED TO THE GOVERNMENT SHOULD NOT BE CONSIDERED CREDITABLE GOVERNMENT SERVICE IN THE ABSENCE OF AN APPOINTMENT OR ELECTION TO A SPECIFIC PUBLIC OFFICE OR POSITION.— [S]ince it is long settled that not all services rendered to the government partake of the nature of "government service," consultants are not required to take an oath of office because they are not rendering "government service" in the sense the term is understood for purposes of applying the laws and regulations applicable to public officers and employees, among which are the retirement laws, the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019 as amended), and the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713). Consultants can engage in the practice of their profession like former Chief Justice Panganiban who admitted in his personal data sheet submitted to the Court that he was a practicing lawyer as Senior Partner of PABLAW during the period for which he was deemed by the majority opinion to have rendered "government service." One who does not take an oath of office which demands the highest standard and responsibilities of public service is understandably not entitled to enjoy the benefits and privileges of a public officer or employee. It is well-settled that an oath of office is a qualifying requirement for public office, a prerequisite to the full investiture of the office. Hence, it is erroneous to consider all services rendered for the government

as government service which can be credited to claim retirement benefits, particularly if the service is rendered not by virtue of an appointment or election to a specific public office or position, which requires the taking of an oath of office, but by a contractual engagement like that of a consultant. x x x Unlike the case of former Chief Justice Panganiban, the cited precedents in the *ponencia* of Justice Estela Perlas-Bernabe identified the positions, designated by law or administrative/executive orders, to which the former Justices were appointed. The situation of former Chief Justice Panganiban is markedly different from the precedents cited by Justice Bernabe considering the presence of evidentiary support extant on record that showed incontrovertibly the appointment of former Chief Justice Andres Narvasa and Justice Abraham Sarmiento to specific positions in government. The legal and factual issues regarding one's entitlement to retirement benefits must be carefully considered because such benefits are accorded by law to public officers and employees who have assumed the concomitant responsibilities and obligations demanded by their oath of office during the mandatory period of time explicitly prescribed by the applicable retirement law. The ruling of the majority, having set a precedent, may have now opened a Pandora's box of claims for retirement benefits previously denied because prior to the ruling of the majority in this case, consultancy services rendered to the government have consistently not been credited as part of government service. The Court will be hard put to take the position that its ruling applies only to former Chief Justice Panganiban and to the Members of this Court who may invoke this ruling in the future due to their having previously rendered similar services to the government.

BRION, *J., dissenting opinion*:

1. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 910, AS AMENDED BY REPUBLIC ACT NO. 9946; RETIREMENT BENEFITS; CONCEPT OF GOVERNMENT SERVICE, EXPLAINED.—** What constitutes government service may be plainly derived from the provisions of Act No. 2657 or the *Administrative Code*, as amended. The old Administrative Code, as amended, defines the terms "employee" or "officer"[.] x x x Similarly relevant, too, is the governing

law on service with the government at the time of former Chief Justice Panganiban's claimed consultancy — the **Civil Service Act of 1950 (R.A. No. 2260**) which x x x classifies positions in the civil service into: (a) competitive service, (b) non-competitive service, and (c) exempt service; Section 3 provides that the "exempt" service is not within the scope of the law; and Section 6 defines exempt service to include (aside from elective officers and the members of the military) "persons *employed* on a contract basis[,]" as well as temporary, emergency or casual laborers. A noteworthy feature of this law, for purposes particularly of the present dispute, is that it refers only to those who are covered by an employer-employee relationship with the government. Thus, even those whose relationship with the government is on a "contract basis" (and, thus, are within the exempt service not covered by the Civil Service Act) must be "employed" and must gain entry to government service through the electoral or the appointive process. The Revised Civil Service Rules accompanying the Act, in its Rule VI, requires that **appointments** be made in the **prescribed from, duly signed by the appointing officer, and submitted to the Civil Service Commission (*CSC*),** even if only for proper notation and record with respect to those in the non-competitive or unclassified service. In sum, those who may render service with the government, without occupying any public office or without having been elected or appointed a public officer evidenced by a written appointment recorded in the CSC, do so outside of the concept of government service. The *ponencia* interestingly broadens this concept of "government service." x x x **For clarity, rendering "government service" within the meaning of the law requires that (1) the person occupies, by appointment or by election, a public office that was created by law, not simply by contract; and (2) the office requires him to render service in the performance of a governmental function.** This signification should particularly apply in construing retirement laws in order not to defeat the intent and purpose of the recognition of retirement and the grant of retirement benefits.

2. **ID.; ID.; ID.; ID.; FORMER CHIEF JUSTICE PANGANIBAN'S CONSULTANCY SERVICES RENDERED TO THE BOARD OF NATIONAL EDUCATION AND TO SECRETARY ROCES SHOULD NOT BE CONSIDERED GOVERNMENT SERVICE; REASONS. —** In stark contrast with the post for which he had been granted retirement benefits, the role of a

"consultant" (that the Sworn Certifications cite as evidence of his claimed government service), former Chief Justice Panganiban points to **no specific position in the government** under which he served as consultant. He likewise **failed to cite any law** pursuant to which he was appointed as consultant. He **did not produce any appointment paper** or any copy of an **oath of office** that he took when he allegedly assumed the offices that the Sworn Certifications pointed to. x x x The requirement of a public office in considering "government service" also signifies service within the governmental structure and the exclusion of service outside of this structure, although beneficial work for the government might have been rendered in this role and capacity. This exclusion specifically refers to **consultancy** rendered pursuant to a contract of service, involving work and delivery to the government of results produced in the consultant's own time and for his own account in the exercise of his profession. This exclusion also encompasses **services outsourced by the government** to private individuals for their special qualifications and expertise; these services do not constitute government service and do not characterize the private individuals as public officers. These aspects of the case are dwelt with at length at the proper places below. It is sufficient for now to simply state that **the mere claim of having rendered services (and even proof of actual rendition of service) will be for naught unless made within an employment relationship existing under the structure established by law within the government. x x x** As a contract of service, consultancy has been excluded as "government service" for retirement purposes because it does not satisfy the basic requirement that there be a public office as understood under the law. **In a consultancy, no tie links the consultant to a public office that has been previously created by law; the elements of public office, and the fact of appointment and of the required oath are likewise missing.** The CSC has fleshed out the requirements by pointedly excluding "consultancy services" for lack of the required employer-employee relationship. CSC Memorandum Circular No. 38, series of 1993, *expressly* provides that **consultancy services "where no employer-employee relationship exists" are not considered government service**. x x x [A] **"legal consultant"** is one who has "adequate external" professional expertise in the law that no one in the agency could provide or render, and whose services therefore must be

procured. A **procured service** is not government service, as it is service hired after the conduct of the procurement process; it is not part of the internal and regular services of the procuring governmental entity. Under Memorandum Circular No. 17, series of 2002, a consultancy contract or job order **need not be recorded by the CSC** because the "services to be rendered thereunder are not considered as government service."

3. **ID.; ID.; ID.; ID.; ID.; FORMER CHIEF JUSTICE PANGANIBAN SIMPLY REMAINED A PRIVATE LAWYER ON CALL FOR SPECIFIC PURPOSE.—** Even if we consider the legal services rendered by former Chief Justice Panganiban as performance of a governmental function, the capacity in which the services were rendered precludes them from being characterized as creditable government service for purposes of retirement. **Without a public position** to which he had been appointed, the services rendered by former Chief Justice Panganiban by way of consultancy would only amount to services specific to the BNE or for the Secretary, for their sole benefits, and — at most — paid from a budget for outside consultants that the budget of these government offices might have allowed. Under these circumstances and without any position in the BNE or the DepEd structural hierarchy, former Chief Justice Panganiban simply remained a **private lawyer on call for specific questions** or requirements of the BNE and of Secretary Roces.

4. **ID.; ID.; ID.; ID.; THE COURT'S EXERCISE OF LIBERALITY IN THE APPLICATION OF RETIREMENT LAWS IS NOT JUSTIFIED IN CASE AT BAR.—** I find no basis — both legal and factual — to exercise liberality in the present case. Although former Chief Justice Panganiban has demonstrated exemplary competence in the performance of his judicial duties, competence alone does not justify the exercise of liberality since ***competence, even to the exemplary degree, is only to be expected among Justices of this Court and should not be considered as an exceptional consideration that should merit the exercise of liberality.*** No basis also exists under jurisprudence, since we do not have any evidence before us *in the present case* showing the circumstances that the Court recognized in its past rulings. The weight of former Chief Justice Panganiban's own adduced documentary evidence negates the exercise of liberality. Former Chief Justice Panganiban, in fact, did not submit the evidence the Court

already expressed as material in its determination. If equitable considerations must be made in this case, it should be to apply the rule that *"**he who comes to court must come with clean hands**."* Several incidents, taken collectively, strongly suggest this consideration in order to avoid unfairness. x x x To go back to the general rule, equitable considerations are not necessary where, as in this case, an existing rule holds that consultancy service cannot be creditable government service. Where the law or jurisprudence is clear, we should likewise be clear and decisive in their application lest we be accused of favoritism in the exercise of liberality. Thus, the invocation of liberal application of retirement laws is not a universal remedy that applies to all cases. Where it has to be applied, strict adherence to the jurisprudential standards — particularly the rule of fairness — must be followed lest we create dangerous situations that lead us to slippery adjudicatory paths. At the very least, we should take care to avoid any perception of accommodating former colleagues, or indirectly ourselves who, inevitably, will be separated from our judicial offices in the future.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

The Court is asked to pass upon the request of former Chief Justice Artemio V. Panganiban (CJ Panganiban) to include as creditable government service the period from January 1962 to December 1965 when he served the Department of Education (DepEd), its Secretary, and the Board of National Education (BNE) to enable him to meet the present service requirement of fifteen (15) years for entitlement to retirement benefits.

When CJ Panganiban reached the compulsory age of retirement on December 7, 2006, he was credited with eleven (11) years, one (1) month and twenty-seven (27) days or 11.15844 years of government service. The Office of Administrative Services (OAS) did not include in the computation his 4-year service as Legal Counsel to the DepEd and its then Secretary, Alejandro R. Roces (Former Education Secretary Roces), and as Consultant to the BNE in a concurrent capacity, from January 1962 to December 1965, on the ground that consultancy "is not considered

government service pursuant to Rule XI (Contract of Services/ Job Orders) of the Omnibus Rules Implementing Book V of Executive Order No. 292."[1] Having failed to meet the twenty (20) years length of service then required under Republic Act (R.A.) No. 910,[2] the OAS considered him eligible to receive only the 5-year lump sum payment under said law.

On January 10, 2010, then President Gloria Macapagal-Arroyo approved R.A. 9946,[3] which not only reduced the requisite length of service under R.A. 910 from twenty (20) years to fifteen (15) years to be entitled to the retirement benefits with lifetime annuity, but provided also for a survivorship clause, among others.

Thus, the instant letter-request of CJ Panganiban seeking a re-computation of his creditable government service to include the previously- excluded 4-year government service to enable him to meet the reduced service requirement of fifteen (15) years for entitlement to retirement benefits under R.A. 9946.

On December 14, 2010, the Court issued a Resolution[4] directing CJ Panganiban to submit additional documentary evidence to support his appointment as Legal Counsel to the DepEd and its Secretary and Consultant to the BNE. In compliance, he submitted the January 19, 2011 Certifications[5] of Former Education Secretary Roces and Retired Justice Bernardo P. Pardo (Retired Justice Pardo) attesting to the fact of his tenure as Legal Counsel to the DepEd and its Secretary and Consultant to the BNE.

---

[1] *Rollo,* p. 3

[2] "AN ACT TO PROVIDE FOR THE RETIREMENT OF JUSTICES OF THE SUPREME COURT AND OF THE COURT OF APPEALS, FOR THE ENFORCEMENT OF THE PROVISIONS HEREOF BY THE GOVERNMENT SERVICE INSURANCE SYSTEM, AND TO REPEAL COMMONWEALTH ACT NUMBERED FIVE HUNDRED AND THIRTY-SIX."

[3] "AN ACT GRANTING ADDITIONAL RETIREMENT, SURVIVORSHIP, AND OTHER BENEFITS TO MEMBERS OF THE JUDICIARY, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 910, AS AMENDED, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES."

[4] *Rollo,* pp. 18-20.

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

The Court finds merit in CJ Panganiban's request.

A careful perusal of the actual functions and responsibilities of CJ Panganiban as outlined in his compliance with attached Sworn Statements of Former Education Secretary Roces and Retired Justice Pardo reveal that he performed actual works and was assigned multifarious tasks necessary and desirable to the main purpose of the DepEd and the BNE.

Former Education Secretary Roces certified that:

> [C]hief Justice Panganiban rendered actual services to the BNE and the Department [of Education] and to me in my official capacity as Secretary of Education for said period [from January 1962 to December 1965], having been officially appointed by me as then Secretary of Education and as Chairman of the Board of Education, he having been paid officially by the government a monthly compensation for rendering such services to the government specifically to the Department of Education and to the Board of National Education. He worked with the Office of the Solicitor General on legal matters affecting the Department and the Board, collaborating closely with then Solicitor Bernardo P. Pardo who was assigned by the Office of the Solicitor General to the Department of Education.
>
> Apart from legal issues, he devoted time and attention to matters assigned to him by the Department or by the Board, like the development of educational policies, the selection and distribution of textbooks and other educational materials, the setting of school calendars, the procurement of equipment and supplies, management of state schools, *etc*.[6]

His services both as Legal Counsel to the DepEd and its Secretary and as Consultant to the BNE during the period 1962-1965 was corroborated by Retired Justice Pardo who, in his affidavit, certified that in his "capacity as Solicitor assigned by the Office of Solicitor General to the Department of Education and Board of National Education"[7] he and CJ Panganiban "collaborated in many cases representing both the Board of

---

[6] *Id.* at 32.

[7] *Id.* at 31.

National Education and Department of Education, particularly then Secretary of Education Alejandro R. Roces, as well as in rendering legal opinions to such offices."[8]

CJ Panganiban performed work ranging from high level assignments involving policy development and implementation to the more humble tasks of selection and distribution of educational materials and setting of school calendars. He himself views his work, thus: "[u]nlike some present day consultants or counsels of government offices and officials, I rendered full and actual service to the Philippine government, working daily at an assigned desk near the Office of the Secretary of Education throughout the full term of Secretary Alejandro R. Roces, January 1962 to December 1965."[9]

Associate Justice Arturo D. Brion (Justice Brion) is not persuaded by the evidence. He holds the view that there must be an appointment to a position that is part of a government organizational structure before any work rendered can be considered government service.

Under the old Administrative Code (Act No. 2657),[10] a government "employee" includes any person in the service of the Government or any branch thereof of whatever grade or class. A government "officer," on the other hand, refers to officials whose duties involve the exercise of discretion in the performance of the functions of government, **whether such duties are precisely defined or not**. Clearly, the law, then and now, did not require a specific job description and job specification. Thus, the absence of a specific position in a governmental structure is not a hindrance for the Court to give weight to CJ Panganiban's government service as legal counsel and consultant. It must be remembered that retired Chief Justice Andres R. Narvasa's (CJ Narvasa) stint in a non-plantilla position as Member of the Court Studies Committee of the Supreme Court, created under Administrative

---

[8] *Id.*

[9] *Id.* at 27-28. Compliance.

[10] Also known as Administrative Code of 1917.

Order No. 164 of then Chief Justice Querube C. Makalintal, was considered sufficient for purposes of crediting him with an additional five (5) years of government service, reckoned from September 2, 1974 to 1979.[11]

In any case, having previously ruled to include as creditable government service the post-retirement work of Justice Abraham T. Sarmiento as **Special Legal Counsel** to the University of the Philippines System[12] and to credit former CJ Narvasa with the legal counselling work he did for the Agrava Fact-Finding Board to which he was appointed **General Counsel** by then President Marcos,[13] the Court sees no reason not to likewise credit in CJ Panganiban's favor the work he had performed as Legal Counsel to the DepEd and its Secretary, not to mention his concurrent work as consultant to the BNE, and accordingly, qualify him for entitlement to retirement benefits.

In A.M. No. 07-6-10-SC,[14] apart from his work as Member of the Court Studies Committee of the Supreme Court, CJ Narvasa was credited his term as General Counsel to the Agrava Fact-Finding Board for one (1) year (from October 29, 1983 to October 24, 1984), as well as his 10-month post-retirement service as Chairperson of the Preparatory Commission on Constitutional Reforms created under Executive Order No. 43, thus, entitling him to monthly pension computed from December 1, 2003. In A.M. No. 03-12-08-SC,[15] the Court favorably considered Justice

---

[11] *Re: Request of Chief Justice Andres R. Narvasa (Ret.) For Re-Computation of his Creditable Government Service*, A.M. No. 07-6-10-SC, January 15, 2008, cited in the subsequent *En Banc* Resolution dated July 23, 2008 <http://sc.judiciary.gov.ph/jurisprudence/2008/july2008/07-6-10-SC.htm> (last viewed February 4, 2013).

[12] *Re: Request of Justice Abraham F. Sarmiento (Ret.) for Monthly Retirement Pensions and All Upward Adjustment of Benefits*, A.M. No. 03-12-08-SC, December 13, 2005, cited in the subsequent *En Banc* Resolution dated February 13, 2007 <http://sc.judiciary.gov.ph/rulesofcourt/2007/feb/A.M.No.03-12-08-SC.htm> (last viewed February 4, 2013).

[13] *Supra* note 11.

[14] *Id.*

[15] *Supra* note 12.

Sarmiento's post-retirement work as Special Legal Counsel to the University of the Philippines (from August 24, 2000 to January 15, 2002) as part of his creditable government service apart from his service as Member of the UP Board of Regents (from January 16, 2002 to December 31, 2003) and Chairman of the UP Board of Regents (from January 1, 2004 to December 31, 2005).

Justice Brion views the Court's favorable disposition of CJ Panganiban's request for lifetime annuity as another case of flip-flopping, believing that **the Court already denied former Chief Justice Panganiban's request for full retirement benefits under R.A. No. 910** and would, thus, be making a complete turnabout even as CJ Panganiban makes a request **for the second time and for the same previously-denied services.**[16]

Justice Brion, however, is mistaken in his belief that the Court is reversing itself in this case. There is no flip-flopping situation to speak of since this is the first instance that the Court *En Banc* is being asked to pass upon a request concerning the computation of CJ Panganiban's creditable service for purposes of adjusting his retirement benefits. It may be recalled that Deputy Clerk of Court and OAS Chief Atty. Eden T. Candelaria had simply responded to a query made by CJ Panganiban when she wrote[17] him, thus:

June 10, 2008

Hon. Artemio V. Panganiban
Retired Chief Justice

Your Honor:

This refers to your query through Ms. Vilma M. Tamoria on why your Honor's service in the Board of National Education was not included in the computation of retirement benefits.

In connection with his Honor's Application for Compulsory Retirement, a Certification dated November 14, 2006 issued by former Secretary of Education, the Honorable Alejandro R. Roces, was

---

[16] See Justice Arturo D. Brion's Dissenting Opinion.

[17] *Rollo*, p. 3.

submitted attesting that you had served as consultant to the Board of National Education and concurrently Legal Counsel to the Secretary of Education from January 1962 to December 1965.

Consultancy or Contract of Service is not considered government service pursuant to Rule XI (Contract of Services/Job Orders) of the Omnibus Rules Implementing Book V of Executive Order No. 292. Hence, your Honor's service as consultant to the Board of National Education from January 1962 to December 1965 was not credited in the computation of creditable government service.

Your Honor is therefore entitled only to the benefits under Section 2 of R.A. 910 as amended which provides for a lump sum equivalent to five (5) years salary based on the last salary you were receiving at the time of retirement considering that you did not attain the length of service as required in Section 1. Thus, you Honor only has a total of 11 years, 1 month and 27 days or 11.15844 government service.

Very truly yours,

(Sgd.)
EDEN T. CANDELARIA
Deputy Clerk of Court and
Chief Administrative Officer

CJ Panganiban no longer pursued the matter with the OAS presumably because a converse ruling allowing credit for his service with the BNE would still have left his total length of government service short of the 20-year requirement as to entitle him to a lifetime annuity under Section 1 of R.A. 910. However, in view of the passage of R.A. 9946, which reduced the requisite period of service from twenty (20) years to fifteen (15) years to benefit from a grant of lifetime annuity, CJ Panganiban sought the Court's approval to include his 4-year service as Legal Counsel to the DepEd and its Secretary, and as Consultant to the BNE as creditable government service.

Besides, nothing prevents the Court from taking a second look into the merits of a request and overturning a ruling determined to be inconsistent with principles of fairness and equality. In particular, the grant of life annuity benefit to Justice Sarmiento was a result of the Court's reversal of its earlier

Resolution denying the request for re-computation. Notably, the Court found merit in Justice Sarmiento's plea for liberality and considered his post-retirement work creditable government service to complete the 20-year length of service required for him to avail of full retirement benefits under R.A. 910.

It bears emphasis that treatment must be without preference especially between persons similarly situated or in equal footing. Just as CJ Narvasa's work as General Counsel to the Agrava Board, and Justice Sarmiento's service as Special Legal Counsel to UP were considered creditable government service, so should the consideration be for CJ Panganiban's work, at least, as Legal Counsel to the DepEd and its Secretary.

Justice Brion asserts that CJ Panganiban's own claim in his Bio-Data and Personal Data Sheet that he remained in active private law practice at the same time that he acted as Legal Counsel to the DepEd and its Secretary and as Consultant to the BNE prevents him from asserting any claim to the contrary. It should be stressed that CJ Panganiban only filed his request for re-computation of his retirement benefits in the hope that the Court will credit in his favor the work he rendered both as Legal Counsel to the DepEd and its Secretary and as Consultant to the BNE in the same way that it credited retired Justice Sarmiento's and retired CJ Narvasa's services as Special Legal Counsel to the UP and General Counsel to the Agrava Board, respectively. When CJ Panganiban submitted his claims to the Court's sense of fairness and wisdom, it was the Court that directed him to present additional evidence in support of the true nature of the services he rendered to these government agencies.

The alleged inconsistency between his earlier statements of being in private law practice in his Bio-Data and Personal Data Sheet and his proffered evidence now showing the nature and extent of his services to the DepEd and its Secretary and to the BNE is more apparent than real. The perception of continuous and uninterrupted exercise of one's legal profession, despite periodic interruptions foisted by public service, is not uncommon among legal practitioners. After all, legal counselling work,

even if rendered to a government agency, is part of legal practice. During the time that CJ Narvasa served as Member of the Court Studies Committee of the Supreme Court from 1974 to 1979, prior to his appointment as General Counsel to the Agrava Board, he likewise appeared to have regarded himself in constant active law practice[18] and yet this did not deter the Court from considering the weight of the work he actually rendered to the government and, thus, credited him not only his one-year stint as General Counsel of the Agrava Board but even the full term of his earlier **involvement** as Member of the Court Studies Committee of the Supreme Court.

Nonetheless, Justice Brion insists that no substantial proof has been presented to support the inference that the work rendered by CJ Panganiban constituted government service and, hence, the application of liberality in the appreciation and interpretation of the law is unjustified. Admittedly, the only evidence presented to support CJ Panganiban's claim that he worked as Legal Counsel to the DepEd and its Secretary and as Consultant to the BNE are the Sworn Statements of Retired Justice Pardo and Former Education Secretary Roces and the submissions of CJ Panganiban but this evidence can hardly be considered undeserving of weight and lacking in substance, coming from a retired member of the Court, a former Cabinet Secretary and a former Chief Justice of the Supreme Court, whose credibility remains untarnished and is beyond question. Justice Brion himself does not dispute the veracity of their claims that CJ Panganiban did, in fact, render actual service. Hence, notwithstanding the absence of any other record of CJ Panganiban's appointment to a position or item within the DepEd and the BNE, his actual service to these government agencies must be regarded as no less than government service and should, therefore, be credited in his favor consistent with the Court's liberal rulings in the cases of CJ Narvasa and Justice Sarmiento.

---

[18] Coronel, Sheila S., *The Dean's December*, Public Eye, The Investigative Reporting Magazine, Philippine Center for Investigative Journalism, Vol. III, No. 2, April-June 1997 <http://pcij.org/imag/PublicEye/dean.html> and <http://en.wikipedia.org/wiki/Andres_Narvasa> (last viewed February 4, 2013).

The Supreme Court has unquestionably followed the practice of liberal treatment in passing upon retirement claims of judges and justices, thus: (1) waiving the lack of required length of service in cases of disability or death while in actual service[19] or distinctive service; (2) adding accumulated leave credits to the actual length of government service in order to qualify one for retirement; (3) tacking post-retirement service in order to complete the years of government service required; (4) extending the full benefits of retirement upon compassionate and humanitarian considerations;[20] and (5) considering legal counselling work for a government body or institution as creditable government service.

The generous extent of the Court's liberality in granting retirement benefits is obvious in *Re: Justice Efren I. Plana*:[21]

> It may also be stressed that under the beneficient provisions of Rep. Act 910, as amended, a Justice who reaches age 70 is entitled to full retirement benefits with no length of service required. Thus, a 69 year old lawyer appointed to the bench will get full retirement benefits for the rest of his life upon reaching age 70, even if he served in the government for only one year. Justice Plana served the government with distinction for 33 years, 5 months, and 11 days, more than 5 years of which were served as a Justice of the Court of Appeals of this Court.

In the instant case, no liberal construction is even necessary to resolve the merits of CJ Panganiban's request. The Court need only observe consistency in its rulings.

---

[19] *Re: Retirement of District Judge Isaac Puno, Jr.*, A.M. No. 589-Ret., June 28, 1977, and *Re: Retirement Benefits of the Late City Judge Alejandro Galang, Jr.*, 194 Phil. 14 (1981), both cited in *Re: Application for Gratuity Benefits of Associate Justice Efren I. Plana*, A.M. No. 5460-RET, March 24, 1988, <http://sc.judiciary.gov.ph/rulesofcourt/1988/mar/administrative_matter_5460_ret.htm> (last viewed February 4, 2013).

[20] *In Re: Application for Life Pension Under Rep. Act 910 of Justice Ruperto G. Martin*, A.M. No. 747-RET, July 13, 1990 <http://www.lawphil.net/judjuris/juri1990/jul1990/am_747_ret_1990.html> (last viewed February 4, 2013).

[21] *Re: Application for Gratuity Benefits of Associate Justice Efren I. Plana*, *supra* note 17.

WHEREFORE, the Court resolves to **GRANT** former Chief Justice Artemio V. Panganiban's request for a re-computation of his creditable government service to include the 4-year period from January 1962 to December 1965 that he served as Legal Counsel to the Department of Education and its then Secretary and Consultant to the Board of National Education, as duly attested to by retired Justice Bernardo P. Pardo and then Secretary of Education himself, Alejandro R. Roces.

ACCORDINGLY, the Office of Administrative Services is hereby **DIRECTED** to re-compute former Chief Justice Artemio V. Panganiban's creditable government service and his corresponding retirement benefits.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., del Castillo, Perez, Reyes, and *Leonen, JJ.,* concur.

Leonardo-de Castro, J., dissents in a separate opinion and joins the dissent of Justice Brion.

Brion, J., dissents.

Peralta, J., joins the dissent of *J.* Brion.

Bersamin, Villarama, Jr., and *Mendoza, JJ.,* join the dissents of *J.* de Castro and *J.* Brion.

Abad, J., for past favor received from C.J. A.V. Panganiban, inhibits self.

DISSENTING OPINION

LEONARDO-DE CASTRO, *J.*:

In light of the ruling in the majority opinion that consultancy services rendered to the government partake of the nature of "government service" which can be credited in the availment of retirement benefits by public officers under the law, should the Civil Service Commission, the Government Service Insurance System, the Office of the Ombudsman, and all concerned government agencies now include within the coverage of their

authority and jurisdiction all consultants presently rendering service to the government?

Conversely, is the ruling of the majority intended to apply only to former Chief Justice Artemio V. Panganiban who, because of his consultancy services in the practice of his profession to the former Secretary of Education from January 1962 to December 1965 (exact dates not specified), will now be entitled, among others, to the lifetime monthly pension of the Members of the Judiciary at the rate equal to the salary of the incumbent Chief Justice? Or will this apply as well only to the Members of this Court similarly situated as the former Chief Justice who may have previously rendered consultancy services to the government? If so, how can the Court countenance or justify such an uneven application of the law?

These are nagging questions engendered by the ruling of the majority which overturned all settled legal principles and doctrines on the nature and character of consultancy services rendered to the government.

First off, the Constitution requires public officials and employees to take an oath of office. Specifically, Article IX(B) of the Constitution provides:

> Sec. 4. All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution.

The Administrative Code of 1987 (Executive Order No. 292) implements this constitutional provision as follows:

Chapter 10 – OFFICIAL OATHS

> Sec. 40. *Oaths of Office for Public Officers and Employees.* — All public officers and employees of the government including every member of the armed forces shall, before entering upon the discharge of his duties, take an oath or affirmation to uphold and defend the Constitution; that he will bear true faith and allegiance to it; obey the laws, legal orders and decrees promulgated by the duly constituted authorities; will well and faithfully discharge to the best of his ability the duties of the office or position upon which he is about to enter; and that he voluntarily assumes the obligation imposed by his oath

of office without mental reservation or purpose of evasion. Copies of the oath shall be deposited with the Civil Service Commission and the National Archives. (Book I.)

All public officers and employees from the highest to the lowest are required to take an oath of office which marks their assumption to duty. Notably, even the Court's appointed utility personnel are required to take the oath of office mandated by the Constitution and the law.

To be sure, since it is long settled that not all services rendered to the government partake of the nature of "government service," consultants are not required to take an oath of office because they are not rendering "government service" in the sense the term is understood for purposes of applying the laws and regulations applicable to public officers and employees, among which are the retirement laws, the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019 as amended), and the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713). Consultants can engage in the practice of their profession like former Chief Justice Panganiban who admitted in his personal data sheet submitted to the Court that he was a practicing lawyer as Senior Partner of PABLAW during the period for which he was deemed by the majority opinion to have rendered "government service."

One who does not take an oath of office which demands the highest standard and responsibilities of public service is understandably not entitled to enjoy the benefits and privileges of a public officer or employee. It is well-settled that an oath of office is a qualifying requirement for public office, a prerequisite to the full investiture of the office.[1]

Hence, it is erroneous to consider all services rendered for the government as government service which can be credited to claim retirement benefits, particularly if the service is rendered not by virtue of an appointment or election to a specific public

---

[1] *Lecaroz v. Sandiganbayan*, 364 Phil. 890, 904 (1999); *Mendoza v. Laxina, Sr.*, 453 Phil. 1013, 1026-1027 (2003); *Chavez v. Ronidel*, G.R. No. 180941, June 11, 2009, 589 SCRA 103, 109.

office or position, which requires the taking of an oath of office, but by a contractual engagement like that of a consultant.

It should be stressed that the Certification of the late former Secretary of Education Alejandro R. Roces did not state to what position former Chief Justice Artemio Panganiban was appointed. He stated that the latter was "appointed" to render service. Such loose statement cannot suffice as numerous consultants are rendering service to the government pursuant to a contract of service which is not considered creditable government service under our retirement laws.

Unlike the case of former Chief Justice Panganiban, the cited precedents in the *ponencia* of Justice Estela Perlas-Bernabe identified the positions, designated by law or administrative/ executive orders, to which the former Justices were appointed. The situation of former Chief Justice Panganiban is markedly different from the precedents cited by Justice Bernabe considering the presence of evidentiary support extant on record that showed incontrovertibly the appointment of former Chief Justice Andres Narvasa and Justice Abraham Sarmiento to specific positions in government.

The legal and factual issues regarding one's entitlement to retirement benefits must be carefully considered because such benefits are accorded by law to public officers and employees who have assumed the concomitant responsibilities and obligations demanded by their oath of office during the mandatory period of time explicitly prescribed by the applicable retirement law.

The ruling of the majority, having set a precedent, may have now opened a Pandora's box of claims for retirement benefits previously denied because prior to the ruling of the majority in this case, consultancy services rendered to the government have consistently not been credited as part of government service. The Court will be hard put to take the position that its ruling applies only to former Chief Justice Panganiban and to the Members of this Court who may invoke this ruling in the future due to their having previously rendered similar services to the government.

In view of the foregoing, I join the dissent of Justice Arturo D. Brion who has meticulously and astutely discussed the factual and legal issues in this administrative matter.

DISSENTING OPINION

BRION, *J.*:

This case involves the request of former Chief Justice Artemio Panganiban for the re-computation of his retirement benefits and his entitlement to **lifetime annuity** under the provisions of Republic Act (*R.A.*) No. 910, as amended by R.A. No. 9946, based on the crediting as **government service** of the work he rendered (1) as consultant of the Board of National Education (*BNE*) and (2) as legal counsel to former Department of Education (*DepEd*) Secretary Alejandro Roces.

I dissent and vote for the denial of the request as the crediting sought is not justified under the law, the rules and established jurisprudence. I respectfully submit the following reasons for this dissent:

First, the Court has twice previously rejected this request. Former Chief Justice Panganiban has not given the Court any reason to reconsider the rejection.

1. Former Chief Justice Panganiban's request to include his four-year service as consultant of the BNE and as legal counsel to Secretary Roces as "creditable government service" has already been **rejected** by this Court several times.[1] The present letter-request dated September 27, 2010 is effectively the **third request** that former Chief Justice Panganiban has made for the inclusion of the **same consultancy services**.

2. **Absence of Supervening Event to Justify Change of Previous Decision.** No supervening event or any compelling

[1] These were embodied in (1) the Letter dated November 14, 2006 of Atty. Candelaria on the Application for Compulsory Retirement under R.A. No. 910 (*rollo*, p. 7); and (2) the Letter dated June 10, 2008 of Atty. Candelaria in response to the query made by Ms. Vilma M. Tamorio (*id.* at 3).

reason exists for this Court to reverse the exclusion of the consultancy former Chief Justice Panganiban rendered. R.A. No. 9946 (which changed the qualifying period for the receipt of full retirement benefits from 20 years under R.A. No. 910 to the current 15 years) did not affect at all the character of the ***government service*** that the law requires for retirement purposes.

Second, **the request does not rest on meritorious legal and factual grounds:**

1. **The Cited Factual Basis is Contrary to Indisputable Record on File with the Court.** Former Chief Justice Panganiban's own record — **his Bio Data and Personal Data Sheet** ***filed immediately after he joined the Court*** **—** shows that he was in **private law practice** at the time he now claims to have been in government service. This record shows that he was then in private law practice as Senior Partner of *Panganiban, Benitez, Parlade Africa & Barinaga Law Office (PABLAW)* from 1963-1995.[2]

2. **No Government Service Involved**. Assuming that he did render consultancy service, this service is not "government service" that can be credited for retirement purposes.

a. **Elements of Public Office and Public Officer Do Not Exist.** The consultancy work did not qualify former Chief Justice Panganiban as a "public officer" occupying a "public office" as the law and the Civil Service rules require:

(i) he was neither elected nor appointed to a public office that was created by law, not simply by a mere contract;

(ii) he did not render service in the performance of a governmental function.

b. **No Employer-Employee Relationship was Involved in the Service He Rendered.** "Consultancy" service does not amount to "government service" in the absence of an employer-employee relationship.

---

[2] Even his **Bio Data of July 1, 2012** indicates that he was in law practice as an Associate at the *Salonga, Ordonez and Associates Law Offices* from 1961 to 1963; http://cjpanganiban.ph/bio-data (visited February 7, 2013).

3. **No Sufficient Evidence was Submitted to Support the Request.** Former Chief Justice Panganiban's evidentiary submissions do not show that he was ever engaged in government service prior to his judicial service.

a. Former Chief Justice Panganiban's request rests solely on the Sworn Certifications he submitted, which do not show compliance with the requirements of having been engaged in government service.

b. The Sworn Certifications attest to the presence of "consultancy" and do not prove that former Chief Justice Panganiban was ever appointed to or ever took an oath of office as a public officer.

c. The absence of appointment papers and evidence of the required oath cannot be excused by the simple appeal to the passage of time.

Third, the rulings in the cases of former Chief Justice Andres R. Narvasa[3] and of former Justice Abraham Sarmiento[4] are not applicable.

1. The factual backgrounds in the two cases are different from the case of former Chief Justice Panganiban.

Former Chief Justice Panganiban is not on the same or equal footing with Chief Justice Narvasa and with Justice Sarmiento —

(i) Position: Former Chief Justice Panganiban was a consultant who had not been appointed to any specific office in the BNE or the DepEd, while the Justices in the cited cases were appointed to specific offices.

(ii) Service: former Chief Justice Panganiban rendered consultancy service, while the cited Justices rendered services defined by law or by administrative issuances.

---

[3] *Re: Request of Chief Justice Andres R. Narvasa (Ret.) for Recomputation of His Creditable Government Service,* A.M. No. 07-6-10-SC, January 15, 2008.

[4] *Re: Request of Justice Abraham F. Sarmiento (Ret.) for Monthly Retirement Pension and All Upward Adjustment of Benefits,* A.M. NO. 03-13-8-SC, February 13, 2007.

(iii) Creation of office: former Chief Justice Panganiban did not occupy any office created by law as the position of consultant was not part of the existing DepEd *plantilla* under Executive Order (*E.O.*) No. 94, while the cited Justices occupied offices created by law and/or administrative issuance:

Former Chief Justice Narvasa was appointed under Presidential Decree No. 1886 (Agrava Board); E.O. No. 43 (Commission on Constitutional Reforms); and Administrative Order No. 164 (Court Studies Committee); and

Justice Sarmiento was appointed pursuant to Section 2(12) of the Administrative Code of 1987 which provides that "[*c*]*hartered institution refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges and the monetary authority of the State*" and under Act No. 1870, as amended by R.A. No. 9500 (1908 UP Charter).

Fourth, the Court's exercise of liberality is not justified in the case of former Chief Justice Panganiban.

No compelling reason exists to warrant the exercise of ***liberality*** in applying retirement laws to former Chief Justice Panganiban's request.

a. **Failure to Fully Comply with the Court's Directive.** Former Chief Justice Panganiban did not present the additional or sufficient documentary evidence that the Court required him to submit in the Resolution dated December 14, 2010. The present request rests on the same evidence previously found insufficient. In the absence of any new and significant evidence, the previous denials should stand.

b. **Lack of Clean Hands Bars a Liberal Approach.** Former Chief Justice Panganiban cannot now deny the presentations he made with this Court in his Bio Data and Personal Data Sheet; the Court's denial in 2006 and 2008 of his request for

crediting and by his acceptance and receipt (without or with delayed objection) of his retirement benefits without the presently claimed annuity, should now bar the grant of former Chief Justice Panganiban's present request.

c. **Far-reaching Consequences.** A grant by this Court of former Chief Justice Panganiban's request through an unjustified liberal approach carries far-reaching implications that may go beyond the grant's immediate financial cost to the government.

(i) Impact on Retired Magistrates. The ruling will open the door to other submissions from many ***retired magistrates*** whose requests for liberality were not entertained by this Court.

(ii) Impact on the Supreme Court itself. A *pro hac vice* or "for former Chief Justice Panganiban only" ruling may particularly be objectionable to retired magistrates whose past applications for liberality have been strictly viewed by the Court. Such kind of ruling opens the Court itself to charges of selfishly ruling for its own interests.

(iii) Impact on Retirement in General. A ruling that certifications alone, without more, leaves the door open for the deluge of similar claims from those who might have in the past entered into consultancy service with the government.

THE ANTECEDENT FACTS

1. The Retirement and the Applicable Law.

Former Chief Justice Panganiban retired on December 6, 2006 under the provisions of R.A. No. 910, which provided the following age and service requirements in the determination of retirement benefits:

Section 1. When a Justice of the Supreme Court or of the Court of Appeals who has rendered at least twenty years' service either in the judiciary or in any other branch of the Government, or in both, (a) retires for having attained the age of seventy years, or (b) resigns by reason of his incapacity to discharge the duties of his office, he shall receive during the residue of his natural life, in the manner hereinafter provided, the salary which he was receiving at the time of his retirement or resignation. And when a Justice of the Supreme

Court or of the Court of Appeals has attained the age of fifty-seven years and has rendered at least twenty-years' service in the Government, ten or more of which have been continuously rendered as such Justice or as judge of a court of record, he shall be likewise entitled to retire and receive during the residue of his natural life, in the manner also hereinafter prescribed, the salary which he was then receiving. It is a condition of the pension provided for herein that no retiring Justice during the time that he is receiving said pension shall appear as counsel before any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office, or collect any fee for his appearance in any administrative proceedings to maintain an interest adverse to the Government, insular, provincial or municipal, or to any of its legally constituted officers.

Thus, for purposes of lifetime annuity, R.A. No. 910 at that time required the minimum age and service requirements: (1) of at least 20 years of service either in the Judiciary or in any other branch of the Government, or in both; (2) retirement for having attained the age of 70, or resignation by reason of his incapacity to discharge the duties of his office.

Former Chief Justice Panganiban compulsorily retired at the age of 70 in December 2006, with 11 years, one month and 27 days or 11.15844 years of government service, as computed by the Office of Administrative Services (*OAS*).[5] **This computation was never disputed.** These years were wholly spent as a Justice of the Supreme Court.

2. <u>The Computation of Benefits and Request for Re-Computation</u>.

a. The current request is **not the first** that former Chief Justice Panganiban made for re-computation. Prior to his retirement in 2006, former Chief Justice Panganiban had made a **first request** that his four-year service as consultant of the BNE and as legal counsel to Secretary Roces be considered as "creditable

[5] Application for Compulsory Retirement under R.A. No. 910, Letter of Atty. Candelaria dated November 14, 2006.

government service" for purposes of his retirement benefits. **He attached to this earlier application Secretary Roces' Sworn Certification**[6] **dated November 14, 2006**. This Sworn Certification reads —

November 14, 2006

To Whom It May Concern:

This is to certify that during my incumbency as Secretary of Education under President Diosdado Macapagal, from January 1962 to December 1965, Attorney, now Chief Justice, Artemio V. Panganiban, Jr. served officially as *consultant* to the Board of National Education (of which I was *ex-officio* chairman) and *concurrently, legal counsel to the Secretary of Education.*

I am executing this certification for whatever purpose it may serve, particularly to show that he served the government during the period mentioned.

(Sgd.) ALEJANDRO R. ROCES

In a **letter dated November 14, 2006**, Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, OAS, merely noted former Chief Justice Panganiban's claimed consultancy services. He was credited with only 11 years, one month, and 27 days of government service, lasting from October 10, 1995 to December 6, 2006 (the period of his incumbency in the Court as Associate Justice and, later, as Chief Justice), clearly excluding the consultancy service now being claimed.[7] Thus, former Chief Justice Panganiban was given his

---

[6] *Rollo*, p. 4.

[7] Based on the records submitted, **former Chief Justice Panganiban** would be 70 years old on December 7, 2006, and he has to his credit a total of 11 years, one month and 27 days or 11.15844 years of government service, broken down as follows:

Inclusive Dates		*Office*		*Yrs.*	*Mos.*	*Days*		*Decimal Equiv.*
10-10-1995 to 12-6-2006	=	Supreme Court	=	11	1	27	=	11.15844

five-year lump sum benefit under R.A. No. 910 and was not granted the lifetime annuity that begins five (5) years after retirement.

b. A **second request** for crediting was made sometime in 2008, through a query made by Ms. Vilma M. Tamorio, former Chief Justice Panganiban's personal secretary, addressed to Atty. Candelaria.[8] Atty. Candelaria responded through a letter[9] dated June 10, 2008, explaining the exclusion:

> **Consultancy or Contract of Service is not considered government service** pursuant to Rule XI (Contract of Services/Job Orders) of the Omnibus Rules Implementing Book V of Executive Order No. 292. **Hence, your Honor's service as consultant to the Board of National Education from January 1962 to December 1965 was not credited in the computation of creditable government service**.[10] (emphasis ours)

c. **More than two years after Atty. Candelaria denied the second request for crediting,** former Chief Justice Panganiban filed his letter[11] to the Court dated September 27, 2010 — effectively **his third request** — reiterating his request and claiming the existence of supervening events that would justify a different and favorable interpretation.

First, he cited the enactment of **R.A. No. 9946** which amended R.A. No. 910 by reducing the minimum service requirement for eligibility to lifetime annuity from 20 years to 15 years of government and/or judicial service. ***Second***, he invoked the rulings in the cases of former Chief Justice Narvasa[12] and retired Justice

---

Further, former Chief Justice Panganiban served as consultant of the BNE from January 1962 to December 1965. As per the attached certification dated November 14, 2006 issued by Secretary Roces; *id.* at 7-8.

[8] As mentioned in the letter dated June 10, 2008 of Atty. Candelaria; *id.* at 3-4.

[9] *Ibid.*

[10] *Ibid.*

[11] *Id.* at 1-2.

[12] *Re: Request of Chief Justice Andres R. Narvasa (Ret.) for Recomputation of His Creditable Government Service*, *supra* note 3.

Sarmiento[13] where the Court included the services rendered by the two justices as general counsel of the Agrava Board and as special legal counsel of the University of the Philippines, respectively, as creditable government service.

Using these cited reasons, former Chief Justice Panganiban (who is **short by three years, seven months and 13 days** or 3.84156 years of government and/or judicial service **from the minimum service requirement of 15 years**) argued that he should be considered eligible to lifetime annuity because his four-year service as consultant of the BNE and as legal counsel to Secretary Roces should be added as "creditable government service," resulting in his completion of the required 15 years of government and/or judicial service.

Atty. Candelaria, in her comment[14] on the present letter-request, recommended its denial, as follows:

> With due respect, it is our view that **the services of CJ Panganiban as legal counsel to then Secretary Roces was rendered only to the Board of National Education (BNE) <u>in the practice of his legal profession</u>.** While Secretary Roces was a member of the BNE in an *ex-officio* capacity as Secretary of Education, there is no showing that CJ Panganiban actually rendered legal services directly to the Department of Education.
>
> On the other hand, CJ Narvasa was appointed by then President Ferdinand E. Marcos as Special Legal Counsel to the Agrava Fact-Finding Board, which had in its organizational set up a position of Special Counsel. Hence, the service of CJ Narvasa in the said Board is considered government service.
>
> In Civil Service Commission (CSC) Resolution No. 000831 Mory Q. Sison (Re: Consultancy Service) dated March 29, 2000, the CSC pronounced that "*generally, consultancy services are not considered service since no employer-employee relationship exists (CSC Resolution No. 95-6339).*"

---

[13] *Re: Request of Justice Abraham F. Sarmiento (Ret.) for Monthly Retirement Pension and All Upward Adjustment of Benefits*, *supra* note 4.

[14] Dated October 26, 2010, submitted pursuant to the Court's Resolution dated October 5, 2010; *rollo,* pp. 13-15.

And in CSC Resolution No. 021264 (Mayumi Juris A. Luna, Re: Consultancy; Query) dated September 27, 2002, it declared that "*by definition, a consultant is one who provides professional advice on matters within the field of his special knowledge or training. There is no employer-employee relationship in the engagement of a consultant but that of a client-professional relationship. Thus, consultancy services are not considered government service.*[15] (emphasis ours; italics supplied)

As a related matter, recall that it was not until two years after retirement that former Chief Justice Panganiban made his second request for re-computation, and it was not until four years after retirement that he brought the present request.

Justice Estela M. Perlas-Bernabe explains that former Chief Justice Panganiban acceded to the Court's exclusion of his consultancy service and simply accepted his five-year lump sum benefit immediately after retirement because he was not then eligible for lifetime annuity under the original provisions of R.A. No. 910.

This position, however, rests on pure speculation and is not in fact accurate. It is not supported by the evidence on record and it should not be for this Court to speculate about former Chief Justice Panganiban's state of mind or his reasons for not immediately pursuing his request in 2006 and 2008. **His inaction is an established factual matter which commands greater weight than any speculation as to his motive or intention.**

Aside from being speculative, the explanation is inaccurate, since former Chief Justice Panganiban gave up any claim for a higher longevity pay when he did not pursue the requests[16] and immediately accepted the Court's computation. Longevity pay is a 5% increment additionally given for every five years of service rendered in the Judiciary.[17] He would have been entitled to this pay had he established his claim either in 2006 or 2008.

---

[15] *Id.* at 14.

[16] See: Tentative Computation of Chief Justice Artemio V. Panganiban's Retirement gratuity and Terminal Benefits, *id.* at 5.

[17] Batas Pambansa Blg. 129 or the Judiciary Reorganization Act of 1980.

d. **Court Action on the Present Request.** On December 14, 2010, the Court issued a Resolution in this case.[18] The Court — after noting former Chief Justice Panganiban's reference to the re-computation of the retirement benefits of former Chief Justice Narvasa — held:

> It bears noting, however, that CJ Narvasa's appointment to the Agrava Board was sanctioned by Presidential Decree No. 1886 issued by President Marcos.
>
> **To determine the true nature of the services rendered by CJ Panganiban, the Court deems it prudent to require the submission of additional documentary evidence, *e.g.*, payroll slip or appointment paper indicating that he was, or appeared as consultant for BNE or to Secretary Roces in the latter's official capacity.** This is not without precedent. In A.M. No. 10654-Ret. (*In Re: Judge Antonio S. Alano*), the Court required retired Judge Alano to submit additional proof that he served in *Sangguniang Bayan* of Isabela, Basilan for purposes of determining his entitlement to monthly pension under RA 910 as amended.
>
> WHEREFORE, the Court resolves to DIRECT Chief Justice Artemio V. Panganiban (Ret.) to submit additional documentary evidence as regards his appointment as consultant for the Board of National Education and/or as counsel for then Secretary of Education Alejandro R. Roces within fifteen (15) days from notice.[19] (emphasis ours; italics supplied)

Thus, while there was no express denial of the request of former Chief Justice Panganiban, the Court — *by the tenor of its Resolution* — actually denied the request due to lack of valid proof of government service as consultant for the Board of National Education (BNE) and/or as counsel for then Secretary of Education Alejandro R. Roces. The implied denial can be plainly discerned from the Resolution itself when it mentioned at the outset that former Chief Justice Narvasa was authorized by law to render service as special counsel; *had there been a similar legal authority for former Chief Justice Panganiban,*

---

[18] *Rollo*, pp. 18-20.

[19] *Id.* at 19-20.

the Court would have approved his request and would not have asked for "additional documentary evidence." In blunter terms, the Court did not consider the affidavit of actual service by Secretary Roces as sufficient proof of government service.

e. **Refutation on the *Ponencia's* Position on the Denials**. Incidentally, I do not see any merit in Justice Perlas-Bernabe's view that this is the first time that the present request has ever been raised before the Court.

The Court, as a matter of practice, considers each and every request made, particularly on the matter of retirement, although it may not be seen to be acting directly, as in this case where it acted through Atty. Candelaria. As a matter of law and practice, applications for compulsory retirement are acted upon by the OAS and by the Fiscal Management and Budget Office (*FMBO*) of this Court.[20] The organizational structure of the Supreme Court delegates the processing of retirement claims by members of the Judiciary to the OAS[21] and to the FMBO.[22] The OAS

---

[20] Under Revised Administrative Circular No. 81-2010 (Guidelines on the Implementation of R.A. No. 9946); see also R.A. No. 910 and Section 3 of R.A. No. 8291 (The Government Insurance Act of 1997).

[21] "[I]ts functions consist of the following: Personnel Management; Human Resource Training and Development; Property Management; Records Management; Management of Leave Matters; Management of Employees' Welfare and Benefits; Discipline of Personnel; Maintenance and improvement of buildings and premises as well as general services of the Court Security services to justices and personnel within the Supreme Court premises." http://sc.judiciary.gov.ph/contacts/SC-OAS.htm as of February 8, 2013.

[22] The FMBO is tasked with all financial transactions of the Supreme Court including that of the OCA, all the Halls of Justice, the PhilJA, and the Presidential Electoral Tribunal. It prepares and processes vouchers to cover payment of salaries, allowances, office supplies, equipment, and other sundry expenses, utilities, janitorial and security services and maintenance and other operating expenses and issues the corresponding checks thereof. It prepares and submits to the DBM and Congress the proposed budget of the Judiciary including pertinent schedules for each year. Salary and policy loans with the GSIS and Pag-ibig are coursed through this Office. It prepares and submits consolidated financial statements and reports to COA, DBM, Treasury and Congress. It also takes charge of all financial transactions of the SC Health and Welfare Plan which include

screens the applications to ascertain compliance with the documentary requirements; once approved, the OAS endorses the application to the FMBO. The FMBO makes a computation of the retirement benefits due the applicant and releases a check of the computed retirement benefits to the claimant.

Atty. Candelaria is an agent of the Court and, in its stead, she possesses the delegated authority to act on the application for retirement of former Chief Justice Panganiban. Unless revoked, her actions in any application for compulsory retirement are considered as the Court's action.[23] For the Court to disavow Atty. Candelaria's action at this stage is to disregard the law and established practice governing the processing of applications for compulsory retirement.

f. **Compliance with the Court's Directive.** Former Chief Justice Panganiban complied with the Court's directive through two Sworn Certifications (both dated January 19, 2011) executed by Secretary Roces and by retired Justice Bernardo P. Pardo. These Sworn Certifications referred to **the same consultancy service that the Court did not favorably consider**, and attested to the following:

(1) Former Chief Justice Panganiban rendered **actual services** as consultant of the BNE and as legal counsel to Secretary Roces in his official capacity as Secretary of Education from January 1962 to December 1965;

(2) He was officially appointed by Secretary Roces and was officially paid by the government a **monthly compensation** for services rendered to the DepEd;

(3) He worked with the Office of the Solicitor General (*OSG*) on legal matters affecting the BNE and the DepEd,

---

collections, deposits, disbursements as well as preparation of financial reports and bank reconciliations. <http://sc.judiciary.gov.ph/contacts/FMBO.htm> visited on February 11, 2013.

[23] Application for Compulsory Retirement of retired Chief Justice Panganiban, letter of Atty. Eden T. Candelaria, dated November 14, 2006; *rollo*, pp. 7-8.

and collaborated on these matters with Justice Pardo (who was then the Solicitor General); and

(4) He handled matters assigned by the BNE and by the DepEd, such as "the development of educational policies, the selection and distribution of textbooks and other educational materials, the setting of school calendars, the procurement of equipment and supplies, management of state schools, *etc*."[24]

Former Chief Justice Panganiban explained that the **lapse of almost 50 years** precludes him from presenting other documentary proofs like time records of actual attendance or receipts of vouchers showing compensation for his services.[25]

Significantly, he did not endeavor to make any other submissions, such as his **payroll slips** or **appointment papers** (as specifically requested), certified copies of these documents from official sources (such as those from the National Archives), or other pieces of evidence, such as tax declarations or certifications as to earnings or tax withheld, showing that he had indeed been in the government's regular payroll at the time he claimed, or that he was not then in the practice of law.

Thus, **his case depended solely on the bare and unqualified statements of Justice Pardo and Secretary Roces** (who passed away on May 23, 2011). These two affiants both attested to the **same period** and the **same consultancy service**.

THE DISSENT

A bare reading of the submissions, considered in light of the undisputed facts on record, leads me to conclude that **former Chief Justice Panganiban's request is not meritorious.**

R.A. No. 910, as amended, requires 15 years of government service

---

[24] Sworn Certification dated January 19, 2011 of Secretary Roces; *id.* at 32.

[25] *Id.* at 27-30.

R.A. No. 910, as amended by R.A. No. 9946, only reduced the minimum requirement of government and/or judicial service for eligibility to lifetime pension from twenty (20) years to fifteen (15) years. The amendment only widened the extension of benefits to retirees by covering even the retirees who had rendered at least 15 years of government and/or judicial service, but retired prior to R.A. No. 9946; **it did not change the legal nature of the service that falls under the term "*government service,*" nor did it change the legal meaning and characterization of "*consultancy.*"**

Thus, to comply with the legal requirement, former Chief Justice Panganiban had to show that the consultancy service he rendered, prior to his judicial years, could *all along* be classified as government service.

Former Chief Justice Panganiban's work with the BNE and with Secretary Roces is not government service

(a) ***The concept of government service***

The core issue this case presents is ***whether the consultancy former Chief Justice Panganiban undertook for the BNE and for Secretary Roces can be classified and credited as government service.*** The resolution of this issue must be based on the law, the applicable rules and jurisprudence, and, most importantly, on the peculiar facts of the case *as supported by the submitted evidence.*

Former Chief Justice Panganiban, as the requesting party, carries the burden of proving that his claim is meritorious. To my mind, he failed in this endeavor. The *ponencia*, in fact, is not based on facts supportive of former Chief Justice Panganiban's claim as it is grounded on speculations and inferences, and it has not properly appreciated the documentary evidence submitted by former Chief Justice Panganiban. Alternatively (*i.e.*, failing to establish strict legal merits), the *ponencia* falls back on an appeal to liberality, but in so doing, it cited and applied Court rulings in cases with completely different factual and legal circumstances. A liberal approach cannot also be made if the

supporting pieces of evidence, *such as the Sworn Certifications submitted and records within the Court's control*, do not warrant the application of a liberal approach.

What constitutes government service may be plainly derived from the provisions of Act No. 2657 or the *Administrative Code*, as amended. The old Administrative Code, as amended, defines the terms "employee" or "officer" in this wise:

> "Employee," when generally used in reference to **persons in the public service,** includes **any person in the service of the Government** or any branch thereof of whatever grade or class.
>
> "Officer," as distinguished from "clerk" or "employee," refers to those ***officials*** **whose duties**, not being of a clerical or manual nature, may be considered to **involve the exercise of discretion in the performance of the functions of government**, whether such duties are precisely defined by law or not.
>
> "Officer," when used with reference to a person **having authority to do a particular act or perform a particular function in the exercise of governmental power**, shall include **any Government *employee, agent, or body* having authority to do the act or exercise the function in question**.[26] (emphases and italics ours)

These provisions were substantially reproduced in the Administrative Code of 1987.[27]

Similarly relevant, too, is the governing law on service with the government at the time of former Chief Justice Panganiban's

---

[26] See Act No. 2711 or the Act Amending the Administrative Code.

[27] Section 2(14) and (15), which defined the terms "Officer" and "Employee," thus:

(14) ***"Officer"*** as distinguished from ***"clerk"*** or ***"employee"***, refers to a person whose duties, not being of a clerical or manual nature, involves the exercise of discretion in the performance of the functions of the government. When used with reference to a person having authority to do a particular act or perform a particular function in the exercise of governmental power, ***"officer"*** includes any government employee, agent or body having authority to do the act or exercise that function.

(15) ***"Employee,"*** when used with reference to a person in the public service, includes any person in the service of the government or any of its agencies, divisions, subdivisions or instrumentalities.

claimed consultancy — the **Civil Service Act of 1959 (R.A. No. 2260)** which was approved on June 19, 1959. Section 1 of this law classifies positions in the civil service into: (a) competitive service, (b) non-competitive service, and (c) exempt service; Section 3 provides that the "exempt" service is not within the scope of the law; and Section 6 defines exempt service to include (aside from elective officers and the members of the military) "persons *employed* on a contract basis[,]" as well as temporary, emergency or casual laborers.

A noteworthy feature of this law, for purposes particularly of the present dispute, is that it refers only to those who are covered by an employer-employee relationship with the government. Thus, even those whose relationship with the government is on a "contract basis" (and, thus, are within the exempt service not covered by the Civil Service Act) must be "employed" and must gain entry to government service through the electoral or the appointive process. The Revised Civil Service Rules accompanying the Act, in its Rule VI, requires that **appointments** be made in the **prescribed from, duly signed by the appointing officer, and submitted to the Civil Service Commission (*CSC*),** even if only for proper notation and record with respect to those in the non-competitive or unclassified service.

In sum, those who may render service with the government, without occupying any public office or without having been elected or appointed a public officer evidenced by a written appointment recorded in the CSC, do so outside of the concept of government service. The *ponencia* interestingly broadens this concept of "government service." It literally interprets the term to include any service performed for the government; it thus claims that the "law x x x did not require a specific job description or job specification" and "the absence of a specific position in a governmental structure is not a hindrance."[28]

This broad construction, if adopted, would cover services performed by a person for the government *in any capacity*¸ whether as a public officer or employee. For purposes of the

[28] *Ponencia*, p. 4.

retirement law, this broad construction would dilute the policy behind public retirement laws, *i.e.*, to reward government employees because they gave the best years of their lives to the service of their country.[29]

For clarity, rendering "government service" within the meaning of the law requires that (1) the person occupies, by appointment or by election, a public office that was created by law, not simply by contract; and (2) the office requires him to render service in the performance of a governmental function. This signification should particularly apply in construing retirement laws in order not to defeat the intent and purpose of the recognition of retirement and the grant of retirement benefits. Rep. Act No. 910 (as amended), in particular, is founded on this intent and purpose. It provides for retirement based either on **age or disability**, or on **years of service**. The intent to reward past service is made patent by the requirement for years of service, both in government and the Judiciary. This is the intent that the Supreme Court itself should be very careful about because it is an intent that applies to the Court itself.

(b) ***No "public office" element exists***

"Public office" is the right, authority and duty, **created and conferred by law**, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by the individual for the benefit of

---

[29] "Retirement benefits given to government employees in effect reward them for giving the best years of their lives to the service of their country. This is especially true with those in government service occupying positions of leadership or positions requiring management skills because the years they devote to government service could be spent more profitably in lucrative appointments in the private sector. In exchange for their selfless dedication to government service, they enjoy security of tenure and are ensured of a reasonable amount to support after they leave the government service. The basis for the provision of retirement benefits is, therefore, service to the government." De Leon, *The Law on Public Officers and Election Law*, pp. 214-215 (2003 edition), citing *GSIS v. CSC,* G.R. Nos. 98395 and 102449, June 19, 1995, 245 SCRA 179, 188.

the public.[30] When the term is used with reference to a person having to do a particular act or to perform a particular function in the exercise of governmental power, it includes any government employee, agent or body to do the act or exercise that function.[31]

Either as Chief Justice or even in his earlier role as Associate Justice of the Supreme Court, former Chief Justice Panganiban was indisputably a public officer, occupying a public office, and undertaking sovereign functions of the government. No less than the Constitution speaks of the positions of Chief Justice and of Associate Justices of the Supreme Court and the judicial power vested in that Court which the Justices exercise.[32] The function of this Court in the constitutional scheme is to adjudicate disputes, to supervise the courts, and to regulate law practice.[33] For the positions he held in this Court, former Chief Justice Panganiban was granted the retirement benefits that R.A. No. 910 grants and defines for the members of the Judiciary.

In stark contrast with the post for which he had been granted retirement benefits, the role of a "consultant" (that the Sworn Certifications cite as evidence of his claimed government service), former Chief Justice Panganiban points to **no specific position in the government** under which he served as consultant. He likewise **failed to cite any law** pursuant to which he was appointed as consultant. He **did not produce any appointment paper** or any copy of an **oath of office** that he took when he allegedly assumed the offices that the Sworn Certifications pointed to.

To be sure, these Sworn Certifications did in fact attest to the "actual service" rendered for the BNE and to Secretary Roces, but their reference to public offices went only that far, as discussed at length below. They only pointed to alleged tasks that former Chief Justice Panganiban undertook, but without more, these tasks — however significant or important they might have been

---

[30] *Fernandez v. Sto. Tomas*, 312 Phil. 235, 247 (1995).

[31] Administrative Code of 1987, Section 2.

[32] CONSTITUTION, Article VIII, Sections 1 and 4.

[33] CONSTITUTION, Article VIII, Sections 1, 5(5), and 6.

— cannot amount to the performance of public functions as understood under the law. This is the **legal reality that the rule of law has to recognize in former Chief Justice Panganiban's present claim: outside of his judicial posts, he never occupied a public office that can be recognized as basis for the additional retirement benefits that he now seeks.**

(c) ***Service within the governmental structure***

The requirement of a public office in considering "government service" also signifies service within the governmental structure and the exclusion of service outside of this structure, although beneficial work for the government might have been rendered in this role and capacity. This exclusion specifically refers to **consultancy** rendered pursuant to a contract of service, involving work and delivery to the government of results produced in the consultant's own time and for his own account in the exercise of his profession. This exclusion also encompasses **services outsourced by the government** to private individuals for their special qualifications and expertise; these services do not constitute government service and do not characterize the private individuals as public officers. These aspects of the case are dwelt with at length at the proper places below. It is sufficient for now to simply state that **the mere claim of having rendered services (and even proof of actual rendition of service) will be for naught unless made within an employment relationship existing under the structure established by law within the government.**

(d) ***The Status of consultancy services***

As a contract of service, consultancy has been excluded as "government service" for retirement purposes because it does not satisfy the basic requirement that there be a public office as understood under the law. **In a consultancy, no tie links the consultant to a public office that has been previously created by law; the elements of public office, and the fact of appointment and of the required oath are likewise missing.**

The CSC has fleshed out the requirements by pointedly excluding "consultancy services" for lack of the required

employer-employee relationship. CSC Memorandum Circular No. 38, series of 1993, *expressly* provides that **consultancy services "where no employer-employee relationship exists" are not considered government service**.

The CSC, in the first place, has long clarified and defined what "consultancy" means. Its definition of the term "consultant" in Resolution No. 95-6939 (*Pagaduan v. Malonzo*) dated November 2, 1995 is an example of its consistent and established ruling. It held a "consultant" to be —

> one who provides professional advice on matters within the field of his special knowledge or training. There is no employer-employee relationship in the engagement of a consultant but that of client-professional relationship. Thus, consultancy services and a consultant is not a government employee. Consequently, a contract of consultancy is not submitted to the Commission for approval.[34]

Interestingly, this definition is practically the same as that given in Webster's Third New International Dictionary which gives the commonly understood definition of a "consultant" as "one who gives professional advice or services regarding matters in the field of his official knowledge or training."

R.A. No. 9184 (*Government Procurement Reform Act*) further reinforces this understanding by defining the term *consulting services* as "services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate **external technical and professional [expertise] that are beyond the capability and/or capacity of the government to undertake** such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other **technical services or special studies**."[35]

Thus, a **"legal consultant"** is one who has "adequate external" professional expertise in the law that no one in the agency could

---

[34] Cited in CSC Resolution No. 99094 (*Remedios L. Petilla*) dated May 5, 1999.

[35] Section 5(f), R.A. No. 9184.

provide or render, and whose services therefore must be procured. A **procured service** is not government service, as it is service hired after the conduct of the procurement process; it is not part of the internal and regular services of the procuring governmental entity.

Under Memorandum Circular No. 17, series of 2002, a consultancy contract or job order **need not be recorded by the CSC** because the "services to be rendered thereunder are not considered as government service."

(e) ***No proof of employment relationship likewise existed***

To determine the existence of an employer-employee relationship, the Court has consistently adhered to the **four-fold test** and has asked: "(1) whether the alleged employer has the power of selection and engagement of an employee; (2) whether he has control of the employee with respect to the means and methods by which work is to be accomplished; (3) whether he has the power to dismiss; and (4) whether the employee was paid wages. Of the four, the **control test is the most important element**,"[36] and its absence renders any further discussion a surplusage.

Recent jurisprudence adds another test, applied in conjunction with the control test, in determining the existence of employment relations.[37] The two-tiered test involves an inquiry into: "(1) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished [***control test***]; and (2) the underlying economic realities of the activity or relationship [***broader economic reality test***]."[38]

Employment relationship under the ***control test*** is determined by asking whether "the person for whom the services are

---

[36] *Lopez v. Metropolitan Waterworks and Sewerage System*, 501 Phil. 115, 129-130 (2005), citing *Tan v. Lagrama*, 436 Phil. 191, 201 (2002); emphasis ours.

[37] *Francisco v. National Labor Relations Commission*, G.R. No. 170087, August 31, 2006, 500 SCRA 690, 697-698.

[38] *Id.* at 697-698.

performed reserves [a] the right to control not only the end [to be] achieved but also the manner and means [to be used in reaching such] end."[39] The ***broader economic reality test*** calls for the determination of the nature of the relationship based on the circumstances of the whole economic activity, namely: "(1) the extent to which the services performed are an integral part of the employer's business; (2) the extent of the worker's investment in equipment and facilities; (3) the nature and degree of control exercised by the employer; (4) the worker's opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker on the employer for his continued employment in that line of business. The proper standard of economic dependence is **whether the worker is dependent on the alleged employer for his continued employment in that line of business**."[40]

The two-tiered test gives a complete picture of the relationship between the parties.[41] Aside from the employer's power to control the employee, an inquiry into the economic realities of the relationship helps provide a comprehensive analysis of the true classification of the individual, whether as employee, independent contractor, corporate officer or some other capacity.[42]

An examination of former Chief Justice Panganiban's submitted evidence — consisting of two Sworn Certifications (both dated January 19, 2011) executed by Secretary Roces (now deceased) and Justice Pardo — does not show the employment relationship that "government service" requires as a basic element.

The Sworn Certifications ***do not expressly claim*** that former Chief Justice Panganiban **was in an employment relationship**

---

[39] *Id.* at 698.

[40] *Id.* at 698-699.

[41] *Id.* at 698.

[42] *Id.* at 697.

with the BNE and with the DepEd. What they expressly state is that former Chief Justice Panganiban ***rendered "actual services,"*** as a consultant, to the BNE and as legal counsel to Secretary Roces in his official capacity as Secretary of Education; that he *worked with the OSG* (where Justice Pardo was the Solicitor General) *on legal matters* with respect to the BNE and the DepEd; that he *handled assignments from the BNE and the DepEd on various matters*; and that he was officially *paid by the government a monthly compensation*.

The statement alone that former **Chief Justice Panganiban was a "consultant"** already raises **alarm bells** for questions that the Sworn Certifications do not (and apparently cannot) answer. Aside from questions arising from the Civil Service rules and rulings, the Court can judicially notice that the position of "consultant" is not included in the organizational chart of government agencies as the services a consultant renders are usually demanded by exigencies of the service or by the lack of qualified persons to perform the required tasks in the organization.

It is perhaps for this reason that the Sworn Certifications simply named former Chief Justice Panganiban as a "consultant" without referring to or attaching an organizational chart indicating the position a consultant occupies at the BNE or the DepEd. The omission, however, should be **significant as it can be read as an implied admission of how former Chief Justice Panganiban actually stood at the BNE or the DepEd — a consultant who did not occupy any fixed position that would entitle him to recognition as a public officer**.

Another striking feature of the Sworn Certifications – arising from their characterization of former Chief Justice Panganiban as a consultant — is that the assignment to and the handling by former Chief Justice Panganiban of legal matters are logically consistent with a consultancy engagement that the Sworn Certifications stated. How and in what manner former Chief Justice Panganiban performed the assigned consultancy are matters not established in the records; in fact, **no inference of "control" — both with respect to the means and to the end to be achieved — can be read from the submitted Sworn**

Certifications. Their allegations are also insufficient to support the inference that the consultancy service "was not merely advisory" or that the work performed was "not usual for a consultancy," as Justice Perlas-Bernabe observed in an earlier version of her *ponencia*.[43]

Even granting that former Chief Justice Panganiban was paid a monthly compensation, **the Sworn Certifications attest only to the matter of payment**. The fact of payment *per se*, however, is meaningless in an employer-employee relationship issue where the evidence expressly states that actual services were rendered as "consultant." In fact, if indeed payment had been paid for consultancy work, then what had been paid should have been consultancy fees made on a monthly basis, in a manner similar to retainer fees. That indeed the payments were made in the concept of retainer fees is an easy inference to make if we consider that, at that time (January 1962 to December 1965), former Chief Justice Panganiban was in active law practice, initially as an Associate in the Salonga Law Office and later as the Senior Partner of PABLAW.

In other words, former Chief Justice Panganiban did not receive **wages** in the way that one in an employment relationship would receive his pay. Indeed, **it is hard to contemplate that former Chief Justice Panganiban, at that time the Senior Partner in a major law firm, would be engaged as an employee in the government, doing what the Sworn Certifications state he was doing.**

Neither do the submitted Sworn Certifications satisfy the **broader economic reality test** to establish that an employer-employee relationship existed.

<u>**First**</u>, while the consultancy services performed by former Chief Justice Panganiban may be important, the records do not show that they were vital to the operations of the BNE and of the DepEd. **Notably, the *plantilla* of both the BNE and the**

---

[43] Page 8 of the Reply to the Dissenting Opinion of Justice Arturo D. Brion.

DepEd under E.O. No. 94, series of 1947, did not include any item for legal counsel or consultant. Under existing laws at that time (Act No. 2657 and Act No. 2711[44] or the Revised Administrative Code), legal services were then rendered by the Attorney-General.[45] Thus, without any further explanation from former Chief Justice Panganiban, no support exists for the claim that the BNE and the DepEd could not properly function without his consultancy services.

Even if we consider the legal services rendered by former Chief Justice Panganiban as performance of a governmental function, the capacity in which the services were rendered precludes them from being characterized as creditable government service for purposes of retirement. **Without a public position** to which he had been appointed, the services rendered by former Chief Justice Panganiban by way of consultancy would only amount to services specific to the BNE or for the Secretary, for their sole benefits, and — at most — paid from a budget for outside consultants that the budget of these government offices might have allowed.

---

[44] Section 83 of Act No. 2711 states:

SECTION 83. Bureaus and offices under the Department of Justice. — x x x.

The Secretary of Justice shall be the attorney-general and legal adviser of the Government and *ex officio* legal adviser of all government-owned and controlled business enterprises. As such, he may assign to the law officers of the said business enterprises such other duties as he may see fit, in addition to their regular duties. When thereunto requested in writing, the Secretary of Justice shall give advice, in the form of written opinions, to any of the following functionaries, upon any question of law relative to the powers and duties of themselves or subordinates, or relative to the interpretation of any law or laws affecting their offices or functions, to wit: the (Governor-General) President of the Philippines, (the President of the Philippine Senate), the Speaker of the (House of Representatives) National Assembly, the respective Heads of the Executive Departments, the chiefs of the organized bureaus and offices, the trustee of any government institution, and any provincial fiscal.

[45] Presently, each department of the Executive Branch shall have its own Legal Services, Section 17, Chapter 3, Book IV, The Administrative Code of 1987.

Under these circumstances and without any position in the BNE or the DepEd structural hierarchy, former Chief Justice Panganiban simply remained a **private lawyer on call for specific questions** or requirements of the BNE and of Secretary Roces. That he might have been required at that time to do textbook distribution and other menial tasks is beside the point. This statement in the Sworn Certifications only stressed the need to produce an official description of the "position" of "legal consultant" that the CSC prescribed even at that time.

Incidentally, part of the necessary consequence that characterization of being a "public officer" or "employee" undertaking government service would have been the requirement to take an **oath of office** pursuant to the Constitution.[46] Former Chief Justice Panganiban would have likewise been required to file a statement of assets, liabilities and net worth.[47] No such proof was ever shown, not even after he had been prompted by the Court *en banc* to make additional submissions.

Second, former Chief Justice Panganiban remained in active private law practice at the same time that he rendered consultancy services for the BNE and to Secretary Roces. This was the statement he made in his Bio Data and Personal Data Sheet filed with the Court long before the present controversy. The uncontroverted fact that former Chief Justice Panganiban was engaged in private law practice for the same period that he rendered service for the BNE and to Secretary Roces outrightly rejects any inference that an employment relationship existed between him and the government. The *ponencia* itself recognizes that **legal counseling work, even if rendered to a government agency, is *part of legal practice*.**[48] The incompatibility of simultaneously holding public and private employment should lead to no other conclusion than that there was only a consultancy arrangement which was part of former Chief Justice Panganiban's legal practice.

---

[46] 1935 CONSTITUTION, General Provisions, Article XIV.

[47] R.A. No. 3019 (enacted on August 17, 1960).

[48] *Ponencia*, p. 8.

In this regard, the *ponencia* cites the case of former Chief Justice Narvasa because it saw him to be in active law practice while he was the general counsel of the Agrava Board. This is an erroneous view as the Philippine Center for Investigative Journalism article[49] it cited in fact stated that former Chief Justice Narvasa took a leave of absence from his law practice during his term with the Agrava Board from October 29, 1983 to October 24, 1984.

The Court also credited former Chief Justice Narvasa for his five-year (1974-1979) involvement as Member of the Court Studies Committee, while he was at the same time engaged in private law practice. The Court, in so acting, apparently gave special consideration and recognition to former Chief Justice Narvasa's participation in the Court Studies Committee created under the specific mandate of Administrative Order No. 164 issued by then Chief Justice Querube C. Makalintal on September 2, 1974.[50]

Significantly, no proof has ever been presented of any similar activity undertaken by former Chief Justice Panganiban. For that matter, no specific function that former Chief Justice Panganiban discharged as consultant of the BNE and as counsel to Secretary Roces was ever made.

Third, former Chief Justice Panganiban continued with his private law practice even after the termination of his consultancy services. This continuity indicates that he has been in private

---

[49] *Ibid.*, referring to The Dean's December, Philippine Center for Investigative Journalism, <pcij.org/lmag/PublicEye/dean.html> last visited on February 12, 2013.

[50] "Accordingly, the Committee was mandated under Administrative Order No. 164, which was issued by then Chief Justice Makalintal on September 2, 1974, to: "(1) to study and analyze the administrative aspects of the operation of the Courts of First Instance and City and Municipal Courts in the Greater Manila Areas and in other areas x x x; and (2) to identify the problems in said courts and suggest practical solutions with a view to improving the administration of justice." (*Re: Request of Chief Justice Andres R. Narvasa [Ret.] for Recomputation of His Creditable Government Service, supra* note 3.)

law practice all the time and simply rendered consultancy services on the side. In other words, his consultancy service was separate from and was not dependent on any employment relationship with the government.

Fourth, there was no degree of permanency in the consultancy work former Chief Justice Panganiban rendered as it expired after four years. On the other hand, his private law practice, as his Bio Data and Personal Data Sheet indicate, went way beyond, all the way to 1995 when he was appointed to the High Court. In other words, former Chief Justice Panganiban's relationship with the BNE and with Secretary Roces and his department was a tenuous one and did not have the character of permanency or stability that an employment relationship usually carries.

Fifth, former Chief Justice Panganiban's consultancy was based largely on his own invested capital and labor. As the Sworn Certifications state *and imply,* the BNE and Secretary Roces relied on him, as a consultant, for the advice he gave on specific legal and policy matters, not for the hours he was available at the BNE or the DepEd to handle specific tasks. Where and when he held office, the Sworn Certifications do not specify, although his Bio Data and Personal Data Sheet would suggest that he had an office of his own as Senior Partner of PABLAW.

In these lights, the Sworn Certifications do not clearly indicate that an employer-employee relationship, requiring the elements of control and dependency, existed between former Chief Justice Panganiban, on the one hand, and the BNE and Secretary Roces, on the other hand. On the contrary, **these sworn statements – read jointly with former Chief Justice Panganiban's Bio Data and Personal Data Sheet — point to the existence of a consultancy extended to former Chief Justice Panganiban as a lawyer on active private law practice.**

(f) *Former Chief Justice Narvasa's and Justice Sarmiento's cases*

In addition to the lack of employment relations, the Court has previously ruled that the compensation received for "creditable

government service" must be paid for the **performance of public duties**.[51]

The cases of former Chief Justice Narvasa and Justice Sarmiento fully fell within the descriptions that characterized their work as "government service." On the other hand, Chief Justice Panganiban's case never did.

The services rendered by Chief Justice Narvasa and by Justice Sarmiento (as general counsel of the Agrava Board for Chief Justice Narvasa; and as special legal counsel and member, and thereafter chairperson, of the Board of Regents of the University of the Philippines for Justice Sarmiento) were undoubtedly ***work in the performance of public functions in positions that are part of the governmental structure***; they occupied and discharged functions of a public office As pointed out by Atty. Candelaria in her comment to the second letter-request:

> On the other hand, CJ Narvasa was appointed by then President Ferdinand E. Marcos as Special Legal Counsel to the Agrava Fact-Finding Board [created pursuant to Presidential Decree No. 1886], which had in its organizational set up a position of Special Counsel. Hence, the service of CJ Narvasa in the said Board is considered government service.[52]

The government service characterization of the services rendered by Justice Sarmiento — as special legal counsel, as a member of the Board of Regents and, later on, as chairperson of the Board of Regents of the University of the Philippines[53] — cannot likewise be disputed. These are positions falling under the organizational structure of the University of the Philippines,

---

[51] *GSIS v. Civil Service Commission*, 315 Phil. 159, 165 (1995). See Section 9 of Presidential Decree No. 1886.

[52] *Rollo*, p. 14.

[53] Section 2(12) of the Administrative Code of 1987 provides:

(12) Chartered institution refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges and the monetary authority of the State.

the country's primary state university. Justice Sarmiento rendered services in positions under this state university structure so that these services constituted public service.

Unlike the Justices he cited in comparison, former Chief Justice Panganiban's work did not involve the performance of duties pursuant to a public office, *i.e.,* ***for work in a specific position under the governmental structure in the performance of public functions***. As I adverted to above, that he did consultancy work is what the affiants — Justice Pardo and Secretary Roces — attested to. Under what specific positions, under what specific role or capacity, and under what terms and structures are, *at best*, unclear as neither affiants gave definitive answers. As already mentioned in passing and as more fully discussed elsewhere, former Chief Justice Panganiban — by his own claim on file with the Court — **was at that time operating *in the private sector* and was then *in active law practice*.** These undisputed facts cannot but significantly affect the characterization of the work former Chief Justice Panganiban rendered.

Other than the fact that former Chief Justice Panganiban actually rendered work for the BNE and for Secretary Roces, the Sworn Certifications of Secretary Roces and Justice Pardo merely enumerated the work he did, *i.e.,* services as consultant for the BNE and as legal counsel to Secretary Roces; collaboration with the OSG on BNE and DepEd matters; and the development and implementation of education policies, *etc.* — which were largely within the field of his special knowledge and training as a lawyer, his specific calling and activity under his Bio Data on record with this Court. **This Bio Data shows that at the relevant time (1963-1995), he was engaged in the private practice of law as the Senior Partner of a major law firm that carried his name – PABLAW**.

Of course, the submitted Sworn Certifications also stated that former Chief Justice Panganiban undertook assigned matters, such as "the selection and distribution of textbooks and other educational materials, the setting of school calendars, the procurement of equipment and supplies, management of state schools, *etc.*" These allegedly assigned tasks, however, and as

previously discussed, are beside the point. The statement in the Sworn Certifications only stressed the need to produce an official description of the "position" of "legal consultant" that the CSC prescribed even at that time. The listing is no more than an enumeration of the tasks of the DepEd and of the BNE and, as I already *implied* above, are hardly believable to be tasks handled by the Senior Partner of a major law firm like the PABLAW.

A significant aspect of the Sworn Certifications relates not to what they expressly state, but to **what they do not say** — specifically, they do not materially describe the true nature of the work former Chief Justice Panganiban rendered in terms of the specific role and capacity he assumed. The Sworn Certifications do not categorically state whether the work he rendered was as service under a specific position under the governmental structure in the performance of the listed functions, or merely as a consultant rendering legal advice to the government in the exercise of his legal profession. To be exact, these Sworn Certifications merely elaborated on the specific functions performed by former Chief Justice Panganiban as indicated in the Sworn Certification of Secretary Roces, **which the Court had considered when it denied the first request of former Chief Justice Panganiban.**

Under these circumstances, **not even a stretched reading of the Sworn Certifications** and the proffered **excuse for the absence of records** can lead to the conclusion that former Chief Justice Panganiban had rendered "creditable government service" that the Court should now recognize. The kind of reading of the facts that former Chief Justice Panganiban urges the Court to do is simply **beyond the stretching point of believability** and **cannot and should not be made by this Court**.

The Court, in fact, should simply gloss over former Chief Justice Panganiban's ready excuse of lapse of time as this is not truly a believable reason. It is unbelievable that records dating back only from the 1960s would no longer be available from the DepEd or the National Archives from where certified photocopies can be secured. To cite a case in point, **Justice Florenz Regalado** started government service in the military

on November 15, 1943. As in the case of former Chief Justice Panganiban, he was only paid a five-year lump sum upon retirement because his previous military and civil services were not supported by documents. He likewise applied for a re-computation and was granted an increased entitlement by the Court after he secured certified copies of documents dating back to the war years.

(g) ***Chief Justice Panganiban's characterization of his consultancy work as private practice of law***

What the Sworn Certifications lack in terms of details when they described former Chief Justice Panganiban's service as "consultancy," is filled in by his Bio Data and Personal Data Sheet on file with the Court and which we take **judicial notice** of as indisputable information within our reach and immediate access.

In these data sheets, ***filed with the Court before any controversy arose***, the presence of consultancy rather than government service is very clearly indicated. **This Bio Data notably mentions his consultancy with Secretary Roces from 1963 to 1965, under the heading "As a Practicing Lawyer." It also clearly states that, at that time, he was in the practice of law as the Senior Partner in PABLAW, from 1963 to 1995.**[54]

These undisputed facts, made by Chief Justice Panganiban **when he entered judicial service**, cannot but overwhelm the facts he adduced when he made claims for retirement benefits **as he was leaving this same service while asking for increased retirement benefits**.

In the absence of substantial proof creating a reasonable inference that the work rendered by Chief Justice Panganiban fell within the term "government service," there is no reason, legal or factual, to grant former Chief Justice Panganiban's

---

[54] The Bio Data states that he was an Associate, *Salonga Ordoñez and Associates Law Office* (1961-1963), and Senior Partner at PABLAW from 1963-1995. He was a Legal Consultant to the Secretary of Education from 1963-1965, which is only for a term of three years, not four years as claimed.

request. In any event, former Chief Justice Panganiban's consultancy service, even if somehow considered service with the government (contrary to his own declaration of record with the Court), is still work excluded by law from the term "creditable government service."

The Court's exercise of liberality is governed by jurisprudential standards

(a) ***The exercise of liberality and its limits***

The discretionary power of the Court to exercise a liberal approach in the application of retirement laws is not unlimited. The discretionary power is **wielded only under circumstances where the retiree has adduced** ***proof of entitlement that can be justified in a generous and expansive interpretation***. The bottom line is that proof must be adduced; liberality must be exercised in the process of appreciating the proof adduced and in the interpretation of the law. **The Court's exercise of liberality is on a case-to-case basis premised on the circumstances of each case**.

The conclusions in the cases when the Court exercised liberality in retirement issues were arrived at only **after a consideration of the factual circumstances peculiar to each case**. The Court's rulings in *Plana,*[55] *Britanico*[56] and *Escolin*[57] were made in light of the presence of circumstances that were unique and personal to Justices Efren I. Plana, Ramon B. Britanico, and Venicio T. Escolin. These Justices found themselves involuntarily separated from their judicial offices under the political circumstances of their time. The Court additionally appreciated their cases individually in light of circumstances personal to each Justice.

---

[55] Resolution in A.M. No. 5460-Ret, March 24, 1988 (Re: Application for Gratuity Benefits of Associate Justice Efren I. Plana).

[56] *Re: Application for Retirement of Associate Justice Britanico of the IAC,* 255 Phil. 346 (1989).

[57] Resolution in A.M. No. 5498-Ret, March 7, 1989 (*Re: Application for Optional Retirement of Former Associate Justice Venicio T. Escolin*).

The Court in extending liberality used Justice Plana's accumulated leaves to cover the deficiency in his retirement age. At the time of his separation from the service, **Justice Plana** also had a total of 33 years, five months and 11 days of government service. In **Justice Escolin's case**, he had accumulated leaves, which left him merely two months short of the retirement age; he likewise had exemplary judicial service in the 17 years he was with the Judiciary. **Justice Britanico**, on the other hand, had 36.23 years of government service; he likewise retired under the second category of Section 1 of R.A. No. 910 where no age requirement is required.

Similarly, the Court considered a personal circumstance in applying a liberal approach to retirement laws in the case of Justice Ruperto G. Martin.[58] Justice Martin suffered a cerebral stroke during his incumbency as Supreme Court Associate Justice and was compelled to retire two years and 17 days short of the retirement age.[59] The Court ruled:

> The ten-year lump sum payment provided in Section 3 of RA 910 is intended to assist the stricken retiree in meeting his hospital and doctors' bills and expenses for his support. The law is not intended to deprive him of his lifetime pension if he is also entitled to retire under Section 1 and is fortunate to be still alive after ten years. The retirement law aims to assist the retiree in his old age, not to punish him for having survived.[60]

The above circumstances are not present in Chief Justice Panganiban's case. Politically, his circumstances are far from those of Justices Plana, Escolin and Britanico who exited the Judiciary due to political changes in the national scene. It is a matter of record that former Chief Justice Panganiban left the Judiciary after retirement based on the compulsory retirement age.

---

[58] *Re: Ruperto G. Martin*, A.M. No. 747-RET, July 13, 1990, 187 SCRA 477.

[59] *Id.* at 479.

[60] *Id.* at 482.

Given all these, there is no point in comparing the cases of these other Justices to that of former Chief Justice Panganiban. Rather than reliance on comparisons from the point of view of liberality, his requested grant of life annuity should be assessed strictly on its merits.

(b) *Liberality and the Narvasa and Sarmiento cases*

Neither are the circumstances of former Chief Justice Narvasa[61] and Justice Sarmiento[62] comparable with those of former Chief Justice Panganiban. Chief Justice Narvasa and Justice Sarmiento undoubtedly performed public functions in positions that were or are part of the governmental structure. Thus, both the nature of their work and the positions they occupied indisputably gave their services a characterization falling within the concept of "creditable government service." This characterization is not true for former Chief Justice Panganiban. At the risk of repetition, his four-year stint as consultant for the BNE and as legal counsel to Secretary Roces was not in the performance of a public function that attaches to a position under the governmental structure and thus was not "government service" or at least "creditable government service." Additionally and more importantly, no such government service was ever established under the evidence that he submitted.

For a complete picture of how the Court has exercised liberality, the Court — on the basis of the exact same considerations – in several instances deemed it proper to refuse to exercise liberality in light of the attendant circumstances of the case.

A recent case in point is that of *Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946.*[63] The Court did not allow the respondent judge to retire ***under R.A. No. 910*** although he undisputedly possessed a total of 18 years, one

---

[61] *Re: Request of Chief Justice Andres R. Narvasa (Ret.) for Recomputation of His Creditable Government Service, supra* note 3.

[62] *Re: Request of Justice Abraham F. Sarmiento (Ret.) for Monthly Retirement Pension and All Upward Adjustment of Benefits, supra* note 4.

[63] A.M. No. 14061-Ret, June 19, 2012.

month and 16 days of judicial service and a total of 35 years of government service.

The rule is that retirement laws are construed liberally in favor of the retiring employee. However, when in the interest of liberal construction the Court allows seeming exceptions to fixed rules for certain retired Judges or Justices, **there are ample reasons behind each grant of an exception**. The crediting of accumulated leaves to make up for lack of required age or length of service is not done indiscriminately. It is always on a case to case basis.

In some instances, the lacking element-such as the time to reach an age limit or comply with length of service is de minimis. It could be that the amount of accumulated leave credits is tremendous in comparison to the lacking period of time.

More important, **there must be present an essential factor** before an application under the Plana or Britanico rulings may be granted. The Court allows a making up or compensating for lack of required age or service only if satisfied that the career of the retiree was marked by competence, integrity, and dedication to the public service; it was only a bowing to policy considerations and an acceptance of the realities of political will which brought him or her to premature retirement.[64] (emphases and underscore mine)

The above standards were also applied by the Court in denying the claims of the respondent judges in *Re: Gregorio G. Pineda.*[65] In refusing to exercise liberality, the Court remarked, among others, that "[t]here are other instances when a Judge must content himself with the retirement benefits under less generous legislation."[66]

The Court even stressed in another case that the doctrine of liberal construction cannot be applied where the law invoked is clear, unequivocal and leaves no room for interpretation or construction.[67]

---

[64] *Ibid.*

[65] Adm. Matter Nos. 2076-RET, 5621-RET, 5698-RET, 5717-RET, 5794-RET and 6789-RET, July 13, 1990, 187 SCRA 469.

[66] *Id.* at 475-476.

[67] *Gov't Service and Insurance System v. Civil Service Commission*, G.R. Nos. 98395 and 102449, October 28, 1994, 237 SCRA 809, 818.

Adhering to the clear provisions of R.A. No. 910 is the Court's ruling in the case of *In Re: Claim of CAR Judge Noel*.[68] The Court did not authorize the respondent judge's claim to monthly pension and annuity under R.A. No. 910 considering that his length of government service falls short of the minimum requirement.

Even for humanitarian considerations, the Court has reined in its exercise of liberality and denied the plea of the widow and the eight children of a judge who died during his incumbency in office.[69] Strictly applying the clear letter of the law, the Court held:

> It is clear from the aforequoted Section 3 in relation to Section 1, that to be entitled to the lump sum payment of the gratuity equivalent to ten years' salary and allowances, a member of the Judiciary should have retired by reason of permanent disability contracted during his incumbency in office and prior to the date of retirement and should have rendered, at the least, twenty (20) years service in the Judiciary or in any other branch of the Government, or both.[70]

Given the varying results of the Court's decisions over the years on the exercise of liberality in retirement issues, any generalization based on the results alone can only be fraught with risk. Comparisons can only be made if the same or similar matters are being made; to resort to idiom, apples can only be compared with apples, not with oranges. A minute and careful analysis though can still yield significant and useful commonalities although these should be used with caution. Subject to this *caveat*, the general discussion below is made.

A rough survey of jurisprudence shows that the Court has generally used three considerations to justify the exercise of liberality. The **first** relates to the peculiar circumstances of the respondent judge's/justice's position (highlighted in the *Plana,*

---

[68] 194 Phil. 9 (1981).

[69] *Re: Retirement Benefits of the Late City Judge Galang, Jr*., 194 Phil. 14 (1981).

[70] *Id.* at 19.

the *Britanico,* the *Escolin* and the *Martin* cases). Apparently, because the Justices involved in the three cases came from the Court itself, the Court could easily appreciate their respective situations. Appreciation by the Court of peculiar circumstances might not have been as easy to make in the cases where lower court magistrates were involved. A naughty observer may even note, given the different treatment between High Court Justices and lower court judges that the Court is always partial to its own, to the prejudice of lower court judges and employees. The **second** relates to the judge's/justice's performance, record or length of stay in the public service (as applied in *Macarambon* and in *Pineda*). The **third**, and the most important consideration, is to look at the provisions of the retirement law itself. If the language of the retirement law is clear and unequivocal, the Court found no room for interpretation and generally opted for the law's strict application (as applied in the cases of former Chief Justice Narvasa, Justice Sarmiento, Judge Alfredo L. Noel and Judge Alejandro Galang, Jr.).

c. *Liberality and former Chief Justice Panganiban's request*

With these considerations in mind, I find no basis — both legal and factual — to exercise liberality in the present case. Although former Chief Justice Panganiban has demonstrated exemplary competence in the performance of his judicial duties, competence alone does not justify the exercise of liberality since ***competence, even to the exemplary degree, is only to be expected among Justices of this Court and should not be considered as an exceptional consideration that should merit the exercise of liberality.***

No basis also exists under jurisprudence, since we do not have any evidence before us *in the present case* showing the circumstances that the Court recognized in its past rulings. The weight of former Chief Justice Panganiban's own adduced documentary evidence negates the exercise of liberality. Former Chief Justice Panganiban, in fact, did not submit the evidence the Court already expressed as material in its determination.

If equitable considerations must be made in this case, it should be to apply the rule that *"**he who comes to court must come***

with clean hands." Several incidents, taken collectively, strongly suggest this consideration in order to avoid unfairness.

First, the consideration of the Bio Data and Personal Data Sheet on file with this Court. These documents are clear and unambiguous in what they state: former Chief Justice Panganiban, ***by his own claim as he entered judicial service***, was a Senior Partner in a major law firm and only rendered consultancy services as a private practitioner to the BNE and to Secretary Roces. To claim at this very late stage, in order ***to secure additional retirement benefits***, that the consultancy services should now be credited as government service meanders from the straight path of fairness.

Second, a first attempt was made to secure a re-computation and this was followed by a second attempt, with both attempts resulting in denial. That a third attempt would be made — two years after the second denial, without any real supervening fact or new evidence — also suggests lack of consideration for fairness. Notably, the Court even bent over backwards, broadly gave a hint of its thinking on the case, and gave former Chief Justice Panganiban every opportunity to adduce new evidence. No new or compelling evidence was adduced.

Lastly, the claim that the lapse of time precludes the introduction of any new evidence stretches the limits of believability and of prevailing law. **Lapse of time is itself a component of the inaction that the law does not condone.**

To go back to the general rule, equitable considerations are not necessary where, as in this case, an existing rule holds that consultancy service cannot be creditable government service. Where the law or jurisprudence is clear, we should likewise be clear and decisive in their application lest we be accused of favoritism in the exercise of liberality.

Thus, the invocation of liberal application of retirement laws is not a universal remedy that applies to all cases. Where it has to be applied, strict adherence to the jurisprudential standards — particularly the rule of fairness — must be followed lest we create dangerous situations that lead us to slippery adjudicatory

paths. At the very least, we should take care to avoid any perception of accommodating former colleagues, or indirectly ourselves who, inevitably, will be separated from our judicial offices in the future.

d. ***A final caveat***

A grant by this Court of former Chief Justice Panganiban's request through an unjustified liberal approach carries far-reaching implications that may go beyond the grant's immediate financial cost to the government.

Impact on Retired Magistrates. The ruling may open the door to similar submissions from many ***retired magistrates*** whose requests for liberality were not entertained by this Court. Our ruling may similarly affect those ***retiring in the future*** who may see in a favorable ruling in this case. These fertile possibilities may not always be consistent with the best interest of truth and fairness.

Impact on the Supreme Court itself. A *pro hac vice* or *"for former Chief Justice Panganiban only"* ruling may particularly be objectionable to other magistrates whose past applications for liberality have been strictly viewed by the Court. Whether right or wrong, such kind of ruling opens the Court itself to charges of selfishly ruling for its own interests. It may well be asked: ***why is this Court always liberal in cases involving themselves or former colleagues, but is very strict when considering the plight of lower court judges?***

Impact on Retirement in General. A ruling that certifications alone, without more, are sufficient to establish government service leaves the door open to a possible deluge of similar claims from those who might have in the past entered into consultancy services with the government. In the Judiciary alone, those of us who were in private law practice before entering judicial service might have, at one time or another, rendered consultancy service for the government. To be sure, there are many more out there among the professionals as this kind of service is a phenomenon that is not specific to lawyers and the Judiciary. **Where does the line lie now and what happens to the rule of law when**

stretching the interpretation of law to its limits becomes the rule? Should the Government Service Insurance System, the Social Security System, and the concerned agencies now entertain applications for crediting, without the benefit of an appointment to public office and based solely on certifications that the applicant indeed delivered service? **Should inaction now be excused by a claim of lapse of time?**

EN BANC

[A.M. OCA-IPI No. 07-2618-RTJ. February 12, 2013]

EDUARDO PANES, JR., JOSEPHINE J. COSEP, ROGER M. ROSAL, LOURDES G. SOLATORIO, AMY P. AGUIRRE, JUANCHO B. HOLGADO, *complainants, vs.* **JUDGE OSCAR E. DINOPOL, RTC, Branch 24, Koronadal City,** *respondent.*

[A.M. OCA-IPI No. 07-2619-RTJ. February 12, 2013]

JOEWE PALAD, *complainant, vs.* **JUDGE OSCAR E. DINOPOL, RTC, Branch 24, Koronadal City,** *respondent.*

[A.M. OCA-IPI No. 07-2652-RTJ. February 12, 2013]

ROQUE C. FACURA, DANIEL I. LANDINGIN, ALFREDO B. ESPINO, VENUS M. POZON, FRED F. FABELLON, *complainants, vs.* **JUDGE OSCAR E. DINOPOL, RTC, Branch 24, Koronadal City,** *respondent.*

[A.M. OCA-IPI No. 07-2720-RTJ. February 12, 2013]

EDEN V. CASTRO, *complainant, vs.* **JUDGE OSCAR E. DINOPOL, RTC, Branch 24, Koronadal City,** *respondent.*

[A.M. OCA-IPI No. 07-2721-RTJ. February 12, 2013]

ROSALINDA G. FAROFALDANE, BARBIE GAIL LUANNE MANANES, ALVIN TROJILLO, REXES CAILAN, ARIEL RENDON, EDUARDO PANES, JR., ROGER ROSAL, ELENITA JOQUINO, MELODY JOY COSEP, AMY P. AGUIRRE, *complainants, vs.* **JUDGE OSCAR E. DINOPOL, RTC, Branch 24, Koronadal City,** *respondent.*

[A.M. OCA-IPI No. 08-2808-RTJ. February 12, 2013]

ENGR. ROQUE C. FACURA, JOSEPHINE J. COSEP, EDUARDO A. PANES JR., REY J. VARGAS, NONITO R. PALMA, MA. LOURDES G. SOLATORIO, AMY P. AGUIRRE, JUANCHO B. HOLGADO, JOSE AMORMIO T. REYES, REXES S. CAILAN, JERRY M. GAYANILO, ARIEL V. RENDON, BARBY GAIL LUANNE S. MANANES, RIC DAGOHONG, ASER G. SADAVA, ROGER M. ROSAL, *complainants, vs.* **JUDGE OSCAR E. DINOPOL, RTC, Branch 24, Koronadal City,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; WHEN ISSUANCE OF THE ORDERS CONSTITUTES GROSS IGNORANCE OF THE LAW.—** [R]espondent failed to provide any legitimate reason for the issuance of the Orders on a Saturday evening when the courts were already closed. As pointed out by the CA, if indeed there was robbery or looting happening in the premises, arrests could be effected by the police officers who were already in the vicinity of the KWD office. We agree with the findings of

the OCA that respondent's defenses neither justify his failure to comply with due process requirements nor do they demonstrate good faith on his part that would exculpate him from administrative liability. Respondent violated the most basic requirements for the proper observance of due process, resulting in the unwarranted arrest and incarceration of powerless individuals. As the OCA pointed out, when respondent issued the first 24 March 2007 Order, he was obviously aware that there is a need to give the parties involved the opportunity to be heard before he cited them for contempt. x x x However, an hour after, acting not on personal knowledge but merely on the narration of Sheriff Publico, he issued the second Order in which he directed all government law enforcement agencies to arrest Eduardo Panes Jr., the security guards of the Supreme Investigative and Security Agency, Juancho Holgado and all persons inside the KWD Del Pilar office, when clearly, none of them was a party to Civil Case No. 1799-24. Still displaying his overreaching powers of adjudication, he again issued the 13 April 2007 twin Orders. The first one directing the city mayor to desist and refrain from taking over the operation and management of the KWD Arellano office; otherwise his arrest would be effected. The second Order meanwhile directed the LWUA personnel to return properties to the KWD Arellano office, also under pain of arrest. We find that the issuance of these Orders was in total disregard of the Rules of Court and with grave abuse of authority. Undoubtedly, respondent is guilty of gross ignorance of the law.

2. **ID.; ID.; JUDGES MAY NOT BE HELD LIABLE FOR DAMAGES FOR ACTS DONE IN THE EXERCISE OF JUDICIAL FUNCTIONS.—** On the issue of whether respondent may be held liable for damages, we rule in the negative. In *Alzua v. Johnson*, we explained that in civil actions for damages, judges of superior and general jurisdiction are not liable to answer for what they do in the exercise of their judicial functions, provided they are acting within their legal powers and jurisdiction.

3. **ID.; ID.; CIRCUMSTANCES WHERE A JUDGE SHOULD HAVE INHIBITED HIMSELF, PRESENT. —** [R]espondent judge should have inhibited himself from taking cognizance of the two other cases involving the leadership and management of KWD. As earlier mentioned, respondent judge filed his 12

> November 2007 Motion for Reconsideration of this Court's Resolution putting him under preventive suspension. He made an undertaking therein that in the event of the lifting of the suspension, he would not interfere in the disposition of the cases involving KWD. Thus, when he took cognizance of Civil Case Nos. 1818-24 and 1839-24 – both of which involved issues on the management of KWD — he violated the assurances he had made to this Court. Furthermore, Cabel, one of the plaintiffs in Civil Case No. 1839-24, is the nephew of the wife of respondent. Section 1, Rule 137 of the Rules of Court, provides for the x x x instances of mandatory inhibition[.] x x x Considering that Cabel is a relative by affinity within the sixth degree, respondent should have inhibited himself from taking cognizance of the case.

APPEARANCES OF COUNSEL

Catherine A. Velasco for E. Panes & J. Holgado.
Beltran Rubico Koa & Mendoza for respondent.

D E C I S I O N

***PER CURIAM*:**

Before us are six (6) administrative cases that have been consolidated, as they arose from the same set of circumstances.

The facts, as reported by the Office of the Court Administrator (OCA), are as follows:[1]

Respondent was the presiding judge of the Regional Trial Court (RTC), Branch 24, Koronadal City.

On 16 November 2006, then Mayor Fernando Q. Miguel appointed Engineer Joselito T. Reyes and Carlito Y. Uy to the board of directors (BOD) of the Koronadal Water District (KWD),

[1] Consolidated Report dated 28 December 2011 submitted by CA Associate Justice Melchor Q.C. Sadang, *citing* the Memorandum dated 30 July 2007 submitted by Court Administrator Christopher O. Lock for OCA IPI No. 07-2618-RTJ and OCA IPI No. 07-2619-RTJ.

and the appointees were to serve from 1 January 2007 to 31 December 2012. Their appointments were subsequently confirmed by the Local Water Utilities Administration (LWUA). Other board members who were appointed were Andres O. Magallanes, Jr., Evangeline A. Ang (Ang), and Engineer Allan D. Yaphockun (Yaphockun). These appointments were communicated by LWUA to Eleanor P. Gomba (Gomba), the general manager of KWD, through a letter[2] dated 12 December 2006.

Gomba, however, refused to recognize the new BOD, prompting LWUA to replace her and to appoint Rey Vargas (Vargas) as officer-in-charge of the office of the general manager.

On 14 February 2007, Gomba transferred her office to Arellano St. Kidapawan City. She, in the name of KWD, then filed a Complaint[3] against Vargas for injunction and damages with application for the *ex parte* issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction.

On 20 February 2007, Executive Judge Laureano T. Alzate issued a 72-hour TRO.

The case was thereafter docketed as Civil Case No. 1799-24 and raffled to respondent as presiding judge of Branch 24.

On 23 February 2007, respondent issued an Order for a writ of preliminary injunction against Vargas,[4] enjoining the latter from doing any of the following: exercising control and supervision over KWD; collecting and receiving payments from KWD concessionaires; exercising control and supervision over all KWD employees; or exercising authority to deal with business transactions relating to KWD.

Gomba, however, alleged that Vargas continued to receive payments in violation of the injunction order. Thus, on 9 March 2007, respondent issued a 20-day TRO enjoining Yaphockun, Ang, and their agents from exercising powers as members of

---

[2] A.M. OCA-IPI No. 07-2652-RTJ, CA Folder 5 of 6, pp. 22-23.

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

[4] *Id.* at 52-55.

the BOD, and from establishing a separate office on G.H. Del Pilar Street.

In the meantime, the LWUA issued Resolution No. 41[5] taking over KWD for a period of six (6) months effective 6 March 2007. By virtue of the Resolution, which was implemented on 24 March 2007, properties were taken from the KWD Arellano office.

Acting on Gomba's Very Urgent *Ex Parte* Omnibus Motion, respondent issued on 24 March 2007, a Saturday, at 8:15 p.m. one of the assailed Orders, the dispositive portion of which reads:[6]

> **ACCORDINGLY**, and to obviate possible loss of government property and in order to preserve the Orders of this Court, all the defendants in this case, to wit: Rey J. Vargas, Allan Yaphockun, Evangeline Ang, John Doe's and Jane Doe's, including all LWUA personnel and officers, specifically Daniel Landingin, Antonio Magtibay, Alfredo Espino, Venus Pozon, Fred Fabellon, Roque Facura, including all of their representatives and agents, and successors, assigns, representatives, supporters, and agents of the Defendants are hereby ordered to obey, uphold and preserve the Orders of this Court dated February 23, 2007 and March 9, 2007, respectively.
>
> Further, the LWUA officers are ordered to maintain the Status Quo Ante, and to return all KWD properties to its office at Arellano St, City of Koronadal immediately upon receipt of this Order. The above named officers and personnel of LWUA are directed to explain within twelve (12) hours why they should not be cited in contempt of Court for violating the aforesaid Orders.

After an hour, at 9:15 p.m., respondent judge issued the second assailed Order[7] ordering the arrest of Eduardo Panes, Jr., security guards of the Supreme Investigative and Security Agency, Juancho Holgado, and all persons inside No. 79 G.H. Del Pilar Street, Koronadal City (KWD Del Pilar office) for resisting the implementation of the earlier 24 March 2007 Order.

---

[5] *Id.* at 27.

[6] *Id.* at 29.

[7] *Id.* at 30.

On 13 April 2007, respondent issued still another Order,[8] this time directing police forces to augment two Philippine National Police (PNP) teams at the KWD Arellano office, its pumping stations and reservoir; ordering the LWUA personnel, Mayor Fernando Miguel, Jesus Pring, Jr. and those giving them aid and comfort to desist and refrain from forcibly, and without court order, taking over the operation and management of the KWD Arellano office; and directing the PNP to arrest and detain the mayor and all his allies in the event of their defiance of the Order.

On the same day, respondent issued another Order[9] directing Daniel Landingan, Antonio Matibay, Alfredo Espino, Venus Pozon, Fredo Fabellon and Roque Facura to return certain properties to the KWD Arellano office. Otherwise, they would be held guilty of indirect contempt, and their arrest and detention ordered until compliance thereof.

We now take up the individual cases filed against respondent judge.

A.M. OCA-IPI No. 07-2618-RTJ

Complainants, all employees of KWD, alleged that the manner of service of the assailed 24 March 2007 twin Orders was violent, and that the disturbance that ensued caused all KWD personnel in the Del Pilar office to scamper and hide for fear of arrest. The office was then ransacked by the allies of Gomba who took the things from the Del Pilar and the Arellano offices, as well as the motor vehicles owned by KWD. The windows and doors were also destroyed.

Complainants further alleged that the Orders were patently illegal and void and were issued with abuse of authority and gross ignorance of law, jurisprudence and the Rules of Court, for the following reasons:

1. These Orders were issued past working hours, on a Saturday, a nonworking day, and without the benefit of a hearing or a notice to concerned parties.

[8] *Id.* at. 31-33.

[9] *Id.* at 34-35.

2. Resistance to a lawful court order, while a ground for indirect contempt, still requires the filing of a charge and the opportunity to be heard.
3. Complainants were not parties to the cases filed before respondent judge on the legitimacy of either faction.
4. The proceedings in Civil Case No. 1799-24 are null and void because the lawyers representing KWD, a government-owned and controlled corporation, were not authorized by the Office of the Government Corporate Counsel (OGCC) and the Commission on Audit (COA).[10]

In response, respondent judge alleged that complainants were not employees of KWD. He further insisted that the Complaint should be dismissed by virtue of a Petition for Review questioning the twin Orders of 24 March 2007 then pending with the CA. Moreover, he claimed that he issued the assailed Orders because he was convinced that the very survival of KWD was seriously threatened, after granting an audience at 4:00 p.m. to the lawyers of the Gomba group when they filed an *Ex Parte Omnibus Motion*. Thus, he thought that the three-day notice rule under the Rules of Court was "totally insignificant and ridiculous,"[11] when what seemed more urgent to him was the speedy delivery of justice.

A.M. OCA-IPI No. 07-2619-RTJ

Complainant Joewe Palad is a security guard of Supreme Investigative and Security Agency detailed to secure the premises of the Del Pilar office. On 24 March 2007, at around 10:00 p.m., he was arrested by elements of the PNP and was brought to the PNP Jail of Koronadal City for allegedly defying the assailed Orders of respondent, but with no bail recommended.[12] He was, however, not aware of these Orders, and only came to know of them on 28 March 2007 when he was brought to court to attend a hearing on his arrest. At 5:00 p.m. of the same day, he was released on respondent's finding that he did not show an act of defiance to the Orders.

---

[10] *Rollo*, Vol. III (A.M. OCA IPI No. 07-2618-RTJ), pp. 28-26.

[11] *Id.*

[12] *Rollo*, Vol. IV (OCA IPI No. 07-2619-RTJ) pp. 2-5.

In his Comment,[13] respondent alleged that complainant Palad defied the orders of Sheriff Ricardo Publico to open the gate of the KWD Del Pilar office. Respondent also alleged that Palad acted in bad faith in filing the present Complaint, with the intention to harass the former.

A.M. OCA IPI No. 07-2652-RTJ

Complainants Roque C. Facura, Daniel I. Landingin, Alfredo B. Espino, Venus M. Pozon and Fred F. Fabellon are employees of the LWUA. They alleged that on 28 February 2007, to alleviate the conflict between the Gomba and the Reyes factions, the LWUA Administrator designated complainant Facura as KWD interim general manager.

On 24 March 2007, the appointed interim BOD allegedly served a notice of takeover on the KWD's BOD. After that, they proceeded to the KWD Arellano office, where Gomba was holding office, to also serve the notice to her.

Upon serving the notice, however, several unknown persons allegedly barged into the Arellano office and took away the records, equipment and other items found.

Complainants alleged that the 24 March 2007 twin Orders of respondent were highly irregular and illegal, having been issued on a Saturday evening without notice and hearing. Complainants likewise alleged that the 13 April 2007 twin Orders are highly irregular and were issued without notice and hearing. They additionally alleged that respondent had shown an unwarranted bias for Gomba, who identified respondent as one of her personal references in her Personal Data Sheet.

Complainants maintained that respondent allowed the private lawyers of Gomba to appear before the court without the necessary authority from the OGCC contrary to pertinent rules and regulation.

Finally, they pointed out that respondent had already been the subject of numerous disciplinary actions as a lawyer and as a judge.

---

[13] *Id.* at 10-11.

In his Comment,[14] respondent claimed that the issues raised were matters cognizable before appropriate judicial proceedings. His exercise of discretion could not be questioned through an administrative proceeding. He alleged that complainants conspired with the other complainants in the other cases and with the mayor and his allies. He maintained that while complainants were not parties to the case, they disturbed the *status quo* promoted by the injunctive Orders he issued and committed robbery when they went to the KWD Arellano office.

A.M. OCA IPI No. 07-02720-RTJ

On 13 August 2007, Eden V. Castro filed a Complaint[15] alleging that she was the owner and administrator of the two-storey building where the KWD Del Pilar office is located. The building has been leased to and occupied by KWD from 2000 until 2007.

On the evening of 24 March 2007, the use of the building was disrupted when Sheriff Publico implemented the Orders issued by respondent. The KWD office was forcibly opened. The gate, doors, windows and other parts of the building were damaged as elements of the PNP entered the building and ordered the arrest of all persons inside. Other items and equipment within the premises of the building were also taken and were brought to court although these are personal properties.

Security guards were also positioned inside the building after the altercation to prevent persons, including complainant, from entering the premises.

Thus, complainant alleged that because of the Orders issued by respondent, she had been deprived of the use of the building and had lost a considerable amount of income from the lease of the property. She thus demanded the payment of damages from respondent.

For his part, respondent alleged that it was unfair for him to be confronted with damages through the present Complaint,

[14] *Rollo*, Vol. II (A.M. OCA IPI No. 07-2652-RTJ), pp. 74-96.

[15] *Rollo*, Vol. V (A.M. OCA IPI No. 07-2720-RTJ), pp. 4-5.

allegedly brought about by the implementation of the 24 March 2007 twin Orders. He maintained that he was not aware of any contractual relationship between complainant Castro and the KWD administration, nor was he aware of the extent of the damage caused to the property. Instead, he alleged that he was informed that no owner claimed the building for almost five months, and that complainant in any case was already in possession by August 2007.[16]

A.M. OCA IPI No. 07-2721-RTJ

Complainants are owners of the several various personal properties such as 3 scooters, 2 motorcycles, 2 tricycles, office tables, kitchen and cooking utensils, and other perishable goods, found within the KWD Del Pilar office. Pursuant to the 24 March 2007 twin Orders, these properties were confiscated by Sheriff Publico and other elements of the PNP.

Respondent judge refused to release these personal properties despite several entreaties for him to do so. Complainants alleged that as a consequence of the confiscation of these personal properties — some of which were their sources of income – they lost a considerable amount of income and could no longer earn a decent living.

Respondent alleged that he belatedly discovered that some of the confiscated properties belonged to complainants herein. After preparing an inventory thereof, the personal properties were turned over and deposited in court for safekeeping. He claims that had the police left the personal belongings unattended, they would have been responsible in case of loss. Respondent further stated that the belongings were already returned to complainants on 8 August 2007. Thus, he prayed that the Complaint be dismissed for being moot and academic.

A.M. OCA IPI No. 08-2808-RTJ

On 18 February 2008, employees of KWD including complainants in A.M. OCA IPI No. 07-2618-RTJ, filed a

---

[16] *Rollo*, Vol. VI (A.M. OCA IPI No. 07-2721-RTJ), pp. 17-19.

Complaint[17] alleging that respondent judge took cognizance of two other related cases involving KWD. The first case is Civil Case No. 1818-24 for Injunction with Application for *Ex Parte* Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction. The assigned presiding judge is Judge Oscar P. Noel, Jr. per this Court's Resolution dated 10 December 2007. However, respondent refused to turn over the records of the case to Judge Noel, Jr. and only did so when the OCA, through a long distance call, prohibited the former from hearing the case.

After Judge Noel, Jr. denied the prayer for a TRO, the plaintiffs in Civil Case No. 1818-24 file a second case, docketed as Civil Case No. 1839-24, also for Injunction with Application for *Ex Parte* Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction. This case was raffled to respondent judge, who subsequently issued an Order granting the 72-hour TRO prayed for by plaintiffs therein.

It appears that when respondent filed his third Motion for Reconsideration of the Order putting him under preventive suspension, he promised that he would not interfere in the disposition of the cases involving KWD. Complainants alleged that the two cases were evidently similar and the reliefs prayed for were identical. Despite the fact that the prayer for the issuance of a TRO in Civil Case No. 1818-24 was already denied twice, respondent still granted a TRO in Civil Case No. 1839-24. Furthermore, they aver that respondent judge took cognizance of the case with apparent bias, when Marlon Cabel (Cabel), one of the plaintiffs in Civil Case No. 1839-24, is the nephew of his wife.

On the other hand, in his Comment,[18] respondent denied the allegations and posited that his undertaking not to hear KWD cases was inconsequential to his preventive suspension. He further alleged that the issue of inhibition was not contained in the

---

[17] *Rollo* (A.M. OCA IPI No. 08-2808-RTJ), pp. 1-11.

[18] *Rollo* (A.M. OCA IPI No. 08-28028-RTJ)¸ pp. 275-279.

Order lifting his preventive suspension. Thus, he contends that he took cognizance of the cases in good faith.

Respondent also averred that when Civil Case No. 1839-24 was raffled to his court, he believed that there was an urgent need to issue a 72-hour TRO. He further claimed that he was unaware of the Orders of Judge Noel, Jr., which were issued during his preventive suspension.

While respondent admits that Marlon Cabel was his wife's nephew, however, he was under the belief that Cabel was already looking for different employment outside of KWD. Thus, when Civil Case No. 1839-24 was raffled to his *sala*, he quickly went through the names of the parties and did not expect to see Cabel's name included. Respondent thereafter confronted him and was informed by Cabel that he was told to affix his signature on the assumption that it was necessary to relieve him from any liability to KWD. Subsequently, on 22 February 2008, Cabel filed a Manifestation of Withdrawal from the case.

JUDICIAL REMEDIES SOUGHT DURING THE PENDENCY OF THE ADMINISTRATIVE CASES

While the foregoing administrative complaints were being investigated by the Court of Appeals (CA), complainants Eduardo Panes, Jr. and Juancho B. Holgado filed a Petition for *Certiorari*[19] before the CA, docketed as CA-G.R. SP No. 01676, against respondent judge and Gomba. This Petition assailed the 24 March 2007 twin Orders.

Another Petition for *Certiorari* was filed with the CA by Roque C. Facura, Daniel I. Landingin, Antonio B. Magtibay, Alfredo B. Espino, Venus M. Pozon, and Fred. F. Fabellon also against respondent judge and Gomba. This case was docketed as CA-G.R. SP No. 01765, which in turn questioned the first 24 March 2007 Order and the 13 April 2007 twin Orders.

Both Petitions alleged that respondent judge committed grave abuse of discretion amount to lack or in excess of discretion in issuing the 24 March 2007 and 13 April 2007 Orders. Petitioners

---

[19] CA Folder 6 of 6, pp. 49-95.

maintained that respondent judge violated their constitutional right to due process and the applicable provisions of the rules of procedure, pertinent laws and jurisprudence.

These two cases were eventually consolidated.

On 31 January 2008, the CA promulgated its Decision granting the Petitions, the dispositive portion of which reads:

> **WHEREFORE,** the petition is **GRANTED**. the assailed Orders dated March 24, 2007 issued at 8:15 o'clock and 9:15 o'clock in the evening, and the two Orders issued on April 13, 2007 are hereby declared null and void. The Regional Trial Court of Koronadal City, South Cotabato, Branch 24 is hereby **ORDERED** to proceed with the main case with dispatch.
>
> **SO ORDERED.**[20]

In granting the Petitions, the CA found that the Very Urgent *Ex* Parte Omnibus Motion filed by Gomba did not contain a notice of hearing. Further, respondent judge granted the Motion without the benefit of a hearing through the 24 March 2007 Orders, violating Section 4, Rule 15 of the Rules of Court. This provision mandates that all written motions shall be set for hearing by the movant to give the other party the opportunity to oppose the prayer of the movant.

The CA likewise held that the LWUA takeover was a right claimed by complainants in A.M. OCA-IPI No. 07-2652-RTJ by virtue of LWUA Resolution No. 41. It further stated that there was not even any urgency for respondent to issue the 24 March 2007 Orders as there were already police officers in the premises who would have prevented the looting.

Moreover, the CA found that petitioners therein were not parties to Civil Case No. 1799-24, which was the main case filed by Gomba against Vargas, Yaphockun, Ang and their agents. It held that petitioners could not be considered agents of the defendants in Civil Case No. 1799-24 because they were representatives of the LWUA, an independent administrative body.

---

[20] *Id.* at 127-144.

The CA pointed out that the taking over of LWUA over KWD was also not put in issue in Civil Case No. 1799-24, thus, respondent had no jurisdiction whatsoever over that issue.

As to the second 24 March 2007 Order, the CA held that order of arrest for indirect contempt against complainants Panes and Holgado was void for lack of due process, violating Section 3 of Rule 71 of the Rules of Court. This provision reads:

> Sec. 3. Indirect contempt to be punished after charge and hearing. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt: x x x.

Thus, in order for a person to be held in indirect contempt, respondent judge should have given the accused an opportunity to comment and to be heard by himself or counsel. This he did not do.

Gomba subsequently filed a Motion for Reconsideration, but this was likewise denied.[21] She then brought the case to this Court under Rule 45, docketed as G.R. No. 184541. In a Minute Resolution[22] dated 19 November 2008, this Petition was denied, and 23 March 2009, it was denied with finality.

ISSUES

The issues are as follows:

I. Whether the issuance by respondent Judge Dinopol of the 24 March 2007 twin Orders constitutes gross ignorance of the law

II. Whether respondent Judge Dinopol is civilly liable for the personal damages suffered by complainants

III. Whether Judge Dinopol, in taking cognizance of cases involving KWD violated the condition for the lifting of his suspension

---

[21] *Id.* at 146-155.

[22] *Id.* at 156-158.

IV. Whether respondent judge should have inhibited himself from a case to which one of the parties was his wife's nephew is party thereto.

THE COURT'S RULING

A judge should be the embodiment of competence, integrity and independence.[23] He should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.[24] He shall be faithful to the law and maintain professional competence.[25]

At the outset, respondent failed to provide any legitimate reason for the issuance of the Orders on a Saturday evening when the courts were already closed. As pointed out by the CA, if indeed there was robbery or looting happening in the premises, arrests could be effected by the police officers who were already in the vicinity of the KWD office.

We agree with the findings of the OCA that respondent's defenses neither justify his failure to comply with due process requirements nor do they demonstrate good faith on his part that would exculpate him from administrative liability. Respondent violated the most basic requirements for the proper observance of due process, resulting in the unwarranted arrest and incarceration of powerless individuals.

As the OCA pointed out, when respondent issued the first 24 March 2007 Order, he was obviously aware that there is a need to give the parties involved the opportunity to be heard before he cited them for contempt. In that Order he said:

> Further, the LWUA officers are ordered to maintain the Status Quo Ante, and to return all KWD properties to its office at Arellano St., City of Koronadal immediately upon receipt of this Order. The above named officers and personnel of LWUA are directed to explain within twelve (12) hours why they should not be cited in contempt of Court for violating the aforesaid Orders.

---

[23] Code of Judicial Conduct, Canon 1, Rule 1.01.

[24] *Id.*, Canon 2, Rule 2.01.

[25] *Id.*, Canon 3, Rule 3.01.

However, an hour after, acting not on personal knowledge but merely on the narration of Sheriff Publico, he issued the second Order in which he directed all government law enforcement agencies to arrest Eduardo Panes Jr., the security guards of the Supreme Investigative and Security Agency, Juancho Holgado and all persons inside the KWD Del Pilar office, when clearly, none of them was a party to Civil Case No. 1799-24.

Still displaying his overreaching powers of adjudication, he again issued the 13 April 2007 twin Orders. The first one directing the city mayor to desist and refrain from taking over the operation and management of the KWD Arellano office; otherwise his arrest would be effected. The second Order meanwhile directed the LWUA personnel to return properties to the KWD Arellano office, also under pain of arrest.

We find that the issuance of these Orders was in total disregard of the Rules of Court and with grave abuse of authority. Undoubtedly, respondent is guilty of gross ignorance of the law.

To be held administratively liable for gross ignorance of the law, the acts complained of must not only be contrary to existing law and jurisprudence, but must have also been motivated by bad faith, fraud, dishonesty, and corruption.[26] Gross ignorance of the law is considered as a serious offense under Rule 140, Section 8, and is punishable as follows:

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

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

---

[26] *Dadison v. Asis*, A.M. No. RTJ-03-1760, 15 January 2004, 419 SCRA 456, 463-464.

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

On the issue of whether respondent may be held liable for damages, we rule in the negative.

In *Alzua v. Johnson*,[27] we explained that in civil actions for damages, judges of superior and general jurisdiction are not liable to answer for what they do in the exercise of their judicial functions, provided they are acting within their legal powers and jurisdiction. We said:

The exemption of judges of courts of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions is a principle essentially inherent in the various judicial systems upon which the system organized under Act No. 136 is modeled. The grounds of public policy and the reasoning upon which the doctrine is based are not less forceful and imperative in these Islands than in the countries from which the new judicial system was borrowed; and an examination of the reasons assigned by the Supreme Court of the United States and by Mr. Cooley in his work on Torts for the universal recognition of the rule in the United States, as set out in the margin (Notes C and D) leaves no room for doubt that a failure to recognize it as an incident to the new judicial system would materially impair its usefulness, and tend very strongly to defeat the ends for which it was established. Indeed, upon the authority of the reasoning in the case of *Bradley vs. Fisher*, it may safely be asserted that an attempt to enforce any rule of law in conflict with this doctrine would be utterly subversive of the system of jurisprudence established in these Islands under and by virtue of the authority of the Congress of the United States:

"For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself. Liability to answer to everyone who might feel himself aggrieved by the action of the judge would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful.

---

[27] 21 Phil. 308 (1912).

As observed by a distinguished English judge, it would establish the weakness of judicial authority in a degrading responsibility.

"The principle, therefore, which exempts judges of courts of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions, obtains in all countries where there is any well-ordered system of jurisprudence. It has been the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country." (*Bradley vs. Fisher, supra*)

x x x x x x x x x

Perhaps we should not conclude this discussion of the doctrine of immunity of judicial officers from civil liability in certain cases without expressly directing attention to the fact that nothing therein is to be understood as giving to them the power to act with partiality, or maliciously, or corruptly, or arbitrarily, or oppressively without fear that they may be called to account for such conduct. No judge, however high his rank may be, is above or beyond the law which it is his high office to administer. Indeed, we would deem it our duty to be the first to take the necessary preliminary steps looking to the suspension and removal from office of the defendant, by impeachment or otherwise, if we were of opinion that the charges of misconduct in office preferred against him had any foundation in fact; and we would not allow the sun to set upon this day's session of the court without having issued the necessary orders for the institution of criminal proceedings against him if we had reason to believe that there are any grounds for the criminal charges set forth in the complaint.[28]

Anent the third and fourth issues, respondent judge should have inhibited himself from taking cognizance of the two other cases involving the leadership and management of KWD.

As earlier mentioned, respondent judge filed his 12 November 2007 Motion for Reconsideration of this Court's Resolution putting him under preventive suspension. He made an undertaking therein that in the event of the lifting of the suspension, he would not interfere in the disposition of the cases involving KWD. Thus, when he took cognizance of Civil Case Nos. 1818-24

[28] *Id.* at 333-348.

and 1839-24 — both of which involved issues on the management of KWD — he violated the assurances he had made to this Court.

Furthermore, Cabel, one of the plaintiffs in Civil Case No. 1839-24, is the nephew of the wife of respondent. Section 1, Rule 137 of the Rules of Court, provides for the following instances of mandatory inhibition:

Section 1. Disqualification of judges. — No judge or judicial officers shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Considering that Cabel is a relative by affinity within the sixth degree, respondent should have inhibited himself from taking cognizance of the case.

It appears that this is not the first time respondent has been the subject of an administrative complaint. In *Sy v. Judge Dinopol*,[29] we held him liable for gross misconduct in office and ordered his dismissal from service with forfeiture of all benefits, except accrued leave credits, if any, with prejudice to his reemployment in any branch or service of the government, including government-owned and controlled corporations. We also enumerated his previous numerous administrative infractions, to wit:

First, in A.M. No. RTJ-06-1969 decided on June 15, 2006, Judge Dinopol was found guilty of gross ignorance of the law and was fined ₱20,000.00.

---

[29] A.M. No. RTJ-09-2189, 18 January 2011, 639 SCRA 681.

Second, in A.M. No. RTJ-06-2020 decided on September 20, 2006, he was found guilty of gross ignorance of the law and abuse of authority, and was fined ₱20,000.00.

Third, in A.M. No. RTJ-06-2003 decided on August 23, 2007, he was found liable for undue delay in rendering a decision or order and for violating the clear provisions of A.M. No. 01-1-07-SC, and was fined ₱11,000.00.

Fourth, in A.M. OCA IPI No. 05-2173-RTJ decided on August 28, 2006, he was strongly admonished, even as the complainant desisted from pursuing the complaint against the judge for gross ignorance of the law, grave abuse of authority and discretion.

And more recently, in A.M. No. RTJ-07-2052 decided on March 30, 2009, Judge Dinopol had been reminded and warned against entertaining litigants outside court premises.[30]

As the OCA points out, respondent's previous dismissal from service does not render the present case moot and academic. In *Perez v. Abiera*[31] we said:

In other words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name

---

[30] *Id.* at 694.

[31] 159-A Phil. 575 (1975).

and integrity as he leaves the government which he served well and faithfully, if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[32]

WHEREFORE, in view of the foregoing, **Judge Oscar E. Dinopol** formerly of the Regional Trial Court, Branch 24, Koronadal City, is hereby found **GUILTY** of gross ignorance of the law. His offense would have warranted his dismissal from the service with forfeiture of all benefits — except leave credits, if any — and disqualification from holding office in the government, including government-owned and –controlled corporations, had he not already been previously dismissed in *Sy v. Judge Dinopol* (A.M. No. RTJ-09-2189).

SO ORDERED.

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

Perez, J., no part. Acted on matter as CA of OCA.

EN BANC

[G.R. No. 187485. February 12, 2013]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SAN ROQUE POWER CORPORATION,** *respondent.*

[G.R. No. 196113. February 12, 2013]

TAGANITO MINING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[32] *Id.* at 580-581.

[G.R. No. 197156. February 12, 2013]

PHILEX MINING CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE; PRESCRIPTIVE PERIODS FOR FILING A CLAIM; THE 120-DAY WAITING PERIOD BEFORE FILING A JUDICIAL CLAIM IS MANDATORY AND JURISDICTIONAL.—** San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

2. **ID.; ID.; ID.; EFFECTS OF FAILURE TO COMPLY WITH THE 120-DAY WAITING PERIOD; CASE AT BAR.—** Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles. The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has

no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review. San Roque's failure to comply with the 120-day **mandatory** period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity. x x x For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.

3. **ID.; ID.; ID.; LATE FILING OF A JUDICIAL CLAIM IS FATAL; THE "DEEMED A DENIAL" DECISION OF THE COMMISSIONER BECOMES FINAL AND INAPPEALABLE.—** Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late. The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of

law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.

4. **ID.; ID.; ID.; THREE COMPELLING REASONS WHY THE 30-DAY PERIOD NEED NOT NECESSARILY FALL WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD.—** First, x x x the law states that the taxpayer may apply with the Commissioner for a refund or credit "**within two (2) years**," **which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription. Second, x x x **the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner**. As held in *Aichi*, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund' **refers to applications for refund/credit with the CIR and not to appeals made to the CTA**." Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period**. Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive

period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period. The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law.

5. **ID.; ID.; CONCEPT OF "EXCESS" INPUT VAT AND "EXCESSIVELY" COLLECTED TAX, DISTINGUISHED AND EXPLAINED.—** The input VAT is **not** "excessively" collected as understood under Section 229 because **at the time the input VAT is collected the amount paid is correct and proper**. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person - the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit **outside** of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT. In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected

under Section 229. x x x From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, x x x, illegally, x x x excessively or **in any manner wrongfully** collected." In short, there must be a **wrongful payment** because what is paid, or part of it, is not legally due. As the Court held in Mirant, Section 229 should "**apply only to instances of erroneous payment or illegal collection of internal revenue taxes.**" Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due.** Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT.

6. **ID.; ID.; PRESCRIPTIVE PERIODS AND PROPER PARTY TO FILE A JUDICIAL CLAIM FOR "EXCESS" INPUT VAT AND "EXCESSIVELY" COLLECTED TAX, DISTINGUISHED AND EXPLAINED.—** Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, x x x illegally, x x x excessively or in any manner wrongfully collected." The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. **Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229**. Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for "excess" input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the **output** VAT. This prescriptive period has no relation to the date of payment of the "excess" **input** VAT. The "excess" input VAT may have been paid for more than two years but this does not bar the

filing of a judicial claim for "excess" VAT under Section 112(A), which has a different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the input VAT was "excessively" collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

7. **ID.; ID.; ID.; APPLICATION OF THE 120+30 DAY PERIODS IN FILING A JUDICIAL CLAIM PURSUANT TO *AICHI* DOCTRINE, EXPLAINED; THESE PERIODS ARE MANDATORY AND JURISDICTIONAL. —** The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are mandatory and jurisdictional. The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies. Such doctrine is basic and elementary. When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner. The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire,

cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period**. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period. x x x [S]trict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

8. **ID.; ID.; REVENUE MEMORANDUM CIRCULAR NO. 49-03, CONSTRUED; EFFECTS OF FILING A JUDICIAL CLAIM BEFORE OR AFTER THE 120-DAY WAITING PERIOD.—** There is nothing in RMC 49-03 that states, expressly or impliedly, that the taxpayer need not wait for the 120-day period to expire before filing a judicial claim with the CTA. RMC 49-03 merely authorizes the BIR to continue processing the administrative claim even after the taxpayer has filed its judicial claim, without saying that the taxpayer can file its judicial claim before the expiration of the 120-day period. x x x, [I]f the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period. On the other hand, if the taxpayer files its judicial claim after the 120- day period, the Commissioner can still continue to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must **necessarily** continue to enable the BIR to oppose intelligently

the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings. **What is important, as far as the present cases are concerned, is that the mere filing by a taxpayer of a judicial claim with the CTA before the expiration of the 120-day period cannot operate to divest the Commissioner of his jurisdiction to decide an administrative claim within the 120-day mandatory period,** ***unless*** **the Commissioner has clearly given cause for equitable estoppel to apply as expressly recognized in Section 246 of the Tax Code.**

9. **ID.; ID.; BIR RULING NO. DA-489-03, EXPLAINED; TWO EXCEPTIONS FROM THE MANDATORY APPLICATION OF THE 120-DAY PERIOD.—** BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.**" Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the120-day period is mandatory and jurisdictional before a judicial claim can be filed. There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code. x x x Since the Commissioner has **exclusive and original jurisdiction to interpret tax laws**, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this

Court. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. x x x [A] general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, "**Any** revocation, modification or reversal" without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

10. **ID.; ID.; ID.; BIR RULING NO. DA-489-03 IS A GENERAL INTERPRETATIVE RULE WHICH IS APPLICABLE TO ALL TAXPAYERS.—** BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period. Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.

11. **ID.; ID.; ID.; ID.; BIR RULING NO. DA-489-03 CANNOT BE GIVEN RETROACTIVE EFFECT; REASONS.—** BIR Ruling No. DA-489-03 cannot be given retroactive effect for four reasons: *first*, it is admittedly an erroneous interpretation of the law; *second*, prior to its issuance, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law; *third*, prior to its issuance, no taxpayer can claim that it was misled by the BIR into filing a judicial claim prematurely; and *fourth*, a claim for tax refund

or credit, like a claim for tax exemption, is strictly construed against the taxpayer.

12. **ID.; ID.; REVENUE REGULATION NO. 7-95 DID NOT AMEND SECTION 106(d) OF THE TAX CODE, AS AMENDED BY RA 7716, BUT MERELY IMPLEMENTED IT; THE 60-DAY PERIOD IS STILL MANDATORY AND JURISDICTIONAL.—** There can be no dispute that under Section 106(d) of the 1977 Tax Code, as amended by RA 7716, the Commissioner has a 60-day period to act on the administrative claim. **This 60-day period is mandatory and jurisdictional**. Did Section 4.106-2(c) of Revenue Regulations No. 7-95 change this, so that the 60-day period is no longer mandatory and jurisdictional? The obvious answer is no. Section 4.106-2(c) itself expressly states that if, **"*after the sixty (60) day period*,"** the Commissioner fails to act on the administrative claim, the taxpayer may file the judicial claim even "before the lapse of the two (2) year period." **Thus, under Section 4.106-2(c) the 60-day period is still mandatory and jurisdictional**. Section 4.106-2(c) did not change Section 106(d) as amended by RA 7716, but merely implemented it, for two reasons. *First*, **Section 4.106-2(c) still expressly requires compliance with the 60-day period**. This cannot be disputed. *Second*, under the novel amendment introduced by RA 7716, mere **inaction** by the Commissioner during the 60-day period is **deemed a denial** of the claim. Thus, Section 4.106-2(c) states that "if no action on the claim for tax refund/credit has been taken by the Commissioner ***after the sixty (60) day period*,**" the taxpayer "**may**" already file the judicial claim even long before the lapse of the two-year prescriptive period. Prior to the amendment by RA 7716, the taxpayer had to wait until the two-year prescriptive period was **about to expire** if the Commissioner did not act on the claim. With the amendment by RA 7716, the taxpayer need not wait until the two-year prescriptive period is about to expire before filing the judicial claim because mere inaction by the Commissioner during the 60-day period is deemed a denial of the claim. **This is the meaning of the phrase "but before the lapse of the two (2) year period" in Section 4.106-2(c)**. As Section 4.106- 2(c) reiterates that the judicial claim can be filed only **"*after the sixty (60) day period*,"** this period remains mandatory and jurisdictional.

LEONEN, *J., separate opinion*:

1. **TAXATION; TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE; PRESCRIPTIVE PERIOD FOR FILING JUDICIAL CLAIM; THE 120 + 30-DAY IS MANDATORY AND JURISDICTIONAL.—** The 120 + 30-day period is mandatory and jurisdictional and the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. On the other hand, failure of the taxpayer to elevate its claim within 30 days from the lapse of the 120-day period, counted from the filing of its administrative claim for refund, or from the date of receipt of the decision of the CIR, will bar any subsequent judicial claim for refund.
2. **ID.; ID.; ID.; THE BIR COMMISSIONER'S ERRONEOUS INTERPRETATION AND APPLICATION OF THE LAW ARE NOT BINDING AND CONCLUSIVE UPON THE COURT.—** [W]hile the BIR Commissioner is given the power and authority to interpret tax laws pursuant to Section 4 of the NIRC, it cannot legislate guidelines contrary to the law it is tasked to implement. Hence, its interpretation is not conclusive and will be ignored if judicially found to be erroneous. Concededly, under Section 246 of the NIRC, "[a]ny revocation, modification or reversal of any BIR ruling or circular shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers." However, if it is patently clear that the ruling is contrary to the text of the law, there can be no reliance in good faith by the practitioners. BIR Ruling DA -489-03 which states that "the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review," constitutes a clear disregard of the express and categorical provision of Section 112(D) of the NIRC. Thus, the Commissioner's erroneous application of the law is not binding and conclusive upon this Court in any way.

SERENO, *C.J., separate dissenting opinion*:

1. **TAXATION; TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE; PRESCRIPTIVE PERIOD FOR FILING**

JUDICIAL CLAIMS; REVENUE REGULATION NO. 7-95 WAS NOT REVOKED UPON THE ENACTMENT OF THE 1997 NIRC.— Revenue Regulation No. (RR) 7-95 was not superseded and did not become obsolete upon the approval of RA 8424 or the 1997 NIRC. It bears to stress that Section 106 (d) of the 1977 NIRC from which RR 7-95 was construed was not repealed by Section 112 (D) of the 1997 NIRC, thus, the same regulation which implements the same framework of the law may still be given effect for the proper execution of the terms set therein. It is wrong to assume that RR 7-95 was automatically revoked upon the enactment of a new law which conveys the same meaning as the old law. Needless to say, RR 7-95 was created in view of Section 106 (d) of the 1977 NIRC which has the same context and was actually replicated in Section 112 (D) of the 1997 NIRC. Thus, to conclude that RR 7-95 became inconsistent with Section 112 (D) of the 1997 NIRC is misplaced. Moreover, to disregard RR 7-95 upon the enactment of the 1997 NIRC would likewise create a complicated scenario of determining which administrative issuance would govern claims under the said tax code during the intervening period pending the revision on its implementing rules. It would be nearly impossible for the Bureau of Internal Revenue to operate in an administrative vacuum.

2. **ID.; ID.; ID.; THE MANDATORY NATURE OF THE 120 + ≤ 30 DAY PERIOD FOR FILING A JUDICIAL CLAIM SHOULD BE APPLIED PROSPECTIVELY.—** [I]n line with numerous jurisprudence, the mandatory and jurisdictional application of the 120+≤30 [day] period must be applied prospectively, or at the earliest only upon the finality of *Aichi* where this Court categorically ruled on the nature of the 120+≤30 [day] period pursuant to Section 112 (D) of the 1997 NIRC. Prior to *Aichi*, the CTA continuously ruled that the 120+≤30 [day] period is not mandatory and jurisdictional. x x x [T]he CTA's disposition of the issue of the prescriptive period for claims for refund of input VAT, which had never been controverted by this Court until the *Aichi* case, had served as a guide not only to inferior courts but also to taxpayers. Hence, following the pronouncement in *Miranda* case, we must give weight to the dispositions made during the interim period when the issue of mandatory compliance with Section 112 had not yet been resolved, much less raised in this jurisdiction. x x x

We find it violative of the right to procedural due process of taxpayers when the Court itself allowed the taxpayers to believe that they were observing the proper procedural periods and, in a sudden jurisprudential turn, deprived them of the relief provided for and earlier relied on by the taxpayers. It is with this reason and in the interest of substantial justice that the strict application of the 120+≤30 day period should be applied prospectively to claims for refund or credit of excess input VAT. To apply these rules retroactively would be tantamount to punishing the public for merely following interpretations of the law that have the imprimatur of this Court. To do so creates a tear in the public order and sow more distrust in public institutions. We would be fostering uncertainty in the minds of the public, especially in the business community, if we cannot guarantee our own obedience to these rules. x x x It is my view that the mandatory nature of 120+≤30 day period must be completely applied prospectively in order to create stability and consistency in our tax laws.

VELASCO, JR., ***J., dissenting opinion*****:**

1. **TAXATION; TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE; PRESCRIPTIVE PERIOD FOR FILING JUDICIAL CLAIMS; REVENUE REGULATION NO. 7-95 (RR 7-95) WAS NOT REPEALED BY THE 1997 NIRC.— Sec. 4.106-2 of RR 7-95**, which provided that such judicial claims for refund/credit of input VAT must be filed "before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter" **was not, however, repealed by the 1997 NIRC**. **There was no provision in RA 8424 explicitly repealing RR 7-95**. Instead, Sec. 4.106-2 of RR 7-95 remained effective as the implementing rule of Sec. 112(D) that was lifted almost verbatim from Sec. 106(d) of the 1977 NIRC, as amended. x x x It is apparent that Sec. 106(d) of the 1977 NIRC, as amended, was substantially adopted and re-enacted by Sec. 112(D) of the 1997 NIRC. In other words, Sec. 106(d) of the 1977 NIRC, as amended, was **not repealed** by Sec. 112(D) of the 1997 NIRC. Thus, **RR 7-95 construing and implementing Sec. 106(d) of the 1977 NIRC, as amended by RA 7716, continued in effect under Sec. 112(D) of the 1997 NIRC.**

2. **ID.; ID.; ID.; REVENUE MEMORANDUM CIRCULAR (RMC) NO. 49-03 PROVES THAT THE 120-DAY AND 30-DAY PERIODS ARE NON-JURISDICTIONAL IN NATURE.—** RMC 49-03 explicitly allowed a taxpayer to file his judicial claim with the CTA while his administrative claim for refund of the same input taxes was still pending before the BIR, *i.e.*, without waiting for the administrative claim to be first resolved, and that both claims, judicial and administrative, could proceed simultaneously; in brief, the administrative agency and the tax court may take cognizance of and act on the claims separately. RMC 49-03 permitted refund-seeking taxpayers to have recourse to the CTA without having to wait for the lapse of the 120-day period granted to the CIR by Section 112(D). At the same time, the BIR was to continue to exercise jurisdiction over the administrative claim for refund, even after the CTA acquired jurisdiction over the judicial claim for refund of the exact same input VAT. This RMC even provided the mechanics for dealing with situations where one claim was resolved ahead of the other, in order to prevent conflicting outcomes or double refunds. Obviously, this RMC provided much needed and reliable guidance to taxpayers in dealing with their claims that were in peril of being time-barred. At bottom, RMC 49-03 conclusively proves that the CIR and the CTA regarded the 120-day and 30-day periods in Sec. 112(D) as being **non-jurisdictional in nature**. It must be reiterated for emphasis that RMC 49-03 was issued and implemented under the aegis of the 1997 NIRC. In addition, it is unarguable that **RMC 49-03 was premised on the belief of the CIR and the CTA that the two-year prescriptive period under Sec. 229 continued to be applicable to judicial claims for refund of input VAT, because otherwise, there would have been no need for, and no point in, allowing both the judicial and administrative claims to proceed simultaneously.**

3. **ID.; ID.; ID.; BIR RULING NO. DA-489-03 WAS A MERE APPLICATION OF RR 7-95.— BIR Ruling No. DA-489-03 was a mere application of the still effective rule set by RR 7-95**, which, as discussed, was an issuance made by the Secretary of Finance pursuant to the authority granted to him by the Tax Code. On the other hand, BIR Ruling No. DA-489-03 was issued not by the CIR, but by then **Deputy Commissioner** Jose Mario C. Buñag of the Legal & Inspection Group of BIR. It was, therefore, not an issuance authorized

under Sec. 4 of the NIRC, which clearly provides that the "power to interpret the provisions of [the NIRC] and other tax laws shall be under the **exclusive** and **original** jurisdiction of the Commissioner, subject to the review by the Secretary." Neither can BIR Ruling No. DA -489-03 be considered an issuance within the delegated authority of the deputy commissioner considering that Sec. 7 of the 1997 NIRC expressly prohibits [that] delegation of x x x powers[.] x x x If this Court is set in sustaining the binding effect of BIR Ruling No. DA-489-03, it must be viewed as simply applying an already established and still effective rule provided by RR 7-95, not an issuance that established a new rule that departed from the 1997 NIRC.

4. **ID.; ID.; ID.; RULINGS OF THE COURT ESTABLISHED THAT THE 120-DAY AND 30-DAY PERIODS ARE MERELY DISCRETIONARY AND DISPENSABLE.—** [A] reading of the rulings of this Court on claims for refund/credit of input VAT initiated from 1996 to 2005 made the impression that this Court was simply applying a well and long established rule that the period provided in Sec. 112(D) of the 1997 NIRC is merely discretionary and dispensable. As long as the judicial claim is filed within the 2-year period provided in Sec. 112(A), it was considered irrelevant whether the claim with the CTA is filed a day or a year after the administrative claim was filed with the CIR. x x x The common thread that runs through these cases is the cavalier treatment of the 120 and 30-day periods prescribed by Sec. 112 of the 1997 NIRC. If it is the Court's position that the prescribed periods of 120 days for administrative claim and 30 days for judicial claims are jurisdictional at the time the judicial claims were filed in these cases, then the cases should have been decided adversely against the taxpayers for filing the claim in breach of Sec. 112 of the 1997 NIRC. When these cases were entertained by the Court despite the clear departure from Sec. 112, the Court, wittingly or unwittingly, led the taxpayers to believe that the 120 and 30-day periods are dispensable as long as both the administrative and judicial claims for refund/credit of input VAT were filed within 2 years from the close of the relevant taxable quarter. Simply put, **the taxpayers relied in good faith on RR 7-95** and honestly believed and regarded the 120 and 30-day periods as merely discretionary and dispensable.

5. ID.; ID.; ID.; ID.; LITANY OF CTA DECISIONS TREAT THE 120-DAY AND 30-DAY PERIODS AS MERELY DISCRETIONARY AND DISPENSABLE; IT CONSTITUTES AN OPERATIVE FACT AND SERVES AS GUIDANCE TO TAXPAYERS IN FILING THEIR CLAIMS.— [W]hile CTA Decisions are not binding on the Court, **the actual manner in which the BIR and the CTA themselves regarded the 120 and 30-day periods —** in the course of handling administrative and judicial claims for refund/tax credit during the period in question, **as evidenced by the factual recitals in the CTA Decisions — constitutes an <u>operative fact</u> that cannot simply be ignored.** The truth of the matter is that, **whatever may have been the law and the regulation in force at the time, <u>taxpayers took guidance from and relied heavily upon the manner in which the BIR and the CTA viewed the 120- and 30-day periods, as reflected in their treatment of claims for input VAT refund/credit, and these taxpayers acted accordingly by filing their claims in the manner permitted and encouraged by the BIR and the CTA</u>.** This is a reality that even this Court cannot afford to turn a blind eye to. Numerous decisions of the CTA in Division and *En Banc* reveal that the **BIR and CTA by their very actuations in the period between 1996 and 2005, did, in fact, permit, tolerate and encourage taxpayers to file their refund/tax credit claims without regard to the 120 and 30-day periods provided in Sec. 112(D)**. x x x There is a host of other CTA cases that illustrate the same point, *i.e.*, that despite non-compliance with the 120 and 30-day periods, the judicial claim was not opposed by the BIR nor rejected by the CTA on the ground of prematurity of the judicial claim, or lack of jurisdiction to take cognizance thereof. On the other hand, there are also CTA *En Banc* decisions treating of the exact opposite of prematurity. x x x Thus, it is exceedingly clear that, historically speaking, in order to enable refund-seeking taxpayers to file their judicial claims within the two- year prescriptive period, the BIR and the CTA did in actual practice treat the 120-day and 30-day periods provided in Sec. 112(D) as merely discretionary and dispensable; and this served as guidance for the taxpayers. **The taxpaying public took heed of the prevailing practices of the BIR and CTA and acted accordingly. This is a matter which this Court must acknowledge and accept**. In addition, there is no doubt in

our mind that the guidance provided to taxpayers by actual BIR and CTA practices, as portrayed in the foregoing discussion, carried as much, if not more, weight and persuasive force as compared to the formal issuances of the BIR such as revenue regulations, RMCs and the like. Thus, adherence to the then prevailing practices of the BIR and CTA , even in the absence of formal issuances like RR 7-95, would be sufficient to clothe the taxpayer with good faith.

6. **ID.; ID.; ID.; IT IS *AICHI* CASE THAT CATEGORICALLY DECLARED THE 120-DAY AND 30-DAY PERIODS AS MANDATORY AND JURISDICTIONAL.—** All doubts on whether or not the 120 and 30-day periods are merely discretionary and dispensable were erased when the Court promulgated *Aichi* on October 6, 2010. There, the Court is definite and categorical that the prescriptive period of 120 and 30 days under Sec. 112 of the 1997 NIRC is mandatory and jurisdictional. *Aichi* explained that the 2-year period provided in **Sec. 112(A)** of the 1997 NIRC refers **only** to the prescription period for the filing of an **administrative claim** with the CIR. Meanwhile, the **judicial claim** contemplated under said **Sec. 112(C)** must be filed within a **mandatory and jurisdictional period** of thirty (30) days after the taxpayer's receipt of the CIR's decision denying the claim, or within thirty (30) days after the CIR's inaction for a period of 120 days from the submission of the complete documents supporting the claim. Hence, the period for filing the judicial claim under Sec. 112(C) may stretch out beyond the 2-year threshold provided in Sec. 112(A) as long as the administrative claim is filed within the said 2-year period.

7. **ID.; ID.; ID.; TAXPAYERS WHO BONA FIDE RELIED ON THE PREVIOUS RULES AND PREVAILING PRACTICES PRIOR TO *AICHI* MUST BE GIVEN DUE CREDIT.—** **[T]his Court, x x x, is duty-bound to sustain and give due credit to the taxpayers' bona fide reliance on RR Nos. 7-95 and 14- 2005, RMC Nos. 42-03 and 49-03**, along with guidance provided by the then prevailing practices of the BIR and the CTA, prior to their modification by RR 16-2005. Such prospective application of the latter revenue regulation comports with the simplest notions of what is fair and just––the precepts of due process. The Court has previously held that "in declaring a law or executive action null and void, or, by extension, no

longer without force and effect, **undue harshness and resulting unfairness must be avoided**." Such pronouncement can be applied to a change in the implementing rules of the law. The reliance on the previous rules, in particular RR Nos. 7-95 and 14-2005, along with RMC Nos. 42-03 and 49-03, and the guidance provided by the then prevailing practices of the BIR and the CTA, most certainly have had irreversible consequences that cannot just be ignored; the past cannot always be erased by a new judicial declaration. x x x Indeed, denying claims for the issuance of TCCs or refund of unutilized input VAT amounting to millions, if not billions, of hard-earned money that rightfully belongs to these taxpayers on the facile ground that the judicial claim was not timely filed in accordance with a **later** rule, virtually sanctions the perpetration of injustice.

APPEARANCES OF COUNSEL

Ilao & Ilao Law Offices for San Roque Power Corp. and Taganito Mining Corp.

Tirso A. Tejada for Philex Mining Corp.

The Solicitor General for Commissioner of Internal Revenue.

D E C I S I O N

CARPIO, *J.*:

The Cases

G.R. No. 187485 is a petition for review[1] assailing the Decision[2] promulgated on 25 March 2009 as well as the Resolution[3]

[1] Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo* (G.R. No. 187485), pp. 22-54.

[2] Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring. Presiding Justice Ernesto D. Acosta penned a Separate Concurring and Dissenting Opinion. *Id.* at 55-80.

[3] Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring. Presiding Justice Ernesto D. Acosta penned a Separate Concurring and Dissenting Opinion. *Id.* at 81-82.

promulgated on 24 April 2009 by the Court of Tax Appeals *En Banc* (CTA EB) in CTA EB No. 408. The CTA EB affirmed the 29 November 2007 Amended Decision[4] as well as the 11 July 2008 Resolution[5] of the Second Division of the Court of Tax Appeals (CTA Second Division) in CTA Case No. 6647. The CTA Second Division ordered the Commissioner of Internal Revenue (Commissioner) to refund or issue a tax credit for ₱483,797,599.65 to San Roque Power Corporation (San Roque) for unutilized input value-added tax (VAT) on purchases of capital goods and services for the taxable year 2001.

G.R. No. 196113 is a petition for review[6] assailing the Decision[7] promulgated on 8 December 2010 as well as the Resolution[8] promulgated on 14 March 2011 by the CTA EB in CTA EB No. 624. In its Decision, the CTA EB reversed the 8 January 2010 Decision[9] as well as the 7 April 2010 Resolution[10] of the CTA Second Division and granted the CIR's petition for review

---

[4] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. *Id.* at 83-93.

[5] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. *Id.* at 101-104.

[6] Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo* (G.R. No. 196113), pp. 3-25.

[7] Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring. Associate Justice Lovell R. Bautista penned a Dissenting Opinion, while Associate Justice Amelia R. Cotangco-Manalastas was on leave. *Id.* at 51-67.

[8] Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Lovell R. Bautista penned a Dissenting Opinion. *Id.* at 74-83.

[9] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. *Id.* at 27-43.

[10] Penned by Associate Justice Erlinda P. Uy, with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring. *Id.* at 45-49.

in CTA Case No. 7574. The CTA EB dismissed, for having been prematurely filed, Taganito Mining Corporation's (Taganito) judicial claim for ₱8,365,664.38 tax refund or credit.

G.R. No. 197156 is a petition for review[11] assailing the Decision[12] promulgated on 3 December 2010 as well as the Resolution[13] promulgated on 17 May 2011 by the CTA EB in CTA EB No. 569. The CTA EB affirmed the 20 July 2009 Decision as well as the 10 November 2009 Resolution of the CTA Second Division in CTA Case No. 7687. The CTA Second Division denied, due to prescription, Philex Mining Corporation's (Philex) judicial claim for ₱23,956,732.44 tax refund or credit.

On 3 August 2011, the Second Division of this Court resolved[14] to consolidate G.R. No. 197156 with G.R. No. 196113, which were pending in the same Division, and with G.R. No. 187485, which was assigned to the Court *En Banc*. The Second Division also resolved to refer G.R. Nos. 197156 and 196113 to the Court *En Banc*, where G.R. No. 187485, the lower-numbered case, was assigned.

G.R. No. 187485
CIR v. San Roque Power Corporation

The Facts

The CTA EB's narration of the pertinent facts is as follows:

---

[11] Under Rule 45 of the 1997 Rules of Civil Procedure. *Rollo* (G.R. No. 197156), pp. 3-29.

[12] Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Lovell R. Bautista penned a Dissenting Opinion. *Id.* at 44-67.

[13] Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Lovell R. Bautista maintained his Dissenting Opinion. *Id.* at 31-42.

[14] *Id.* at 75-76.

[CIR] is the duly appointed Commissioner of Internal Revenue, empowered, among others, to act upon and approve claims for refund or tax credit, with office at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.

[San Roque] is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Barangay San Roque, San Manuel, Pangasinan. It was incorporated in October 1997 to design, construct, erect, assemble, own, commission and operate power-generating plants and related facilities pursuant to and under contract with the Government of the Republic of the Philippines, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation, or other entity engaged in the development, supply, or distribution of energy.

As a seller of services, [San Roque] is duly registered with the BIR with TIN/VAT No. 005-017-501. It is likewise registered with the Board of Investments ("BOI") on a preferred pioneer status, to engage in the design, construction, erection, assembly, as well as to own, commission, and operate electric power-generating plants and related activities, for which it was issued Certificate of Registration No. 97-356 on February 11, 1998.

On October 11, 1997, [San Roque] entered into a Power Purchase Agreement ("PPA") with the National Power Corporation ("NPC") to develop hydro-potential of the Lower Agno River and generate additional power and energy for the Luzon Power Grid, by building the San Roque Multi-Purpose Project located in San Manuel, Pangasinan. The PPA provides, among others, that [San Roque] shall be responsible for the design, construction, installation, completion, testing and commissioning of the Power Station and shall operate and maintain the same, subject to NPC instructions. During the cooperation period of twenty-five (25) years commencing from the completion date of the Power Station, NPC will take and pay for all electricity available from the Power Station.

On the construction and development of the San Roque Multi-Purpose Project which comprises of the dam, spillway and power plant, [San Roque] allegedly incurred, excess input VAT in the amount of ₱559,709,337.54 for taxable year 2001 which it declared in its Quarterly VAT Returns filed for the same year. [San Roque] duly filed with the BIR separate claims for refund, in the total amount of ₱559,709,337.54, representing unutilized input taxes as declared in its VAT returns for taxable year 2001.

However, on March 28, 2003, [San Roque] filed amended Quarterly VAT Returns for the year 2001 since it increased its unutilized input VAT to the amount of ₱560,200,283.14. Consequently, [San Roque] filed with the BIR on even date, separate amended claims for refund in the aggregate amount of ₱560,200,283.14.

[CIR's] inaction on the subject claims led to the filing by [San Roque] of the Petition for Review with the Court [of Tax Appeals] in Division on April 10, 2003.

Trial of the case ensued and on July 20, 2005, the case was submitted for decision.[15]

The Court of Tax Appeals' Ruling: Division

The CTA Second Division initially denied San Roque's claim. In its Decision[16] dated 8 March 2006, it cited the following as bases for the denial of San Roque's claim: lack of recorded zero-rated or effectively zero-rated sales; failure to submit documents specifically identifying the purchased goods/services related to the claimed input VAT which were included in its Property, Plant and Equipment account; and failure to prove that the related construction costs were capitalized in its books of account and subjected to depreciation.

The CTA Second Division required San Roque to show that it complied with the following requirements of Section 112(B) of Republic Act No. 8424 (RA 8424)[17] to be entitled to a tax refund or credit of input VAT attributable to capital goods imported or locally purchased: (1) it is a VAT-registered entity; (2) its input taxes claimed were paid on capital goods duly supported by VAT invoices and/or official receipts; (3) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and (4) its claim for refund was filed within the two- year prescriptive period both in the administrative and judicial levels.

[15] *Rollo* (G.R. No. 187485), pp. 56-58.

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

[17] The short title of RA 8424 is Tax Reform Act of 1997. It is also sometimes referred to as the National Internal Revenue Code (NIRC). In this *ponencia*, we refer to RA 8424 as 1997 Tax Code.

The CTA Second Division found that San Roque complied with the first, third, and fourth requirements, thus:

The fact that [San Roque] is a VAT registered entity is admitted (*par. 4, Facts Admitted, Joint Stipulation of Facts, Records, p. 157*). It was also established that the instant claim of ₱560,200,823.14 is already net of the ₱11,509.09 output tax declared by [San Roque] in its amended VAT return for the first quarter of 2001. Moreover, the entire amount of ₱560,200,823.14 was deducted by [San Roque] from the total available input tax reflected in its amended VAT returns for the last two quarters of 2001 and first two quarters of 2002 (*Exhibits M-6, O-6, OO-1 & QQ-1*). This means that the claimed input taxes of ₱560,200,823.14 did not form part of the excess input taxes of ₱83,692,257.83, as of the second quarter of 2002 that was to be carried-over to the succeeding quarters. Further, [San Roque's] claim for refund/tax credit certificate of excess input VAT was filed within the two-year prescriptive period reckoned from the dates of filing of the corresponding quarterly VAT returns.

For the first, second, third, and fourth quarters of 2001, [San Roque] filed its VAT returns on April 25, 2001, July 25, 2001, October 23, 2001 and January 24, 2002, respectively (*Exhibits "H, J, L, and N"*). These returns were all subsequently amended on March 28, 2003 (*Exhibits "I, K, M, and O"*). On the other hand, [San Roque] originally filed its separate claims for refund on July 10, 2001, October 10, 2001, February 21, 2002, and May 9, 2002 for the first, second, third, and fourth quarters of 2001, respectively, (*Exhibits "EE, FF, GG, and HH"*) and subsequently filed amended claims for all quarters on March 28, 2003 (*Exhibits "II, JJ, KK, and LL"*). Moreover, the Petition for Review was filed on April 10, 2003. Counting from the respective dates when [San Roque] originally filed its VAT returns for the first, second, third and fourth quarters of 2001, the administrative claims for refund (original and amended) and the Petition for Review fall within the two-year prescriptive period.[18]

San Roque filed a Motion for New Trial and/or Reconsideration on 7 April 2006. In its 29 November 2007 Amended Decision,[19] the CTA Second Division found legal basis to partially grant San Roque's claim. The CTA Second Division ordered the

[18] *Rollo* (G.R. No. 187485), pp. 70-71.

[19] *Id.* at 83-93.

Commissioner to refund or issue a tax credit in favor of San Roque in the amount of ₱483,797,599.65, which represents San Roque's unutilized input VAT on its purchases of capital goods and services for the taxable year 2001. The CTA based the adjustment in the amount on the findings of the independent certified public accountant. The following reasons were cited for the disallowed claims: erroneous computation; failure to ascertain whether the related purchases are in the nature of capital goods; and the purchases pertain to capital goods. Moreover, the reduction of claims was based on the following: the difference between San Roque's claim and that appearing on its books; the official receipts covering the claimed input VAT on purchases of local services are not within the period of the claim; and the amount of VAT cannot be determined from the submitted official receipts and invoices. The CTA Second Division denied San Roque's claim for refund or tax credit of its unutilized input VAT attributable to its zero-rated or effectively zero-rated sales because San Roque had no record of such sales for the four quarters of 2001.

The dispositive portion of the CTA Second Division's 29 November 2007 Amended Decision reads:

WHEREFORE, [San Roque's] "Motion for New Trial and/or Reconsideration" is hereby PARTIALLY GRANTED and this Court's Decision promulgated on March 8, 2006 in the instant case is hereby MODIFIED.

Accordingly, [the CIR] is hereby ORDERED to REFUND or in the alternative, to ISSUE A TAX CREDIT CERTIFICATE in favor of [San Roque] in the reduced amount of Four Hundred Eighty Three Million Seven Hundred Ninety Seven Thousand Five Hundred Ninety Nine Pesos and Sixty Five Centavos (₱483,797,599.65) representing unutilized input VAT on purchases of capital goods and services for the taxable year 2001.

SO ORDERED.[20]

The Commissioner filed a Motion for Partial Reconsideration on 20 December 2007. The CTA Second Division issued a

---

[20] *Id.* at 92.

Resolution dated 11 July 2008 which denied the CIR's motion for lack of merit.

The Court of Tax Appeals' Ruling: *En Banc*

The Commissioner filed a Petition for Review before the CTA EB praying for the denial of San Roque's claim for refund or tax credit in its entirety as well as for the setting aside of the 29 November 2007 Amended Decision and the 11 July 2008 Resolution in CTA Case No. 6647.

The CTA EB dismissed the CIR's petition for review and affirmed the challenged decision and resolution.

The CTA EB cited *Commissioner of Internal Revenue v. Toledo Power, Inc.*[21] and Revenue Memorandum Circular No. 49-03,[22] as its bases for ruling that San Roque's judicial claim was not prematurely filed. The pertinent portions of the Decision state:

More importantly, the Court *En Banc* has squarely and exhaustively ruled on this issue in this wise:

> **It is true that Section 112(D) of the abovementioned provision applies to the present case. However, what the petitioner failed to consider is Section 112(A) of the same provision.** The respondent is also covered by the two (2) year prescriptive period. We have repeatedly held that the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period.
>
> Accordingly, the Supreme Court held in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue* that the two-year prescriptive period for filing a claim for input tax is reckoned from the date of the filing of the quarterly VAT return and payment of the tax due. **If the said period is about to expire but the BIR has not yet acted on the application for refund, the taxpayer may interpose a petition for review with this Court within the two year period.**

[21] CTA EB Case No. 321 (CTA Case Nos. 6805 and 6851), 7 May 2008.

[22] Dated 18 August 2003.

> In the case of *Gibbs vs. Collector*, the Supreme Court held that if, however, the Collector (now Commissioner) takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.
>
> Furthermore, in the case of *Commissioner of Customs and Commissioner of Internal Revenue vs. The Honorable Court of Tax Appeals and Planters Products, Inc.*, **the Supreme Court held that the taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect.** It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector (now Commissioner) of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Collector (now Commissioner) of Internal Revenue, would have, at his personal convenience, given his go signal.
>
> This Court ruled in several cases that once the petition is filed, the Court has already acquired jurisdiction over the claims and the Court is not bound to wait indefinitely for no reason for whatever action respondent (herein petitioner) may take. **At stake are claims for refund and unlike disputed assessments, no decision of respondent (herein petitioner) is required before one can go to this Court.** (Emphasis supplied and citations omitted)

Lastly, it is apparent from the following provisions of Revenue Memorandum Circular No. 49-03 dated August 18, 2003, that [the CIR] knows that claims for VAT refund or tax credit filed with the Court [of Tax Appeals] can proceed simultaneously with the ones filed with the BIR and that taxpayers need not wait for the lapse of the subject 120-day period, to wit:

> In response to [the] request of selected taxpayers for adoption of procedures in handling refund cases that are aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law, certain provisions of RMC No. 42-2003 are hereby amended and new provisions are added thereto.

In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:

I.) A-17 of Revenue Memorandum Circular No. 42-2003 is hereby revised to read as follows:

In cases where the taxpayer has filed a "Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.

If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA.[23] (Emphasis supplied)

G.R. No. 196113
Taganito Mining Corporation v. CIR

The Facts

The CTA Second Division's narration of the pertinent facts is as follows:

Petitioner, Taganito Mining Corporation, is a corporation duly organized and existing under and by virtue of the laws of the

[23] *Rollo* (G.R. No. 187485), pp. 67-69.

Philippines, with principal office at 4th Floor, Solid Mills Building, De La Rosa St., Lega[s]pi Village, Makati City. It is duly registered with the Securities and Exchange Commission with Certificate of Registration No. 138682 issued on March 4, 1987 with the following primary purpose:

> To carry on the business, for itself and for others, of mining lode and/or placer mining, developing, exploiting, extracting, milling, concentrating, converting, smelting, treating, refining, preparing for market, manufacturing, buying, selling, exchanging, shipping, transporting, and otherwise producing and dealing in nickel, chromite, cobalt, gold, silver, copper, lead, zinc, brass, iron, steel, limestone, and all kinds of ores, metals and their by-products and which by-products thereof of every kind and description and by whatsoever process the same can be or may hereafter be produced, and generally and without limit as to amount, to buy, sell, locate, exchange, lease, acquire and deal in lands, mines, and mineral rights and claims and to conduct all business appertaining thereto, to purchase, locate, lease or otherwise acquire, mining claims and rights, timber rights, water rights, concessions and mines, buildings, dwellings, plants machinery, spare parts, tools and other properties whatsoever which this corporation may from time to time find to be to its advantage to mine lands, and to explore, work, exercise, develop or turn to account the same, and to acquire, develop and utilize water rights in such manner as may be authorized or permitted by law; to purchase, hire, make, construct or otherwise, acquire, provide, maintain, equip, alter, erect, improve, repair, manage, work and operate private roads, barges, vessels, aircraft and vehicles, private telegraph and telephone lines, and other communication media, as may be needed by the corporation for its own purpose, and to purchase, import, construct, machine, fabricate, or otherwise acquire, and maintain and operate bridges, piers, wharves, wells, reservoirs, plumes, watercourses, waterworks, aqueducts, shafts, tunnels, furnaces, cook ovens, crushing works, gasworks, electric lights and power plants and compressed air plants, chemical works of all kinds, concentrators, smelters, smelting plants, and refineries, matting plants, warehouses, workshops, factories, dwelling houses, stores, hotels or other buildings, engines, machinery, spare parts, tools, implements and other works, conveniences and properties of any description in connection with or which may be directly or indirectly conducive to any

of the objects of the corporation, and to contribute to, subsidize or otherwise aid or take part in any operations;

and is a VAT-registered entity, with Certificate of Registration (BIR Form No. 2303) No. OCN 8RC0000017494. Likewise, [Taganito] is registered with the Board of Investments (BOI) as an exporter of beneficiated nickel silicate and chromite ores, with BOI Certificate of Registration No. EP-88-306.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of the said office, including inter alia, the power to decide refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by Bureau of Internal Revenue (BIR) under Section 4 of the NIRC. He holds office at the BIR National Office Building, Diliman, Quezon City.

[Taganito] filed all its Monthly VAT Declarations and Quarterly Vat Returns for the period January 1, 2005 to December 31, 2005. For easy reference, a summary of the filing dates of the original and amended Quarterly VAT Returns for taxable year 2005 of [Taganito] is as follows:

Exhibit(s)	**Quarter**	**Nature of the Return**	**Mode of filing**	**Filing Date**
L to L-4	1st	Original	Electronic	April 15, 2005
M to M-3		Amended	Electronic	July 20, 2005
N to N-4		Amended	Electronic	October 18, 2006
Q to Q-3	2nd	Original	Electronic	July 20, 2005
R to R-4		Amended	Electronic	October 18, 2006
U to U-4	3rd	Original	Electronic	October 19, 2005
V to V-4		Amended	Electronic	October 18, 2006
Y to Y-4	4th	Original	Electronic	January 20, 2006
Z to Z-4		Amended	Electronic	October 18, 2006

As can be gleaned from its amended Quarterly VAT Returns, [Taganito] reported zero-rated sales amounting to ₱1,446,854,034.68; input VAT on its domestic purchases and importations of goods (other than capital goods) and services amounting to ₱2,314,730.43; and input VAT on its domestic purchases and importations of capital

goods amounting to ₱6,050,933.95, the details of which are summarized as follows:

Period Covered	Zero-Rated Sales	Input VAT on Domestic Purchases and Importations of Goods and Services	Input VAT on Domestic Purchases and Importations of Capital Goods	Total Input VAT
01/01/05 - 03/31/05	551,179,871.58	1,491,880.56	₱239,803.22	₱1,731,683.78
04/01/05 - 06/30/05	64,677,530.78	204,364.17	5,811,130.73	6,015,494.90
07/01/05 - 09/30/05	480,784,287.30	144,887.67	-	144,887.67
10/01/05 - 12/31/05	350,212,345.02	473,598.03	-	473,598.03
TOTAL	**₱1,446,854,034.68**	**₱2,314,730.43**	**₱6,050,933.95**	**₱8,365,664.38**

On November 14, 2006, [Taganito] filed with [the CIR], through BIR's Large Taxpayers Audit and Investigation Division II (LTAID II), a letter dated November 13, 2006 claiming a tax credit/refund of its supposed input VAT amounting to ₱8,365,664.38 for the period covering January 1, 2004 to December 31, 2004. On the same date, [Taganito] likewise filed an Application for Tax Credits/Refunds for the period covering January 1, 2005 to December 31, 2005 for the same amount.

On November 29, 2006, [Taganito] sent again another letter dated November 29, 2004 to [the CIR], to correct the period of the above claim for tax credit/refund in the said amount of ₱8,365,664.38 as actually referring to the period covering January 1, 2005 to December 31, 2005.

As the statutory period within which to file a claim for refund for said input VAT is about to lapse without action on the part of the [CIR], [Taganito] filed the instant Petition for Review on February 17, 2007.

In his Answer filed on March 28, 2007, [the CIR] interposes the following defenses:

4. [Taganito's] alleged claim for refund is subject to administrative investigation/examination by the Bureau of Internal Revenue (BIR);

5. The amount of ₱8,365,664.38 being claimed by [Taganito] as alleged unutilized input VAT on domestic purchases of goods and services and on importation of capital goods for the period January 1, 2005 to December 31, 2005 is not properly documented;

6. [Taganito] must prove that it has complied with the provisions of Sections 112 (A) and (D) and 229 of the National Internal Revenue Code of 1997 (1997 Tax Code) on the prescriptive period for claiming tax refund/credit;

7. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98, **otherwise there would be no sufficient compliance with the filing of administrative claim for refund, the administrative claim thereof being mere pro- forma, which is a condition *sine qua non* prior to the filing of judicial claim** in accordance with the provision of Section 229 of the 1997 Tax Code. Further, Section 112 (D) of the Tax Code, as amended, requires the **submission of complete documents in support of the application filed** with the BIR before the 120-day audit period shall apply, and **before the taxpayer could avail of judicial remedies as provided for in the law.** Hence, [Taganito's] failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

8. [Taganito] must prove that it has complied with the invoicing requirements mentioned in Sections 110 and 113 of the 1997 Tax Code, as amended, in relation to provisions of Revenue Regulations No. 7-95.

9. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit **(*Asiatic Petroleum Co. vs. Llanes*, 49 Phil. 466 cited in *Collector of Internal Revenue vs. Manila Jockey Club, Inc.*, 98 Phil. 670);**

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from

taxation (***Commissioner of Internal Revenue vs. Ledesma*, 31 SCRA 95)** and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 1211).**

SPECIAL AND AFFIRMATIVE DEFENSES

11. The Court of Tax Appeals has no jurisdiction to entertain the instant petition for review for failure on the part of [Taganito] to comply with the provision of Section 112 (D) of the 1997 Tax Code which provides, thus:

> Section 112. *Refunds or Tax Credits of Input Tax*. —
>
> x x x x x x x x x
>
> (D) *Period within which refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.**
>
> In cases of full or partial denial for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day- period, appeal the decision or the unacted claim with the Court of Tax Appeals.** (Emphasis supplied.)

12. As stated, [Taganito] filed the administrative claim for refund with the Bureau of Internal Revenue on November 14, 2006. Subsequently on February 14, 2007, the instant petition was filed. Obviously the 120 days given to the Commissioner to decide on the claim has not yet lapsed when the petition was filed. The petition was prematurely filed, hence it must be dismissed for lack of jurisdiction.

During trial, [Taganito] presented testimonial and documentary evidence primarily aimed at proving its supposed entitlement to the refund in the amount of ₱8,365,664.38, representing input taxes for the period covering January 1, 2005 to December 31, 2005. [The CIR], on the other hand, opted not to present evidence. Thus, in the

Resolution promulgated on January 22, 2009, this case was submitted for decision as of such date, considering [Taganito's] "Memorandum" filed on January 19, 2009 and [the CIR's] "Memorandum" filed on December 19, 2008.[24]

The Court of Tax Appeals' Ruling: Division

The CTA Second Division partially granted Taganito's claim. In its Decision[25] dated 8 January 2010, the CTA Second Division found that Taganito complied with the requirements of Section 112(A) of RA 8424, as amended, to be entitled to a tax refund or credit of input VAT attributable to zero-rated or effectively zero-rated sales.[26]

The pertinent portions of the CTA Second Division's Decision read:

> Finally, records show that [Taganito's] administrative claim filed on November 14, 2006, which was amended on November 29, 2006, and the Petition for Review filed with this Court on February 14, 2007 are well within the two-year prescriptive period, reckoned from March 31, 2005, June 30, 2005, September 30, 2005, and December 31, 2005, respectively, the close of each taxable quarter covering the period January 1, 2005 to December 31, 2005.
>
> In fine, [Taganito] sufficiently proved that it is entitled to a tax credit certificate in the amount of ₱8,249,883.33 representing unutilized input VAT for the four taxable quarters of 2005.
>
> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, [the CIR] is hereby ORDERED to REFUND to [Taganito] the amount of EIGHT MILLION TWO HUNDRED FORTY NINE THOUSAND EIGHT HUNDRED EIGHTY THREE PESOS AND THIRTY THREE CENTAVOS (₱8,249,883.33) representing its unutilized input taxes attributable to zero-rated sales from January 1, 2005 to December 31, 2005.
>
> SO ORDERED.[27]

---

[24] *Rollo* (G.R. No. 196113), pp. 27-33. Emphases in the original.

[25] *Id.* at 27-43.

[26] *Id.* at 35-36.

[27] *Id.* at 42.

The Commissioner filed a Motion for Partial Reconsideration on 29 January 2010. Taganito, in turn, filed a Comment/ Opposition on the Motion for Partial Reconsideration on 15 February 2010.

In a Resolution[28] dated 7 April 2010, the CTA Second Division denied the CIR's motion. The CTA Second Division ruled that the legislature did not intend that Section 112 (Refunds or Tax Credits of Input Tax) should be read in isolation from Section 229 (Recovery of Tax Erroneously or Illegally Collected) or vice versa. The CTA Second Division applied the mandatory statute of limitations in seeking judicial recourse prescribed under Section 229 to claims for refund or tax credit under Section 112.

The Court of Tax Appeals' Ruling: *En Banc*

On 29 April 2010, the Commissioner filed a Petition for Review before the CTA EB assailing the 8 January 2010 Decision and the 7 April 2010 Resolution in CTA Case No. 7574 and praying that Taganito's entire claim for refund be denied.

In its 8 December 2010 Decision,[29] the CTA EB granted the CIR's petition for review and reversed and set aside the challenged decision and resolution.

The CTA EB declared that Section 112(A) and (B) of the 1997 Tax Code both set forth the reckoning of the two-year prescriptive period for filing a claim for tax refund or credit over input VAT to be the close of the taxable quarter when the sales were made. The CTA EB also relied on this Court's rulings in the cases of *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*[30] and *Commisioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant)*.[31] Both *Aichi* and Mirant ruled that the two-year prescriptive period to file a refund for input VAT arising from zero-rated sales should be

---

[28] *Id.* at 45-49.

[29] *Id.* at 51-67.

[30] G.R. No. 184823, 6 October 2010, 632 SCRA 422.

[31] G.R. No. 172129, 12 September 2008, 565 SCRA 154.

reckoned from the close of the taxable quarter when the sales were made. *Aichi* further emphasized that the failure to await the decision of the Commissioner or the lapse of 120-day period prescribed in Section 112(D) amounts to a premature filing.

The CTA EB found that Taganito filed its administrative claim on 14 November 2006, which was well within the period prescribed under Section 112(A) and (B) of the 1997 Tax Code. However, the CTA EB found that Taganito's judicial claim was prematurely filed. Taganito filed its Petition for Review before the CTA Second Division on 14 February 2007. The judicial claim was filed after the lapse of only 92 days from the filing of its administrative claim before the CIR, in violation of the 120-day period prescribed in Section 112(D) of the 1997 Tax Code.

The dispositive portion of the Decision states:

> WHEREFORE, the instant Petition for Review is hereby GRANTED. The assailed Decision dated January 8, 2010 and Resolution dated April 7, 2010 of the Special Second Division of this Court are hereby REVERSED and SET ASIDE. Another one is hereby entered DISMISSING the Petition for Review filed in CTA Case No. 7574 for having been prematurely filed.
>
> SO ORDERED.[32]

In his dissent,[33] Associate Justice Lovell R. Bautista insisted that Taganito timely filed its claim before the CTA. Justice Bautista read Section 112(C) of the 1997 Tax Code (Period within which Refund or Tax Credit of Input Taxes shall be Made) in conjunction with Section 229 (Recovery of Tax Erroneously or Illegally Collected). Justice Bautista also relied on this Court's ruling in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (Atlas)*,[34] which stated that refundable or creditable input

---

[32] *Rollo* (G.R. No. 196113), p. 66.

[33] *Id.* at 68-73.

[34] G.R. Nos. 141104 & 148763, 8 June 2007, 524 SCRA 73.

VAT and illegally or erroneously collected national internal revenue tax are the same, insofar as both are monetary amounts which are currently in the hands of the government but must rightfully be returned to the taxpayer. Justice Bautista concluded:

> Being merely permissive, a taxpayer claimant has the option of seeking judicial redress for refund or tax credit of excess or unutilized input tax with this Court, either within 30 days from receipt of the denial of its claim, or after the lapse of the 120-day period in the event of inaction by the Commissioner, provided that both administrative and judicial remedies must be undertaken within the 2-year period.[35]

Taganito filed its Motion for Reconsideration on 29 December 2010. The Commissioner filed an Opposition on 26 January 2011. The CTA EB denied for lack of merit Taganito's motion in a Resolution[36] dated 14 March 2011. The CTA EB did not see any justifiable reason to depart from this Court's rulings in *Aichi* and *Mirant*.

G.R. No. 197156
Philex Mining Corporation v. CIR

The Facts

The CTA EB's narration of the pertinent facts is as follows:

> [Philex] is a corporation duly organized and existing under the laws of the Republic of the Philippines, which is principally engaged in the mining business, which includes the exploration and operation of mine properties and commercial production and marketing of mine products, with office address at 27 Philex Building, Fairlaine St., Kapitolyo, Pasig City.
>
> [The CIR], on the other hand, is the head of the Bureau of Internal Revenue ("BIR"), the government entity tasked with the duties/functions of assessing and collecting all national internal revenue taxes, fees, an charges, and enforcement of all forfeitures, penalties and fines connected therewith, including the execution of judgments in all cases decided in its favor by [the Court of Tax Appeals] and

---

[35] *Rollo* (G.R. No. 196113), p. 73.

[36] *Id.* at 74-83.

the ordinary courts, where she can be served with court processes at the BIR Head Office, BIR Road, Quezon City.

On October 21, 2005, [Philex] filed its Original VAT Return for the third quarter of taxable year 2005 and Amended VAT Return for the same quarter on December 1, 2005.

On March 20, 2006, [Philex] filed its claim for refund/tax credit of the amount of ₱23,956,732.44 with the One Stop Shop Center of the Department of Finance. However, due to [the CIR's] failure to act on such claim, on October 17, 2007, pursuant to *Sections 112 and 229 of the NIRC of 1997, as amended*, [Philex] filed a Petition for Review, docketed as C.T.A. Case No. 7687.

In [her] Answer, respondent CIR alleged the following special and affirmative defenses:

> 4. Claims for refund are strictly construed against the taxpayer as the same partake the nature of an exemption;
>
> 5. The taxpayer has the burden to show that the taxes were erroneously or illegally paid. Failure on the part of [Philex] to prove the same is fatal to its cause of action;
>
> 6. [Philex] should prove its legal basis for claiming for the amount being refunded.[37]

The Court of Tax Appeals' Ruling: Division

The CTA Second Division, in its Decision dated 20 July 2009, denied Philex's claim due to prescription. The CTA Second Division ruled that the two-year prescriptive period specified in Section 112(A) of RA 8424, as amended, applies not only to the filing of the administrative claim with the BIR, but also to the filing of the judicial claim with the CTA. Since Philex's claim covered the 3rd quarter of 2005, its administrative claim filed on 20 March 2006 was timely filed, while its judicial claim filed on 17 October 2007 was filed late and therefore barred by prescription.

On 10 November 2009, the CTA Second Division denied Philex's Motion for Reconsideration.

---

[37] *Rollo* (G.R. No. 197156), pp. 46-48.

The Court of Tax Appeals' Ruling: *En Banc*

Philex filed a Petition for Review before the CTA EB praying for a reversal of the 20 July 2009 Decision and the 10 November 2009 Resolution of the CTA Second Division in CTA Case No. 7687.

The CTA EB, in its Decision[38] dated 3 December 2010, denied Philex's petition and affirmed the CTA Second Division's Decision and Resolution.

The pertinent portions of the Decision read:

> In this case, while there is no dispute that [Philex's] administrative claim for refund was filed within the two-year prescriptive period; however, as to its judicial claim for refund/credit, records show that on March 20, 2006, [Philex] applied the administrative claim for refund of unutilized input VAT in the amount of ₱23,956,732.44 with the One Stop Shop Center of the Department of Finance, per Application No. 52490. From March 20, 2006, which is also presumably the date [Philex] submitted supporting documents, together with the aforesaid application for refund, the CIR has 120 days, or until July 18, 2006, within which to decide the claim. Within 30 days from the lapse of the 120-day period, or from July 19, 2006 until August 17, 2006, [Philex] should have elevated its claim for refund to the CTA. However, [Philex] filed its Petition for Review only on October 17, 2007, which is 426 days way beyond the 30-day period prescribed by law.
>
> Evidently, the Petition for Review in CTA Case No. 7687 was filed 426 days late. Thus, the Petition for Review in CTA Case No. 7687 should have been dismissed on the ground that the Petition for Review was filed way beyond the 30-day prescribed period; thus, no jurisdiction was acquired by the CTA in Division; and not due to prescription.
>
> WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED DUE COURSE, and accordingly, DISMISSED. The assailed Decision dated July 20, 2009, dismissing the Petition for Review in CTA Case No. 7687 due to prescription, and Resolution dated November 10, 2009 denying [Philex's] Motion for

---

[38] *Id.* at 44-67.

Reconsideration are hereby AFFIRMED, with modification that the dismissal is based on the ground that the Petition for Review in CTA Case No. 7687 was filed way beyond the 30-day prescribed period to appeal.

SO ORDERED.[39]

The Issues

G.R. No. 187485
CIR v. San Roque Power Corporation

The Commissioner raised the following grounds in the Petition for Review:

I. The Court of Tax Appeals *En Banc* erred in holding that [San Roque's] claim for refund was not prematurely filed.

II. The Court of Tax Appeals *En Banc* erred in affirming the amended decision of the Court of Tax Appeals (Second Division) granting [San Roque's] claim for refund of alleged unutilized input VAT on its purchases of capital goods and services for the taxable year 2001 in the amount of ₱483,797,599.65.[40]

G.R. No. 196113
Taganito Mining Corporation v. CIR

Taganito raised the following grounds in its Petition for Review:

I. The Court of Tax Appeals *En Banc* committed serious error and acted with grave abuse of discretion tantamount to lack or excess of jurisdiction in erroneously applying the *Aichi* doctrine in violation of [Taganito's] right to due process.

II. The Court of Tax Appeals committed serious error and acted with grave abuse of discretion amounting to lack or excess of jurisdiction in erroneously interpreting the provisions of Section 112 (D).[41]

---

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

[40] *Rollo* (G.R. No. 187485), p. 33.

[41] *Rollo* (G.R. No. 196113), p. 11.

G.R. No. 197156
Philex Mining Corporation v. CIR

Philex raised the following grounds in its Petition for Review:

I. The CTA *En Banc* erred in denying the petition due to alleged prescription. The fact is that the petition was filed with the CTA within the period set by prevailing court rulings at the time it was filed.

II. The CTA *En Banc* erred in retroactively applying the Aichi ruling in denying the petition in this instant case.[42]

The Court's Ruling

For ready reference, the following are the provisions of the Tax Code applicable to the present cases:

Section 105:

> *Persons Liable*. — **Any person who, in the course of trade or business, sells**, barters, exchanges, leases **goods or properties, renders services**, and any person who imports goods **shall be subject to the value-added tax (VAT)** imposed in Sections 106 to 108 of this Code.
>
> **The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services**. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> x x x x x x x x x

Section 110(B):

> Sec. 110. *Tax Credits*. —
>
> (B) *Excess Output or Input Tax*. — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. **If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters**: [Provided, That the input tax inclusive of input VAT carried over from the previous quarter that may be

---

[42] *Rollo* (G.R. No. 197156), p. 9.

credited in every quarter shall not exceed seventy percent (70%) of the output VAT:][43] Provided, however, That **any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112**.

Section 112:[44]

Sec. 112. *Refunds or Tax Credits of Input Tax. —*

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the**

---

[43] Bracketed proviso was deleted by RA 9361, which took effect on 13 December 2006.

[44] RA 9337 amended Section 112 to read:

Sec. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — **Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales,** except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106 (A) (2) (a) (1), (2) and (b) and Section 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales. Provided, finally, That for a person making sales that are zero-rated under Section 108 (B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

(B) *Cancellation of VAT Registration.* — x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) hereof.

taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2) (a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

(B) *Capital Goods.*— A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

(C) *Cancellation of VAT Registration*. — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes

(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input

---

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period,** appeal the decision or the unacted claim with the Court of Tax Appeals.

(D) *Manner of Giving Refund*. — x x x

taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals.

(E) *Manner of Giving Refund.* — Refunds shall be made upon warrants drawn by the Commissioner or by his duly authorized representative without the necessity of being countersigned by the Chairman, Commission on Audit, the provisions of the Administrative Code of 1987 to the contrary notwithstanding: Provided, that refunds under this paragraph shall be subject to post audit by the Commission on Audit.

Section 229:

Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been **excessively or in any manner wrongfully collected**, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of **two (2) years from the date of payment of the tax** or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

(All emphases supplied)

I. **Application of the 120+30 Day Periods**

a. ***G.R. No. 187485 - CIR v. San Roque Power Corporation***

On 10 April 2003, a mere 13 days after it filed its amended administrative claim with the Commissioner on 28 March 2003, San Roque filed a Petition for Review with the CTA docketed as CTA Case No. 6647. From this we gather two crucial facts: *first*, San Roque did not wait for the 120-day period to lapse before filing its judicial claim; *second*, San Roque filed its judicial claim more than four (4) years **before** the *Atlas*[45] doctrine, which was promulgated by the Court on 8 June 2007.

Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.[46]

The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the Commissioner of Internal

---

[45] *Supra* note 34.

[46] *Delos Reyes v. Flores*, G.R. No. 168726, 5 March 2010, 614 SCRA 270; *Figuerres v. Court of Appeals*, 364 Phil. 683 (1999); *Aboitiz and Co., Inc. v. Collector of Customs of Cebu*, 172 Phil. 617 (1978); *Ham v. Bachrach Motor Co., Inc.,* 109 Phil. 949 (1960).

Revenue in cases involving x x x refunds of internal revenue taxes."[47] When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**"[48] of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial"

---

[47] The charter of the CTA, RA 1125, as amended, provides:

Section 7. Jurisdiction. — The CTA shall exercise:

(a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

x x x x x x x x x

(Emphasis supplied)

See also *Adamson v. Court of Appeals*, G.R. Nos. 120935 and 124557, 21 May 2009, 588 SCRA 27.

[48] Section 7. Jurisdiction. — The CTA shall exercise:

(a) **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

> (1) x x x x x x x x x
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;**

x x x x x x x x x

(Emphasis supplied)

of the Commissioner, the CTA has no jurisdiction over a petition for review.[49]

San Roque's failure to comply with the 120-day **mandatory** period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity.

It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others."[50] For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.

This Court cannot brush aside the grave issue of the mandatory and jurisdictional nature of the 120-day period just because the Commissioner merely asserts that the case was prematurely filed with the CTA and does not question the entitlement of San Roque to the refund. The mere fact that a taxpayer has undisputed excess input VAT, or that the tax was admittedly illegally, erroneously or excessively collected from him, does not entitle him as a matter of right to a tax refund or credit.

---

[49] *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3 (1968); *Caltex (Philippines), Inc. v. Commissioner of Internal Revenue*, 121 Phil. 1390 (1965).

[50] See *Alcantara v. Department of Environment and Natural Resources*, G.R. No. 161881, 31 July 2008, 560 SCRA 753; *Heirs of Zari v. Santos*, 137 Phil. 79 (1969); *Hilado v. Collector of Internal Revenue*, 100 Phil. 288 (1956).

Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. **Well- settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer**.[51] The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

This Court cannot disregard mandatory and jurisdictional conditions mandated by law simply because the Commissioner chose not to contest the numerical correctness of the claim for tax refund or credit of the taxpayer. Non-compliance with mandatory periods, non-observance of prescriptive periods, and non-adherence to exhaustion of administrative remedies **bar** a taxpayer's claim for tax refund or credit, whether or not the Commissioner questions the numerical correctness of the claim of the taxpayer. This Court should not establish the precedent that non-compliance with mandatory and jurisdictional conditions can be excused if the claim is otherwise meritorious, particularly in claims for tax refunds or credit. Such precedent will render meaningless compliance with mandatory and jurisdictional requirements, for then every tax refund case will have to be decided on the numerical correctness of the amounts claimed, regardless of non-compliance with mandatory and jurisdictional conditions.

San Roque cannot also claim being misled, misguided or confused by the *Atlas* doctrine because **San Roque filed its petition for review with the CTA more than four years before *Atlas* was promulgated.** The *Atlas* doctrine did not exist at the time San Roque failed to comply with the 120- day period. Thus, San Roque cannot invoke the *Atlas* doctrine as an excuse for its failure to wait for the 120-day period to lapse. In any event, the Atlas doctrine merely stated that the two-year prescriptive

---

[51] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219; *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp*., G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549; *La Carlota Sugar Central v. Jimenez*, 112 Phil. 232 (1961).

period should be counted from the date of payment of the output VAT, not from the close of the taxable quarter when the sales involving the input VAT were made. **The *Atlas* doctrine does not interpret, expressly or impliedly, the 120+30[52] day periods.**

In fact, Section 106(b) and (e) of the Tax Code of 1977 as amended, which was the law cited by the Court in *Atlas* as the applicable provision of the law did not yet provide for the 30-day period for the taxpayer to appeal to the CTA from the decision or inaction of the Commissioner.[53] **Thus, the *Atlas* doctrine cannot be invoked by anyone to disregard compliance with the 30-day mandatory and jurisdictional period**. Also, the difference between the *Atlas* doctrine on one hand, and the *Mirant*[54] doctrine on the other hand, is a mere 20 days. The *Atlas* doctrine counts the two-year prescriptive period from the date of payment of the output VAT, which means within 20 days after the close of the taxable quarter. The output VAT at that time must be paid at the time of filing of the quarterly tax returns, which were to be filed "within 20 days following the end of each quarter."

Thus, in *Atlas*, the three tax refund claims listed below were deemed timely filed because the administrative claims filed with the Commissioner, and the petitions for review filed with the CTA, were all filed within two years from the date of payment of the output VAT, following Section 229:

Period Covered	Date of Filing Return & Payment of Tax	Date of Filing Administrative Claim	Date of Filing Petition With CTA
2nd Quarter, 1990 Close of Quarter **30 June 1990**	**20 July 1990**	21 August 1990	**20 July 1992**

---

[52] The 30-day period refers to the time given to the taxpayer to file its judicial claim with the CTA, counted from the denial by the Commissioner of the administrative claim or from the expiration of the 120-day period. See Section 112 (C), second paragraph of the Tax Code.

[53] The 30-day period was introduced in the Tax Code under RA 7716, which was approved on 5 May 1994.

[54] *Supra* note 31.

3rd Quarter, 1990 Close of Quarter **30 September 1990**	**18 October 1990**	21 November 1990	**9 October 1992**
4th Quarter, 1990 Close of Quarter **31 December 1990**	**20 January 1991**	19 February 1991	**14 January 1993**

Atlas paid the output VAT at the time it filed the quarterly tax returns on the 20th, 18th, and 20th day **after** the close of the taxable quarter. Had the two-year prescriptive period been counted from the "close of the taxable quarter" as expressly stated in the law, the tax refund claims of Atlas would have already prescribed. In contrast, the *Mirant* doctrine counts the two-year prescriptive period from the "close of the taxable quarter when the sales were made" as expressly stated in the law, which means the last day of the taxable quarter. **The 20-day difference**[55] **between the *Atlas* doctrine and the later *Mirant* doctrine is not material to San Roque's claim for tax refund**.

Whether the *Atlas* doctrine or the *Mirant* doctrine is applied to San Roque is immaterial because what is at issue in the present case is San Roque's non-compliance with the 120-day mandatory and jurisdictional period, which is counted from the date it filed its administrative claim with the Commissioner. The 120-day period may extend beyond the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period. However, San Roque's fatal mistake is that

---

[55] This assumes the taxpayer pays the VAT on time on the date required by law to file the quarterly return. Since 1 January 1998 when the Tax Reform Act of 1997 took effect, Section 114 (A) of the NIRC has required VAT-registered persons to pay the VAT "**on a monthly basis**." Section 114 of the NIRC provides:

(A) *In General* — Every person liable to pay the value-added tax imposed under the Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each of the taxable quarter prescribed for each taxpayer: **Provided, however, That VAT-registered persons shall pay the value-added tax on a monthly basis.**

(B) x x x (Emphasis supplied).

it did not wait for the Commissioner to decide within the 120-day period, a mandatory period whether the *Atlas* or the *Mirant* doctrine is applied.

At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112(C)[56] expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain, and unequivocal: "x x x the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days** from the date of submission of complete documents." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain, and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.

Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

> x x x the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law

---

[56] In RA 8424, the section is numbered 112 (D). RA 9337 renumbered the section to 112 (C). In this Decision, we refer to Section 112 (D) under RA 8424 as Section 112 (C) as it is currently numbered.

states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

b. ***G.R. No. 196113 — Taganito Mining Corporation v. CIR***

Like San Roque, Taganito also filed its petition for review with the CTA without waiting for the 120-day period to lapse. Also, like San Roque, Taganito filed its judicial claim **before** the promulgation of the *Atlas* doctrine. Taganito filed a Petition for Review on 14 February 2007 with the CTA. This is almost four months **before** the adoption of the *Atlas* doctrine on 8 June 2007. Taganito is similarly situated as San Roque — both cannot claim being misled, misguided, or confused by the *Atlas* doctrine.

However, Taganito can invoke BIR Ruling No. DA-489-03[57] dated 10 December 2003, which expressly ruled that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**." Taganito filed its judicial claim *after* the issuance of BIR Ruling No. DA-489-03 but before the adoption of the *Aichi* doctrine. Thus, as will be explained later, Taganito is deemed to have filed its judicial claim with the CTA on time.

c. ***G.R. No. 197156 — Philex Mining Corporation v. CIR***

Philex (1) filed on 21 October 2005 its original VAT Return for the third quarter of taxable year 2005; (2) filed on 20 March 2006 its administrative claim for refund or credit; (3) filed on 17 October 2007 its Petition for Review with the CTA. The close of the third taxable quarter in 2005 is 30 September 2005, which is the reckoning date in computing the two-year prescriptive period under Section 112(A).

Philex timely filed its administrative claim on 20 March 2006, within the two-year prescriptive period. Even if the two-year

[57] Issued by then BIR Commissioner Jose Mario C. Bunag.

prescriptive period is computed from the date of payment of the output VAT under Section 229, Philex still filed its administrative claim on time. **Thus, the *Atlas* doctrine is immaterial in this case**. The Commissioner had until 17 July 2006, the last day of the 120-day period, to decide Philex's claim. Since the Commissioner did not act on Philex's claim on or before 17 July 2006, Philex had until 17 August 2006, the last day of the 30-day period, to file its judicial claim. **The CTA EB held that 17 August 2006 was indeed the last day for Philex to file its judicial claim**. However, Philex filed its Petition for Review with the CTA only on 17 October 2007, or four hundred twenty- six (426) days after the last day of filing. **In short, Philex was late by one year and 61 days in filing its judicial claim**. As the CTA EB correctly found:

> **Evidently, the Petition for Review in C.T.A. Case No. 7687 was filed 426 days late**. Thus, the Petition for Review in C.T.A. Case No. 7687 should have been dismissed on the ground that the Petition for Review was filed way beyond the 30-day prescribed period; thus, no jurisdiction was acquired by the CTA Division; x x x[58] (Emphasis supplied)

Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.

---

[58] *Rollo* (G.R. No. 197156), p. 65.

The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise.[59] Philex failed to comply with the statutory conditions and must thus bear the consequences.

II. **Prescriptive Periods under Section 112(A) and (C)**

There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.

First, Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer "may, **within two (2) years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of the creditable input tax due or paid to such sales." In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit "**within two (2) years**," **which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two- year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.

Second, Section 112(C) provides that the Commissioner shall decide the application for refund or credit "within one hundred

---

[59] *Yao v. Court of Appeals*, 398 Phil. 86 (2000).

twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A)." The reference in Section 112(C) of the submission of documents "in support of the application filed in accordance with Subsection A" means that the application in Section 112(A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two- year prescriptive period in Section 112(A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. **Stated otherwise, the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner**. As held in *Aichi*, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund' **refers to applications for refund/credit with the CIR and not to appeals made to the CTA**."

Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days),[60] then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period**. Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.

---

[60] Article 13 of the Civil Code provides: "When the law speaks of years, x x x it shall be understood that years are three hundred sixty five days each; x x x"

The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain, and unequivocal language.

Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).

III. **"Excess" Input VAT and "Excessively" Collected Tax**

The input VAT is **not** "excessively" collected as understood under Section 229 because **at the time the input VAT is collected the amount paid is correct and proper**. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller[61] of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT.[62] If the input VAT is in fact "excessively"

---

[61] Section 105, 1997 Tax Code.

[62] Section 4.110-2 of Revenue Regulations 16-05, also known as the Consolidated Value-Added Tax Regulations of 2005, provides:

> **Persons Who Can Avail of the Input Tax Credit.** — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit **outside** of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.

In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.

Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, x x x illegally, x x x excessively or in any manner wrongfully collected." The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. **Only the person legally liable**

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) **To the purchaser of the domestic goods or properties upon consummation of the sale;** or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee. (Emphasis supplied)

to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229.[63]

Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for "excess" input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the ***output*** VAT. This prescriptive period has no relation to the date of payment of the "excess" ***input*** VAT. The "excess" input VAT may have been paid for more than two years but this does not bar the filing of a judicial claim for "excess" VAT under Section 112(A), which has a different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the input VAT was "excessively" collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

As its name implies, the Value-Added Tax system is a tax on the value added by the taxpayer in the chain of transactions. For simplicity and efficiency in tax collection, the VAT is imposed not just on the value added by the taxpayer, but on the entire selling price of his goods, properties or services. However, the taxpayer is allowed a refund or credit on the VAT previously paid by those who sold him the inputs for his goods, properties, or services. The net effect is that the taxpayer pays the VAT only on the value that he adds to the goods, properties, or services that he actually sells.

Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under

---

[63] In *Commissioner of Internal Revenue v. Smart Communications, Inc*., G.R. Nos. 179045-06, 25 August 2010, 629 SCRA 342, 353, the Court held that "the person entitled to claim tax refund is the taxpayer. However, in case the taxpayer does not file a claim for refund, the withholding agent may file the claim."

the law, like companies generating power through renewable sources of energy.[64] Thus, a **non** zero- rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. **He can only carry-over and apply his "excess" input VAT against his future output VAT**. If such "excess" input VAT is an "excessively" collected tax, the taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer. If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.

Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously, x x x illegally,

---

[64] Section 108 (B), 1997 Tax Code. Also, Section 110 (B) provides in part that "any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112."

x x x excessively or **in any manner wrongfully** collected." In short, there must be a **wrongful payment** because what is paid, or part of it, is not legally due. As the Court held in *Mirant*, Section 229 should "**apply only to instances of erroneous payment or illegal collection of internal revenue taxes**." Erroneous or wrongful payment includes excessive payment because **they all refer to payment of taxes not legally due**. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.

IV. **Effectivity and Scope of the *Atlas, Mirant* and *Aichi* Doctrines**

The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant*.** The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. Prior to the *Atlas* doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule. The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT.

The *Atlas* doctrine has no relevance to the 120+30 day periods under Section 112(C) because the application of the 120+30 day periods was not in issue in *Atlas*. The application of the 120+30 day periods was first raised in *Aichi*, which adopted the *verba legis* rule in holding that the 120+30 day periods are

mandatory and jurisdictional. The language of Section 112(C) is plain, clear, and unambiguous. When Section 112(C) states that "the Commissioner shall grant a refund or issue the tax credit within one hundred twenty (120) days from the date of submission of complete documents," the law clearly gives the Commissioner 120 days within which to decide the taxpayer's claim. Resort to the courts prior to the expiration of the 120-day period is a patent violation of the doctrine of exhaustion of administrative remedies, a ground for dismissing the judicial suit due to prematurity. Philippine jurisprudence is awash with cases affirming and reiterating the doctrine of exhaustion of administrative remedies.[65] Such doctrine is basic and elementary.

When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." The word "may" simply means that the taxpayer **may or may not appeal** the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period. Certainly, by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.

The old rule[66] that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period**. With the 30-day period always

---

[65] See note 1.

[66] *Gibbs v. Collector of Internal Revenue*, 107 Phil. 232 (1960).

available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.

V. **Revenue Memorandum Circular No. 49-03 (RMC 49-03) dated 15 April 2003**

There is nothing in RMC 49-03 that states, expressly or impliedly, that the taxpayer need not wait for the 120-day period to expire before filing a judicial claim with the CTA. RMC 49-03 merely authorizes the BIR to continue processing the administrative claim even after the taxpayer has filed its judicial claim, without saying that the taxpayer can file its judicial claim before the expiration of the 120-day period. RMC 49-03 states: "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (either the Bureau of Internal Revenue or the One- Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance), the administrative agency and the court may act on the case separately." Thus, if the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period.

On the other hand, if the taxpayer files its judicial claim after the 120-day period, the Commissioner can still continue

to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must ***necessarily*** continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings.

What is important, as far as the present cases are concerned, is that the mere filing by a taxpayer of a judicial claim with the CTA before the expiration of the 120-day period cannot operate to divest the Commissioner of his jurisdiction to decide an administrative claim within the 120-day mandatory period, ***unless*** **the Commissioner has clearly given cause for equitable estoppel to apply as expressly recognized in Section 246 of the Tax Code**.[67]

VI. **<u>BIR Ruling No. DA-489-03 dated 10 December 2003</u>**

BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period**

---

[67] Section 246 of the 1997 Tax Code provides:

Sec. 246. Non-Retroactivity of Rulings. — Any revocation, modification or reversal of any of the **rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith. (Emphasis supplied)

before it could seek judicial relief with the CTA by way of Petition for Review." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals,[68] that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

Section 4 of the Tax Code, a new provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:

Sec. 4. *Power of the Commissioner To Interpret Tax Laws and To Decide Tax Cases*. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

---

[68] *Commissioner of Internal Revenue v. Hitachi Computer Products (Asia) Corporation*, CA-G.R. SP No. 63340, 7 February 2002.

Since the Commissioner has **exclusive and original jurisdiction to interpret tax laws**, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. Section 246 provides as follows:

> Sec. 246. Non-Retroactivity of Rulings. — Any revocation, modification or reversal of any of the **rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (Emphasis supplied)

Thus, a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, "***Any*** revocation, modification or reversal" without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant*

and *Aichi*[69] is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. As held by this Court in *CIR v. Philippine Health Care Providers, Inc*.:[70]

> In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
>
> This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp*. in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd.*, *Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp., Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc., and Commissioner of Internal Revenue v. Court of Appeals.* **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case**.
>
> More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying

---

[69] *Supra* note 30.

[70] G.R. No. 168129, 24 April 2007, 522 SCRA 131, 142-143.

its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer. (Emphasis supplied)

Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.

However, BIR Ruling No. DA-489-03 cannot be given retroactive effect for four reasons: *first*, it is admittedly an erroneous interpretation of the law; *second*, prior to its issuance, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law; *third*, prior to its issuance, no taxpayer can claim that it was misled by the BIR into filing a judicial claim prematurely; and *fourth*, a claim for tax refund or credit, like a claim for tax exemption, is strictly construed against the taxpayer.

San Roque, therefore, cannot benefit from BIR Ruling No. DA-489-03 because it filed its judicial claim prematurely on 10 April 2003, ***before*** the issuance of BIR Ruling No. DA-

489-03 on 10 December 2003. To repeat, San Roque cannot claim that it was misled by the BIR into filing its judicial claim prematurely because BIR Ruling No. DA-489-03 was issued only after San Roque filed its judicial claim. At the time San Roque filed its judicial claim, the law as applied and administered by the BIR was that the Commissioner had 120 days to act on administrative claims. This was in fact the position of the BIR prior to the issuance of BIR Ruling No. DA-489-03. **Indeed, San Roque never claimed the benefit of BIR Ruling No. DA-489-03 or RMC 49-03, whether in this Court, the CTA, or before the Commissioner.**

Taganito, however, filed its judicial claim with the CTA on 14 February 2007, ***after*** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. Truly, Taganito can claim that in filing its judicial claim prematurely without waiting for the 120-day period to expire, it was misled by BIR Ruling No. DA-489-03. Thus, Taganito can claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity.

Philex's situation is not a case of premature filing of its judicial claim but of late filing, indeed *very* late filing. BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim. Philex cannot claim the benefit of BIR Ruling No. DA-489-03 because Philex did not file its judicial claim prematurely but filed it long after the lapse of the 30-day period **following the expiration of the 120-day period**. In fact, Philex filed its judicial claim 426 days after the lapse of the 30-day period.

VII. **Existing Jurisprudence**

There is no basis whatsoever to the claim that in five cases this Court had already made a ruling that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. The effect of the claim of the dissenting opinions is that San Roque's failure to wait for the 120-day mandatory period to lapse is inconsequential, thus allowing San Roque to claim the tax refund

or credit. However, the five cases cited by the dissenting opinions do not support even remotely the claim that this Court had already made such a ruling. **None of these five cases mention, cite, discuss, rule or even hint that compliance with the 120-day mandatory period is inconsequential as long as the administrative and judicial claims are filed within the two-year prescriptive period.**

In *CIR v. Toshiba Information Equipment (Phils.), Inc.*,[71] the issue was whether any output VAT was actually passed on to Toshiba that it could claim as input VAT subject to tax credit or refund. The Commissioner argued that "although Toshiba may be a VAT-registered taxpayer, it is not engaged in a VAT-taxable business." The Commissioner cited Section 4.106- 1 of Revenue Regulations No. 75 that "refund of input taxes on capital goods shall be allowed only to the extent that such capital goods are used in VAT-taxable business." In the words of the Court, "Ultimately, however, the issue still to be resolved herein shall be whether respondent Toshiba is entitled to the tax credit/refund of its input VAT on its purchases of capital goods and services, to which this Court answers in the affirmative." Nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

In *Intel Technology Philippines, Inc. v. CIR*,[72] the Court stated: "The issues to be resolved in the instant case are (1) whether the absence of the BIR authority to print or the absence of the TIN-V in petitioner's export sales invoices operates to forfeit its entitlement to a tax refund/credit of its unutilized input VAT attributable to its zero-rated sales; and (2) whether petitioner's failure to indicate "TIN-V" in its sales invoices automatically invalidates its claim for a tax credit certification." Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

---

[71] 503 Phil. 823 (2005).

[72] G.R. No. 166732, 27 April 2007, 522 SCRA 657.

In *AT&T Communications Services Philippines, Inc. v. CIR*,[73] the Court stated: "x x x the CTA First Division, conceding that petitioner's transactions fall under the classification of zero-rated sales, nevertheless denied petitioner's claim '**for lack of substantiation**,' x x x." The Court quoted the ruling of the First Division that "**valid VAT official receipts, and not mere sale invoices, should have been submitted**" by petitioner to substantiate its claim. The Court further stated: "x x x the CTA *En Banc*, x x x affirmed x x x the CTA First Division," and "petitioner's motion for reconsideration having been denied x x x, the present petition for review was filed." Clearly, the sole issue in this case is whether petitioner complied with the substantiation requirements in claiming for tax refund or credit. Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

In *CIR v. Ironcon Builders and Development Corporation*,[74] the Court put the issue in this manner: "Simply put, the sole issue the petition raises is whether or not the CTA erred in granting respondent Ironcon's application for refund of its **excess** creditable VAT withheld." The Commissioner argued that "since the NIRC does not specifically grant taxpayers the option to refund **excess** creditable VAT withheld, it follows that such refund cannot be allowed." Thus, this case is solely about whether the taxpayer has the right under the NIRC to ask for a cash refund of **excess** creditable VAT withheld. Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

In *CIR v. Cebu Toyo Corporation*,[75] the issue was whether Cebu Toyo was exempt or subject to VAT. Compliance with

---

[73] G.R. No. 182364, 3 August 2010, 626 SCRA 567.

[74] G.R. No. 180042, 8 February 2010, 612 SCRA 39.

[75] 491 Phil. 625, 637-638 (2005).

the 120-day period was never an issue in *Cebu Toyo*. As the Court explained:

Both the Commissioner of Internal Revenue and the Office of the Solicitor General argue that respondent Cebu Toyo Corporation, as a PEZA-registered enterprise, **is exempt from national and local taxes, including VAT**, under Section 24 of Rep. Act No. 7916 and Section 109 of the NIRC. Thus, they contend that respondent Cebu Toyo Corporation is not entitled to any refund or credit on input taxes it previously paid as provided under Section 4.103-1 of Revenue Regulations No. 7-95, notwithstanding its registration as a VAT taxpayer. For petitioner claims that said registration was erroneous and did not confer upon the respondent any right to claim recognition of the input tax credit.

The respondent counters that it availed of the income tax holiday under E.O. No. 226 for four years from August 7, 1995 making it exempt from income tax but not from other taxes such as VAT. **Hence, according to respondent, its export sales are not exempt from VAT, contrary to petitioner's claim, but its export sales is subject to 0% VAT**. Moreover, it argues that it was able to establish through a report certified by an independent Certified Public Accountant that the input taxes it incurred from April 1, 1996 to December 31, 1997 were directly attributable to its export sales. Since it did not have any output tax against which said input taxes may be offset, it had the option to file a claim for refund/tax credit of its unutilized input taxes.

Considering the submission of the parties and the evidence on record, we find the petition bereft of merit.

Petitioner's contention that respondent is not entitled to refund for being exempt from VAT is untenable. This argument turns a blind eye to the fiscal incentives granted to PEZA-registered enterprises under Section 23 of Rep. Act No. 7916. Note that under said statute, the respondent had two options with respect to its tax burden. It could avail of an income tax holiday pursuant to provisions of E.O. No. 226, thus exempt it from income taxes for a number of years but not from other internal revenue taxes such as VAT; or it could avail of the tax exemptions on all taxes, including VAT under P.D. No. 66 and pay only the preferential tax rate of 5% under Rep. Act No. 7916. Both the Court of Appeals and the Court of Tax Appeals found that respondent availed of the income tax holiday for four (4) years starting from August 7, 1995, as clearly

reflected in its 1996 and 1997 Annual Corporate Income Tax Returns, where respondent specified that it was availing of the tax relief under E.O. No. 226. **Hence, respondent is not exempt from VAT and it correctly registered itself as a VAT taxpayer. In fine, it is engaged in taxable rather than exempt transactions**. (Emphasis supplied)

Clearly, the issue in *Cebu Toyo* was whether the taxpayer was exempt from VAT or subject to VAT at 0% tax rate. If subject to 0% VAT rate, the taxpayer could claim a refund or credit of its input VAT. Again, nowhere in this case did the Court discuss, state, or rule that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period.

While this Court stated in the narration of facts in *Cebu Toyo* that the taxpayer "did not bother to wait for the Resolution of its (administrative) claim by the CIR" before filing its judicial claim with the CTA, this issue was not raised before the Court. Certainly, this statement of the Court is not a binding precedent that the taxpayer need not wait for the 120-day period to lapse.

Any issue, whether raised or not by the parties, *but not passed upon by the Court,* does not have any value as precedent. As this Court has explained as early as 1926:

It is contended, however, that the question before us was answered and resolved against the contention of the appellant in the case of *Bautista vs. Fajardo* (38 Phil. 624). In that case no question was raised nor was it even suggested that said section 216 did not apply to a public officer. That question was not discussed nor referred to by any of the parties interested in that case. It has been frequently decided that the fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity, where that question is squarely and properly raised and presented. **Where a question passes the Court *sub silentio*, the case in which the question was so passed is not binding on the Court *(McGirr vs. Hamilton and Abreu*, 30 Phil. 563), nor should it be considered as a precedent**. (*U.S. vs. Noriega and Tobias*, 31 Phil. 310; *Chicote vs. Acasio*, 31 Phil. 401; *U.S. vs. More*, 3 Cranch [U.S.] 159, 172; *U.S. vs. Sanges*, 144 U.S. 310,

319; *Cross vs. Burke*, 146 U.S. 82.) For the reasons given in the case of *McGirr vs. Hamilton and Abreu, supra*, the decision in the case of *Bautista vs. Fajardo, supra*, can have no binding force in the interpretation of the question presented here.[76] (Emphasis supplied)

In *Cebu Toyo*, the nature of the 120-day period, whether it is mandatory or optional, was not even raised as an issue by any of the parties. **The Court never passed upon this issue**. Thus, *Cebu Toyo* does not constitute binding precedent on the nature of the 120-day period.

There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two- year prescriptive period. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.[77] As held by this Court in *The Philippine Veterans Affairs Office v. Segundo*:[78]

x x x Let it be admonished that decisions of the Supreme Court "applying or interpreting the laws or the Constitution . . . form part of the legal system of the Philippines," and, as it were, "laws" by their own right because they interpret what the laws say or mean. **Unlike rulings of the lower courts, which bind the parties to specific cases alone, our judgments are universal in their scope and application, and equally mandatory in character**. Let it be warned that to defy our decisions is to court contempt. (Emphasis supplied)

---

[76] *Agcaoili v. Suguitan*, 48 Phil. 676, 697 (1926).

[77] Article 8, Civil Code of the Philippines. *De Mesa v. Pepsi Cola Products Phils., Inc.*, 504 Phil. 685 (2005); *The Philippine Veterans Affairs Office v. Segundo*, 247 Phil. 330 (1988); *Ang Ping v. RTC, Manila, Branch 40*, 238 Phil. 77 (1987); *Floresca v. Philex Mining Corporation*, 220 Phil. 533 (1985).

[78] 247 Phil. 330, 336 (1988).

The same basic doctrine was reiterated by this Court in *De Mesa v. Pepsi Cola Products Phils., Inc.*:[79]

The principle of *stare decisis et non quieta movere* is entrenched in Article 8 of the Civil Code, to wit:

> ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

It enjoins adherence to judicial precedents. **It requires our courts to follow a rule already established in a final decision of the Supreme Court**. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. (Emphasis supplied)

VIII. **Revenue Regulations No. 7-95 Effective 1 January 1996**

Section 4.106-2(c) of Revenue Regulations No. 7-95, by its own express terms, applies only if the taxpayer files the judicial claim "***after***" the lapse of the 60-day period, a period with which San Roque failed to comply. **Under Section 4.106-2(c), the 60-day period is still mandatory and jurisdictional**.

Moreover, it is a hornbook principle that a prior administrative regulation can ***never*** prevail over a later contrary law, more so in this case where the later law was enacted precisely to amend the prior administrative regulation and the law it implements.

The laws and regulation involved are as follows:

1977 Tax Code, as amended by Republic Act No. 7716 (1994)

Sec. 106. *Refunds or tax credits of creditable input tax. —*

(a) x x x x x x x x x

(d) Period within which refund or tax credit of input tax shall be made — In proper cases, the Commissioner shall grant a

[79] 504 Phil. 685, 691 (2005).

refund or issue the tax credit for creditable input taxes **within sixty (60) days** from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof. **In case of** full or partial denial of the claim for tax refund or tax credit, or **the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**.

Revenue Regulations No. 7-95 (1996)

Section 4.106-2. Procedures for claiming refunds or tax credits of input tax — (a) x x x

x x x x x x x x x

(c) Period within which refund or tax credit of input taxes shall be made. — In proper cases, the Commissioner shall grant a tax credit/refund for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with subparagraphs (a) and (b) above.

In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise the decision will become final. However, **if no action on the claim for tax credit/refund has been taken by the Commissioner of Internal Revenue *after the sixty (60) day period* from the date of submission of the application but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter, the taxpayer may appeal to the Court of Tax Appeals**.

x x x x x x x x x

1997 Tax Code

Section 112. *Refunds or Tax Credits of Input Tax —*

(A) x x x x x x x x x

x x x x x x x x x

(D) *Period within which Refund or Tax Credit of Input Taxes shall be made.* — In proper cases, the Commissioner shall grant the refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days** from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

There can be no dispute that under Section 106(d) of the 1977 Tax Code, as amended by RA 7716, the Commissioner has a 60-day period to act on the administrative claim. **This 60-day period is mandatory and jurisdictional**.

Did Section 4.106-2(c) of Revenue Regulations No. 7-95 change this, so that the 60-day period is no longer mandatory and jurisdictional? The obvious answer is no.

Section 4.106-2(c) itself expressly states that if, ***"after the sixty (60) day period,"*** the Commissioner fails to act on the administrative claim, the taxpayer may file the judicial claim even "before the lapse of the two (2) year period." **Thus, under Section 4.106-2(c) the 60-day period is still mandatory and jurisdictional**.

Section 4.106-2(c) did not change Section 106(d) as amended by RA 7716, but merely implemented it, for two reasons. *First*, **Section 4.106-2(c) still expressly requires compliance with the 60-day period**. This cannot be disputed.

Second, under the novel amendment introduced by RA 7716, mere **inaction** by the Commissioner during the 60-day period is **deemed a denial** of the claim. Thus, Section 4.106-2(c) states that "if no action on the claim for tax refund/credit has been taken by the Commissioner ***after the sixty (60) day period,***" the taxpayer "**may**" already file the judicial claim *even long*

before the lapse of the two-year prescriptive period. Prior to the amendment by RA 7716, the taxpayer had to wait until the two-year prescriptive period was **about to expire** if the Commissioner did not act on the claim.[80] With the amendment by RA 7716, the taxpayer need not wait until the two-year prescriptive period is about to expire before filing the judicial claim because mere inaction by the Commissioner during the 60-day period is deemed a denial of the claim. **This is the meaning of the phrase "but before the lapse of the two (2) year period" in Section 4.106-2(c)**. As Section 4.106- 2(c) reiterates that the judicial claim can be filed only "***after the sixty (60) day period***," this period remains mandatory and jurisdictional. Clearly, Section 4.106-2(c) did not amend Section 106(d) but merely faithfully implemented it.

Even assuming, for the sake of argument, that Section 4.106-2(c) of Revenue Regulations No. 7-95, an administrative issuance, amended Section 106(d) of the Tax Code to make the period given to the Commissioner non-mandatory, still the 1997 Tax Code, a much later law, reinstated the original intent and provision of Section 106(d) by extending the 60-day period to 120 days and **re-adopting the original wordings of Section 106(d)**. Thus, Section 4.106-2(c), a mere administrative issuance, becomes inconsistent with Section 112(D), a later law. Obviously, the later law prevails over a prior inconsistent administrative issuance.

Section 112(D) of the 1997 Tax Code is clear, unequivocal, and categorical that the Commissioner has 120 days to act on an administrative claim. The taxpayer can file the judicial claim

---

[80] The rule before the amendment by RA 7716 was succinctly stated in *Insular Lumber Co. v. Court of Tax Appeals* (192 Phil. 221, 232-233 [1981]):

We agree with the respondent court. This Court has consistently adhered to the rule that the claim for refund should first be filed with the Commissioner of Internal Revenue, and the subsequent appeal to the Court of Tax Appeals must be instituted, within the said two-year period. **If, however, the Commissioner takes time in deciding the claim, and *the period of two years is about to end*, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Commissioner.** x x x. (Emphasis supplied)

(1) ***only within thirty days after the Commissioner partially or fully denies the claim*** within the 120- day period, or (2) ***only within thirty days from the expiration of the 120- day period*** if the Commissioner does not act within the 120-day period.

There can be no dispute that upon effectivity of the 1997 Tax Code on 1 January 1998, or **more than five years** ***before*** **San Roque filed its administrative claim on 28 March 2003**, the law has been clear: the 120- day period is mandatory and jurisdictional. San Roque's claim, having been filed administratively on 28 March 2003, is governed by the 1997 Tax Code, not the 1977 Tax Code. Since San Roque filed its judicial claim before the expiration of the 120-day mandatory and jurisdictional period, San Roque's claim cannot prosper.

San Roque cannot also invoke Section 4.106-2(c), which expressly provides that the taxpayer can only file the judicial claim "***after***" the lapse of the 60-day period from the filing of the administrative claim. **San Roque filed its judicial claim just 13 days after filing its administrative claim**. To recall, San Roque filed its judicial claim on 10 April 2003, a mere 13 days after it filed its administrative claim.

Even if, *contrary to all principles of statutory construction as well as plain common sense*, we gratuitously apply now Section 4.106-2(c) of Revenue Regulations No. 7-95, still **San Roque cannot recover any refund or credit because San Roque did not wait for the 60-day period to lapse, contrary to the express requirement in Section 4.106-2(c)**. In short, San Roque does not even comply with Section 4.106-2(c). A claim for tax refund or credit is strictly construed against the taxpayer, who must prove that his claim clearly complies with all the conditions for granting the tax refund or credit. San Roque did not comply with the express condition for such statutory grant.

A final word. Taxes are the lifeblood of the nation. The Philippines has been struggling to improve its tax efficiency collection for the longest time with minimal success. Consequently, the Philippines has suffered the economic adversities arising from poor tax collections, forcing the government to continue borrowing to fund the budget deficits.

This Court cannot turn a blind eye to this economic malaise by being unduly liberal to taxpayers who do not comply with statutory requirements for tax refunds or credits. The tax refund claims in the present cases are not a pittance. Many other companies stand to gain if this Court were to rule otherwise. The dissenting opinions will turn on its head the well-settled doctrine that tax refunds are strictly construed against the taxpayer.

WHEREFORE, the Court hereby (1) **GRANTS** the petition of the Commissioner of Internal Revenue in G.R. No. 187485 to **DENY** the ₱483,797,599.65 tax refund or credit claim of San Roque Power Corporation; (2) **GRANTS** the petition of Taganito Mining Corporation in G.R. No. 196113 for a tax refund or credit of ₱8,365,664.38; and (3) **DENIES** the petition of Philex Mining Corporation in G.R. No. 197156 for a tax refund or credit of ₱23,956,732.44.

SO ORDERED.

Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, and *Reyes, JJ.,* concur.

Del Castillo, J., joins *J.* Leonen in his separate opinion.

Leonen, J., see separate opinion.

Sereno, C.J., joins the dissent of *J.* Velasco; but partly digress (see separate dissenting opinion).

Velasco, Jr., J., dissents (see dissenting opinion).

Mendoza and *Perlas-Bernabe, JJ.,* join the dissent of *J.* Velasco.

SEPARATE OPINION

LEONEN, *J.*:

I agree with the *ponencia* to the effect that:

1. A VAT-registered person whose sales are zero-rated, or effectively zero-rated, may apply for a refund or credit of creditable input tax within 2 years after the close of

the taxable quarter when the zero-rated or effectively zero-rated sales were made. An administrative claim that is filed beyond the 2-year period is barred by prescription.

2. CIR has 120 days from the date of submission of complete documents in support of an application, within which to act on the claim. The taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from the receipt of the decision or after the expiration of the 120-day period within which the claim has not been acted upon.

3. The 120 + 30-day period is mandatory and jurisdictional and the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. On the other hand, failure of the taxpayer to elevate its claim within 30 days from the lapse of the 120-day period, counted from the filing of its administrative claim for refund, or from the date of receipt of the decision of the CIR, will bar any subsequent judicial claim for refund.

4. Excess input tax is not an excessively, erroneously, or illegally collected tax. A claim for refund of this tax is in the nature of a tax exemption, which is based on a specific provision of law, *i.e.*, Section 110 of NIRC, which allows VAT-registered persons to recover the excess input taxes they have paid in relation to their sales. Hence, claims for refund/tax credit of excess input tax are governed not by Section 229 but only by Section 112 of the NIRC.

These interpret the following provisions of the NIRC *viz*:

Section 112. *Refunds or Tax Credits of Input Tax.* —

(A) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid

attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (emphasis mine)

Section 110. *Tax Credits*. —

(A) Creditable Input Tax. — x x x

(B) Excess Output or Input Tax. — If at the end of any taxable quarter the ouput tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. Any input tax attributable to the purchase of capital goods or to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.

I am however unable to agree with the conclusion that the interpretation we have just put on these provisions take effect only when we pronounce them. Thus, in the view of the *ponencia*, that it is to be applied "prospectively".

My disagreement stems from the idea that we do not make law. Ours is a duty to construe: *i.e.*, declare authoritatively the meaning of existing text. I can grant that words are naturally open textured and do have their own degrees of ambiguity. This can be based on their intrinsic text, language structure, context, and the interpreter's standpoint.

However, the provisions that we have just reviewed already put the private parties within a reasonable range of interpretation that would serve them notice as to the remedies that are available to them. That is, that resort to judicial action can only be done after a denial by the commissioner or after the lapse of 120 days from the date of submission of complete documents in support of the administrative claim for refund.

Furthermore, settled is the principle that an "erroneous application and enforcement of the law by public officers do not preclude a subsequent correct application of the statute, and the Government is never estopped by mistake or error on the part of its agents."[1]

Accordingly, while the BIR Commissioner is given the power and authority to interpret tax laws pursuant to Section 4 of the NIRC, it cannot legislate guidelines contrary to the law it is tasked to implement. Hence, its interpretation is not conclusive and will be ignored if judicially found to be erroneous.

Concededly, under Section 246 of the NIRC, "[a]ny revocation, modification or reversal of any BIR ruling or circular shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers." However, if it is patently clear that the ruling is contrary to the text of the law, there can be no reliance in good faith by the practitioners.

BIR Ruling DA-489-03 which states that "the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review," constitutes a clear disregard of the express and categorical provision of Section 112(D) of the NIRC. Thus, the Commissioner's erroneous application of the law is not binding and conclusive upon this Court in any way.

As aptly held by this Court in *Philippine Bank of Communications v. CIR*:[2]

---

[1] *Philippine Basketball Association v. Court of Appeals*, 392 Phil. 133, 144 (2000).

[2] *Philippine Bank of Communications v. CIR, CTA & CA*, 361 Phil. 916 (1999).

Article 8 of the Civil Code recognizes judicial decisions, applying or interpreting statutes as part of the legal system of the country. But administrative decisions do not enjoy that level of recognition. A memorandum-circular of a bureau head could not operate to vest a taxpayer with a shield against judicial action. For there are no vested rights to speak of respecting a wrong construction of the law by the administrative officials and such wrong interpretation could not place the Government in estoppel to correct or overrule the same.[3]

In many instances, we have not given "prospective" application to our interpretation of tax laws. For instance:

A) In the case of *The Commissioner of Internal Revenue v. Ilagan Electric & Ice Plant, Inc. and Court of Tax Appeals*,[4] we were guided by our ruling in *Guagua Electric Light Co., Inc. v. Collector of Internal Revenue*[5] which was **promulgated on 24 April 1967 (while the Ilagan case was pending)** where we held that a demand on the part of the Collector (now Commissioner) of Internal Revenue for payment of an erroneously refunded franchise tax is in effect an assessment for deficiency franchise tax. Applying the five-year prescriptive period for assessment specified under Section 331 of the Tax Code (and not Article 1145 of the Civil Code), we held that CIR's assessment made on 27 July 1961 against Ilagan Electric for erroneously refunded franchise tax for the 4th quarter of 1952 to the 4th quarter of 1954 is barred by prescription.

B) In the case of *Collector of Internal Revenue v. Batangas Transportation Company and Laguna-Tayabas Bus Company,*[6] we reversed the Court of Tax Appeals and

---

[3] *Id.* at 931.

[4] *The Commissioner of Internal Revenue v. Ilagan Electric & Ice Plant, Inc. and Court of Tax Appeals,* 140 Phil. 62 (1969).

[5] *Guagua Electric Light Co., Inc. v. Collector of Internal Revenue*, 126 Phil. 85 (1967).

[6] *Collector of Internal Revenue v. Batangas Transportation Company and Laguna-Tayabas Bus Company*, 102 Phil. 822 (1958).

held that in light of our ruling in the case of *Eufemia Evangelista v. Collector of Internal Revenue*[7] **promulgated on October 15, 1957,** the "Joint Emergency Operation" operated by Batangas Transportation Company and Laguna-Tayabas Bus Company is a "corporation" within the meaning of Section 84(b) of the Internal Revenue Code, and consequently, is subject to income tax.

C) The non-prospective effect of our decision can also be gleaned from what transpired in the case of *Carmen Planas v. Collector of Internal Revenue.*[8] That case involved a resolution of the CTA directing the execution of a judgment of the defunct Board of Tax Appeals, which affirmed the war profit tax assessment made by the Collector (now Commissioner) against Carmen Planas. We took note of our 30 March 1954 Resolution dismissing Carmen Planas' appeal from the Board of Tax Appeals decision on the basis of our declaration in *University of Sto. Tomas v. Board of Tax Appeals,*[9] that the provisions of E.O. No. 401-A conferring upon the Board of Tax Appeals exclusive jurisdiction over all appeals from decisions of the CIR in disputed assessments and other matters arising under the NIRC are null and void; hence, said Board has no jurisdiction over said internal revenue cases. Therefore, we concluded that the decision of the Board of Tax Appeals was neither valid, final or executory.

As a matter of fact, in the fairly recent case of *Accenture, Inc. v. Commissioner of Internal Revenue*,[10] we upheld the Court of Tax Appeal's application of our pronouncements in

---

[7] *Eufemia Evangelista v. Collector of Internal Revenue*, 102 Phil. 140 (1957).

[8] *Carmen Planas v. Collector of Internal Revenue*, 113 Phil. 377 (1961).

[9] *University of Sto. Tomas v. Board of Tax Appeals, 93 Phil.* 376 (1953).

[10] *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.[11] (*Burmeister*) as basis in ruling that *Accenture's* services would qualify for zero-rating under Section 108(b) of the 1997 NIRC [formerly Section 102(b) of the 1977 Tax Code], only if the recipient of the services was doing business outside of the Philippines. We held:

> Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one. When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[12]

It is the duty of the lawyers of private parties to best discern the acceptable interpretation of legal text based upon methodologies familiar to lawyers. In doing so, they take the risk that the Supreme Court will rule otherwise, especially if the text of the law — as in this case — is very clear.

This Court should not be a guarantor of lawyer's mistakes. Nor should it remove all risks taken by the taxpayers through the advice and actions of their counsels. The capacity to bear the costs of these mistakes in interpretation is generally better internalized by the private taxpayers rather than carried by the public as a whole. Government has had no agency in the decision of the private parties—in this case San Roque and Taganito Mining—to prematurely raise their claims with the Court of Tax Appeals. They could have taken the other route and erred on the side of caution, especially since Section 112 (D) of the NIRC is very clear.

---

[11] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* 541 Phil. 119 (2007).

[12] *Accenture, Inc. v. Commissioner of Internal Revenue, supra.*

In view of the foregoing, I concur with the statement of doctrines in the *ponencia* but vote for the following result:

1. Grant the petition of the Commission of Internal Revenue in G.R. No. 187485 to deny the claim for tax refund or credit of San Roque Power Corporation in the amount of ₱560,200,283.14;
2. Deny the petition of Taganito Mining Corporation in G.R. No. 196113 for a tax credit in the amount of ₱8,365,664.38; and
3. Deny the petition of Philex Mining Corporation in G.R. No. 197156 for a tax refund or credit of ₱23,956,732.44.

SEPARATE DISSENTING OPINION

SERENO, *C.J.*:

The crux of the disparity in opinion among my esteemed colleagues is the proper application of the mandatory and jurisdictional nature of the 120+≤30 period provided under Section 112 (D) of the 1997 NIRC, whether prospective or retroactive.

I concur with the dissent of Justice Velasco that Revenue Regulation No. (RR) 7-95 was not superseded and did not become obsolete upon the approval of RA 8424 or the 1997 NIRC. It bears to stress that Section 106 (d) of the 1977 NIRC from which RR 7-95 was construed was not repealed by Section 112 (D) of the 1997 NIRC, thus, the same regulation which implements the same framework of the law may still be given effect for the proper execution of the terms set therein. It is wrong to assume that RR 7-95 was automatically revoked upon the enactment of a new law which conveys the same meaning as the old law. Needless to say, RR 7-95 was created in view of Section 106 (d) of the 1977 NIRC which has the same context and was actually replicated in Section 112 (D) of the 1997 NIRC. Thus, to conclude that RR 7-95 became inconsistent with Section 112 (D) of the 1997 NIRC is misplaced.

Moreover, to disregard RR 7-95 upon the enactment of the 1997 NIRC would likewise create a complicated scenario of

determining which administrative issuance would govern claims under the said tax code during the intervening period pending the revision on its implementing rules. It would be nearly impossible for the Bureau of Internal Revenue to operate in an administrative vacuum.

Although we express the same position that the CTA Decisions constitute an operative fact on the manner in which the BIR, CA, CTA and even this court regarded the 120+≤30 period leading the taxpayers to believe that they were observing the proper period in their claims for refund, I do not agree with Justice Velasco's stand as to the application of RR 16-2005 which construed the nature of the 120+≤30 period as mandatory and jurisdictional only from the date it took effect on 1 November 2005. I believe that in line with numerous jurisprudence, the mandatory and jurisdictional application of the 120+≤30 period must be applied prospectively, or at the earliest only upon the finality of *Aichi* where this Court categorically ruled on the nature of the 120+≤30 period pursuant to Section 112 (D) of the 1997 NIRC. Prior to *Aichi*, the CTA continuously ruled that the 120+≤30 period is not mandatory and jurisdictional.

In *Miranda, et al. v. Imperial, et al.*,[1] (*Miranda* case) while the Court had ruled: "only decisions of this Honorable Court establish jurisprudence or doctrines in this jurisdiction," decisions of the Court of Appeals (CA) which cover points of law still undecided in the Philippines may still serve as judicial guides or precedents to lower courts.[2] Indeed, decisions of the CA have a persuasive juridical effect.[3] And they may attain the status of

---

[1] 77 Phil. 1073 (1947).

[2] *GSIS v. Cadiz*, 453 Phil. 384, 391 (2003).

[3] A Comparative Study of the Juridical Role and its Effect on the Theory on Juridical Precedents in the Philippine Hybrid Legal System, Cesar Villanueva, <http://law.upd.edu.ph/plj/images/files/PLJ%20volume%2065/PLJ%20 volume%2065%20first%20&% 20second%2 0quarter%20-04-%20Cesar%20Lapuz%20Villanueva%20 %20Comparative%20Study%20of%20the%20Judicial%20Role.pdf> (visited 14 January 2013).

doctrines if after having been subjected to test in the crucible of analysis and revision, the Supreme Court should find the same to have merits and qualities sufficient for their consecration as rules of jurisprudence.[4] If unreversed decisions of the CA are given weight in applying and interpreting the law, Court of Tax Appeals (CTA) decisions must also be accorded the same treatment considering they are both appellate courts, apart from the fact that the CTA is a highly specialized body specifically created for the purpose of reviewing tax cases.[5] This is especially the case when the doctrine and practice in the CTA has to do only with a procedural step.

Applying the foregoing to the issue at hand, the CTA's disposition of the issue of the prescriptive period for claims for refund of input VAT, which had never been controverted by this Court until the *Aichi* case, had served as a guide not only to inferior courts but also to taxpayers. Hence, following the pronouncement in *Miranda* case, we must give weight to the dispositions made during the interim period when the issue of mandatory compliance with Section 112 had not yet been resolved, much less raised in this jurisdiction.

Although I recognize the well-settled rule in taxation that tax refunds or credit, just like tax exemptions, are strictly construed against taxpayers, reason dictates that such strict construction properly applies only when what is being construed is the substantive right to refund of taxpayers. When courts themselves have allowed for procedural liberality, then they should not be so strict regarding procedural lapses that do not really impair the proper administration of justice.[6] After all, the higher objective of procedural rule is to insure that the

---

[4] Persons, Dean Ernesto L. Pineda, 33 (2004), citing *Miranda v. Imperial*, *id.* at 1, and *Gaw Sin Gee v. Market Master of the Divisoria Market, et.al.* [C.A.], 46 O.G. 2617.

[5] *Commissioner of Internal Revenue, v. Solidbank Corporation*, 462 Phil. 96 (2003).

[6] *Fabrigar v. People*, 466 Phil. 1036, 1044 (2004) citing *Ligon v. Court of Appeals*, 314 Phil. 689, 699 (1995).

substantive rights of the parties are protected.[7] In *Balindong v. Court of Appeals*[8] we stated:

> x x x. Hence, **rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.** Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism or whimsicality in the settlement of disputes. **The enforcement of procedural rules is not antithetical to the substantive rights of the litigants. The policy of the courts is to give effect to both procedural and substantive laws, as complementing each other, in the just and speedy resolution of the dispute between the parties.**[9] (Emphasis supplied)

In the light of the foregoing, I find that previous regard to the 120+≤30 day period is an exceptional circumstance which warrant this Court to suspend the rules of procedure and accord liberality to the taxpayers who relied on such interpretations.

We find it violative of the right to procedural due process of taxpayers when the Court itself allowed the taxpayers to believe that they were observing the proper procedural periods and, in a sudden jurisprudential turn, deprived them of the relief provided for and earlier relied on by the taxpayers. It is with this reason and in the interest of substantial justice that the strict application of the 120+≤30 day period should be applied prospectively to claims for refund or credit of excess input VAT.

To apply these rules retroactively would be tantamount to punishing the public for merely following interpretations of the law that have the imprimatur of this Court. To do so creates a tear in the public order and sow more distrust in public institutions.

---

[7] *Id.*

[8] 488 Phil. 203 (2004).

[9] *Id.* at 215-216.

We would be fostering uncertainty in the minds of the public, especially in the business community, if we cannot guarantee our own obedience to these rules.

In a dissenting opinion in a case involving VAT law, Justice Tinga well said: "**Taxes may be inherently punitive, but when the fine line between damage and destruction is crossed, the courts must step forth and cut the hangman's noose. Justice Holmes once confidently asserted that 'the power to tax is not the power to destroy while this Court sits' and we should very well live up to this expectation not only of the revered Holmes, but of the Filipino people who rely on this Court as the guardian of their rights. At stake is the right to exist and subsist despite taxes, which is encompassed in the due process clause**."[10] (Emphasis supplied)

The Court should not allow procedural rules that it has tolerated, then suddenly distolerated, to unjustly result in the denial of the legitimate claims of taxpayers, *viz*:

> **Substantial justice, equity and fair play are on the side of petitioner. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.**[11] (Emphasis supplied)

Further, in *Land Bank of the Philippines v. De Leon*,[12] this Court had said that "[a] prospective application of our Decision is not only grounded on equity and fair play, but also based on the constitutional tenet that rules of procedure shall not impair substantive rights."[13]

---

[10] *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 251 (2005).

[11] *BPI-Family Savings Bank, Inc. v. Court of Appeals*, 386 Phil. 719, 729 (2000).

[12] 447 Phil. 495 (2003).

[13] *Id.* at 503.

It is my view that the mandatory nature of 120+≤30day period must be completely applied prospectively in order to create stability and consistency in our tax laws.

In this case, at the time Taganito filed its administrative and judicial claims for refund, the two-year prescriptive period remained the unreversed interpretation of the court. Thus, we cannot fault Taganito for heavily relying on court interpretations even with the existence of RR 16-2005. Taxpayers or the public in general, cannot be blamed for preferring to abide court interpretations over mere administrative issuances as the latter's validity is still subject to judicial determination.

Accordingly, I concur with the opinion as to the outcome of the Dissent of Justice Velasco with regard to G.R. Nos. 187485 and 197156. However, for consistency of my position as discussed above and in the further interest of substantial justice, I vote to GRANT the Petition of Taganito in G.R. No. 196113.

DISSENTING OPINION

VELASCO, JR., *J.*:

I register my dissent to the majority opinion in G.R. No. 187485, entitled *Commissioner of Internal Revenue v. San Roque Power Corporation*, and G.R. No. 196113, entitled *Taganito Mining Corporation v. Commissioner of Internal Revenue*. However, I concur with the disposition of the case in G.R. No. 197156, entitled *Philex Mining Corporation v. Commissioner of Internal Revenue*.

The primary issue in these three (3) consolidated cases revolves around the proper period for filing the **judicial claim** for a tax refund of input tax or the issuance of a tax credit certificate (TCC).

Commissioner of Internal Revenue v. San Roque Power Corp. (G.R. No. 187485)

In G.R. No. 187485, respondent-taxpayer San Roque Power Corporation (San Roque) filed on **March 28, 2003** an amended administrative claim for refund of input value-added tax (VAT)

amounting to PhP 560,200,283.14 with the Bureau of Internal Revenue (BIR). Thirteen (13) days thereafter, or on **April 10, 2003**, San Roque filed a Petition for Review regarding the same amount with the Court of Tax Appeals (CTA).

The CTA Second Division initially denied San Roque's claim for insufficiency of supporting documents and evidence. However, on San Roque's motion, the CTA Second Division reconsidered and granted San Roque's claim, albeit at a reduced amount of PhP 483,797,599.65.

The reconsideration prompted the Commissioner of Internal Revenue (CIR) to file a Petition for Review before the CTA *En Banc* claiming that San Roque prematurely filed its judicial claim with the CTA and failed to meet the requisites for claiming a refund/credit of input VAT. The CTA *En Banc* dismissed the CIR's petition sustaining the timeliness of San Roque's administrative and judicial claims.

The CTA *En Banc* held that the word "may" in Section 112(D) of the 1997 National Internal Revenue Code (NIRC) signifies the intent to allow a directory and permissive construction of the 120-day period for the filing of a judicial claim for refund/credit of input VAT. Hence, the filing of judicial claims for refund/credit of VAT within the said 120-day period is allowed, as long as it is made within the two-year prescriptive period prescribed under Section 229 of the 1997 NIRC.

Undaunted, the CIR elevated the controversy before this Court asserting, in the main, that San Roque's failure to wait for the lapse of the 120-day period after filing its claim with the BIR is fatal to San Roque's right to a refund/credit of input VAT. Moreover, so the CIR claimed, the refund should be spread across the 40-year life span of the capital goods and equipment of the taxpayer.

In a Resolution dated January 12, 2011, this Court affirmed the CTA Second Division's Decision, as sustained by the CTA *En Banc*, with the modification that the tax credit should be spread over the 40-year lifespan of San Roque's capital goods and equipment.

On February 11, 2011, the CIR filed a Motion for Reconsideration citing this Court's October 6, 2010 Decision in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* (*Aichi*).[1]

Taganito Mining Corp. v. CIR (G.R. No. 196113)

In the meantime, in G.R. No. 196113, petitioner Taganito Mining Corporation (Taganito) filed with the CIR on **November 14, 2006** a claim for refund/credit of input VAT for the period January 1, 2004 to December 31, 2004 in the total amount of PhP 8,365,664.38. On November 29, 2006, Taganito informed the CIR that the correct period covered by its claim actually spans from to January 1, 2005 to December 31, 2005.

Ninety-two (92) days after it first filed its claim for refund/credit, or on **February 14, 2007**, Taganito filed a Petition for Review with the CTA claiming that the CIR failed to act on its claim. The CTA Second Division partially granted Taganito's claim and ordered the CIR to refund the taxpayer in the amount of PhP 8,249,883.33.

When its motion for reconsideration was denied by the CTA Second Division, the CIR filed a Petition for Review with the CTA *En Banc* asserting that the 120-day period prescribed in Sec. 112(D) of the 1997 NIRC is jurisdictional so that Taganito's non-compliance thereof is fatal to its claim for refund/credit of input VAT.

Citing our Decision in *Aichi*, the *CTA En Banc* ruled that Taganito's failure to wait for the lapse of the 120-day period prescribed in Sec. 112(D) of the 1997 NIRC amounted to a premature filing of its judicial claim that violates the doctrine of exhaustion of administrative remedies.

The CTA *En Banc* denied Taganito's Motion for Reconsideration. Hence, Taganito filed the present petition.

---

[1] G.R. No. 184823, 632 SCRA 422.

Philex Mining Corp. v. CIR
(G.R. No. 197156)

In G.R. No. 197156, petitioner Philex Mining Corporation (Philex) filed on October 21, 2005 its Original VAT Return for the third quarter of taxable year 2005, and on December 1, 2005, its Amended VAT Return for the same quarter.

On **March 20, 2006**, Philex then filed a claim for refund/credit of input VAT in the total amount of PhP 23,956,732.44 with the One Stop Shop Center of the Department of Finance.

Almost a year and seven (7) months thereafter, or on October 17, 2007, Philex elevated its claim for refund/credit with the CTA. Ruling on the petition, the CTA Second Division denied the claim holding that while Philex's administrative claim was timely filed, its judicial claim was filed out of time. Hence, Philex's claim for refund/credit is barred by prescription.

Philex's Motion for Reconsideration was denied by the CTA Second Division. Hence, on December 2, 2009, Philex filed with the CTA *En Banc* a Petition for Review.

The CTA *En Banc* denied the motion.

Applying our pronouncements in *Aichi*, the CTA *En Banc* held that Philex only had until August 17, 2006, or thirty (30) days after the lapse of the 120-day period from the filing of its administrative claim on March 20, 2006, to file its judicial claim with the CTA. Hence, the CTA Second Division no longer had jurisdiction to entertain the petition filed by Philex 426-day late.

The denial of its claim impelled Philex to file its petition before this Court.

To resolve the primary issue common to the foregoing cases, it has been advanced that the following three (3) cases are determinative: (1) *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, June 8, 2007* (*Atlas*);[2] (2) *Commissioner of Internal Revenue v. Mirant*

---

[2] G.R. Nos. 141104 & 148763, 524 SCRA 73.

Pagbilao Corporation, September 12, 2008 (*Mirant*);[3] and (3) *Aichi*,[4] which has been cited by both the CIR and the CTA. It is then suggested that the doctrine applicable to a claim for refund or issuance of a TCC depends on the case operative at the time of filing the claim.

It is, however, submitted that in resolving the issue on the proper period for filing a **judicial claim**, only *Aichi* is relevant, and a review of the relevant legislations and regulations is necessary for a more comprehensive appreciation of the present controversy.

In *Atlas*, the period to file a judicial claim was never the issue. Instead, *Atlas* sought to define the start of the two-year period within which to file the claim and pegged it at "the date of filing of the return and payment of the tax due, which, according to the law then existing, should be made within 20 days from the end of quarter."[5] Moreover, *Atlas* involved claims for refund of unutilized input VAT covering taxable years 1990 and 1992. It, therefore, construed the relevant provisions of the Tax Code of 1977,[6] as amended by Executive Order No. (EO) 273,[7] which read:

Sec. 106. Refunds or tax credits of input tax. — x x x

(b) *Zero-rated or effectively zero-rated sales.* — Any person, except those covered by paragraph (a) above, whose sales are zero-rated or are effectively zero-rated may, within two years after the close of the quarter when such sales were made, apply for the issuance of a tax credit certificate or refund of the input taxes attributable to such sales to the extent that such input tax has not been applied against output tax.

x x x x x x x x x

---

[3] G.R. No. 172129, 565 SCRA 154.

[4] *Supra* note 1.

[5] *Supra* note 2, at 96.

[6] Otherwise known as Presidential Decree No. 1158.

[7] Took effect on January 1, 1988.

(e) *Period within which refund or input taxes may be made by the Commissioner.* — **The Commissioner shall refund input taxes within 60 days from the date the application for refund was filed with him or his duly authorized representative.** No refund or input taxes shall be allowed unless the VAT-registered person files an application for refund within the period prescribed in paragraphs (a), (b) and (c), as the case may be. (Emphasis supplied.)

It is clear from the foregoing provisions that the Tax Code of 1977 applied in *Atlas* did not provide a period within which the judicial claim must be filed by the taxpayer after he has filed his administrative claim for refund. The correlation made by this Court of the prescriptive period in Sec. 106 with Sec. 230[8] (now Sec. 229), which states that no suit or proceeding to claim a tax refund is allowed after the expiration of the two (2) years from the date of the payment of the tax, was, therefore, necessary and justified under the circumstances present in *Atlas*. The same correlation is not applicable to the present cases.

The period within which to file a judicial claim for the refund of VAT or the issuance of a TCC was first introduced in 1994 through Republic Act No. (RA) 7716,[9] Sec. 6 of which provided:

---

[8] Sec. 230. Recovery of tax erroneously or illegally collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, **no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**; Provided however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis supplied.)

[9] An Act Restructuring the Value Added Tax (VAT) System, Widening Its Tax Base and Enhancing Its Administration and for these Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as Amended, and for Other Purposes. Approved May 5, 1994.

Section 6. Section 106 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 106. Refunds or tax credits of creditable input tax. — (a) Any VAT-registered person, whose sales are zero-rated or effectively zero-rated, may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x.

x x x x x x x x x

"(d) Period within which refund or tax credit of input taxes shall be made. — In proper cases, **the Commissioner shall grant a refund or issue the tax credit for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof.** In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**." (Emphasis supplied.)

Then Secretary of Finance Roberto F. De Ocampo, however, issued **Revenue Regulation No. (RR) 7-95**, otherwise known as the "Consolidated Value-Added Tax Regulations" pursuant to his rule-making authority under Sec. 245 (now Sec. 244) of the NIRC in relation to Sec. 4, which provides:

Section 245. **Authority of Secretary of Finance to promulgate rules and regulations**. — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needed rules and regulations for the effective enforcement of the provisions of this Code.

The mentioned RR 7-95 became effective on January 1, 1996 and still applied the 2-year prescriptive period to judicial claims, viz:

SEC. 4.106-2. Procedures for claiming refunds or tax credits of input tax — (a) Where to file the claim for refund or tax credit. — Claims for refund or tax credit shall be filed with the appropriate

Revenue District Office (RDO) having jurisdiction over the principal place of business of the taxpayer. However, direct exporters may also file their claim for tax credit with the One-Stop-Shop Center of the Department of Finance.

x x x x x x x x x

(c) Period within which refund or tax credit of input taxes shall be made. — In proper cases, the Commissioner shall grant a tax credit/refund for creditable input taxes within sixty (60) days from the date of submission of complete documents in support of the application filed in accordance subparagraphs (a) and (b) above.

In case of full or partial denial of the claim for tax credit/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the receipt of said denial, otherwise the decision will become final. However, **if no action on the claim for tax credit-refund has been taken by the Commissioner of Internal Revenue after the sixty (60) day period from the date of submission of the application** ***but before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter*****, the taxpayer may appeal to the Court of Tax Appeals.** (Emphasis supplied.)

Tax revenue regulations are "issuances signed by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, that specify, **prescribe or define rules and regulations for the effective enforcement of the provisions of the [NIRC]** and related statutes."[10] As these issuances are mandated by the Tax Code itself, they are in the nature of a subordinate legislation that is as compelling as the provisions of the NIRC it implements.[11] RR 7-95, therefore, provides a binding set of rules in the filing of claims for the refund/credit of input VAT and prevails over all other rulings and issuances of the BIR in all matters concerning the interpretation and proper application of the VAT provisions of the NIRC.

---

[10] <http://www.bir.gov.ph/iss_rul/issuances.htm> (visited February 5, 2013); emphasis supplied.

[11] See *BPI Leasing Corporation v. Court of Appeals*, G.R. No. 127624, November 18, 2003.

The period given to the CIR to decide a claim for input VAT refund/credit was extended from 60 days under EO 273 and RR 7-95 to 120 days under RA 8424, otherwise known as the 1997 NIRC, which became effective on January 1, 1998. Sec. 112 of RA 8424 on the refund of tax credits stated, thus:

Section 112. Refunds or Tax Credits of Input Tax. —

(A) Zero-rated or Effectively Zero-rated Sales. — any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax x x x.

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be made. In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above**, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**.[12] (Emphasis supplied.)

Mirant was decided under the aegis of the 1997 NIRC and resolved a claim for refund/credit of input VAT for the period April 1993 to September 1996. However, it likewise did not set forth the period prescribed in **Sec. 112(D)** of the 1997 NIRC

---

[12] The subheading "Period within which refund or Tax Credit of Input Taxes shall be Made" was previously under Sec. 112(D) until the effectivity of RA 9337, which deleted the subheading on "Capital Goods" in what was previously Sec. 112(B) of the NIRC.

in filing the judicial claim after the administrative claim has been filed. Like in *Atlas*, the issue resolved in *Mirant* is the date from which the 2-year prescriptive period to file the claim should be counted. Applying **Sec. 112(A)** of the 1997 NIRC, this Court, in *Mirant,* modified the *Atlas* doctrine and set the commencement of the 2-year prescriptive period from the date of the close of the relevant taxable quarter. In so ruling, this Court declared in *Mirant* that the provisions of Sec. 229 of the 1997 NIRC do not apply to claims for refund/credit of input taxes because these taxes are not erroneously or illegally collected taxes:

> To be sure, MPC cannot avail itself of the provisions of either Sec. 204(C) or 229 of the NIRC which, for the purpose of refund, prescribes a different starting point for the two-year prescriptive limit for the filing of a claim therefor. Secs. 204(C) and 229 respectively provide:
>
> x x x x x x x x x
>
> Notably, the above provisions also set a two-year prescriptive period, reckoned from date of payment of the tax or penalty, for the filing of a claim of refund or tax credit. Notably too, both provisions apply only to instances of erroneous payment or illegal collection of internal revenue taxes.[13]

Ergo, the 2-year period set forth in Sec. 229 does not apply to judicial claims for the refund/credit of input VAT.

Sec. 4.106-2 of RR 7-95, which provided that such judicial claims for refund/credit of input VAT must be filed "before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter" **was not, however, repealed by the 1997 NIRC**. **<u>There was no provision in RA 8424 explicitly repealing RR 7-95</u>**.[14] Instead, Sec. 4.106-2 of RR

---

[13] *Supra* note 3.

[14] RA 8424, Sec. 7, Repealing Clauses. — (A) The provision of Section 17 of Republic Act No. 7906, otherwise known as the "Thrift Banks Act of 1995" shall continue to be in force and effect only until December 31, 1999.

Effective January 1, 2000, all thrift banks, whether in operation as of that date or thereafter, shall no longer enjoy tax exemption as provided under

7-95 remained effective as the implementing rule of Sec. 112(D) that was lifted almost verbatim from Sec. 106(d) of the 1977 NIRC, as amended. At the risk of being repetitive, I quote again the pertinent provisions of Sec. 106(d) of the 1977 NIRC, as amended by RA 7716 which was approved on May 5, 1994 prior to the issuance of RR 7-95, and Sec. 112(D) of the 1997 NIRC for comparison:

Sec. 106(d), 1977 NIRC	Sec. 112(D), 1997 NIRC
Sec. 106. *Refunds or tax credits of creditable input tax.* — x x x	Section 112. *Refunds or Tax Credits of Input Tax.* — x x x
d) *Period within which refund or tax credit of input taxes shall be made.* — In proper cases, **the Commissioner shall grant a refund or issue the tax credit for creditable input taxes within sixty (60) days from the date of submission of complete documents** in support of the application filed in accordance with sub-paragraphs (a) and (b) hereof**.**	*(D) Period within which Refund or Tax Credit of Input Taxes shall be made.* In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof.
In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within**	In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above**, the taxpayer affected may, within**

Section 17 of R.A. No. 7906, thereby subjecting all thrift banks to taxes, fees and charges in the same manner and at the same rate as banks and other financial intermediaries.

(B) The provisions of the National Internal Revenue Code, as amended, and all other laws, including charters of government-owned or -controlled corporations, decrees, orders or regulations or parts thereof, that are inconsistent with this Act are hereby repealed or amended accordingly.

thirty (30) days from the receipt of the decision denying the claim or after the expiration of the sixty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.	**thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals**.

It is apparent that Sec. 106(d) of the 1977 NIRC, as amended, was substantially adopted and re-enacted by Sec. 112(D) of the 1997 NIRC. In other words, Sec. 106(d) of the 1977 NIRC, as amended, was **not repealed** by Sec. 112(D) of the 1997 NIRC. Thus, **RR 7-95 construing and implementing Sec. 106(d) of the 1977 NIRC, as amended by RA 7716, continued in effect under Sec. 112(D) of the 1997 NIRC.**

In *Commissioner of Internal Revenue v. American Express*,[15] We ruled that when the legislature reenacts a law that has been construed by an executive agency using substantially the same language, it is an indication of the adoption by the legislature of the prior construction by the agency:

[U]pon the enactment of RA 8424, which substantially carries over the particular provisions on zero rating of services under Section 102(b) of the Tax Code, the principle of legislative approval of administrative interpretation by reenactment clearly obtains. This principle means that "the reenactment of a statute substantially unchanged is persuasive indication of the adoption by Congress of a prior executive construction."

The legislature is presumed to have reenacted the law with full knowledge of the contents of the revenue regulations then in force regarding the VAT, and to have approved or confirmed them because they would carry out the legislative purpose. The particular provisions of the regulations we have mentioned earlier are, therefore, re-enforced. "When a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the [l]egislature thereafter [reenacts] the provisions [without] substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose."

---

[15] G.R. No. 152609, June 29, 2005, 462 SCRA 197, 229-230.

In fact, in this Court's January 17, 2011 Decision in *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*,[16] where the Court resolved a judicial claim filed on December 27, 2000 for creditable input taxes for the period October to December 1998 (after the effectivity of RA 8424 or the 1997 NIRC), this Court cited and relied on the provisions of RR 7-95, viz:

> To claim a refund of input VAT on capital goods, Section 112 (B) of the NIRC requires that:
>
> x x x x x x x x x
>
> Corollarily, **Section 4.106-1 (b) of RR No. 7-95** defines capital goods as follows: x x x Based on the foregoing definition, we find no reason to deviate from the findings of the CTA that training materials, office supplies, posters, banners, T-shirts, books, and the other similar items reflected in petitioner's Summary of Importation of Goods are not capital goods. A reduction in the refundable input VAT on capital goods from ₱15,170,082.00 to ₱9,898,867.00 is therefore in order. (Emphasis supplied.)

Thus, this Court, I submit, cannot now assert that RR 7-95 was superseded and became obsolete upon the approval of RA 8424 or the 1997 NIRC.

Furthermore, the CIR issued Revenue Memorandum Circular No. (RMC) 49-03[17] pursuant to his rule-making power under Sec. 4 the 1997 NIRC, which states:

> Section 4. **Power of the Commissioner to Interpret tax Laws and to Decide Tax Cases**. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

---

[16] G.R. No. 172378, January 17, 2011, 639 SCRA 521. See also *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012; *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010, 612 SCRA 28.

[17] Prescribes amendments to RMC 42-2003 relative to the processing of claims for VAT credit/refund.

The power to decide disputed assessments, refunds of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

RMC 49-03, like all other RMCs, is an issuance that publishes pertinent and applicable portions, as well as amplifications, of laws, rules, regulations and precedents issued by the BIR and other agencies/offices.[18] RMC 49-03, in particular, recognized and laid out the rules concerning the concurrent jurisdiction of the CIR and the CTA in cases of claims for VAT refunds or issuances of TCCs.

The significance and impact of RMC 49-03, dated August 15, 2003, can best be appreciated by a close reading:

In response to request of selected taxpayers for adoption of procedures in handling refund cases that are aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law, certain provisions of RMC No. 42-2003 are hereby amended and new provisions are added thereto.

In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:

1) A-17 of Revenue Memorandum Circular No. 42-3003 is hereby revised to read as follows:

"In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), **the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency**, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/ processing office for the docket containing certified true copies of all the documents pertinent to the claim.

[18] <http://www.bir.gov.ph/iss_rul/issuances.htm> (visited February 5, 2013).

The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. **In the meantime, the investigating/ processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency**.

If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate / tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/ processing office." (Emphasis supplied.)

RMC 49-03 explicitly allowed a taxpayer to file his judicial claim with the CTA while his administrative claim for refund of the same input taxes was still pending before the BIR, *i.e.*, without waiting for the administrative claim to be first resolved, and that both claims, judicial and administrative, could proceed simultaneously; in brief, the administrative agency and the tax court may take cognizance of and act on the claims separately.

RMC 49-03 permitted refund-seeking taxpayers to have recourse to the CTA without having to wait for the lapse of the 120-day period granted to the CIR by Section 112(D). At the same time, the BIR was to continue to exercise jurisdiction over the administrative claim for refund, even after the CTA acquired jurisdiction over the judicial claim for refund of the exact same

input VAT. This RMC even provided the mechanics for dealing with situations where one claim was resolved ahead of the other, in order to prevent conflicting outcomes or double refunds. Obviously, this RMC provided much needed and reliable guidance to taxpayers in dealing with their claims that were in peril of being time-barred.

At bottom, RMC 49-03 conclusively proves that the CIR and the CTA regarded the 120-day and 30-day periods in Sec. 112(D) as being **non-jurisdictional in nature**. It must be reiterated for emphasis that RMC 49-03 was issued and implemented under the aegis of the 1997 NIRC.

In addition, it is unarguable that **RMC 49-03 was premised on the belief of the CIR and the CTA that the two-year prescriptive period under Sec. 229 continued to be applicable to judicial claims for refund of input VAT, because otherwise, there would have been no need for, and no point in, allowing both the judicial and administrative claims to proceed simultaneously**.

Moreover, RMC 49-03 obviously demanded and necessitated the agreement and cooperation of the CTA. In other words, RMC 49-03 was meaningful, relevant, viable and enforceable only because the CTA concurred in the CIR's belief, and abided by, embraced and implemented the scheme under RMC 49-03 involving the twin-and-simultaneous jurisdiction by the CTA and the BIR over the claims for refund of one and the same input VAT.

At bottom, the only plausible explanation why the CIR issued and the BIR and CTA jointly implemented the RMC 49-03 system of handling claims, notwithstanding the existence of Sec. 112(D) of the 1997 NIRC, was that they believed that it would not conflict with Sec. 112(D), **precisely because of the continued effectivity of RR 7-95**. The CIR and the CTA were of the belief that the said two-year prescriptive period was applicable to the filing of judicial claims for refund of input VAT, and, therefore, in order to save such claims from being denied on account of late filing, they devised a system (consistent with and permissible under RR 7-95), allowing the judicial claim to be filed without awaiting the outcome of the administrative claim (or the lapse

of the 120-day period), and allowing both claims to proceed simultaneously.

Needless to say, RMC 49-03 did not spring forth from sheer nothingness; it was preceded by RMC 42-03. In fact, the title of RMC 49-03 reads: "Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters."

On the other hand, RMC 42-03, dated as of July 15, 2003, has the subject title "Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/ Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters."

Obviously intended to address various concerns/difficulties **already pre-existing** at the time of its issuance, RMC 42-03 presented, in Q & A format, information needed by taxpayers in dealing with specific problematic situations involving VAT usage and VAT refund claims. Question No. 17, at the very end of RMC 42-03, reads as follows:

> Q-17: If a claim submitted to the Court of Tax Appeals for judicial determination is denied by the CTA due to lack of documentary support, should the corresponding claim pending at the BIR offices be also denied?

The question speaks of a situation where the administrative claim is still pending with, and has not been resolved by, the BIR, but the judicial claim for refund of the same taxes has already been filed with and taken cognizance of by the CTA, and has been denied on account of lack of documentary support and not on account of prematurity.

Beyond doubt, this particular scenario was not uncommon back in 2003, **and in prior years as well**, as shown by the fact that it earned a distinguished spot in the BIR's FAQ, and

eventually had an entire Revenue Memorandum Circular devoted to it (*i.e.*, RMC 49-03). This oft-repeated scenario was the result of the widespread practice among taxpayers of filing judicial claims with an eye to beating the two-year deadline under Sec. 229 of the Tax Code, coupled with the BIR and the CTA's assiduous disregard of the 120-day and 30-day periods under Sec. 112(D).

The phrasing of that question indicates that neither the BIR nor the CTA considered such judicial claims to be premature for non-compliance with the 120-day and 30-day periods; those periods were by no means deemed jurisdictional in nature. That was the official position taken by the BIR and the CTA, as reflected in their handling of the claims, and **the taxpayers and the general public cannot be faulted if they relied on the actuations and declarations of the Commissioner of Internal Revenue and the CTA**.[19]

The answer to Question No. 17 confirms the foregoing disquisition. It reads as follows:

> A-17: Generally, the BIR loses jurisdiction over the claim when it is filed with the CTA. Thus, when the claim is denied by the CTA, the BIR cannot grant any tax credit or refund for the same claim. However, cases involving tax credit/refund claims, which are archived in the CTA and have not been acted upon by the said court, may be processed

---

[19] *See*, for instance, CTA Case Nos. 7230 & 7299, *Team Sual Corporation v. Commissioner of Internal Revenue*, November 26, 2009, where the CTA's First Division intoned: "The Court *En Banc* has consistently ruled that judicial course within thirty (30) days after the lapse of the 120-day period is directory and permissive and not mandatory nor jurisdictional as long as the said period is within the 2-year prescriptive period under Sections 112 and 229 of the 1997 NIRC, as amended. It has likewise held that if the 2-year prescriptive period is about to expire, there is no need to wait for the denial of the claim by the Commissioner of Internal Revenue or its inaction after the expiration of the 120-day period before the taxpayer can lodge its appeal with this Court." (citing *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*, C.T.A. EB No. 416, February 4, 2009; *Commissioner of Internal Revenue v. San Roque Power Corporation*, C.T.A. EB No. 408, March 25, 2009; *Commissioner of Internal Revenue v. CE Cebu Geothermal Power Company, Inc.*, C.T.A. EB No. 426, May 29, 2009).

> by the concerned BIR office upon approval of the CTA to archive or suspend the proceeding of the case pending in its bench.

The foregoing answer would have turned out very different if prematurity had been an issue or a concern at that time. At the very least, the answer would have to be qualified, *e.g.*, in case of non-compliance with the 120-day and 30-day periods, the CTA is bereft of jurisdiction, *etc*. In any event, in A-17 we can already see the nascency of the simultaneous jurisdictions of the BIR and the CTA.

As will already be obvious from just a cursory glance, the various questions and answers/solutions contained in RMC 42-03 did not simply materialize out of thin air and come into full bloom instantaneously. It was most definitely the end product of thoughtful interaction between official policy and practice on the part of the BIR and the CTA, and taxpayers' experiences gathered over time. **In other words, to acknowledge RMC 42-03 as an operative fact is to acknowledge the long history and process of policy formulation and implementation underpinning RMC 42-03, and the accumulation over time of the empirical basis thereof**.

Put another way, RMC 42-03 merely presented in clear-cut, written form the official solutions and answers to various, frequently encountered problems involving VAT usage and refund claims; these solutions and answers—crafted and refined over a period of time, being the product of what we may refer to as collective wisdom generated by the interaction of the tax agency, the tax court and taxpayers—actually antedated RMC 42-03 by many years.

It is just the same way with Q-17 and A-17—they only put in black and white what had already been the prevailing practice and understanding of the tax agency, the tax court and taxpayers in respect of judicial claims.

Now, going back to the beginning of this discussion, taxpayers ought not be prejudiced if they filed their judicial claims relying in good faith on RMC 49-03. But just as this Court cannot

afford to ignore RMC 49-03, in the same way and for the very same reasons the Court likewise cannot ignore RMC 42-03 and the official policies, practices and experience that preceded and gave birth to RMC 42-03 and eventually to RMC 49-03. And, therefore, judicial claims filed in accordance with the thrust, intendment and direction of RMC 42-03 and the solutions/answers, policies and practices that predated RMC 42-03 and formed its underlying basis, must likewise be spared. And with more reason, considering the following discussion.

On December 10, 2003, the BIR issued Ruling No. DA-489-03, addressed to the Department of Finance, holding that a taxpayer need not wait for the lapse of the 120-day period before it could seek judicial relief:

> x x x With the actions taken by herein taxpayer [Lazi Bay Resources Development, Inc.], it is your contention that the "*claimant is not yet on the right forum in violation of the provision of Section 112(D) of the NIRC*," to wit:
>
> x x x x x x x x x
>
> In reply, please be informed that **a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**. Neither is it required that the Commissioner should first act on the claim of a particular taxpayer before the CTA may acquire jurisdiction, particularly if the claim is about to prescribe. **The Tax Code fixed the period of two (2) years for filing a claim for refund with the Commissioner [Sec. 112(A) in relation to Sec. 204(c)] and for filing a case in court [Section 229].** Hence, a decision of the Commissioner is not a condition or requisite before the taxpayer can resort to the judicial remedy afforded by law. (Emphasis supplied.)

The *ponencia* claims that the permissive treatment of the 120 and 30-day periods in Sec. 112 should be reckoned from the date of the issuance of the above BIR ruling—December 10, 2003.

On this I beg to differ.

BIR Ruling No. DA-489-03 was a mere application of the still effective rule set by RR 7-95, which, as discussed, was an issuance made by the Secretary of Finance pursuant to the

authority granted to him by the Tax Code. On the other hand, BIR Ruling No. DA-489-03 was issued not by the CIR, but by then **Deputy Commissioner** Jose Mario C. Buñag of the Legal & Inspection Group of BIR. It was, therefore, not an issuance authorized under Sec. 4 of the NIRC, which clearly provides that the "power to interpret the provisions of [the NIRC] and other tax laws shall be under the **exclusive** and **original** jurisdiction of the Commissioner, subject to the review by the Secretary." Neither can BIR Ruling No. DA-489-03 be considered an issuance within the delegated authority of the deputy commissioner considering that Sec. 7 of the 1997 NIRC expressly prohibits the delegation of the following powers:

(A) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(B) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau.

If this Court is set in sustaining the binding effect of BIR Ruling No. DA-489-03, it must be viewed as simply applying an already established and still effective rule provided by RR 7-95, not an issuance that established a new rule that departed from the 1997 NIRC.

For that matter, a reading of the rulings of this Court on claims for refund/credit of input VAT initiated from 1996 to 2005 made the impression that this Court was simply applying a well and long established rule that the period provided in Sec. 112(D) of the 1997 NIRC is merely discretionary and dispensable. As long as the judicial claim is filed within the 2-year period provided in Sec. 112(A), it was considered irrelevant whether the claim with the CTA is filed a day or a year after the administrative claim was filed with the CIR. The pertinent case laws on the issue are as follows:

(1) In *CIR v. Cebu Toyo Corporation*,[20] the Court gave due course to the petition of taxpayer Cebu Toyo and recognized its right to tax refund despite the fact that Cebu Toyo "did not

[20] G.R. No. 149073, February 16, 2005, 451 SCRA 447.

bother to wait for the resolution of its claim by the CIR"[21] and instead filed its judicial claim on June 26, 1998, or only 88 days after filing its administrative claim on March 30, 1998.

(2) In *Philippine Geothermal, Inc v. CIR*,[22] this Court allowed a refund even if the judicial claim was filed by petitioner, "to toll the running of the two-year prescriptive period before the Court of Tax Appeals,"[23] on July 2, 1997, or **almost a year** after it filed its administrative claim on July 10, 1996.

(3) In *CIR v. Toshiba Information Equipment (Phils.), Inc.*,[24] this Court affirmed the right of respondent-taxpayer to a refund or the issuance of a TCC, "to toll the running of the two-year prescriptive period for judicially claiming a tax credit/refund,"[25] even if Toshiba filed its judicial claim on March 31, 1998, only **four days** after its administrative claim filed on March 27, 1998.

(4) In *Toshiba Information Equipment (Phils.), Inc. v. CIR*,[26] this Court ordered the refund or the issuance of a TCC in favor of petitioner Toshiba in spite of the fact that its judicial claim was on March 31, 1999, just **one day** after it filed its administrative claim on March 30, 1999, "to toll the running of the two-year prescriptive period under Section 230 of the Tax Code of 1977, as amended."[27]

(5) In *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*,[28] this Court held that "petitioner is legally entitled to a refund or issuance of a tax credit certificate of its unutilized input VAT input taxes" despite the fact that its judicial claim was filed **more than a year** after its administrative claim

---

[21] *Id.*

[22] G.R. No. 154028, July 29, 2005, 465 SCRA 308.

[23] *Id.*

[24] G.R. No. 150154, August 9, 2005, 466 SCRA 211.

[25] *Id.*

[26] G.R. No. 157594, March 9, 2010, 614 SCRA 526.

[27] *Id.*

[28] G.R. No. 166732, April 27, 2007, 522 SCRA 657.

on May 19, 1999, or on June 30, 2000 "when the two-year prescriptive period to file a refund was about to lapse without any action by the Commission of Internal Revenue on its claim."[29]

(6) Similarly, in *Commissioner of Internal Revenue v. Ironcon Builders and Development Corporation*,[30] the Court affirmed respondent-taxpayer's right to refund/credit of input VAT even if its judicial claim was filed on July 1, 2002, or **more than a year** after its administrative claim was filed on May 10, 2001.

The common thread that runs through these cases is the cavalier treatment of the 120 and 30-day periods prescribed by Sec. 112 of the 1997 NIRC. If it is the Court's position that the prescribed periods of 120 days for administrative claim and 30 days for judicial claims are jurisdictional at the time the judicial claims were filed in these cases, then the cases should have been decided adversely against the taxpayers for filing the claim in breach of Sec. 112 of the 1997 NIRC. When these cases were entertained by the Court despite the clear departure from Sec. 112, the Court, wittingly or unwittingly, led the taxpayers to believe that the 120 and 30-day periods are dispensable as long as both the administrative and judicial claims for refund/ credit of input VAT were filed within 2 years from the close of the relevant taxable quarter. Simply put, **the taxpayers relied in good faith on RR 7-95** and honestly believed and regarded the 120 and 30-day periods as merely discretionary and dispensable. Hence, noted tax experts and commentators, Victor A. Deoferio, Jr. and Victorino Mamalateo, recommended that for safe measure and to avert the forfeiture of the right to avail of the judicial remedies, taxpayers should "file an appeal with the Court of Tax Appeals, without waiting for the expiration of the 120-day period, if the two-year period is about to lapse."[31]

Unfortunately, the aforecited decisions of the Court were of no help to taxpayers in the years between 1996 and 2005—

---

[29] *Id.*

[30] G.R. No. 180042, February 8, 2010, 612 SCRA 39.

[31] V.A. Deoferio, Jr. and V. Mamalateo, *The Value Added Tax in the Philippines* 261 (2000).

said decisions were promulgated only in 2005, 2007 and 2010. Prior to 2005, there were no decisions in point rendered by this Court, and taxpayers had for guidance only the BIR issuances then in force and effect: RR No. 7-95, later followed by RMC 42-03 on July 15, 2003, RMC 49-03 on August 15, 2003, and BIR Ruling No. DA-489-03. And of course, the prevailing practices of the BIR and the CTA.

In fact, decisions of the CTA *En Banc* in some 128 cases involving judicial claims for refund or credit of unutilized VAT, which claims were filed in the years prior to the issuance of RMC 42-03 on July 15, 2003, and RMC 49-03 on August 15, 2003, paint a revealing picture of how the BIR and the CTA themselves actually regarded the 120 and 30-day periods.

At this point, I hasten to state that, while CTA Decisions are not binding on the Court, **the actual manner in which the BIR and the CTA themselves regarded the 120 and 30-day periods—**in the course of handling administrative and judicial claims for refund/tax credit during the period in question, **as evidenced by the factual recitals in the CTA Decisions—constitutes an operative fact that cannot simply be ignored.** The truth of the matter is that, **whatever may have been the law and the regulation in force at the time, taxpayers took guidance from and relied heavily upon the manner in which the BIR and the CTA viewed the 120- and 30-day periods, as reflected in their treatment of claims for input VAT refund/credit, and these taxpayers acted accordingly by filing their claims in the manner permitted and encouraged by the BIR and the CTA.** This is a reality that even this Court cannot afford to turn a blind eye to.

Numerous decisions of the CTA in Division and *En Banc* reveal that the **BIR and CTA by their very actuations in the period between 1996 and 2005, did, in fact, permit, tolerate and encourage taxpayers to file their refund/tax credit claims without regard to the 120 and 30-day periods provided in Sec. 112(D)**. For instance, in CTA EB Case No. 43, *Overseas Ohsaki Construction Corp. v. Comm. of Internal Revenue*, petitioner therein filed on **October 23, 2001** an administrative

claim for PhP 5.8 million in input VAT. The very next day, **October 24, 2001**, petitioner instituted its judicial claim. However, neither respondent CIR nor the CTA questioned petitioner's non-compliance with the 120 and 30-day periods. Trial on the merits ensued, and the CTA[32] denied the claim, but not on the ground of any jurisdictional issue, or prematurity of the judicial claim, but for failure to comply with invoicing requirements under RR 7-95.[33]

There is a host of other CTA cases that illustrate the same point, *i.e.*, that despite non-compliance with the 120 and 30-day periods, the judicial claim was not opposed by the BIR nor rejected by the CTA on the ground of prematurity of the judicial claim, or lack of jurisdiction to take cognizance thereof.[34]

---

[32] The Decision has the file name CTA_EB_CV_00043_D_2005 MAY10_ REF.pdf, and may be found in the CTA's official website.

[33] The Presiding Justice, Hon. Ernesto D. Acosta, submitted a concurring and dissenting opinion but likewise did not raise therein the issue of prematurity of the judicial claim or the CTA's lack of jurisdiction over the same.

[34] (1) CTA EB Case No. 53, *Jideco Mfg. Phils. Inc. v. Comm. of Internal Revenue.* — Admin. claim filed on Oct. 23, 2002; judicial claim filed on Oct. 24, 2002 (1 day after filing of admin claim); (2) CTA EB Case No. 85, *Applied Food Ingredients Co., Inc. v. CIR.* — Admin. claim filed on July 5, 2000; judicial claim filed on Sept. 29, 2000 (86 days after filing of admin claim); (3) CTA EB Case No. 186, *Kepco Philippines Corporation v. CIR* — Admin. claim filed on January 29, 2001; judicial claim filed on April 24, 2001 (85 days after filing of admin claim); (4) CTA EB Case No. 197, *American Express Int'l., Inc.- Phil. Branch v. CIR.* — Admin. claim filed on April 25, 2002; judicial claim filed on April 25, 2002 (*i.e.*, on the same day as filing of admin claim); (5) CTA EB Case No. 226, *Mirant (Navotas II) Corporation (Formerly: Southern Energy Navotas II Power, Inc.) v. CIR.* — Admin. claim filed on March 18, 2003; judicial claims filed on: March 31, 2003 (for P0.21million) and on July 22, 2003 (for P0.64 million) — 13 days and 126 days, respectively, after filing of admin claim; (6) CTA EB Case No. 231, *Marubeni Philippines Corporation v. CIR* — Admin. claim filed on March 30, 2001; amended admin claim filed on April 2, 2001; judicial claim filed on April 25, 2001 (26 days after filing of original admin claim); (7) CTA EB Case No. 14, *ECW Joint Venture, Inc. v. Comm. of Internal Revenue,* the petitioner therein filed on June 19, 2002 an administrative claim for refund of VAT. A month later, petitioner filed on July 19, 2002 its judicial claim. Neither the CIR nor

On the other hand, there are also CTA *En Banc* decisions treating of the exact opposite of prematurity. There is CTA EB Case No. 24, *Intel Technology Phils., Inc. v. Comm. of Internal Revenue*, where the petitioner filed on May 6, 1999 its application for tax credit/refund of input VAT in the amount of PhP 25.5 million. On September 29, 2000, some 512 days after the filing of the administrative claim, and long "after the expiration of the one hundred twenty (120) days allowed under Section 112(D) of the Tax Code," petitioner filed its judicial claim. However, without citing the non-observance of the 120 and 30-day periods, the CTA granted a portion of the amount claimed.[35] Again, there is a litany of cases which serves to bolster the discussion and drive home the point.[36]

---

the CTA raised prematurity as an issue; (8) CTA EB Case No. 47, *BASF Phils., Inc. v. Comm. of Internal Revenue*. Petitioner BASF filed on April 19, 2001 its judicial claim seeking tax credits, after having filed on March 27, 2001, or just 23 days earlier, its administrative claim.

[35] This Decision bears the file name CTA_EB_CV_00024_D_2006 JAN27_REF.pdf, and may be viewed at and downloaded from the CTA's official website.

[36] (1) CTA EB Case No. 54, *Hitachi Global Storage Technologies Phils. Corp. v. CIR.* — Admin. claim filed on August 4, 2000; judicial claim filed on July 2, 2001 (332 days after filing of admin claim). CTA EB Case No. 107, *Kepco Philippines Corporation v. CIR.* — Admin. claims filed on Jan. 29, 2001 and Mar. 21, 2001; judicial claim filed on Mar. 31, 2002. (1 yr & 61 days, and 1 yr & 10 days, respectively, from filing of admin claims); (2) CTA EB Case No. 154, *Silicon Phils., Inc. v. CIR.* — Admin. claim filed on Oct. 25, 1999; judicial claim filed on Oct. 1, 2001 (707 days after the filing of the admin claim); (3) CTA EB Case No. 174, *Kepco Philippines Corporation v. CIR.* — Admin. claims filed on Oct. 1, 2001 and June 24, 2002; judicial claim filed on April 22, 2003 (569 days and 302 days, respectively, after the filing of the two admin. claims).; (4) CTA EB Case No. 181, *Intel Technology Phils., Inc. v. CIR.* — Admin. claim filed on Aug. 26, 1999; judicial claim filed on June 29, 2001 (673 days after filing of admin claim). *Nota bene*: While the case was pending trial, petitioner received on Jan. 24, 2002 from the BIR a Tax Credit Certificate dated Jan. 21, 2002 in the amount of P4.379 million, representing part of the VAT subject of the refund claim. This proves that, during this period prior to the issuance of RMC 42-03, the BIR continued to exercise jurisdiction over the admin claim even though the CTA had already taken cognizance of the judicial claim for the same refund — in exactly the same manner

Thus, it is exceedingly clear that, historically speaking, in order to enable refund-seeking taxpayers to file their judicial claims within the two-year prescriptive period, the BIR and the CTA did in actual practice treat the 120-day and 30-day periods provided in Sec. 112(D) as merely discretionary and dispensable; and this served as guidance for the taxpayers. **The taxpaying public took heed of the prevailing practices of the BIR and CTA and acted accordingly. This is a matter which this Court must acknowledge and accept**.

In addition, there is no doubt in our mind that the guidance provided to taxpayers by actual BIR and CTA practices, as portrayed in the foregoing discussion, carried as much, if not more, weight and persuasive force as compared to the formal

---

as was later prescribed in RMC 49-03; (5) CTA EB Case No. 209, *Intel Phils. Manufacturing, Inc. v. CIR.* — Admin. claim filed on August 6, 1999; judicial claim filed on March 30, 2001 (602 days after the filing of the admin claim). *Nota Bene*: During pendency of the trial, petitioner manifested on Aug. 26, 2002 that it had been granted by the Department of Finance a tax credit certificate in the sum of ₱9.948 million, equivalent to 50% of its total claimed input VAT on local purchases, and forming part of its refund claim. This proves that during this period before the issuance of RMC 42-03, the BIR continued to exercise jurisdiction over the admin. claim even though the CTA had already taken cognizance of the judicial claim for the same refund – in exactly the same manner as was later prescribed in RMC 49-03; (6) CTA EB Case No. 219, *Silicon Philippines, Inc. (formerly Intel Phils. Mfg., Inc.) v. CIR.* — Admin. claim filed on August 10, 2000; judicial claim filed on June 28, 2002 (687 days after the filing of the admin claim); (7) CTA EB Case No. 233, *Panasonic Communications Imaging Corp. of the Phils. (formerly Matsushita Business Machine Corp. of the Phils.) v. CIR.* — Admin. claims filed on Feb. 8, 2000 (2nd & 3rd Qs 1999, P5.2 million) and Aug. 25, 2000 (4th Q 1999 & 1st Q 2000, ₱6.7 million); judicial claim filed on March 6, 2001 (392 days and 193 days, respectively, after the filing of the admin. claims); (8) CTA EB Case No. 239, *Panasonic Communications Imaging Corporation of the Phils. (formerly Matsushita Business Machine Corporation of the Phils.) v. CIR.* — Admin. claims filed on March 12, 1999 and July 20, 1999; judicial claim filed on Dec. 16, 1999 (279 days and 149 days, respectively, from and after filing of admin claims); (9) CTA EB Case No. 28, *Intel Technology Phils., Inc. v. Comm. of Internal Revenue,* the petitioner filed on May 18, 1999 its administrative claim for refund/tax credit of VAT; this was followed, some 317 days later, by the judicial claim filed on March 31, 2000.

issuances of the BIR such as revenue regulations, RMCs and the like. Thus, adherence to the then prevailing practices of the BIR and CTA, even in the absence of formal issuances like RR 7-95, would be sufficient to clothe the taxpayer with good faith.

On May 24, 2005, RA 9337[37] was approved. It amended the VAT provisions of the 1997 NIRC. Specifically, it deleted the subsection on "Capital Goods" in Sec. 112 and so renumbered the subsection entitled "*Period within which Refund or Tax Credit of Input Taxes shall be made*" as Sec. 112(C). RA 9337 also mandated the Secretary of Finance to issue rules and regulations implementing the amended VAT provisions:

SEC. 23. Implementing Rules and Regulations. — The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than June 30, 2005, the necessary Rules and Regulations for the effective implementation of this Act. Upon issuance of the said Rules and Regulations, all former rules and regulations pertaining to value-added tax shall be deemed revoked.

Pursuant to the foregoing mandate, then Secretary of Finance Cesar Purisima issued **RR 14-2005** on June 23, 2005. However, like its predecessor RR 7-95, Sec. 4.112-1(d) of RR 14-2005 likewise provided that the judicial claims for refund/credit of input VAT must be made within two (2) years from the close of the taxable quarter when the relevant sales were made:

SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. — x x x

x x x x x x x x x

(d) **Period within which refund or tax credit certificate/refund of input taxes shall be made**

---

[37] Entitled "An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes." Its effectivity clause provides that it shall take effect July 1, 2005 but suspended due to a TRO filed by some taxpayers. The law finally took effect November 1, 2005 when the TRO was finally lifted by the Supreme Court. See *Abakada Guro Party List v. Ermita*, G.R. Nos. 168056, *etc*., September 1, 2005, 469 SCRA 1.

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, **if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application** ***but*** ***<u>before the lapse of the two (2) year period</u> from the close of the taxable quarter when the sales were made,*** the taxpayer may appeal to the CTA. (Emphasis supplied.)

This was remedied by **<u>RR 16-2005</u>**, otherwise known as the "Consolidated Value-Added Regulations of 2005," which superseded RR 14-2005 and became effective on **November 1, 2005**. The prefatory statement of RR 16-2005 provides:

Pursuant to the provisions of Secs. 244 and 245 of the National Internal Revenue Code of 1997, as last amended by Republic Act No. 9337 (Tax Code), in relation to Sec. 23 of the said Republic Act, these Regulations are hereby promulgated to implement Title IV of the Tax Code, as well as other provisions pertaining to Value-Added Tax (VAT). **These Regulations supersedes Revenue Regulations No. 14-2005 dated June 22, 2005**. (Emphasis supplied.)

Sec. 4.112-1 of RR 16-2005 more faithfully reflected Sec. 112 of the 1997 NIRC, as amended by RA 9337, and deleted the reference to the 2-year period in conjunction with the filing of a judicial claim for refund/credit of input VAT, viz:

SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. — x x x

x x x x x x x x x

(d) Period within which refund or tax credit certificate/refund of input taxes shall be made

In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.

In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, **if no action on the claim for tax credit certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period.** (Emphasis supplied.)

All doubts on whether or not the 120 and 30-day periods are merely discretionary and dispensable were erased when the Court promulgated *Aichi* on October 6, 2010. There, the Court is definite and categorical that the prescriptive period of 120 and 30 days under Sec. 112 of the 1997 NIRC is mandatory and jurisdictional. *Aichi* explained that the 2-year period provided in **Sec. 112(A)** of the 1997 NIRC refers **only** to the prescription period for the filing of an **administrative claim** with the CIR. Meanwhile, the **judicial claim** contemplated under said **Sec. 112(C)** must be filed within a **mandatory and jurisdictional period** of thirty (30) days after the taxpayer's receipt of the CIR's decision denying the claim, or within thirty (30) days after the CIR's inaction for a period of 120 days from the submission of the complete documents supporting the claim. Hence, the period for filing the judicial claim under Sec. 112(C) may stretch out beyond the 2-year threshold provided in Sec. 112(A) as long as the administrative claim is filed within the said 2-year period. *Aichi* explained, thus:

Section 112 (D) [now Section 112 (C)] of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal

before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales."

The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.

In fact, **applying the two-year period to judicial claims would render nugatory Section 112(D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR**. The second paragraph of Section 112(D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.

x x x x x x x x x

In fine, the premature filing of respondent's claim for refund/ credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA.[38] (Emphasis supplied.)

The Court should not turn a blind eye to the subordinate legislations issued by the Secretary of Finance (and RMCs issued by the CIR) and the various decisions of this Court as well as the then prevailing practices of the BIR and the CTA suggesting that the taxpayers can dispense with the 120 and 30 day-periods in filing their judicial claim for refund/credit of input VAT so long as both the administrative and judicial claims are filed within two (2) years from the close of the relevant taxable quarter. I humbly submit that in deciding claims for refund/credit of input VAT, the following guideposts should be observed:

(1) For judicial claims for refund/credit of input VAT filed from January 1, 1996 (effectivity of RR 7-95) up to October 31, 2005 (prior to effectivity of RR 16-2005), the Court may treat the filing of the judicial claim within the 120 day (or 60-day, for judicial claims filed before January 1, 1998), or beyond the 120+30 day-period (or 60+30 day-period) as permissible provided that both the administrative and judicial claims are filed within two (2) years from the close of the relevant taxable quarter. Thus, the 120 and 30-day periods under Sec. 112 may be considered merely discretionary and may be dispensed with.

(2) For judicial claims filed from November 1, 2005 (date of effectivity of RR 16-2005), the prescriptive period under Sec. 112(C) is mandatory and jurisdictional. Hence, judicial claims for refund/credit of input VAT must be filed within a mandatory and jurisdictional period of thirty (30) days after the taxpayer's receipt of the CIR's decision denying the claim, or within thirty (30) days after the CIR's inaction for a period of 120 days from the submission of the complete documents supporting the claim. The judicial claim may be filed even beyond the 2-year threshold in Sec. 112(A) as long as the administrative claim is filed within said 2-year period.

---

[38] *Supra* note 1.

(3) RR 16-2005, as fortified by our ruling in *Aichi*, must be applied PROSPECTIVELY in the same way that the ruling in *Atlas* and *Mirant* must be applied prospectively.[39]

Sec. 246 of the 1997 NIRC expressly forbids the retroactive application of rules and regulations issued by the Secretary of Finance, *viz*:

SEC. 246. **Non-Retroactivity of Rulings.** — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application** if the revocation, modification or reversal will be prejudicial to the taxpayers x x x. (Emphasis supplied.)

Hence, **this Court, I maintain, is duty-bound to sustain and give due credit to the taxpayers' bona fide reliance on RR Nos. 7-95 and 14-2005, RMC Nos. 42-03 and 49-03**, along with guidance provided by the then prevailing practices of the BIR and the CTA, prior to their modification by RR 16-2005.

Such prospective application of the latter revenue regulation comports with the simplest notions of what is fair and just–– the precepts of due process. The Court has previously held that "in declaring a law or executive action null and void, or, by extension, no longer without force and effect, **undue harshness and resulting unfairness must be avoided**."[40] Such pronouncement can be applied to a change in the implementing rules of the law. The reliance on the previous rules, in particular RR Nos. 7-95 and 14-2005, along with RMC Nos. 42-03 and 49-03, and the guidance provided by the then prevailing practices of the BIR and the CTA, most certainly have had irreversible consequences that cannot just be ignored; the past cannot always be erased by a new judicial declaration.[41]

---

[39] See also *Co v. Court of Appeals*, G.R. No. 100776, October 28, 1993, 227 SCRA 444, 448-455; citing *Ilagan v. People*, January 29, 1974, 55 SCRA 361.

[40] *Hacienda Luisita, Incorporated v. Luisita Industrial Park Corporation*, G.R. No. 171101, July 5, 2011, 653 SCRA 154. Emphasis supplied.

[41] *Id.*

It can also be said that the government is estopped from asserting the strict and mandatory compliance with Sec. 112(C) and RR 16-2005 against taxpayers who had relied on RR 7-95 and RR 14-2005, as well as RMC Nos. 42-03 and 49-03, and the guidance of the then prevailing practices of the BIR and the CTA. While the exception to the rule on non-estoppel of the government is rarely applied, the Court has emphasized in *Republic of the Philippines v. Court of Appeals*[42] that this rule cannot be used to perpetrate injustice:

> The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, like all general rules, this is also subject to exceptions, viz.:
>
> > "Estoppel against the public are little favored. They should not be invoked except in rare and unusual circumstances and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, **the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations x x x, the doctrine of equitable estoppel may be invoked against public authorities** as well as against private individuals."

Indeed, denying claims for the issuance of TCCs or refund of unutilized input VAT amounting to millions, if not billions, of hard-earned money that rightfully belongs to these taxpayers on the facile ground that the judicial claim was not timely filed in accordance with a **later** rule, virtually sanctions the perpetration of injustice.

And since RR 16-2005, as clarified by our ruling in *Aichi*, is to be applied prospectively, based on and reckoned from the aforestated cut-off date of November 1, 2005, I accordingly vote as follows:

---

[42] G.R. No. 116111, January 21, 1999, 301 SCRA 366.

1. In *CIR v. San Roque Power Corporation*, the motion for reconsideration and the petition of the CIR is **DENIED**.

San Roque filed its administrative claim for refund of VAT for taxable year 2001 on April 10, 2003 and, barely two weeks after, it filed its judicial claim with the CTA; this was clearly within the 120-day waiting period for administrative claims. However, since both administrative and judicial claims were filed during the effectivity of RR 7-95, San Roque can claim in good faith that it was led by RR 7-95, as well as the guidance of the then prevailing practices of the BIR and the CTA, to believe that the 120 and 30-day periods are dispensable considering that in San Roque's case, its administrative and judicial claims were both filed within 2 years from the close of the relevant taxable quarter.

2. In *Taganito Mining Corporation v. CIR*, the petition is **DENIED**.

Taganito filed its judicial claim on February 14, 2007, 92 days after it filed its administrative claim with the CIR and within the 120-day waiting period. Since its judicial claim was filed after November 1, 2005 when RR 16-2005 took effect and superseded RR 14-2005 and RR 7-95, Taganito cannot validly claim reliance in good faith on the revenue regulations that considered the 120 and 30-day periods in Sec. 112(C) dispensable so long as the claims are filed within the 2-year period.

3. In *Philex Mining Corp v. CIR*, the petition is likewise **DENIED**.

The administrative claim for VAT for the third quarter of 2005 was filed on March 20, 2006 while the judicial claim was filed on October 17, 2007, one year and three months after the lapse of the 120-day period under Sec. 112(C), and 17 days after the lapse of the 2-year prescriptive period in Section 112(A). The judicial claim is, therefore, belatedly filed under both the superseded RR Nos. 7-95 and 14-2005, and the effective RR 16-2005.

SECOND DIVISION

[A.M. No. P-11-2967. February 13, 2013]
(Formerly A.M. OCA IPI No. 08-2991-P)

ERLINDA C. MENDOZA, *complainant, vs.* **PEDRO S. ESGUERRA, Process Server, Regional Trial Court, Branch 89, Baloc, Sto. Domingo, Nueva Ecija,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; DELAY IN THE MAILING OF ORDERS CONSTITUTES SIMPLE NEGLECT OF DUTY.—** [T]he respondent cannot shift the blame to the Civil Docket Clerk for the delay in the service of the July 7, 2008 Order. The Court fully agrees with the findings of Executive Judge Tribiana that if indeed a copy of the July 7, 2008 Order had been handed to the respondent only on August 8, 2008, a Friday, "he should not have proceeded to mail the same; but instead, should have served the Order personally to the parties, particularly to the herein complainant." Even the Notice of Dismissal dated August 21, 2008 was mailed only on September 19, 2008, three (3) weeks after it was endorsed to him sometime on August 22 or 25, 2008. These acts clearly demonstrate lack of sufficient or reasonable diligence on the part of the respondent. Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that "Court personnel shall at all times perform official duties properly and with diligence." Clearly, the respondent had been remiss in the performance of his duties and has shown lack of dedication to the functions of his office. The respondent's actuations displayed a conduct falling short of the stringent standards required of court employees. In the absence of any further ulterior motivation shown on the records, the Court agrees with Executive Judge Tribiana that the respondent is guilty of simple neglect of duty.
2. **ID.; ID.; ID.; ID.; PENALTY OF FINE IMPOSED INSTEAD OF SUSPENSION SO AS TO PREVENT UNDUE ADVERSE EFFECT ON PUBLIC SERVICE.—** Under Memorandum Circular No. 19, s. 1999 of the Civil Service Commission, simple neglect of duty is classified as a less grave offense

punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. However, to prevent any undue adverse effect on public service that would ensue if the respondent would be suspended, the Court deems it wise to impose the penalty of fine instead so that the respondent can continue to discharge his assigned tasks. We believe that a fine equivalent to three (3) months salary would best impress upon the respondent the character of the offense he committed, and send a signal to the whole Judiciary how this Court regards even a seemingly simple violation when that violation would adversely affect third parties and tarnish the image of the Judiciary.

D E C I S I O N

BRION, *J.*:

In a sworn administrative complaint[1] dated October 14, 2008, Erlinda C. Mendoza (*complainant*) charged Pedro S. Esguerra (*respondent*), Process Server, Regional Trial Court (*RTC*), Branch 89, Baloc, Sto. Domingo, Nueva Ecija, with Negligence and Dereliction of Duty.

The complaint shows that the complainant was the plaintiff in Civil Case No. 53-SD-94, entitled "*Erlinda C. Mendoza v. Renato Mendoza,*" filed with the RTC of Baloc, Sto. Domingo, Nueva Ecija, Branch 89, presided by Judge Santiago M. Arenas. In an Order[2] dated August 14, 2008, the RTC dismissed the complaint "[i]n view of the repeated non-appearance of both parties[.]"

On September 26, 2008, the complainant wrote Judge Arenas asking for the reconsideration of the dismissal of her case.[3] She explained that she failed to attend the hearing of her case because she received a copy of the Order (dated July 9, 2008)

---

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

[2] *Id.* at 5.

[3] *Id.* at 8.

setting the case for hearing only on August 22, 2008; another copy was served on her on August 29, 2008.

She further alleged that she inquired from the Office of the Clerk of Court why she was not promptly furnished a copy of the notice before the date set for hearing. She found out that the first notice was given to the respondent Process Server on July 9, 2008 but he mailed it only on August 11, 2008, while the second notice was endorsed to him on August 6, 2008 and was mailed only on August 22, 2008. The complainant pointed out that it took the respondent more than one (1) month to mail the first notice, while the second notice was mailed after the date set for the hearing of her case.

In his answer[4] dated December 6, 2008, the respondent claimed that as Process Server, he is in charge of mailing all the legal processes of the Court. He explained that the copy of the Order of July 7, 2008 setting the case for hearing on August 14, 2008 was mailed only on August 11, 2008 because it was handed to him by the Civil Docket Clerk only "sometime" in the afternoon of August 8, 2008, which was a Friday. He claimed that "the said omission is attributable only to the Clerk in charge (Civil Docket Clerk)."

In an Evaluation Report[5] dated February 3, 2010, the Office of the Court Administrator recommended that the complaint be referred to the Executive Judge of the RTC of Sto. Domingo, Nueva Ecija for investigation, report and recommendation, to give the parties the opportunity to substantiate their respective positions.

At the RTC proceedings, the complainant submitted additional evidence to substantiate her complaint against the respondent. She submitted a copy of the Notice of Dismissal in support of her claim that the respondent had been remiss in the performance of his duties. In her letter[6] dated September 27, 2010, addressed

---

[4] *Id.* at 10-11.

[5] *Id.* at 18-19.

[6] *Id.* at 23-24

to Executive Judge Nelson A. Tribiana, she submitted a copy of the Notice of Dismissal dated August 21, 2008 showing that it was endorsed to the respondent sometime on August 22 or 25, 2008, but was mailed only on September 19, 2008.

The respondent, when asked to explain the delay in the mailing of the July 7, 2008 Order, maintained the earlier allegation in his Answer submitted to the Court — that the Order was given to him only on August 8, 2008. Since this date was a Friday, he mailed the Order only on the next working day, August 11, 2008. He explained further that the order he mailed on August 22, 2008 (and received by the complainant on August 29, 2008) was the same and similar order, intended merely as a follow-up of the first mailed order.

In an Investigation Report and Recommendation[7] dated November 12, 2010, Executive Judge Tribiana found the respondent liable for simple neglect of duty. His findings:

> As to whose responsibility the delays in the mailing of the Orders could be attributed, the undersigned believes that it is that of respondent Pedro S. Esguerra, he, as Process Server, being the one responsible in the mailing of Orders issued by the Court. His allegation that the July 7, 2008 Order was endorsed to him by the Docket Clerk for mailing only on August 8, 2008 (Friday), is at all self-serving, as he failed to substantiate such claim. If it were true that said Order was given to him only on August 8, 2008, he should have called the attention of the Docket Clerk, that the mailing of the Order would be too late for the hearing scheduled on August 14, 2008. Thus, he should not have proceeded to mail the same; but instead, should have served the Order personally to the parties, particularly to the herein complainant. Respondent failed to live up to the standards called for of him as a Process Server, whose duty is to serve court processes with utmost care on his part by seeing to it that all notices assigned to him are duly served upon the parties.
>
> It is thus the finding of the undersigned that respondent Pedro S. Esguerra x x x is liable for simple neglect of duty, defined as the

---

[7] *Id.* at 38-41.

failure of an employee to give proper attention to a task expected of him, signifying "disregard of a duty resulting from carelessness or indifference."[8]

No less than the Constitution itself mandates that all public officers and employees should serve with responsibility, integrity and efficiency, for public office is a public trust.[9] The Court has repeatedly reminded those who work in the Judiciary to be examples of responsibility, competence and efficiency; they must discharge their duties with due care and utmost diligence, since they are officers of the Court and agents of the law.[10] "Indeed, any conduct, act or omission on the part of those who would violate the norm[s] of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced."[11]

In the present case, the respondent cannot shift the blame to the Civil Docket Clerk for the delay in the service of the July 7, 2008 Order. The Court fully agrees with the findings of Executive Judge Tribiana that if indeed a copy of the July 7, 2008 Order had been handed to the respondent only on August 8, 2008, a Friday, "he should not have proceeded to mail the same; but instead, should have served the Order personally to the parties, particularly to the herein complainant."[12] Even the Notice of Dismissal dated August 21, 2008 was mailed only on September 19, 2008, three (3) weeks after it was endorsed to him sometime on August 22 or 25, 2008. These acts clearly demonstrate lack of sufficient or reasonable diligence on the part of the respondent. Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that "Court personnel

---

[8] *Id.* at 40-41.

[9] *Francisco v. Galvez*, A.M. No. P-09-2636, December 4, 2009, 607 SCRA 21, 27.

[10] *Baculi v. Ugale,* A.M. No. P-08-2569, October 30, 2009, 604 SCRA 685, 687.

[11] *Gutierrez v. Quitalig*, 448 Phil. 469, 479 (2003).

[12] *Supra* note 7, at 40.

shall at all times perform official duties properly and with diligence." Clearly, the respondent had been remiss in the performance of his duties and has shown lack of dedication to the functions of his office. The respondent's actuations displayed a conduct falling short of the stringent standards required of court employees.[13]

In the absence of any further ulterior motivation shown on the records, the Court agrees with Executive Judge Tribiana that the respondent is guilty of simple neglect of duty. He reports:

> There is no doubt that the mailing of the July 7, 2008 Order subject matter of this investigation was delayed for thirty three (33) days (from July 9, 2008 to August 11, 2008). And even the mailing on August 22, 2008 of the same Order, allegedly intended merely as a follow-up, was also delayed for sixteen (16) days counted from the time the OIC Clerk of Court initiated said Order. There is thus, a pattern of delays in the release and mailing of Orders. In fact, even the August 14, 2008 Order of Dismissal, which bears the initial of then OIC-Clerk of Court, Marietta Atayde, dated August 21, 2008, was mailed only on September 19, 2008, a delay of twenty five (25) days (from August 25, 2008, when said Order should have been mailed).[14]

Under Memorandum Circular No. 19, s. 1999 of the Civil Service Commission, simple neglect of duty is classified as a less grave offense punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. However, to prevent any undue adverse effect on public service that would ensue if the respondent would be suspended, the Court deems it wise to impose the penalty of fine instead so that the respondent can continue to discharge his assigned tasks.[15] We believe that a fine equivalent to three (3) months salary would

---

[13] *Juario v. Labis*, A.M. No. P-07-2388, June 30, 2008, 556 SCRA 540, 544.

[14] *Supra* note 7, at 40.

[15] *Juario v. Labis, supra* note 13, at 544-545; *Zamudio v. Auro*, A.M. No. P-04-1793, December 8, 2008, 573 SCRA 178, 187.

best impress upon the respondent the character of the offense he committed, and send a signal to the whole Judiciary how this Court regards even a seemingly simple violation when that violation would adversely affect third parties and tarnish the image of the Judiciary.

WHEREFORE, the Court finds respondent Pedro S. Esguerra, Process Server, Regional Trial Court, Branch 89, Baloc, Sto. Domingo, Nueva Ecija, guilty of Simple Neglect of Duty and he is hereby imposed a **FINE** equivalent to three (3) months salary, with a **WARNING** that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), del Castillo, Villarama, Jr.,[*] and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[A.M. No. MTJ-10-1771. February 13, 2013]
(Formerly A.M. OCA IPI No. 09-2160-MTJ)

VICTORIANO G. MANLAPAZ, *complainant, vs.* **JUDGE MANUEL T. SABILLO, Municipal Circuit Trial Court, Lamitan, Basilan,** *respondent.*

SYLLABUS

JUDICIAL ETHICS; JUDGES; WILLFUL FAILURE TO PAY A JUST DEBT, COMMITTED; AN OFFER TO PAY CAN MITIGATE CULPABILITY; PENALTY OF FINE, IMPOSED.— [T]he complainant's claim against the respondent

[*] Designated as additional member in lieu of Associate Justice Jose P. Perez per Raffle dated February 6, 2013.

is a just debt, whose existence and justness the respondent himself admitted. The respondent's willfulness in not paying his just obligation is shown by his continued failure to settle it, despite demand letters sent to him by the complainant. The RTC's final decision in the complainant's favor renders the respondent's obligation to pay conclusive. Admittedly, the respondent later realized his misdeeds and finally offered to pay his indebtedness to the complainant. This development, however, cannot erase his misconduct; it can only mitigate his culpability. Thus, we must hold the respondent accountable and accordingly penalize him. In doing so, however, we must also ensure that public service is not hindered and therefore deem it best, for this purpose, to merely impose on the respondent the penalty of fine instead of the suspension or dismissal that the rules fully allow.

D E C I S I O N

BRION, *J.*:

For the Court's resolution is the administrative complaint filed by Victoriano G. Manlapaz (*complainant*) charging Judge Manuel T. Sabillo (*respondent*), Municipal Circuit Trial Court, Lamitan, Basilan, with serious and gross misconduct.

In a verified complaint-affidavit dated June 8, 2009,[1] the complainant alleged that sometime in 1996, the respondent, then a practicing lawyer, offered to sell to him and his wife a house and lot situated in Valenzuela City, Metro Manila for the price of ₱2,400,000.00, payable in sixteen (16) months. The complainant agreed to buy the property, believing that they got a fair deal as the respondent was one of their wedding sponsors. He made an initial payment of ₱500,000.00. After paying the total amount of ₱920,000.00, the transaction was discontinued for reasons that the complainant alleged to be "inconsistent with good faith."[2] The parties verbally agreed to terminate or discontinue their agreement. The respondent undertook to return the amount of ₱920,000.00 the complainant had already paid him.

---

[1] *Rollo*, pp. 3-6.

[2] *Id.* at 4.

The respondent reneged on his undertaking and failed to return the amount despite the complainant's repeated demands. This prompted the complainant to file a complaint for sum of money with damages with the Regional Trial Court (*RTC*) of Valenzuela City, Branch 75.[3] In a decision dated June 15, 2003, the RTC ordered the respondent to refund to the complainant the amount of ₱920,000.00; to pay him ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱100,000.00 as attorney's fees; and to pay the costs of the suit.[4]

The respondent appealed to the Court of Appeals (*CA*). In a resolution dated April 25, 2007, the CA dismissed the appeal for the respondent's failure to pay the docket fees. The decision of the RTC became final and executory on November 21, 2007.[5]

On October 21, 2008, a writ of execution was issued by the RTC.[6] The sheriff tried to implement the writ, but he discovered that there was no more property to levy on. The respondent had already sold the property on December 15, 2004 to a buyer who offered a higher price.[7]

On the same date, the complainant, through his lawyer, sent a demand letter[8] to the respondent, whom he learned is now an incumbent Judge of the Municipal Circuit Trial Court of Lamitan, Basilan. The respondent agreed to meet the complainant. During the meeting with the complainant's lawyers, the respondent paid the ₱100,000.00 attorney's fees awarded by the RTC, but failed to settle the ₱920,000.00 and the amounts of awarded damages.[9]

---

[3] *Id.* at 9-11.

[4] *Id.* at 13-18; penned by Acting Presiding Judge Dionisio C. Sison.

[5] Order dated September 29, 2008, issued by Judge Trinidad L. Dabbay. *Id.* at 21.

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

[7] *Id.* at 30-32.

[8] *Id.* at 24.

[9] *Id.* at 5.

In his comment dated October 24, 2009,[10] the respondent vehemently denied that his actions constituted misconduct. He claimed that the filing of the administrative case against him was intended merely to embarrass and harass him. He further stated that despite the fraudulent scheme against him, he promised the complainant that he would refund the amount as soon as the house and lot were sold. The complainant could not wait and sued him. He could have settled his obligation earlier, but the complainant refused to meet him. He offered payment in the form of a cashier's check, but the complainant refused to accept it.

The records further show that in a letter dated January 10, 2011, the Judicial and Bar Council required the complainant to comment on the respondent's comment dated January 4, 2011 on the complaint. In his comment dated January 24, 2011,[11] the complainant reiterated his allegations in his complaint. He maintained that the RTC judgment had not yet been fully satisfied. The respondent has paid only the attorney's fees of ₱100,000.00 sometime in February 2009.

The complainant further alleged that when he asked the respondent for the balance of the money judgment awarded by the RTC, the respondent "stubbornly" refused to pay and offered the meager amount of ₱400,000.00 as full satisfaction of the money awarded to him. In a letter dated March 18, 2008[12] sent by his lawyer, the complainant informed the respondent that he was not amenable to the latter's offer. The complainant offered to waive the legal interests provided the respondent return the whole amount of ₱920,000.00.

In its evaluation report[13] dated April 8, 2010, the Office of the Court Administrator (*OCA*) found the respondent liable of willful failure to pay just debts classified as a light offense under Section 22(i) Rule XIV of the Omnibus Rules Implementing

---

[10] *Id.* at 43-45.

[11] *Id.* at 72-77.

[12] *Id.* at 26.

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

Book V of Executive Order No. 292, as amended by CSC Memorandum Circular No. 19, s. 1999.[14] It recommended that (1) the complaint be redocketed as a regular administrative matter, (2) the respondent be ordered to pay his indebtedness to the complainant, and (3) the respondent be reprimanded and warned that a repetition of the same or similar offense would warrant the imposition of a more severe penalty.

The respondent claimed that he had been in good faith in his willingness to return the amount paid by the complainant. The indications though all point to the contrary.

In the first place, the respondent failed to deliver the property he sold. The respondent — apparently hoping to get out of an unwanted situation — agreed to restitute the amount paid as soon as he was able to sell the property to another buyer. The sale to another buyer came, but the respondent still failed to comply with his undertaking to the point that an RTC judgment was entered against him.

While the respondent eventually tried to settle his obligation when he offered to issue a cashier's check dated October 22, 2009 to pay not only the ₱920,000.00 but also the damages awarded by the RTC, the offer however appears to be an afterthought and was made only after the consequences of the RTC judgment became inescapable. Previously, the respondent showed other insincerities, such as when he offered to settle the indebtedness for only ₱400,000.00, and when he paid only the ₱100,000.00 attorney's fees but left the principal amount of ₱920,000.00 unsettled. These actions, taken together, indicate to us a pattern of willfulness to avoid payment of a just debt.

The Court has repeatedly stressed that it is not a collection agency for the unpaid debts of its officials and employees,[15] but has nevertheless provided for Section 8, Rule 140 of the Rules of Court that holds its officials and employees administratively

---

[14] Now Section 52, C(10) Rule IV of the CSC Memorandum Circular No. 19, s. 1999.

[15] *Villaseñor v. De Leon*, A.M. No. P-03-1685, March 20, 2003, 399 SCRA 342.

liable in unpaid debt situations. This Section provides that willful failure to pay a just debt is a ground for disciplinary action against judges and justices and should find full application in the present case.

Just debts, as defined in Section 23, Rule XIV of the Omnibus Rules Implementing Book V of E.O. No. 292, refer to (1) claims adjudicated by a court of law; or (2) claims, the existence and justness of which are admitted by the debtor. Section 8, Rule 140 of the Rules of Court classifies willful failure to pay a just debt as a serious charge, penalized as follows:

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

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided, however,* That the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from the office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[16]

While reference to a debt necessarily implies a transaction that is private and outside of official transactions, the rules do not thereby intrude into public officials' private lives; they simply look at their actions from the prism of public service and consider these acts unbecoming of a public official.[17] These rules take into account that these are actions of officials who are entrusted with public duties and who, even in their private capacities, should continually act to reflect their status as public servants. Employees of the judiciary should be living examples of uprightness not only in the performance of official duties but also in their personal

---

[16] Rule 140 of the Rules of Court.

[17] *Grio Lending Services v. Sermonia*, A.M. No. P-03-1757, December 10, 2003, 417 SCRA 361.

and private dealings with other people so as to preserve at all times the good name and standing of the courts in the community.[18]

In the present case, the complainant's claim against the respondent is a just debt, whose existence and justness the respondent himself admitted. The respondent's willfulness in not paying his just obligation is shown by his continued failure to settle it, despite demand letters sent to him by the complainant. The RTC's final decision in the complainant's favor renders the respondent's obligation to pay conclusive.

Admittedly, the respondent later realized his misdeeds and finally offered to pay his indebtedness to the complainant. This development, however, cannot erase his misconduct; it can only mitigate his culpability. Thus, we must hold the respondent accountable and accordingly penalize him. In doing so, however, we must also ensure that public service is not hindered and therefore deem it best, for this purpose, to merely impose on the respondent the penalty of fine[19] instead of the suspension or dismissal that the rules fully allow.

WHEREFORE, the Court finds respondent Judge Manuel T. Sabillo of the Municipal Circuit Trial Court of Lamitan, Basilan **GUILTY** of willful failure to pay a just debt under Section 8, Rule 140 of the Rules of Court. He is hereby imposed a fine of Forty Thousand Pesos (₱40,000.00) with the **WARNING** that a repetition of the same or similar offense shall be dealt with more severely. He is further directed to pay his indebtedness to the complainant, if he has not at this time settled it, within thirty (30) days from notice hereof.

SO ORDERED.

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

---

[18] *Supra.*

[19] *Juario v. Labis, supra* note 13, at 544-545; *Zamudio v. Auro*, A.M. No. P-04-1793, December 8, 2008, 573 SCRA 178, 187.

[*] Designated as additional member in lieu of Associate Justice Jose Portugal Perez per Raffle dated February 11, 2013.

FIRST DIVISION

[A.M. No. MTJ-12-1818. February 13, 2013]
(Formerly OCA I.P.I. No. 10-2265-MTJ-P)

ATTY. MANUEL J. JIMENEZ, JR., *complainant, vs.* **JUDGE MICHAEL M. AMDENGAN, Presiding Judge, Municipal Trial Court, Angono, Rizal,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION, COMMITTED; THE 30-DAY PERIOD WITHIN WHICH TO RENDER A DECISION CANNOT BE EXTENDED BY MERE ISSUANCE OF AN ORDER.—** Despite the simultaneous submissions of the parties' respective Position Papers on 04 January 2010, respondent judge — through an Order dated 17 February 2010 — still submitted the case for decision. By that time, the mandatory period of 30 days within which to render judgment on the case had already lapsed. By issuing the Order dated 17 February 2010 purportedly submitting the case for decision, he was subverting Section 10 of the Rules on Summary Procedure. Respondent considered his Order the start of the 30-day period within which to render a decision. The ruling was already due on 04 February 2010, reckoned from the date the parties last filed their respective Position Papers. He could not have extended the period by the mere issuance of an Order, when the rules clearly provide for a mandatory period within which to decide a case. Hence, he was guilty of undue delay in rendering a decision.

2. **ID.; ID.; ID.; CANDID ADMISSION AND ACCEPTANCE OF INFRACTION, CONSIDERED IN IMPOSING ONLY A FINE.—** Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or an order is classified as a less serious charge, punishable by either suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or a fine of more than ₱10,000 but not exceeding ₱20,000. We take into consideration his candid admission and acceptance of his infraction as factors in imposing only a fine. We also take into account his age and

frail health, although these factors do not in any way absolve him from liability or excuse him from diligently fulfilling his duties.

RESOLUTION

SERENO, *C.J.*:

Complainant Atty. Manuel J. Jimenez, Jr. (complainant) is the lawyer and attorney-in-fact of Olivia G. Merced, the plaintiff in the ejectment case docketed as Civil Case No. 001-09. The case is pending before the Municipal Trial Court (MTC), Angono, Rizal, presided by respondent Judge Michael M. Amdengan (respondent judge).

The Facts of the Case

The plaintiff Merced filed with the MTC an ejectment Complaint against the defendant Nelson Cana on 23 January 2009.[1] Summons was duly served on the defendant on 02 February 2009 per certification of the lower court's process server.[2] Despite the summons, the defendant did not file an Answer to the Complaint. As a result, the plaintiff filed a Motion for Judgment[3] asking for the grant of the reliefs prayed for in her Complaint. The Motion was opposed by the defendant and, on 22 July 2009, was denied by the MTC, which considered him to have voluntarily submitted to its jurisdiction. Consequently, it granted him 10 days to file his Answer,[4] which he did on 17 August 2009, stating therein his affirmative defenses.[5]

The preliminary conference of the parties was originally set by the MTC on 25 September 2009, but was later reset to 16 October 2009. During the preliminary conference, respondent

---

[1] *Rollo*, Annex "A" of the Complaint-Affidavit.

[2] *Id.*, Annex "B" of the Complaint-Affidavit.

[3] *Id.*, Annex "C" of the Complaint-Affidavit.

[4] *Id.*, Annex "F" of the Complaint-Affidavit.

[5] *Id.*, Annex "G" of the Complaint-Affidavit.

judge referred the case for mediation. Due to the inability of the parties to arrive at a settlement, the case was referred back to the MTC for trial on the merits. On 04 December 2009, respondent ordered the parties to file their respective position papers within 30 days, after which the case was to be submitted for resolution.[6] On 04 January 2010, the parties simultaneously filed their Position Papers under the Rules of Summary Procedure.[7]

It was only on 17 February 2010 that respondent judge issued an order submitting the case for decision.[8] On 03 March 2010, he promulgated his ruling,[9] in which he noted that the plaintiff had failed to refer her Complaint to the *Lupon* for the mandatory *barangay* conciliation proceedings as required under the **Revised *Katarungang Pambarangay* Law**. Thus, her ejectment Complaint was dismissed without prejudice.[10]

On 07 April 2010, complainant filed the instant administrative case charging respondent judge with (1) gross inefficiency and negligence and (2) gross ignorance of law and jurisprudence. Complainant specifically alleged that respondent was guilty of gross inefficiency for failing to resolve the ejectment case within a period of 30 days as mandated under the Rules of Summary Procedure. Likewise, the latter was charged with gross ignorance of law for having dismissed the case on the ground of failure to comply with the *barangay* conciliation procedure.

On 06 May 2010, the Office of the Court Administrator (OCA) required respondent judge to file his Comment on the Complaint-Affidavit within 10 days. In the Comment he filed on 06 July 2010, he answered the first charge of gross inefficiency by admitting that after the ejectment case was deemed submitted for resolution on 04 January 2010, he indeed failed to resolve

---

[6] *Id.*, Annex "M" of the Complaint-Affidavit.

[7] *Id.*, Annexes "N" and "O" of the Complaint-Affidavit.

[8] *Id.*, Annex "Q" of the Complaint-Affidavit.

[9] *Id.*, Annex "R" of the Complaint-Affidavit.

[10] *Id.* at 4.

it within the prescribed 30-day period. Although he offered no excuse for that lapse, he prayed that whatever sanction would be given to him must be tempered and mitigated by mercy and compassion, given that he was already 69 years old and already blind in his left eye.[11]

On the second charge of gross ignorance of the law, he believed that in the event his ruling was not in accordance with law and jurisprudence, complainant should have availed himself of the proper remedies under the rules, instead of resorting to an administrative Complaint,[12] which should thus be dismissed. On 30 July 2012, complainant rebutted these allegations in his Reply to the Comment of respondent judge. On 19 August 2012, the latter filed his Rejoinder.

The Findings of the OCA

On 31 August 2010, the OCA promulgated its report and recommendation on the case. It found respondent judge guilty of gross inefficiency for having failed to resolve the ejectment case within the prescribed 30-day period after the filing of the parties' respective Position Papers, pursuant to Rule 70 of the Rules of Court and the 1991 Revised Rules on Summary Procedure. As he had incurred a one-month delay in resolving the ejectment case, it recommended that he be fined ₱20,000 pursuant to Sections 9 and 11, Rule 140 of the Rules of Court.[13]

---

[11] *Id.*, Comment of Judge Amdengan.

[12] *Id.* at 3.

[13] Rule 140: SEC. 9. *Less Serious Charges.* — Less serious charges include:

1. Undue delay in rendering a decision or order, or in transmitting the records of a case;
2. Frequently and unjustified absences without leave or habitual tardiness;
3. Unauthorized practice of law;
4. Violation of Supreme Court rules, directives, and circulars;
5. Receiving additional or double compensation unless specifically authorized by law;
6. Untruthful statements in the certificate of service; and
7. Simple misconduct.

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

The OCA found no merit in the charge of gross ignorance of the law allegedly committed by respondent judge for dismissing the ejectment Complaint on the ground that it had not been referred to the *Lupon*. It noted that complainant was already assailing the propriety of the Order, which it deemed to be judicial in nature. It held that the proper remedy for correcting the actions of judges should rest on judicial adjudication, and not on the filing of administrative complaints against them. Thus, the second charge was dismissed for being judicial in nature.

The OCA noted that respondent had previously been fined ₱20,000 for gross ignorance of law and/or procedure in the administrative case *Atty. Pablo B. Francisco v. Judge Michael M. Amdengan*, docketed as A.M. No. MTJ-09-1739. In that ejectment case, respondent entertained a motion to suspend proceedings similar to a Motion for Postponement, a prohibitive pleading under the Rules on Summary Procedure.[14]

Our Ruling

After a thorough review of the records, we **AFFIRM** the OCA findings in part.

It was sufficiently established that respondent judge committed undue delay in rendering a Decision in the subject ejectment Complaint. An action for ejectment is governed by the Rules of Summary Procedure, Section 10 of which provides:

> Sec. 10. Rendition of judgment.— Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.
>
> However should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the

---

x x x x x x x x x

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

x x x x x x x x x

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

[14] OCA Report dated 31 August 2010, p. 3.

matters to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last clarificatory affidavits, or the expiration of the period for filing the same.

The court shall not resort to the clarificatory procedure to gain time for the rendition of the judgment.

This provision is mandatory, considering the nature of an ejectment case as we have explained in *Teroña v. Hon. Antonio de Sagun.*[15] We quote below the pertinent portion of that Decision:

The strict adherence to the reglementary period prescribed by the RSP [Rules on Summary Procedure] is due to the essence and purpose of these rules. The law looks with compassion upon a party who has been illegally dispossessed of his property. Due to the urgency presented by this situation, the RSP provides for an expeditious and inexpensive means of reinstating the rightful possessor to the enjoyment of the subject property. This fulfills the need to resolve the ejectment case quickly.

Despite the simultaneous submissions of the parties' respective Position Papers on 04 January 2010, respondent judge — through an Order dated 17 February 2010 — still submitted the case for decision. By that time, the mandatory period of 30 days within which to render judgment on the case had already lapsed. By issuing the Order dated 17 February 2010 purportedly submitting the case for decision, he was subverting Section 10 of the Rules on Summary Procedure. Respondent considered his Order the start of the 30-day period within which to render a decision. The ruling was already due on 04 February 2010, reckoned from the date the parties last filed their respective Position Papers. He could not have extended the period by the mere issuance of an Order, when the rules clearly provide for a mandatory period within which to decide a case. Hence, he was guilty of undue delay in rendering a decision.

Under Section 9, Rule 140 of the Rules of Court, undue delay in rendering a decision or an order is classified as a less serious

---

[15] G.R. No. 152131, 29 April 2009, 587 SCRA 60, 72.

charge, punishable by either suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or a fine of more than ₱10,000 but not exceeding ₱20,000.[16] We take into consideration his candid admission and acceptance of his infraction as factors in imposing only a fine. We also take into account his age and frail health, although these factors do not in any way absolve him from liability or excuse him from diligently fulfilling his duties.

As for the dismissal of the charge of gross ignorance of the law, we sustain the OCA's recommendation. Indeed, complainant is already assailing the propriety of the Decision rendered by respondent judge. The administrative Complaint, however, contains no allegation that the dismissal of the ejectment case was marred by unethical behavior on his part. Thus, an administrative complaint against him is not the proper remedy to assail his judgment.

In *Rodriguez v. Judge Rodolfo S. Gatdula*,[17] we have explained that administrative complaints against judges cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the case has not yet been resolved with finality. In the instant case, complainant had the available remedy of appeal when her ejectment Complaint was dismissed. Hence, the OCA correctly dismissed the second charge against respondent judge.

WHEREFORE, we **AFFIRM** the findings of the OCA and **ADOPT** its recommendations with modification, as follows:

1) Finding respondent Judge Michael M. Amdengan **GUILTY of Undue Delay in Rendering a Decision** and accordingly **FINE** him in the amount of ₱10,000 with a **STERN WARNING** that a repetition of the same or a similar act will be dealt with more severely; and

---

[16] *Teodosio v. Judge Arturo Carpio*, 468 Phil. 164 (2004).

[17] 442 Phil. 307, 308 (2002).

2) **DISMISSING** the charge of gross ignorance of the law for being judicial in nature.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 151334. February 13, 2013]

CAROLINA (CARLINA) *VDA. DE* FIGURACION, HEIRS OF ELENA FIGURACION-ANCHETA, namely: LEONCIO ANCHETA, JR., and ROMULO ANCHETA, HEIRS OF HILARIA A. FIGURACION, namely: FELIPA FIGURACION-MANUEL, MARY FIGURACION-GINEZ, and EMILIA FIGURACION-GERILLA, AND HEIRS OF QUINTIN FIGURACION, namely: LINDA M. FIGURACION, LEANDRO M. FIGURACION, II, and ALLAN M. FIGURACION, *petitioners, vs.* **EMILIA FIGURACION-GERILLA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ISSUES NOT RAISED BEFORE THE COURT *A QUO* CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.—** The inconsistent postures taken by the petitioners breach the basic procedural tenet that a party cannot change his theory on appeal as expressly adopted in Rule 44, Section 15 of the Rules of Court[.] x x x Fortifying the rule, the Court had repeatedly emphasized that defenses not pleaded in the answer may not be raised for the first time on appeal. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below,

he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party. The Court had likewise, in numerous times, affirmed that points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. x x x Accordingly, the Court will not give due course to the new issues raised by the petitioners involving the nature and execution of the *Deed of Quitclaim*. For their failure to advance these questions during trial, the petitioners are now barred by estoppel from imploring an examination of the same.

2. **ID.; ID.; ID.; EXCEPTION, NOT APPLICABLE IN CASE AT BAR.—** While a party may change his theory on appeal when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory, this exception does not, however, obtain in the case at hand. Contrary to the petitioners' assertion, the Court finds that the issues on the supposed defects and actual nature of the *Deed of Quitclaim* are questions of fact that require not only a review or re-evaluation of the evidence already adduced by the parties but also the reception of new evidence as the petitioners themselves have acknowledged when they attached in the petition several certifications in support of their new argument. It is settled that questions of fact are beyond the province of a Rule 45 petition since the Court is not a trier of facts.

3. **CIVIL LAW; CO-OWNERSHIP; AN AFFIDAVIT OF SELF-ADJUDICATION EXECUTED BY A CO-OWNER CANNOT PREJUDICE THE SHARE OF OTHER CO-OWNERS.—** The status of Agripina and Carolina as the legitimate heirs of Eulalio is an undisputed fact. As such heirs, they became co-owners of Lot No. 707 upon the death of Eulalio on July 20, 1930. Since Faustina was predeceased by Eulalio, she likewise became a co-owner of the lot upon Eulalio's death. Faustina's share, however, passed on to her daughter Carolina

when the former died on October 18, 1949. The *Affidavit of Self-Adjudication* executed by Carolina did not prejudice the share of Agripina because it is not legally possible for one to adjudicate unto himself an entire property he was not the sole owner of. A co-owner cannot alienate the shares of her other co-owners — *nemo dat qui non habet*. Hence, Lot No. 707 was a co-owned property of Agripina and Carolina. As co-owners, each of them had full ownership of her part and of the fruits and benefits pertaining thereto. Each of them also had the right to alienate the lot but only in so far as the extent of her portion was affected.

4. **ID.; ID.; EFFECTS OF SALE OF CO-OWNED PROPERTY WITHOUT THE CONSENT OF A CO-OWNER; A CO-OWNER HAS THE RIGHT TO COMPEL PARTITION AT ANY TIME.—** [W]hen Carolina sold the entire Lot No. 707 on December 11, 1962 to Hilaria and Felipa without the consent of her co-owner Agripina, the disposition affected only Carolina's *pro indiviso* share, and the vendees, Hilaria and Felipa, acquired only what corresponds to Carolina's share. A co-owner is entitled to sell his undivided share; hence, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void and only the rights of the co-owner/seller are transferred, thereby making the buyer a co-owner of the property. Accordingly, the deed of sale executed by Carolina in favor of Hilaria and Felipa was a valid conveyance but only insofar as the share of Carolina in the co-ownership is concerned. As Carolina's successors-in-interest to the property, Hilaria and Felipa could not acquire any superior right in the property than what Carolina is entitled to or could transfer or alienate after partition. In a contract of sale of co-owned property, what the vendee obtains by virtue of such a sale are the same rights as the vendor had as co-owner, and the vendee merely steps into the shoes of the vendor as co-owner. Hilaria and Felipa did not acquire the undivided portion pertaining to Agripina, which has already been effectively bequeathed to respondent Emilia as early as November 28, 1961 thru the *Deed of Quitclaim.* In turn, being the successor-in-interest of Agripina's share in Lot No. 707, respondent Emilia took the former's place in the co-ownership and as such co-owner, has the right to compel partition at any time.

5. **ID.; ID.; ACQUISITIVE PRESCRIPTION CANNOT SET IN ABSENT A CLEAR ACT OF REPUDIATION; REGISTRATION OF THE ENTIRE LOT IN THE NAMES OF TWO CO-OWNERS ONLY DID NOT SERVE TO EFFECTIVELY REPUDIATE CO-OWNERSHIP.—** Co-heirs or co-owners cannot acquire by acquisitive prescription the share of the other co-heirs or co-owners absent a clear repudiation of the co-ownership. The act of repudiation, as a mode of terminating co-ownership, is subject to certain conditions, to wit: (1) a co-owner repudiates the co-ownership; (2) such an act of repudiation is clearly made known to the other co-owners; (3) the evidence thereon is clear and conclusive; and (4) he has been in possession through open, continuous, exclusive, and notorious possession of the property for the period required by law. The petitioners failed to comply with these conditions. The act of Hilaria and Felipa in effecting the registration of the entire Lot No. 707 in their names thru TCT No. 42244 did not serve to effectively repudiate the co-ownership. The respondent built her house on the eastern portion of the lot in 1981 without any opposition from the petitioners. Hilaria also paid realty taxes on the lot, in behalf of the respondent, for the years 1983-1987. These events indubitably show that Hilaria and Felipa failed to assert exclusive title in themselves adversely to Emilia. Their acts clearly manifest that they recognized the subsistence of their co-ownership with respondent Emilia despite the issuance of TCT No. 42244 in 1962. Their acts constitute an implied recognition of the co-ownership which in turn negates the presence of a clear notice of repudiation to the respondent. To sustain a plea of prescription, it must always clearly appear that one who was originally a joint owner has repudiated the claims of his co-owners, and that his co-owners were apprised or should have been apprised of his claim of adverse and exclusive ownership before the alleged prescriptive period began to run.

6. **ID.; ID.; ID.; PRESCRIPTION AMONG CO-OWNERS CANNOT TAKE PLACE WITHOUT A CLEAR EVIDENCE OF POSSESSION AND OCCUPATION.—** [R]ecords do not reflect conclusive evidence showing the manner of occupation and possession exercised by Hilaria and Felipa over the lot from the time it was registered in their names. The only evidence of possession extant in the records dates back only to 1985 when Hilaria and Felipa declared the lot in their

names for taxation purposes. Prescription can only produce all its effects when acts of ownership, or in this case, possession, do not evince any doubt as to the ouster of the rights of the other co-owners. Hence, prescription among co-owners cannot take place when acts of ownership exercised are vague or uncertain. Moreover, the evidence relative to the possession, as a fact upon which the alleged prescription is based, must be clear, complete and conclusive in order to establish said prescription without any shadow of doubt; and when upon trial it is not shown that the possession of the claimant has been adverse and exclusive and opposed to the rights of the others, the case is not one of ownership, and partition will lie. The petitioners failed to muster adequate evidence of possession essential for the reckoning of the 10-year period for acquisitive prescription.

7. **ID.; ID.; PROXIMITY OF THE PERIOD WHEN THE CO-OWNERSHIP WAS REPUDIATED AND THE FILING OF THE COMPLAINT NEGATES APPLICATION OF LACHES.—** Anent laches, the Court finds it unavailing in this case in view of the proximity of the period when the co-ownership was expressly repudiated and when the herein complaint was filed. Laches is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has abandoned it or declined to assert it. More so, laches is a creation of equity and its application is controlled by equitable considerations. It cannot be used to defeat justice or perpetrate fraud and injustice. Neither should its application be used to prevent the rightful owners of a property from recovering what has been fraudulently registered in the name of another.

APPEARANCES OF COUNSEL

De Guzman Mariñas Soriano Ugay & Associates Law Offices for petitioners.

Simplicio M. Sevilla for respondent.

DECISION

REYES, *J.*:

At bar is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated December 11, 2001 of the Court of Appeals (CA) in CA-G.R. CV No. 58290, which reversed and set aside the Decision[3] dated June 26, 1997 of the Regional Trial Court (RTC) of Urdaneta, Pangasinan, Branch 49. The RTC decision (1) dismissed respondent Emilia Figuracion-Gerilla's (Emilia) complaint for partition, annulment of documents, reconveyance, quieting of title and damages, and (2) annulled the *Affidavit of Self-Adjudication* executed by petitioner Carolina (Carlina) *Vda. De* Figuracion (Carolina).

The Facts

The parties are the heirs of Leandro Figuracion (Leandro) who died intestate in May 1958. Petitioner Carolina is the surviving spouse. The other petitioners — Elena Figuracion-Ancheta, Hilaria A. Figuracion (Hilaria), Felipa Figuracion-Manuel (Felipa), Quintin Figuracion, and Mary Figuracion-Ginez — and respondent Emilia were Carolina and Leandro's children.[4]

Subject of the dispute are two parcels of land both situated in Urdaneta, Pangasinan, which were acquired by Leandro during his lifetime. These properties were: (1) Lot No. 2299 with a land area of 7,547 square meters originally covered by Transfer

---

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

[2] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Conchita Carpio Morales (now retired) and Sergio L. Pestaño, concurring; *id.* at 26-32.

[3] *Id.* at 37-46.

[4] As culled from the related case entitled *Emilia Figuracion-Gerilla v. Carolina Vda. De Figuracion, Elena Figuracion-Ancheta, Hilaria A. Figuracion, Felipa Figuracion-Manuel, Quintin Figuracion and Mary Figuracion-Ginez;* 531 Phil. 81 (2006).

Certificate of Title (TCT) No. 4221-P;[5] and (2) Lot No. 705 measuring 2,900 square meters and covered by TCT No. 4220-P. Both lands were registered in the name of "Leandro Figuracion married to Carolina Adviento". Leandro executed a Deed of Quitclaim over the above real properties in favor of his six (6) children on August 23, 1955. Their shares, however, were not delineated with particularity because spouses Leandro and Carolina reserved the lots and its fruits for their expenses.

Also involved in the controversy is Lot No. 707 of the Cadastral Survey of Urdaneta, Pangasinan, with an area of 3,164 square meters originally owned by Eulalio Adviento (Eulalio), covered by Original Certificate of Title (OCT) No. 15867 issued in his name on August 21, 1917. Eulalio begot Agripina Adviento (Agripina) with his first wife Marcela Estioko (Marcela), whom Eulalio survived. When he remarried, Eulalio had another daughter, herein petitioner Carolina, with his second wife, Faustina Escabesa (Faustina).[6]

On November 28, 1961, Agripina[7] executed a *Deed of Quitclaim*[8] over the eastern half of Lot No. 707 in favor of her niece, herein respondent Emilia.

Soon thereafter or on December 11, 1962, petitioner Carolina executed an *Affidavit of Self-Adjudication*[9] adjudicating unto herself the entire Lot No. 707 as the sole and exclusive heir of her deceased parents, Eulalio and Faustina.[10] On the same date, Carolina also executed a *Deed of Absolute Sale*[11] over Lot

---

[5] TCT No. 4221-P was later cancelled and replaced by TCT No. 101331 in view of Leandro's sale of the 162-square meter portion of the land to Lazaro Adviento.

[6] *Supra* note 4.

[7] Agripina died on July 28, 1963, single and without issue; records, p. 269.

[8] *Id.* at 266.

[9] *Id.* at 267.

[10] Eulalio died on July 20, 1930 while Faustina died October 18, 1949.

[11] Records, p. 271.

No. 707 in favor of petitioners Hilaria and Felipa, who in turn immediately caused the cancellation of OCT No. 15867 and the issuance of TCT No. 42244 in their names.[12]

In 1971, Emilia and her family went to the United States and returned to the Philippines only in 1981. Upon her return and relying on the *Deed of Quitclaim*, she built a house on the eastern half of Lot No. 707.[13]

The legal debacle of the Figuracions started in 1994 when Hilaria and her agents threatened to demolish the house of Emilia who, in retaliation, was prompted to seek the partition of Lot No. 707 as well as Lot Nos. 2299 and 705. The matter was initially brought before the *Katarungang Pambarangay*, but no amicable settlement was reached by the parties.[14] On May 23, 1994, respondent Emilia instituted the herein Complaint[15] for the partition of Lot Nos. 2299, 705 and 707, annulment of the *Affidavit of Self-Adjudication*, *Deed of Absolute Sale* and TCT No. 42244, reconveyance of eastern half portion of Lot No. 707, quieting of title and damages.

In opposition, the petitioners averred the following special and affirmative defenses: (1) the respondent's cause of action had long prescribed and that she is guilty of laches hence, now estopped from bringing the suit; (2) TCT No. 42244 in the name of Felipa and Hilaria have already attained indefeasibility and conclusiveness as to the true owners of Lot No. 707; and (3) an action for partition is no longer tenable because Felipa and Hilaria have already acquired rights adverse to that claimed by respondent Emilia and the same amount to a repudiation of the alleged co-ownership.[16]

---

[12] *Id.* at 272.

[13] Uniform factual findings of the RTC and CA; *rollo*, pp. 26-32 and 37-46.

[14] Records, p. 12.

[15] *Id.* at 1-5.

[16] *Id.* at 19-23.

During pre-trial conference, the issues were simplified into: (1) whether or not Lot Nos. 2299 and 705 are the exclusive properties of Leandro; and (2) whether or not respondent Emilia is the owner of the eastern half of Lot No. 707.[17]

On the basis of the evidence adduced by the parties, the RTC rendered its Decision dated June 26, 1997 disposing as follows:

WHEREFORE, premises considered, the complaint for partition, reconveyance, quieting of title and damages is hereby ordered dismissed whereas the affidavit of self-adjudication[,] deed of sale and the transfer certificate of title involving Lot 707 are hereby declared null and void.

No costs.

SO ORDERED.[18]

The RTC ruled that a partition of Lot Nos. 2299 and 705 will be premature since their ownership is yet to be transmitted from Leandro to his heirs whose respective shares thereto must still be determined in estate settlement proceedings. Anent Lot No. 707, the RTC held that petitioner Carolina transferred only her one-half (½) share to Felipa and Hilaria and any conveyance of the other half pertaining to Agripina was void. While the RTC nullified the *Affidavit of Self-Adjudication, Deed of Absolute Sale* and TCT No. 42244, it refused to adjudicate the ownership of the lot's eastern half portion in favor of respondent Emilia since a settlement of the estate of Eulalio is yet to be undertaken.[19]

Respondent Emilia appealed to the CA, which, in its Decision dated December 11, 2001, ruled that the RTC erred in refusing to partition Lot No. 707. The CA explained that there is no necessity for placing Lot No. 707 under judicial administration since Carolina had long sold her ½ *pro indiviso* share to Felipa and Hilaria. Thus, when Carolina sold the entire Lot No. 707 on December 11, 1962 as her own, the sale affected only her

---

[17] Pre-trial Order dated April 4, 1995; *id.* at 68-69.

[18] *Rollo*, p. 46.

[19] *Id.* at 43-45.

share and not that belonging to her co-owner, Agripina. The proper action in such case is not the nullification of the sale, or for the recovery of possession of the property owned in common from the third person, but for a division or partition of the entire lot. Such partition should result in segregating the portion belonging to the seller and its delivery to the buyer.

The CA, however, agreed with the RTC that a partition of Lot Nos. 2299 and 705 is indeed premature considering that there is a pending legal controversy with respect to Lot No. 705 and the accounting of the income from Lot No. 2299 and of the expenses for the last illness and burial of Leandro and Carolina, for which the lots appear to have been intended.

Accordingly, the decretal portion of the CA decision reads:

WHEREFORE, premises considered, the present appeal is hereby GRANTED and the decision appealed from in Civil Case No. U-5826 is hereby VACATED and SET ASIDE. A new judgment is hereby rendered declaring Lot No. 707 covered by TCT No. 42244 to be owned by appellant Emilia Figuracion-Gerilla [herein respondent], ½ *pro indiviso* share, appellee Felipa Figuracion [herein petitioner], ¼ *pro indiviso* share, and appellee Hilaria Figuracion [herein petitioner], ¼ *pro indiviso* share, who are hereby directed to partition the same and if they could not agree on a partition, they may petition the trial court for the appointment of a commissioner to prepare a project of partition, in accordance with the procedure as provided in Rule 69 of the 1997 Rules of Civil Procedure, as amended.

No pronouncement as to costs.

SO ORDERED.[20]

Respondent Emilia appealed the CA's decision to the Court, docketed as G.R. No. 154322. In a Decision promulgated on August 22, 2006, the Court denied the appeal, concurring with the CA's ruling that a partition of Lot Nos. 2299 and 705 would be inappropriate considering that: (1) the ownership of Lot No. 705 is still in dispute; and (2) there are still unresolved issues as to the expenses chargeable to the estate of Leandro.

[20] *Id.* at 32.

The present petition involves the appeal of the petitioners who attribute this sole error committed by the CA:

THE DECISION RENDERED BY THE HONORABLE COURT OF APPEALS IS CONTRARY TO LAW AND EXISTING JURISPRUDENTIAL DICTA LAID DOWN BY THE HONORABLE SUPREME COURT.[21]

In view of the Court's ruling in G.R. No. 154322, the ensuing discussion shall concern only Lot No. 707.

The Arguments of the Parties

The petitioners argue that respondent Emilia has no valid basis for her claim of ownership because the *Deed of Quitclaim* executed in her favor by Agripina was in fact a deed of donation that contained no acceptance and thus, void. The petitioners attached a copy of the *Deed of Quitclaim* and stressed on the following portions, *viz*:

I, **AGRIPINA ESTIOKO ADVIENTO**, of le[ga]l age, Filipino citizen, single and a resident [of] San Vicenter (sic), Urdaneta City, Pangasinan, for and in consideration of the sum of ONE PESO ([₱]1.00), Philippine Currency and the services rendered by my niece EMILIA FIGURACION, 20 years old, single, Filipino citizen and a resident of San Vicente, Urdaneta City, Pangasinan, do hereby by these presentsw (sic) RENOUNCE, RELEASE and forever QUITCLAIM in favor of EMILIA FIGURACION, her heirs, and assigns the ONE[-]HALF (½) eastern portion of the following parcel of land more particularly described and bounded as follows to wit[.][22]

They further aver that the *Deed of Quitclaim* is riddled with defects that evoke questions of law, because: *(a)* it has not been registered with the Register of Deeds, albeit, allegedly executed as early as 1961; *(b)* a certification dated June 3, 2003 issued by the Office of the Clerk of Court (OCC) of the RTC of Urdaneta, Pangasinan, shows that it does not have a copy of the *Deed of Quitclaim*; *(c)* the Office of the National Archives which is the

---

[21] *Id.* at 16.

[22] *Id.* at 17.

depository of old and new notarized documents has no record of the *Deed of Quitclaim* as evidenced by a certification dated May 19, 2003;[23] and *(d)* Atty. Felipe V. Abenojar, who supposedly notarized the *Deed of Quitclaim* was not commissioned to notarize in 1961 per the certification dated June 9, 2003 from the OCC of the RTC of Urdaneta, Pangasinan.[24]

Respondent Emilia, on the other hand, contends that the *Deed of Quitclaim* should be considered an onerous donation that requires no acceptance as it is governed by the rules on contracts and not by the formalities for a simple donation.[25]

The Court's Ruling

Issues not raised before the courts *a quo* cannot be raised for the first time in a petition filed under Rule 45

Records show that there is a palpable shift in the defense raised by the petitioners before the RTC and the CA.

In the Pre-Trial Order[26] of the RTC dated April 4, 1995, the parties agreed to limit the issue with regard to Lot No. 707 as follows: whether or not respondent Emilia is the owner of the eastern half portion of Lot No. 707. The petitioners' supporting theory for this issue was that "the *Deed of Quitclaim* dated November 28, 1961 was rendered ineffective by the issuance of [TCT No. 42244] in the name of Felipa and Hilaria."[27] On appeal to the CA, however, the petitioners raised a new theory by questioning the execution and enforceability of the *Deed of* Quitclaim. They claimed that it is actually a donation that was not accepted in the manner required by law.[28]

---

[23] *Id.* at 194-200.

[24] *Id.* at 201-206.

[25] *Id.* at 77-86.

[26] Records, pp. 68-69.

[27] *Id.* at 20.

[28] Opposition/Comment to the respondent's motion for reconsideration of the CA's Decision dated December 11, 2001; CA *rollo,* pp. 191-200.

The inconsistent postures taken by the petitioners breach the basic procedural tenet that a party cannot change his theory on appeal as expressly adopted in Rule 44, Section 15 of the Rules of Court, which reads:

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

Fortifying the rule, the Court had repeatedly emphasized that defenses not pleaded in the answer may not be raised for the first time on appeal. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.[29] The Court had likewise, in numerous times, affirmed that points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[30]

While a party may change his theory on appeal when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory,[31] this exception does not, however, obtain in the case at hand.

Contrary to the petitioners' assertion, the Court finds that the issues on the supposed defects and actual nature of the *Deed*

---

[29] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* 535 Phil. 481, 490 (2006).

[30] *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 934 (2003).

[31] *Id.* at 935.

of Quitclaim are questions of fact that require not only a review or re-evaluation of the evidence already adduced by the parties but also the reception of new evidence as the petitioners themselves have acknowledged when they attached in the petition several certifications[32] in support of their new argument. It is settled that questions of fact are beyond the province of a Rule 45 petition since the Court is not a trier of facts.[33]

Accordingly, the Court will not give due course to the new issues raised by the petitioners involving the nature and execution of the *Deed of Quitclaim.* For their failure to advance these questions during trial, the petitioners are now barred by estoppel[34] from imploring an examination of the same.

The respondent can compel the partition of Lot No. 707

The first stage in an action for partition is the settlement of the issue of ownership. Such an action will not lie if the claimant has no rightful interest in the subject property. In fact, the parties filing the action are required by the Rules of Court to set forth in their complaint the nature and the extent of their title to the property. It would be premature to effect a partition until and unless the question of ownership is first definitely resolved.[35]

Here, the respondent traces her ownership over the eastern half of Lot No. 707 from the *Deed of Quitclaim* executed by Agripina, who in turn, was the co-owner thereof being one of the legitimate heirs of Eulalio. It is well to recall that the petitioners failed to categorically dispute the existence of the *Deed of Quitclaim*. Instead, they averred that it has been rendered ineffective by TCT No. 42244 in the name of Felipa and Hilaria this contention is, of course, flawed.

---

[32] *Rollo*, pp. 199-200 and 206.

[33] *Manguiob v. Arcangel,* G.R. No. 152262, February 15, 2012, 666 SCRA 39, 51.

[34] See *Cuyo v. People of the Philippines,* G.R. No. 192164, October 12, 2011, 659 SCRA 69, 76.

[35] *Ocampo v. Ocampo*, 471 Phil. 519, 534 (2004).

Mere issuance of a certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate, or that the registrant may only be a trustee, or that other parties may have acquired interest over the property subsequent to the issuance of the certificate of title.[36] Stated differently, placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. The certificate cannot always be considered as conclusive evidence of ownership.[37] **In this case, co-ownership of Lot No. 707 was precisely what respondent Emilia was able to successfully establish, as correctly found by the RTC and affirmed by the CA.**

The status of Agripina and Carolina as the legitimate heirs of Eulalio is an undisputed fact. As such heirs, they became co-owners of Lot No. 707 upon the death of Eulalio on July 20, 1930. Since Faustina was predeceased by Eulalio, she likewise became a co-owner of the lot upon Eulalio's death. Faustina's share, however, passed on to her daughter Carolina when the former died on October 18, 1949. The *Affidavit of Self-Adjudication* executed by Carolina did not prejudice the share of Agripina because it is not legally possible for one to adjudicate unto himself an entire property he was not the sole owner of. A co-owner cannot alienate the shares of her other co-owners — *nemo dat qui non habet.*[38]

Hence, Lot No. 707 was a co-owned property of Agripina and Carolina. As co-owners, each of them had full ownership of her part and of the fruits and benefits pertaining thereto. Each of them also had the right to alienate the lot but only in so far as the extent of her portion was affected.[39]

---

[36] *Lacbayan v. Samoy, Jr.,* G.R. No. 165427, March 21, 2011, 645 SCRA 677, 690.

[37] *Id.* at 689-690.

[38] *Aromin v. Floresca,* 528 Phil. 1165, 1195 (2006).

[39] New Civil Code of the Philippines, Article 493.

Thus, when Carolina sold the entire Lot No. 707 on December 11, 1962 to Hilaria and Felipa without the consent of her co-owner Agripina, the disposition affected only Carolina's *pro indiviso* share, and the vendees, Hilaria and Felipa, acquired only what corresponds to Carolina's share. A co-owner is entitled to sell his undivided share; hence, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void and only the rights of the co-owner/seller are transferred, thereby making the buyer a co-owner of the property.[40]

Accordingly, the deed of sale executed by Carolina in favor of Hilaria and Felipa was a valid conveyance but only insofar as the share of Carolina in the co-ownership is concerned. As Carolina's successors-in-interest to the property, Hilaria and Felipa could not acquire any superior right in the property than what Carolina is entitled to or could transfer or alienate after partition.

In a contract of sale of co-owned property, what the vendee obtains by virtue of such a sale are the same rights as the vendor had as co-owner, and the vendee merely steps into the shoes of the vendor as co-owner.[41] Hilaria and Felipa did not acquire the undivided portion pertaining to Agripina, which has already been effectively bequeathed to respondent Emilia as early as November 28, 1961 thru the *Deed of Quitclaim*. In turn, being the successor-in-interest of Agripina's share in Lot No. 707, respondent Emilia took the former's place in the co-ownership and as such co-owner, has the right to compel partition at any time.[42]

The respondent's right to demand for partition is not barred by acquisitive prescription or laches

---

[40] *Aguirre v. Court of Appeals,* 466 Phil. 32, 48 (2004).

[41] *Panganiban v. Oamil*, G.R. No. 149313, January 22, 2008, 542 SCRA 166, 176.

[42] NEW CIVIL CODE OF THE PHILIPPINES, Article 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

The petitioners posit that the issuance of TCT No. 42244 in the name of Hilaria and Felipa over Lot No. 707 on December 11, 1962 was an express repudiation of the co-ownership with respondent Emilia. Considering the period of time that has already lapsed since then, acquisitive prescription has already set in and the respondent is now barred by laches from seeking a partition of the subject lot.

The contention is specious.

Co-heirs or co-owners cannot acquire by acquisitive prescription the share of the other co-heirs or co-owners absent a clear repudiation of the co-ownership.[43] The act of repudiation, as a mode of terminating co-ownership, is subject to certain conditions, to wit: (1) a co-owner repudiates the co-ownership; (2) such an act of repudiation is clearly made known to the other co-owners; (3) the evidence thereon is clear and conclusive; and (4) he has been in possession through open, continuous, exclusive, and notorious possession of the property for the period required by law.[44]

The petitioners failed to comply with these conditions. The act of Hilaria and Felipa in effecting the registration of the entire Lot No. 707 in their names thru TCT No. 42244 did not serve to effectively repudiate the co-ownership. The respondent built her house on the eastern portion of the lot in 1981 without any opposition from the petitioners. Hilaria also paid realty taxes on the lot, in behalf of the respondent, for the years 1983-1987.[45] These events indubitably show that Hilaria and Felipa failed to assert exclusive title in themselves adversely to Emilia.

---

[43] Article 494.

x x x x x x x x x

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs as long as he expressly or impliedly recognizes the co-ownership.

[44] *Santos v. Santos,* 396 Phil. 928, 947 (2000), citing *Adille v. Court of Appeals*, 241 Phil. 487, 494-495 (1988).

[45] Records, pp. 281-285.

Their acts clearly manifest that they recognized the subsistence of their co-ownership with respondent Emilia despite the issuance of TCT No. 42244 in 1962. Their acts constitute an implied recognition of the co-ownership which in turn negates the presence of a clear notice of repudiation to the respondent. To sustain a plea of prescription, it must always clearly appear that one who was originally a joint owner has repudiated the claims of his co-owners, and that his co-owners were apprised or should have been apprised of his claim of adverse and exclusive ownership before the alleged prescriptive period began to run.[46]

In addition, when Hilaria and Felipa registered the lot in their names to the exclusion of Emilia, an implied trust was created by force of law and the two of them were considered a trustee of the respondent's undivided share.[47] As trustees, they cannot be permitted to repudiate the trust by relying on the registration. In *Ringor v. Ringor*,[48] the Court had the occasion to explain the reason for this rule:

A trustee who obtains a Torrens title over a property held in trust for him by another cannot repudiate the trust by relying on the registration. A Torrens Certificate of Title in Jose's name did not vest ownership of the land upon him. The Torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. The Torrens system was not intended to foment betrayal in the performance of a trust. It does not permit one to enrich himself at the expense of another. Where one does not have a rightful claim to the property, the Torrens system of registration can confirm or record nothing. Petitioners cannot rely on the registration of the lands in Jose's name nor in the name of the Heirs of Jose M. Ringor, Inc., for the wrong result they seek. For Jose could not repudiate a trust by relying on a Torrens title he held in trust for his co-heirs.

---

[46] *Galvez v. Court of Appeals*, 520 Phil. 217, 225 (2006).

[47] NEW CIVIL CODE OF THE PHILIPPINES, Article 1456. If property is acquired through mistake or fraud, the person obtaining it is by force of law considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[48] 480 Phil. 141 (2004).

The beneficiaries are entitled to enforce the trust, notwithstanding the irrevocability of the Torrens title. The intended trust must be sustained.[49] (Citations omitted and emphasis ours)

Further, records do not reflect conclusive evidence showing the manner of occupation and possession exercised by Hilaria and Felipa over the lot from the time it was registered in their names. The only evidence of possession extant in the records dates back only to 1985 when Hilaria and Felipa declared the lot in their names for taxation purposes.[50] Prescription can only produce all its effects when acts of ownership, or in this case, possession, do not evince any doubt as to the ouster of the rights of the other co-owners. Hence, prescription among co-owners cannot take place when acts of ownership exercised are vague or uncertain.[51]

Moreover, the evidence relative to the possession, as a fact upon which the alleged prescription is based, must be clear, complete and conclusive in order to establish said prescription without any shadow of doubt; and when upon trial it is not shown that the possession of the claimant has been adverse and exclusive and opposed to the rights of the others, the case is not one of ownership, and partition will lie.[52] The petitioners failed to muster adequate evidence of possession essential for the reckoning of the 10-year period for acquisitive prescription.

The express disavowal of the co-ownership did not happen on December 11, 1962 when TCT No. 42244 was issued but in 1994 when Hilaria attempted to demolish Emilia's house thus explicitly excluding her from the co-ownership. It was the only time that Hilaria and Felipa made known their denial of the co-ownership. On the same year, the respondent instituted the present complaint for partition; hence, the period required by law for acquisitive period to set in was not met.

---

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

[50] Records, pp. 273-274.

[51] *Heirs of Maningding v. CA,* 342 Phil. 567, 577 (1997).

[52] *Id.*

Anent laches, the Court finds it unavailing in this case in view of the proximity of the period when the co-ownership was expressly repudiated and when the herein complaint was filed. Laches is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has abandoned it or declined to assert it.[53] More so, laches is a creation of equity and its application is controlled by equitable considerations. It cannot be used to defeat justice or perpetrate fraud and injustice. Neither should its application be used to prevent the rightful owners of a property from recovering what has been fraudulently registered in the name of another.[54]

Partition of Lot No. 707

Under the Old Civil Code[55] which was then in force at the time of Eulalio and Marcela's marriage, Lot No. 707 was their conjugal property.[56] When Marcela died, one-half of the lot was automatically reserved to Eulalio, the surviving spouse, as his share in the conjugal partnership.[57] Marcela's rights to the other half, in turn, were transmitted to her legitimate child, Agripina and surviving spouse Eulalio.[58] Under Article 834 of

---

[53] *Cruz v. Cristobal,* 529 Phil. 695, 715 (2006).

[54] *Supra* note 46, at 228-229.

[55] Based on the facts on record, Faustina, Eulalio's second wife and Eulalio himself respectively died on July 20, 1930 and October 18, 1949. Logically then, their marriage and Eulalio's first marriage with Marcela occurred prior to the said dates. Considering that the NEW CIVIL CODE took effect only in 1950, the above marriages, the distribution of the conjugal partnership therein and the successional rights of the heirs shall be governed by the provisions of the OLD CIVIL CODE.

[56] OLD CIVIL CODE OF THE PHILIPPINES, Article 1407. All the property of the spouses shall be deemed partnership property in the absence of proof that it belongs exclusively to the husband or to the wife.

[57] Article 1392. By virtue of the conjugal partnership the earnings or profits obtained by either of the spouses during the marriage belong to the husband and the wife, share and share alike, upon its dissolution; *Herbon v. Palad*, 528 Phil. 130, 145 (2006).

[58] Article 807. The following are forced heirs:

the Old Civil Code, Eulalio was entitled only to the usufruct of the lot while the naked ownership belonged to Agripina. When he remarried, Eulalio's one half portion of the lot representing his share in the conjugal partnership and his usufructuary right over the other half were brought into his second marriage with Faustina.[59]

When Eulalio died on July 20, 1930, ¼ portion of the lot was reserved for Faustina as her share in the conjugal partnership.[60] The remaining ¼ were transmitted equally to the widow Faustina and Eulalio's children, Carolina and Agripina.[61] However, Faustina is only entitled to the usufruct of the third available for betterment.[62]

The usufructuary of Eulalio over the ½ portion inherited by Agripina earlier was merged with her naked ownership.[63] Upon the death of Faustina, the shares in Lot No. 707 which represents her share in the conjugal partnership and her inheritance from

---

1. Legitimate children and descendants, with respect to their legitimate parents and ascendants.

2. In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants.

3. The widower or widow, natural children legally acknowledged, and the father or the mother of the latter, in the manner, and to the extent established by Articles 834, 835, 836, 837, 841, 842 and 846; *id.*

[59] *Id.* at 146.

[60] *Supra* note 56.

[61] *Supra* note 57.

[62] Article 834. A widower or widow who, on the death of his or her spouse, is not divorced, or should be so by the fault of the deceased, shall be entitled to a portion in usufruct equal to that corresponding by way of legitime to each of the legitimate children or descendants who has not received any betterment.

If only one legitimate child or descendant survives, the widower or widow shall have the usufruct of the third available for betterment, such child or descendant to have the naked ownership until, on the death of the surviving spouse, the whole title is merged in him.

[63] *Id.*

Eulalio were in turn inherited by Carolina[64] including Faustina's usufructuary rights which were merged with Carolina's naked ownership.[65]

Consequently, Agripina is entitled to 5/8 portion of Lot No. 707 while the remaining 3/8 pertains to Carolina. Thus, when Carolina sold Lot No. 707 to Hilaria and Felipa, the sale affected only 3/8 portion of the subject lot. Since the *Deed of Quitclaim*, bequeathed only the ½ eastern portion of Lot No. 707 in favor of Emilia instead of Agripina's entire 5/8 share thereof, the remaining 1/8 portion shall be inherited by Agripina's nearest collateral relative,[66] who, records show, is her sister Carolina.

In sum, the CA committed no reversible error in holding that the respondent is entitled to have Lot No. 707 partitioned. The CA judgment must, however, be modified to conform to the above-discussed apportionment of the lot among Carolina, Hilaria, Felipa and Emilia.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CV No. 58290 dated December 11, 2001, is **AFFIRMED with MODIFICATIONS** as follows: (1) 3/8 portion of Lot No. 707 shall pertain in equal shares to Hilaria Figuracion and Felipa Figuracion-Manuel; (2) ½ portion of Lot. No. 707 shall pertain to Emilia Figuracion-Gerilla; and (3) 1/8 portion of Lot No. 707 shall pertain to the estate of Carolina (Carlina) *Vda. De* Figuracion. The case is **REMANDED** to the Regional Trial Court of Urdaneta, Pangasinan, Branch 49, who is directed to conduct a PARTITION BY COMMISSIONERS and effect the actual physical partition of the subject property, as well as the improvements that lie therein, in the foregoing manner.

---

[64] *Supra* note 57.

[65] *Supra* note 62.

[66] New Civil Code of the Philippines, Article 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased.

Article 1007. In case brothers and sisters of the half blood, some on the father's and some on the mother's side, are the only survivors, all shall inherit in equal shares without distinction as to the origin of the property.

The trial court is **DIRECTED** to appoint not more than three (3) competent and disinterested persons, who should determine the technical metes and bounds of the property and the proper share appertaining to each co-owner, including the improvements, in accordance with Rule 69 of the Rules of Court. When it is made to appear to the commissioners that the real estate, or a portion thereof, cannot be divided without great prejudice to the interest of the parties, the court *a quo* may order it assigned to one of the parties willing to take the same, provided he pays to the other parties such sum or sums of money as the commissioners deem equitable, unless one of the parties interested ask that the property be sold instead of being so assigned, in which case the court shall order the commissioners to sell the real estate at public sale, and the commissioners shall sell the same accordingly, and thereafter distribute the proceeds of the sale appertaining to the just share of each co-owner. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 166282. February 13, 2013]

HEIRS OF FE TAN UY (Represented by her heir, Manling Uy Lim), *petitioners, vs.* **INTERNATIONAL EXCHANGE BANK,** *respondent.*

---

[*] Additional member per Raffle dated February 13, 2013.

[G.R. No. 166283. February 13, 2013]

GOLDKEY DEVELOPMENT CORPORATION, *petitioner, vs.* **INTERNATIONAL EXCHANGE BANK,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION LAW; PIERCING OF THE VEIL OF CORPORATE FICTION; CONCEPT.—** Basic is the rule in corporation law that a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Following this principle, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation. Nevertheless, this legal fiction may be disregarded if it is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.

2. **ID.; ID.; ID.; REQUISITES BEFORE A DIRECTOR OR OFFICER OF A CORPORATION MAY BE HELD PERSONALLY LIABLE FOR CORPORATE OBLIGATIONS.—** Before a director or officer of a corporation can be held personally liable for corporate obligations, however, the following requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.

3. **ID.; ID.; ID.; PIERCING OF THE VEIL OF CORPORATE FICTION IS NOT JUSTIFIED IN CASE AT BAR.—** In this case, petitioners are correct to argue that it was not alleged, much less proven, that Uy committed an act as an officer of Hammer that would permit the piercing of the corporate veil. A reading of the complaint reveals that with regard to Uy, iBank did not demand that she be held liable for the obligations of Hammer because she was a corporate officer who committed

bad faith or gross negligence in the performance of her duties such that the lifting of the corporate mask would be merited. What the complaint simply stated is that she, together with her errant husband Chua, acted as surety of Hammer, as evidenced by her signature on the Surety Agreement which was later found by the RTC to have been forged. Considering that the only basis for holding Uy liable for the payment of the loan was proven to be a falsified document, there was no sufficient justification for the RTC to have ruled that Uy should be held jointly and severally liable to iBank for the unpaid loan of Hammer. Neither did the CA explain its affirmation of the RTC's ruling against Uy. The Court cannot give credence to the simplistic declaration of the RTC that liability would attach directly to Uy for the sole reason that she was an officer and stockholder of Hammer. At most, Uy could have been charged with negligence in the performance of her duties as treasurer of Hammer by allowing the company to contract a loan despite its precarious financial position. Furthermore, if it was true, as petitioners claim, that she no longer performed the functions of a treasurer, then she should have formally resigned as treasurer to isolate herself from any liability that could result from her being an officer of the corporation. Nonetheless, these shortcomings of Uy are not sufficient to justify the piercing of the corporate veil which requires that the negligence of the officer must be so gross that it could amount to bad faith and must be established by clear and convincing evidence.

4. **ID.; ID.; ID.; WHERE A CORPORATION ACTED AS AN ALTER EGO OF ANOTHER CORPORATION, THE SEPARATE PERSONALITY OF THE TWO CORPORATIONS MAY BE BRUSHED ASIDE AND TREAT THEM AS ONE AND THE SAME.—** To the Court's mind, Goldkey's argument, that iBank is barred from pursuing Goldkey for the satisfaction of the unpaid obligation of Hammer because it had already limited its liability to the real estate mortgage, is completely absurd. Goldkey needs to be reminded that it is being sued not as a consequence of the real estate mortgage, but rather, because it acted as an alter ego of Hammer. Accordingly, they must be treated as one and the same entity, making Goldkey accountable for the debts of Hammer. In fact, it is Goldkey who is now precluded from denying the validity of the Real Estate Mortgage. In its Answer with Affirmative

Defenses and Compulsory Counterclaim, dated January 5, 1998, it already admitted that it acted as a third-party mortgagor to secure the obligation of Hammer to iBank. Thus, it cannot, at this late stage, question the due execution of the third-party mortgage. Similarly, Goldkey is undoubtedly mistaken in claiming that iBank is seeking to enforce an obligation of Chua. The records clearly show that it was Hammer, of which Chua was the president and a stockholder, which contracted a loan from iBank. What iBank sought was redress from Goldkey by demanding that the veil of corporate fiction be lifted so that it could not raise the defense of having a separate juridical personality to evade liability for the obligations of Hammer. Under a variation of the doctrine of piercing the veil of corporate fiction, when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or one and the same.

APPEARANCES OF COUNSEL

Mario E. Valderama for petitioners in both cases.
Macalino and Associates for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court are two consolidated petitions for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, assailing the August 16, 2004 Decision[1] and the December 2, 2004 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 69817 entitled "*International Exchange Bank v. Hammer Garments Corp., et al.*"

---

[1] *Rollo* (G.R. No. 166283), pp. 41-54; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justice Conrado M. Vazquez, Jr. and Associate Justice Fernanda Lampas Peralta of the Seventh Division.

[2] *Id.* at 56-57.

The Facts

On several occasions, from June 23, 1997 to September 3, 1997, respondent International Exchange Bank (*iBank*), granted loans to Hammer Garments Corporation (*Hammer*), covered by promissory notes and deeds of assignment, in the following amounts:[3]

Date of Promissory Note	Amount
June 23, 1997	₱ 5,599,471.33
July 24, 1997	2,700,000.00
July 25, 1997	2,300,000.00
August 1, 1997	2,938,505.04
August 1, 1997	3,361,494.96
August 14, 1997	980,000.00
August 21, 1997	2,527,200.00
August 21, 1997	3,146,715.00
September 3, 1997	1,385,511.75
Total	₱24,938,898.08

These were made pursuant to the Letter-Agreement,[4] dated March 23, 1996, between iBank and Hammer, represented by its President and General Manager, Manuel Chua *(Chua)* a.k.a. Manuel Chua Uy Po Tiong, granting Hammer a ₱ 25 Million-Peso Omnibus Line.[5] The loans were secured by a ₱ 9 Million-Peso Real Estate Mortgage[6] executed on July 1, 1997 by Goldkey Development Corporation (*Goldkey*) over several of its properties and a ₱ 25 Million-Peso Surety Agreement[7] signed by Chua and his wife, Fe Tan Uy (*Uy*), on April 15, 1996.

---

[3] *Id.* at 62, 325, 414-431.

[4] *Id.* at 106-107.

[5] *Id.* at 60.

[6] *Id.* at 432-433.

[7] *Id.* at 434-435.

As of October 28, 1997, Hammer had an outstanding obligation of ₱25,420,177.62 to iBank.[8] Hammer defaulted in the payment of its loans, prompting iBank to foreclose on Goldkey's third-party Real Estate Mortgage. The mortgaged properties were sold for ₱ 12 million during the foreclosure sale, leaving an unpaid balance of ₱ 13,420,177.62.[9] For failure of Hammer to pay the deficiency, iBank filed a Complaint[10] for sum of money on December 16, 1997 against Hammer, Chua, Uy, and Goldkey before the Regional Trial Court, Makati City *(RTC)*.[11]

Despite service of summons, Chua and Hammer did not file their respective answers and were declared in default. In her separate answer, Uy claimed that she was not liable to iBank because she never executed a surety agreement in favor of iBank. Goldkey, on the other hand, also denies liability, averring that it acted only as a third-party mortgagor and that it was a corporation separate and distinct from Hammer.[12]

Meanwhile, iBank applied for the issuance of a writ of preliminary attachment which was granted by the RTC in its December 17, 1997 Order.[13] The Notice of Levy on Attachment of Real Properties, dated July 15, 1998, covering the properties under the name of Goldkey, was sent by the sheriff to the Registry of Deeds of Quezon City.[14]

The RTC, in its Decision,[15] dated December 27, 2000, ruled in favor of iBank. While it made the pronouncement that the signature of Uy on the Surety Agreement was a forgery, it nevertheless held her liable for the outstanding obligation of

---

[8] *Id.* at 42, 60 and 350.

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

[10] *Id.* at 349-357.

[11] *Id.* at 321.

[12] *Id.* at 61-62.

[13] *Id.* at 43.

[14] *Id.* at 323 and 385.

[15] *Id.* at 60-69.

Hammer because she was an officer and stockholder of the said corporation. The RTC agreed with Goldkey that as a third-party mortgagor, its liability was limited to the properties mortgaged. It came to the conclusion, however, that Goldkey and Hammer were one and the same entity for the following reasons: (1) both were family corporations of Chua and Uy, with Chua as the President and Chief Operating Officer; (2) both corporations shared the same office and transacted business from the same place, (3) the assets of Hammer and Goldkey were co-mingled; and (4) when Chua absconded, both Hammer and Goldkey ceased to operate. As such, the piercing of the veil of corporate fiction was warranted. Uy, as an officer and stockholder of Hammer and Goldkey, was found liable to iBank together with Chua, Hammer and Goldkey for the deficiency of ₱13,420,177.62.

Aggrieved, the heirs of Uy and Goldkey *(petitioners)* elevated the case to the CA. On August 16, 2004, it promulgated its decision affirming the findings of the RTC. The CA found that iBank was not negligent in evaluating the financial stability of Hammer. According to the appellate court, iBank was induced to grant the loan because petitioners, with intent to defraud the bank, submitted a falsified Financial Report for 1996 which incorrectly declared the assets and cashflow of Hammer.[16] Because petitioners acted maliciously and in bad faith and used the corporate fiction to defraud iBank, they should be treated as one and the same as Hammer.[17]

Hence, these petitions filed separately by the heirs of Uy and Goldkey. On February 9, 2005, this Court ordered the consolidation of the two cases.[18]

The Issues

Petitioners raise the following issues:

---

[16] *Id.* at 46-47.

[17] *Id.* at 50.

[18] *Rollo* (G.R. No. 166282), p. 8a.

Whether or not a trial court, under the facts of this case, can go out of the issues raised by the pleadings;[19]

Whether or not there is guilt by association in those cases where the veil of corporate fiction may be pierced;[20] **and**

Whether or not the "alter ego" theory in disregarding the corporate personality of a corporation is applicable to Goldkey.[21]

Simplifying the issues in this case, the Court must resolve the following: (1) whether Uy can be held liable to iBank for the loan obligation of Hammer as an officer and stockholder of the said corporation; and (2) whether Goldkey can be held liable for the obligation of Hammer for being a mere alter ego of the latter.

The Court's Ruling

The petitions are partly meritorious.

Uy is not liable; The piercing of the veil of corporate fiction is not justified

The heirs of Uy argue that the latter could not be held liable for being merely an officer of Hammer and Goldkey because it was not shown that she had committed any actionable wrong[22] or that she had participated in the transaction between Hammer and iBank. They further claim that she had cut all ties with Hammer and her husband long before the execution of the loan.[23]

The Court finds in favor of Uy.

Basic is the rule in corporation law that a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Following this principle, obligations

---

[19] *Id.* at 22.

[20] *Id.* at 22.

[21] *Rollo* (G.R. No. 166283), p. 20.

[22] *Id.* at 253.

[23] *Id.* at 245-246.

incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation.[24] Nevertheless, this legal fiction may be disregarded if it is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.[25] This is consistent with the provisions of the Corporation Code of the Philippines, which states:

Sec. 31. Liability of directors, trustees or officers. — Directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

Solidary liability will then attach to the directors, officers or employees of the corporation in certain circumstances, such as:

1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; and (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;

2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;

3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or

---

[24] *Garcia v. Social Security Commission Legal and Collection*, G.R. No. 170735, December 17, 2007, 540 SCRA 456, 473-474.

[25] *Aratea v. Suico*, G.R. No. 170284, March 16, 2007, 518 SCRA 501, 507 citing *Prudential Bank v. Alviar*, 502 Phil. 595 (2005).

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[26]

Before a director or officer of a corporation can be held personally liable for corporate obligations, however, the following requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.[27]

While it is true that the determination of the existence of any of the circumstances that would warrant the piercing of the veil of corporate fiction is a question of fact which cannot be the subject of a petition for review on *certiorari* under Rule 45, this Court can take cognizance of factual issues if the findings of the lower court are not supported by the evidence on record or are based on a misapprehension of facts.[28]

In this case, petitioners are correct to argue that it was not alleged, much less proven, that Uy committed an act as an officer of Hammer that would permit the piercing of the corporate veil. A reading of the complaint reveals that with regard to Uy, iBank did not demand that she be held liable for the obligations of Hammer because she was a corporate officer who committed bad faith or gross negligence in the performance of her duties such that the lifting of the corporate mask would be merited. What the complaint simply stated is that she, together with her errant husband Chua, acted as surety of Hammer, as evidenced by her signature on the Surety Agreement which was later found by the RTC to have been forged.[29]

---

[26] *Uichico v. National Labor Relations Commission*, 339 Phil. 242, 252 (1997).

[27] *Francisco v. Mallen, Jr.*, G.R. No. 173169, September 22, 2010, 631 SCRA 118, 123.

[28] *Sarona v. National Labor Relations Commission*, G.R. No. 185280, January 18, 2012, 663 SCRA 394, 415.

[29] *Rollo* (G.R. No. 166283), pp. 64 and 351.

Considering that the only basis for holding Uy liable for the payment of the loan was proven to be a falsified document, there was no sufficient justification for the RTC to have ruled that Uy should be held jointly and severally liable to iBank for the unpaid loan of Hammer. Neither did the CA explain its affirmation of the RTC's ruling against Uy. The Court cannot give credence to the simplistic declaration of the RTC that liability would attach directly to Uy for the sole reason that she was an officer and stockholder of Hammer.

At most, Uy could have been charged with negligence in the performance of her duties as treasurer of Hammer by allowing the company to contract a loan despite its precarious financial position. Furthermore, if it was true, as petitioners claim, that she no longer performed the functions of a treasurer, then she should have formally resigned as treasurer to isolate herself from any liability that could result from her being an officer of the corporation. Nonetheless, these shortcomings of Uy are not sufficient to justify the piercing of the corporate veil which requires that the negligence of the officer must be so gross that it could amount to bad faith and must be established by clear and convincing evidence. Gross negligence is one that is characterized by the lack of the slightest care, acting or failing to act in a situation where there is a duty to act, wilfully and intentionally with a conscious indifference to the consequences insofar as other persons may be affected.[30]

It behooves this Court to emphasize that the piercing of the veil of corporate fiction is frowned upon and can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception.[31] As aptly explained in *Philippine National Bank v. Andrada Electric & Engineering Company*:[32]

---

[30] *Magaling v. Ong*, G.R. No. 173333, August 13, 2008, 562 SCRA 152, 169-170.

[31] *Kukan International Corporation v. Reyes*, G.R. No. 182729, September 29, 2010, 631 SCRA 596, 628.

[32] 430 Phil. 882 (2002).

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.[33]

Indeed, there is no showing that Uy committed gross negligence. And in the absence of any of the aforementioned requisites for making a corporate officer, director or stockholder personally liable for the obligations of a corporation, Uy, as a treasurer and stockholder of Hammer, cannot be made to answer for the unpaid debts of the corporation.

Goldkey is a mere alter ego of Hammer

Goldkey contends that it cannot be held responsible for the obligations of its stockholder, Chua.[34] Moreover, it theorizes that iBank is estopped from expanding Goldkey's liability beyond the real estate mortgage.[35] It adds that it did not authorize the execution of the said mortgage.[36] Finally, it passes the blame on to iBank for failing to exercise the requisite due diligence in properly evaluating Hammer's creditworthiness before it was extended an omnibus line.[37]

The Court disagrees with Goldkey.

There is no reason to discount the findings of the CA that iBank duly inspected the viability of Hammer and satisfied itself that the latter was a good credit risk based on the Financial Statement submitted. In addition, iBank required that the loan

---

[33] *Philippine National Bank v. Andrada Electric & Engineering Company*, 430 Phil. 882, 894 (2002).

[34] *Rollo* (G.R. No. 166283), p. 257.

[35] *Id.* at 260.

[36] *Id.* at 262.

[37] *Id.* at 234.

be secured by Goldkey's Real Estate Mortgage and the Surety Agreement with Chua and Uy. The records support the factual conclusions made by the RTC and the CA.

To the Court's mind, Goldkey's argument, that iBank is barred from pursuing Goldkey for the satisfaction of the unpaid obligation of Hammer because it had already limited its liability to the real estate mortgage, is completely absurd. Goldkey needs to be reminded that it is being sued not as a consequence of the real estate mortgage, but rather, because it acted as an alter ego of Hammer. Accordingly, they must be treated as one and the same entity, making Goldkey accountable for the debts of Hammer.

In fact, it is Goldkey who is now precluded from denying the validity of the Real Estate Mortgage. In its Answer with Affirmative Defenses and Compulsory Counterclaim, dated January 5, 1998, it already admitted that it acted as a third-party mortgagor to secure the obligation of Hammer to iBank.[38] Thus, it cannot, at this late stage, question the due execution of the third-party mortgage.

Similarly, Goldkey is undoubtedly mistaken in claiming that iBank is seeking to enforce an obligation of Chua. The records clearly show that it was Hammer, of which Chua was the president and a stockholder, which contracted a loan from iBank. What iBank sought was redress from Goldkey by demanding that the veil of corporate fiction be lifted so that it could not raise the defense of having a separate juridical personality to evade liability for the obligations of Hammer.

Under a variation of the doctrine of piercing the veil of corporate fiction, when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or one and the same.[39]

---

[38] *Id.* at 367-368.

[39] *General Credit Corporation v. Alsons Development and Investment Corporation*, 542 Phil. 219, 231 (2007).

While the conditions for the disregard of the juridical entity may vary, the following are some probative factors of identity that will justify the application of the doctrine of piercing the corporate veil, as laid down in *Concept Builders, Inc. v NLRC*:[40]

(1) Stock ownership by one or common ownership of both corporations;

(2) Identity of directors and officers;

(3) The manner of keeping corporate books and records, and

(4) Methods of conducting the business.[41]

These factors are unquestionably present in the case of Goldkey and Hammer, as observed by the RTC, as follows:

1. Both corporations are family corporations of defendants Manuel Chua and his wife Fe Tan Uy. The other incorporators and shareholders of the two corporations are the brother and sister of Manuel Chua (Benito Ng Po Hing and Nenita Chua Tan) and the sister of Fe Tan Uy, Milagros Revilla. The other incorporator/share holder is Manling Uy, the daughter of Manuel Chua Uy Po Tiong and Fe Tan Uy.

The stockholders of Hammer Garments as of March 23, 1987, aside from spouses Manuel and Fe Tan Uy are: Benito Chua, brother Manuel Chua, Nenita Chua Tan, sister of Manuel Chua and Tessie See Chua Tan. On March 8, 1988, the shares of Tessie See Chua Uy were assigned to Milagros T. Revilla, thereby consolidating the shares in the family of Manuel Chua and Fe Tan Uy.

2. Hammer Garments and Goldkey share the same office and practically transact their business from the same place.

3. Defendant Manuel Chua is the President and Chief Operating Officer of both corporations. All business transactions of Goldkey and Hammer are done at the instance of defendant Manuel Chua who is authorized to do so by the corporations.

The promissory notes subject of this complaint are signed by him as Hammer's President and General Manager. The third-party

---

[40] 326 Phil. 955 (1996).

[41] *Concept Builders, Inc. v. NLRC*, 326 Phil. 955, 965 (1996).

real estate mortgage of defendant Goldkey is signed by him for Goldkey to secure the loan obligation of Hammer Garments with plaintiff "iBank". The other third-party real estate mortgages which Goldkey executed in favor of the other creditor banks of Hammer are also signed by Manuel Chua.

4. The assets of Goldkey and Hammer are co-mingled. The real properties of Goldkey are mortgaged to secure Hammer's obligation with creditor banks.

The proceeds of at least two loans which Hammer obtained from plaintiff "iBank", purportedly to finance its export to Wal-Mart are instead used to finance the purchase of a manager's check payable to Goldkey. The defendants' claim that Goldkey is a creditor of Hammer to justify its receipt of the Manager's check is not substantiated by evidence. Despite subpoenas issued by this Court, Goldkey thru its treasurer, defendant Fe Tan Uy and or its corporate secretary Manling Uy failed to produce the Financial Statement of Goldkey.

5. When defendant Manuel Chua "disappeared", the defendant Goldkey ceased to operate despite the claim that the other "officers" and stockholders like Benito Chua, Nenita Chua Tan, Fe Tan Uy, Manling Uy and Milagros T. Revilla are still around and may be able to continue the business of Goldkey, if it were different or distinct from Hammer which suffered financial set back.[42]

Based on the foregoing findings of the RTC, it was apparent that Goldkey was merely an adjunct of Hammer and, as such, the legal fiction that it has a separate personality from that of Hammer should be brushed aside as they are, undeniably, one and the same.

WHEREFORE, the petitions are **PARTLY GRANTED.** The August 16, 2004 Decision and the December 2, 2004 Resolution of the Court of Appeals, in CA-G.R. CV No. 69817, are hereby **MODIFIED.** Fe Tan Uy is released from any liability arising from the debts incurred by Hammer from iBank. Hammer Garments Corporation, Manuel Chua Uy Po Tiong and Goldkey Development Corporation are jointly and severally liable to pay

---

[42] *Rollo* (G.R. No. 166283), pp. 66-67.

International Exchange Bank the sum of ₱13,420,177.62 representing the unpaid loan obligation of Hammer as of December 12, 1997 plus interest. No costs.

SO ORDERED.

*Velasco, Jr. (Chairperson), Abad, Villarama, Jr.,** and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173189. February 13, 2013]

JONATHAN I. SANG-AN, *petitioner, vs.* **EQUATOR KNIGHTS DETECTIVE AND SECURITY AGENCY, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; A CASH OR SURETY BOND IS NOT REQUIRED FOR THE FILING OF THE PETITION; PETITION FOR *CERTIORARI,* EXPLAINED.—** The requirement of a cash or surety bond as provided under Article 223 of the Labor Code only applies to appeals from the orders of the LA to the NLRC. It does not apply to special civil actions such as a petition for *certiorari* under Rule 65 of the Rules of Court. In fact, nowhere under Rule 65 does it state that a bond is required for the filing of the petition. A petition for *certiorari* is an original and independent action and is not part of the proceedings that resulted in the judgment or order assailed before the CA. It deals with the issue of jurisdiction, and may

---

* Designated additional member in lieu of Associate Justice Diosdado M. Peralta, per raffle, dated July 20, 2011.

be directed against an interlocutory order of the lower court or tribunal prior to an appeal from the judgment, or to a final judgment where there is no appeal or any plain, speedy or adequate remedy provided by law or by the rules.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; TO VALIDLY DISMISS AN EMPLOYEE, THE EMPLOYER MUST OBSERVE BOTH SUBSTANTIVE AND PROCEDURAL DUE PROCESS.—** In order to validly dismiss an employee, it is fundamental that the employer observe both substantive and procedural due process — the termination of employment must be based on a just or authorized cause and the dismissal can only be effected, after due notice and hearing. This Court finds that Equator complied with the substantive requirements of due process when Jonathan committed the two offenses.

3. **ID.; ID.; JUST CAUSE; SERIOUS MISCONDUCT; THE MISCONDUCT IS OF SUCH GRAVE AND AGGRAVATED CHARACTER AND NOT MERELY TRIVIAL OR UNIMPORTANT AND THE SAME MUST BE IN CONNECTION WITH THE EMPLOYEE'S WORK; DISMISSAL OF PETITIONER ON GROUND OF SERIOUS MISCONDUCT, UPHELD.—** Article 282(A) of the Labor Code provides that an employee may be dismissed on the ground of **serious misconduct** or willful disobedience of the lawful orders of his employer or representative in connection with his work. Misconduct is improper or wrongful conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such grave and aggravated character and not merely trivial or unimportant. It is also important that the misconduct be in connection with the employee's work to constitute just cause for his separation. By losing two firearms and issuing an unlicensed firearm, Jonathan committed serious misconduct. He did not merely violate a company policy; he violated the law itself (Presidential Decree No. 1866 or *Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for*

Certain Violations Thereof and for Relevant Purposes), and placed Equator and its employees at risk of being made legally liable. Thus, Equator had a valid reason that warranted Jonathan's dismissal from employment as Assistant Operation Manager.

4. **ID.; ID.; PROCEDURAL DUE PROCESS; TWO-WRITTEN NOTICE REQUIREMENT, DISCUSSED; NOT COMPLIED WITH.—** The Court, however, finds that Equator failed to observe the proper procedure in terminating Jonathan's services. x x x. Jurisprudence has expounded on the guarantee of due process, requiring the employer to furnish the employee with two written notices before termination of employment can be effected: a **first written notice** that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a **second written notice** which informs the employee of the employer's decision to dismiss him. In considering whether the charge in the first notice is sufficient to warrant dismissal under the second notice, the employer must afford the employee ample opportunity to be heard. A review of the records shows that Jonathan was not furnished with any written notice that informed him of the acts he committed justifying his dismissal from employment. The notice of suspension given to Jonathan only pertained to the first offense, *i.e.*, the loss of Equator's firearms under Jonathan's watch. With respect to his second offense (*i.e.*, the issuance of an unlicensed firearm to Equator's security guard — that became the basis for his dismissal), Jonathan was never given any notice that allowed him to air his side and to avail of the guaranteed opportunity to be heard. That Equator brought the second offense before the LA does not serve as notice because by then, Jonathan had already been dismissed.

5. **ID.; ID.; ID.; AN EMPLOYEE DISMISSED FOR A JUST CAUSE IS ENTITLED TO NOMINAL DAMAGES OF ₱30,000.00 WHERE HIS RIGHT TO PROCEDURAL DUE PROCESS HAS BEEN VIOLATED.—** In order to validly dismiss an employee, the observance of both substantive and procedural due process by the employer is a condition *sine qua non*. Procedural due process requires that the employee be given a notice of the charge against him, an ample opportunity to be heard, and a notice of termination. Since Jonathan had been dismissed in violation of his right to procedural due process

but for a just cause, Equator should pay him nominal damages of ₱30,000.00, in accordance with *Agabon v. NLRC*. The decision of the NLRC, although final, was brought to the CA on a petition for *certiorari* and was eventually nullified for grave abuse of discretion. When the CA ruled on the case, this Court had abandoned the ruling in *Serrano v. NLRC* in favor of the *Agabon* ruling.

APPEARANCES OF COUNSEL

Flores & Flores Law Office for petitioner.
Manolo M. Zerna for respondent.

D E C I S I O N

BRION, *J*.:

Before the Court is the petition for review on *certiorari*[1] filed by petitioner Jonathan I. Sang-an assailing the decision[2] dated September 29, 2005 and the resolution[3] dated May 29, 2006 of the Court of Appeals *(CA)* in CA-G.R. SP. No. 86677. The CA set aside the decision[4] dated December 15, 2003 of the National Labor Relations Commission (*NLRC*) and reinstated the decision[5] dated July 30, 2001 of Labor Arbiter Geoffrey P. Villahermosa (*LA*).

The Facts

Jonathan was the Assistant Operation Manager of respondent Equator Knights Detective and Security Agency, Inc. (*Equator*).

---

[1] Under Rule 45 of the Rules of Court; *rollo,* pp. 9-19.

[2] Penned by Associate Justice Pampio A. Abarintos, and concurred in by Associate Justices Vicente L. Yap and Enrico A. Lanzanas; *id.* at 124-130.

[3] *Id.* at 139-140.

[4] Penned by Commissioner Edgardo M. Enerlan, and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles; *id.* at 62-66.

[5] *Id.* at 41-45.

He was tasked, among others, with the duty of assisting in the operations of the security services; he was also **in charge of safekeeping Equator's firearms**.

On April 21, 2001, Equator discovered that **two firearms were missing from its inventory**. The investigation revealed that it was Jonathan who might have been responsible for the loss.[6] On April 24, 2001, Jonathan was **temporarily suspended from work** pending further investigation.

On May 8, 2001, while Jonathan was under suspension, a security guard from Equator was apprehended by policemen for violating the Commission on Elections' gun ban rule. The security guard stated in his affidavit[7] that **the unlicensed firearm had been issued to him by Jonathan**.

On May 24, 2001, Jonathan filed with the NLRC a **complaint for illegal suspension with prayer for reinstatement**.[8] In his position paper, however, he treated his case as one for illegal dismissal and alleged that he had been denied due process when he was dismissed.[9] Equator, on the other hand, argued that Jonathan's dismissal was not illegal but was instead for a just cause under Article 282 of the Labor Code.[10]

On July 30, 2001, the **LA rendered a decision**[11] **dismissing the complaint**. It declared that no illegal dismissal took place as Jonathan's services were terminated pursuant to a just cause. The LA found that Jonathan was dismissed due to the two infractions he committed:

> The basis for the termination of the complainant was first, when he was suspended when he issued a firearm [to] a security guard

---

[6] *Id.* at 38.

[7] *Id.* at 125.

[8] *Id.* at 23.

[9] *Id.* at 24-30.

[10] *Id.* at 35-37.

[11] *Supra* note 5.

and then replaced it with another one, then took the respondent['s] firearm with him and since then both firearms were lost. x x x.

x x x x x x x x x

His second offense which resulted in his being terminated was when he issued an unlicensed firearm to a Security Guard stationed in one of the business establishment[s] in Bais City which is a client of the respondents.

x x x x x x x x x

WHEREFORE, in the light of the foregoing, judgment is hereby rendered DISMISSING this case for lack of legal and factual basis.[12]

Jonathan appealed the LA's decision to the NLRC, contending that no charge had been laid against him; there was no hearing or investigation of any kind; and he was not given any chance or opportunity to defend himself.

The NLRC sustained the findings of the LA that there had been just cause for his dismissal. However, it found that Jonathan had been denied his right to due process when he was dismissed. It held that Equator's letter informing him of his temporary suspension until further notice did not satisfy the requirements of due process for a valid dismissal. Thus, the NLRC modified the LA's decision and ordered Equator to pay Jonathan backwages from April 24, 2001 until the date of the NLRC's decision. Equator moved for reconsideration but the NLRC denied the motion, prompting the filing of a petition for *certiorari* under Rule 65 of the Rules of Court with the CA. Equator argued that the NLRC committed grave abuse of discretion when it found that Jonathan had been denied procedural due process.

The CA reversed the decision of the NLRC, finding that Equator substantially complied with the procedural requirements of due process. It found that the letter given to Jonathan did not mean that he had been dismissed; rather, he was only suspended — the very reason for the case for illegal suspension Jonathan filed before the LA.

---

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

The CA found that Jonathan filed his complaint for illegal suspension on May 2, 2001. During the pendency of the illegal suspension case before the LA, Jonathan committed another offense on May 8, 2001 when he issued the unlicensed firearm to Equator's security guard. The CA found that Equator's June 7, 2001 position paper brought Jonathan's second offense before the LA for resolution; thus, Jonathan was not denied due process. **The CA reinstated the LA's decision dismissing Jonathan's complaint.** Jonathan filed a motion for reconsideration which the CA denied. He thereafter filed the present petition.

The Parties' Arguments

Jonathan contends that when Equator filed a petition for *certiorari* under Rule 65 of the Rules of Court alleging grave abuse of discretion by the NLRC, it failed to post a cash or surety bond as required by Article 223 of the Labor Code. Without complying with this condition, the petition for *certiorari* should have been dismissed outright. Also, Jonathan contends that the CA's findings of fact are contrary to the findings of fact by the NLRC. Since the findings of fact of quasi-judicial agencies are accorded respect and finality, he argues that the NLRC's decision must be sustained.

Equator, on the other hand, submits that the rule on posting of cash or surety bond as required by Article 223 of the Labor Code is not applicable in a petition for *certiorari* under Rule 65 of the Rules of Court. It also submits that both the LA and the NLRC concur in finding just cause for the dismissal of Jonathan; hence, Jonathan's subsequent dismissal is valid.

The Issues

Given the parties' arguments, the case poses the following issues for the Court's resolution:

1. whether the posting of a cash or surety bond is required for the filing of a petition for *certiorari* under Rule 65 of the Rules of Court with the CA; and
2. whether Jonathan was validly dismissed.

The Court's Ruling

We find the petition partially meritorious.

A cash/surety bond is not needed in a Petition for Certiorari under Rule 65

The requirement of a cash or surety bond as provided under Article 223 of the Labor Code only applies to appeals from the orders of the LA to the NLRC. It does not apply to special civil actions such as a petition for *certiorari* under Rule 65 of the Rules of Court. In fact, nowhere under Rule 65 does it state that a bond is required for the filing of the petition.

A petition for *certiorari* is an original and independent action and is not part of the proceedings that resulted in the judgment or order assailed before the CA. It deals with the issue of jurisdiction, and may be directed against an interlocutory order of the lower court or tribunal prior to an appeal from the judgment, or to a final judgment where there is no appeal or any plain, speedy or adequate remedy provided by law or by the rules.

Jonathan filed a complaint for illegal dismissal

Contrary to the findings of the CA, Jonathan was not merely suspended but was dismissed from the service. While Jonathan initially filed an action for illegal suspension, the position papers both parties filed treated the case as one for illegal dismissal. Jonathan alleged in his position paper that "the [r]espondent illegally SUSPENDED (DISMISSED) the x x x complainant[,]" and claimed that his dismissal lacked the required due process.[13] Similarly, Equator's position paper states that after the commission of the second offense on May 8, 2001, "**[management] made up a decision to dismiss** [Jonathan]."[14] Even the LA treated the case before him as "a case for illegal dismissal[.]"[15] In

---

[13] *Id.* at 25.

[14] *Id.* at 36.

[15] *Id.* at 41.

Equator's memorandum to this Court, it admitted that Jonathan was dismissed.[16]

We also find that Jonathan did not file his complaint for illegal suspension on May 2, 2001. The records of the case disclose that the receiving date stamped on the complaint is May 24, 2001. The date relied upon by the CA, May 2, 2001, was the date when the complaint was subscribed and sworn to before a notary public.[17] Due to the second offense committed by Jonathan on May 8, 2001, Equator decided to dismiss him. Therefore, when the LA tried the case, Jonathan had already been dismissed.

Equator failed to comply with the procedural due process

In order to validly dismiss an employee, it is fundamental that the employer observe both substantive and procedural due process — the termination of employment must be based on a just or authorized cause and the dismissal can only be effected, after due notice and hearing.[18]

This Court finds that Equator complied with the substantive requirements of due process when Jonathan committed the two offenses.

Article 282(A) of the Labor Code provides that an employee may be dismissed on the ground of **serious misconduct** or willful disobedience of the lawful orders of his employer or representative in connection with his work. Misconduct is improper or wrongful conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of

---

[16] *Id.* at 163.

[17] *Id.* at 23.

[18] See *Bughaw, Jr. v. Treasure Island Industrial Corporation*, G.R. No. 173151, March 28, 2008, 550 SCRA 307, 316-318, citing Articles 282 and 283 of the Labor Code; and *Challenge Socks Corporation v. Court of Appeals*, G.R. No. 165268, November 8, 2005, 474 SCRA 356, 363-364.

judgment. The misconduct, to be serious within the meaning of the Labor Code, must be of such grave and aggravated character and not merely trivial or unimportant. It is also important that the misconduct be in connection with the employee's work to constitute just cause for his separation.[19]

By losing two firearms and issuing an unlicensed firearm, Jonathan committed serious misconduct. He did not merely violate a company policy; he violated the law itself (Presidential Decree No. 1866 or *Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes*),[20] and placed Equator and its employees at risk of being made legally liable. Thus, Equator had a valid reason that warranted Jonathan's dismissal from employment as Assistant Operation Manager.

The Court, however, finds that Equator failed to observe the proper procedure in terminating Jonathan's services. Section 2, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code provides that:

Section 2. *Standard of due process: requirements of notice.* — In all cases of termination of employment, the following standards of due process shall be substantially observed.

I. For termination of employment based on just causes as defined in Article 282 of the Labor Code:

---

[19] *Philippine Long Distance Company v. The Late Romeo F. Bolso,* G.R. No. 159701, August 17, 2007, 530 SCRA 550, 560.

[20] Section 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms of Ammunition. — The penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him; and

(c) A written notice [of] termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[21]

Jurisprudence has expounded on the guarantee of due process, requiring the employer to furnish the employee with two written notices before termination of employment can be effected: a **first written notice** that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a **second written notice** which informs the employee of the employer's decision to dismiss him. In considering whether the charge in the first notice is sufficient to warrant dismissal under the second notice, the employer must afford the employee ample opportunity to be heard.

A review of the records shows that Jonathan was not furnished with any written notice that informed him of the acts he committed justifying his dismissal from employment. The notice of suspension given to Jonathan only pertained to the first offense, *i.e.*, the loss of Equator's firearms under Jonathan's watch. With respect to his second offense (*i.e.*, the issuance of an unlicensed firearm to Equator's security guard — that became the basis for his dismissal), Jonathan was never given any notice that allowed him to air his side and to avail of the guaranteed opportunity to be heard. That Equator brought the second offense before the LA does not serve as notice because by then, Jonathan had already been dismissed.

In order to validly dismiss an employee, the observance of both substantive and procedural due process by the employer

---

[21] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 209.

is a condition *sine qua non*. Procedural due process requires that the employee be given a notice of the charge against him, an ample opportunity to be heard, and a notice of termination.[22]

Since Jonathan had been dismissed in violation of his right to procedural due process but for a just cause, Equator should pay him nominal damages of ₱30,000.00, in accordance with *Agabon v. NLRC.*[23] The decision of the NLRC, although final, was brought to the CA on a petition for *certiorari* and was eventually nullified for grave abuse of discretion. When the CA ruled on the case, this Court had abandoned the ruling in *Serrano v. NLRC*[24] in favor of the *Agabon* ruling.

WHEREFORE, we hereby **PARTIALLY GRANT** the petition. The decision dated September 29, 2005 and the resolution dated May 29, 2006 of the Court of Appeals in CA-G.R. SP. No. 86677 are **AFFIRMED** with **MODIFICATION.** The employer, Equator Knights Detective and Security Agency, Inc., had sufficient basis to terminate the employment of Jonathan I. Sang-an whose dismissal is thus declared to be substantively valid. However, he was denied his right to procedural due process for lack of the required notice of dismissal. Consequently, Equator Knights Detective and Security Agency, Inc. is ordered to pay petitioner Jonathan I. Sang-an ₱30,000.00 as nominal damages for its non-compliance with procedural due process.

SO ORDERED.

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

---

[22] *New Puerto Commercial v. Lopez,* G.R. No. 169999, July 26, 2010, 625 SCRA 422, 423.

[23] 485 Phil. 248 (2004).

[24] 380 Phil. 416 (2000).

THIRD DIVISION

[G.R. No. 173357. February 13, 2013]

ROWENA DE LEON CRUZ, *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITIONS FOR REVIEW ON *CERTIORARI*; ONLY ERRORS OF LAW ARE GENERALLY REVIEWED BY THE COURT EXCEPT WHEN THE FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION, AS AFFIRMED BY THE COURT OF APPEALS, CONTRADICT THOSE OF THE LABOR ARBITER.—** As the decision of the Labor Arbiter has been appealed to the NLRC, the NLRC has the power to review the factual finding and resolution of the Labor Arbiter. It is a settled rule that only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of the decisions of the Court of Appeals. However, an exception to this rule is when the findings of the NLRC, as affirmed by the Court of Appeals, contradict those of the Labor A rbiter. In this case, the Labor Arbiter found that petitioner was illegally dismissed, while the NLRC reversed the finding of the Labor Arbiter, which reversal was affirmed by the Court of Appeals. In view of the discordance between the findings of the Labor Arbiter, on one hand, and the NLRC and the Court of A ppeals, on the other, there is a need for the Court, in the exercise of its equity jurisdiction, to review the factual findings and the conclusions based on the said findings. After a review of the records of the case, the Court agrees with the findings of the Court of Appeals and the NLRC that petitioner's dismissal was for a valid cause.

2. **LABOR AND SOCIAL LEGISLATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSE; GROSS NEGLIGENCE AND BREACH OF TRUST, EXPLAINED. —** Respondent dismissed petitioner from her employment on grounds of gross negligence and breach of trust reposed on her by respondent under Article 282 (b) and (c) of the Labor Code. Gross negligence connotes want or absence of or failure to exercise slight care

or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. On the other hand, the basic premise for dismissal on the ground of loss of confidence is that the employees concerned hold a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee.

3. **ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; THE TEST OF "SUPERVISORY" OR "MANAGERIAL STATUS" DEPENDS ON WHETHER A PERSON POSSESSES AUTHORITY TO ACT IN THE INTEREST OF HIS EMPLOYER AND WHETHER SUCH AUTHORITY IS NOT MERELY ROUTINARY OR CLERICAL IN NATURE, BUT REQUIRES THE USE OF INDEPENDENT JUDGMENT; APPLICABLE.—** The test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment. x x x. Petitioner holds a managerial status since she is tasked to act in the interest of her employer as she exercises independent judgment when she approves pre-termination of USD CDs or the withdrawal of deposits. In fact, petitioner admitted the exercise of independent judgment when she explained that as regards the pre-termination of the USD CDs of Uymatiao and Caluag, the transactions were approved on the basis of her independent judgment that the signatures in all the documents presented to her by the traders matched, as shown in her reply dated April 23, 2002 to respondent's memorandum asking her to explain the unauthorized preterminations/withdrawals of U.S. dollar deposits in the BPI Ayala Avenue Branch.

4. **ID.; ID.; ID.; ID.; AS LONG AS THERE IS SOME BASIS FOR SUCH LOSS OF CONFIDENCE, SUCH AS WHEN THE EMPLOYER HAS REASONABLE GROUND TO BELIEVE THAT THE EMPLOYEE CONCERNED IS RESPONSIBLE FOR THE PURPORTED MISCONDUCT, AND THE NATURE OF HIS PARTICIPATION THEREIN RENDERS HIM UNWORTHY OF THE TRUST AND CONFIDENCE DEMANDED OF HIS POSITION, A MANAGERIAL EMPLOYEE MAY BE DISMISSED.—** [P]etitioner was remiss in the performance of her duty to approve

the pre-termination of certificates of deposits by legitimate depositors or their duly-authorized representatives, resulting in prejudice to the bank, which reimbursed the monetary loss suffered by the affected clients. Hence, respondent was justified in dismissing petitioner on the ground of breach of trust. As long as there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position, a managerial employee may be dismissed. *Bristol Myers Squibb (Phils), Inc. v. Baban* reiterated: x x x [A]s a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him. In fine, the dismissal of petitioner on the ground of breach of trust or loss of trust and confidence is upheld.

APPEARANCES OF COUNSEL

Clarence D. Guerrero for petitioner.

Benedicto Verzosa Felipe Burkley and Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Court of Appeals' Decision[2] dated April 27, 2006 in CA-G.R. SP No. 92202,

---

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

[2] Penned by Associate Justice Andres B. Reyes, Jr. of the Special Tenth Division, with Associate Justices Rosmari D. Carandang and Japar B. Dimaampao; concurring, *rollo,* pp. 7-17.

and its Resolution dated July 13, 2006, denying petitioner's motion for reconsideration.

The Court of Appeals affirmed the Decision of the National Labor Relations Commission (NLRC), dated January 31, 2005, which reversed and set aside the Decision of the Labor Arbiter finding the dismissal of petitioner Rowena de Leon Cruz to be illegal. The NLRC dismissed petitioner's Complaint for lack of merit.

The facts are as follows:

Petitioner was hired by Far East Bank and Trust Company (FEBTC) in 1989. Upon the merger of FEBTC with respondent Bank of the Philippine Islands (BPI) in April 2000, petitioner automatically became an employee of respondent. Petitioner held the position of Assistant Branch Manager of the BPI Ayala Avenue Branch in Makati City, and she was in charge of the Trading Section.

On July 12, 2002, after 13 years of continuous service, respondent terminated petitioner on grounds of gross negligence and breach of trust. Petitioner's dismissal was brought about by the fraud perpetrated against three depositors, namely, Geoffrey L. Uymatiao, Maybel Caluag and Evelyn G. Avila, in respondent's Ayala Avenue Branch.

The fraud committed against Uymatiao, Caluag and Avila was narrated by the NLRC and the Court of Appeals as follows:

On June 2, 1997, Geoffrey Uymatiao deposited US$29,592.30 under a U.S. Dollar Certificate of Deposit (USD CD) with respondent's Ayala Avenue Branch. As shown on the USD CD, it was supposed to mature a month after its issuance or on July 2, 1997. Since the USD CD was not presented by Uymatiao for redemption on July 2, 1997, it was automatically rolled over on a monthly basis by the bank with a new USD CD being issued for each rolled-over USD CD, and the rolled-over USD CD was kept by the bank.

On June 21, 2000, Uymatiao's USD CD, with due date on June 27, 2000, was pre-terminated and the proceeds thereof,

amounting to US$34,358.03, was credited to an account opened in the name of Uymatiao by means of an Instruction Sheet. However, it was not Uymatiao who pre-terminated the last USD CD, as the prior USD CD was still in his possession. When Uymatiao discovered the fraud, he immediately wrote respondent a letter complaining that he was not the one who pre-terminated the account. Upon investigation, it turned out that Uymatiao's signature was forged and intercalated in the records of BPI Ayala Avenue Branch. Moreover, it was petitioner who approved the pre-termination of Uymatiao's USD CD and the withdrawal of the proceeds thereof.

Uymatiao also had a U.S. Dollar Savings Account. For a time, his savings account was dormant. However, on June 23, 2003, the account was reactivated, without Uymatiao's consent, through an alleged Instruction Sheet bearing the forged signature of Uymatiao and a spurious passbook. On the same date that it was reactivated, the amount of US$15,000.00 was withdrawn. On July 7, 2002, the amount of US$3,500.00 was again withdrawn from Uymatiao's account.

Uymatiao complained about the illegal withdrawal. An investigation revealed that the Letter of Instruction, which was used to reactivate the account, was a forgery. Moreover, it was found that petitioner was the one who approved the reactivation and withdrawal of money from Uymatiao's account.

The second defrauded depositor, Maybel Caluag, deposited US$5,848.30 under a USD CD, which was supposed to mature on February 11, 2000. The automatic roll-over of Caluag's USD CD would have continued, but on July 24, 2000, the same was pre-terminated and the proceeds thereof, amounting to US$6,006.58, was credited to an account opened in the name of Caluag by means of an Instruction Sheet. The amount was subsequently withdrawn.

On July 28, 2000, Caluag discovered the fraud and complained that she did not pre-terminate her USD CD. She said that she was in Japan on July 24, 2000 and she did not authorize anyone to pre-terminate her account. She presented the original certificate of deposit issued to her to prove that she did not have her account

pre-terminated. Upon investigation, it was found that petitioner was the one who approved the pre-termination of Caluag's account.

The third defrauded depositor, Evelyn Avila, had a balance of US$20,575.12 in her U.S. Dollar Savings Account as of March 31, 2000. On July 27, 2000, it was made to appear that Avila withdrew the balance from her account. On February 28, 2001, Avila discovered the illegal withdrawal and complained to respondent about it. She said that she was in Australia on July 27, 2000 when the withdrawal from her account was made. An investigation later showed that it was petitioner who approved the withdrawal from Avila's account.

On April 19, 2002, BPI Vice-President Edwin S. Ragos issued a memorandum[3] directing petitioner to explain within 24 hours the aforementioned unauthorized pre-terminations/withdrawals of US dollar deposits at the BPI Ayala Avenue Branch.

In petitioner's reply,[4] she asserted that she followed the bank procedure/policy on pre-termination of accounts, opening of transitory accounts and reactivation of dormant accounts. She explained that upon verifying the authenticity of the signatures of the depositors involved, she approved the withdrawals from certain accounts of these clients. With regard to the pre-termination of Uymatiao's USD CD, petitioner claimed that the Trader presented to her what she believed was an original and genuine client copy of the certificate of deposit, the surrender of which caused the issuance of a new USD CD.

Moreover, petitioner stated that at the time the alleged fraudulent transactions took place, she was not yet an Assistant Manager, but only a Cash II Officer of the branch, still operating under the FEBTC set-up. As such, she was in charge of overseeing and supervising all the transactions in the Trading Section, among other departments. Hence, her responsibilities required her only to bring out signature card files from the vault to the Trading

---

[3] CA *rollo*, pp. 57-58.

[4] Letter dated April 23, 2002, *id.* at 59-63.

Section and to ensure that these files were returned to the vault at the close of banking hours.

On May 22, 2002, an administrative hearing was held to give petitioner an opportunity to explain her side of the controversy.

On July 10, 2002, a notice of termination[5] was issued informing petitioner of her dismissal effective July 12, 2002 on grounds of gross negligence and breach of trust for the following acts: (1) allowing the issuance of USD CDs under the bank's safekeeping to an impostor without valid consideration; (2) allowing USD CD pre-terminations based on such irregularly released certificates; and (3) allowing withdrawals by third parties from clients' accounts, which resulted in prejudice to the bank.

Petitioner filed an appeal before BPI President Xavier Loinaz, but her appeal was denied.

The aforementioned incidents of fraud resulted in the dismissal of three officers, including petitioner, one trader; the suspension of two officers and one trader, and the reprimand of one teller.[6]

Thereafter, petitioner filed a Complaint for illegal dismissal against respondent and its officers with the Arbitral Office of the NLRC.

In her Position Paper, petitioner alleged that her employment record as an officer and staff had always been beyond par and was not tainted with any fraud or anomaly. When the incidents took place, she was barely two months as Service Officer of the Ayala Avenue Branch's Trading Section, and she was hardly familiar with any bank client, not to mention the enormous volume of transactions handled by the said BPI branch. Being new in her position, she had yet to adjust to the system in place. Nonetheless, she followed the policies and procedural control prior to affixing her initials as approving authority; hence, petitioner asserted that her dismissal was grossly disproportionate as a penalty.

---

[5] *Id.* at 64.

[6] Respondent's Memorandum, *rollo*, p. 124.

In respondent's Position Paper, respondent asserted that petitioner's dismissal is legal; hence, petitioner has no cause of action against it. Respondent stated that there is no question that the fraudulent incidents, which affected its three depositors, namely, Uymatiao, Caluag and Avila, happened in its Ayala Avenue Branch, and that the fraudulent transactions were approved by petitioner as borne out by her signature on the documents allowing the pre-termination of certificates of dollar deposits and allowing the withdrawal of dollar deposits from the respective savings account of the affected depositors. Respondent stated that in giving the aforementioned unauthorized pre-termination and withdrawal transactions her seal of approval, petitioner neglected to perform one, if not the most, basic banking requirement integral to these transactions, which is to see to it that the persons who effected the pre-termination and cancellation of the USD CDs and who made the withdrawals from the U.S. dollar savings deposits and received the proceeds thereof were really the depositors themselves, namely, Uymatiao, Caluag and Avila. According to respondent, as it happened, respondent never exerted any effort to require such persons to produce satisfactory identification, which was the reason the aforementioned incidents of fraud were successfully carried out. If it had been her own money that was involved, petitioner would have asked for more than what was expected of her in this case, which was simply to ask for satisfactory identification from the respective person effecting the pre-termination of the certificate of deposit and making the withdrawal. Hence, respondent submitted that petitioner's dismissal on grounds of gross negligence and breach of trust, resulting in the substantial monetary loss to respondent in the sum of US$81,492.39, which it reimbursed to the affected depositors, is legal and valid.

In a Decision[7] dated April 1, 2004, the Labor Arbiter held that the dismissal of petitioner was illegal. The dispositive portion of the decision reads:

WHEREFORE, decision is hereby rendered declaring the dismissal of complainant Rowena Cruz illegal such that respondent Bank of

[7] *Rollo*, pp. 61-76.

the Philippine Islands is hereby ordered to reinstate her to her former or substantially equivalent position without loss of seniority rights and other privileges and to pay her backwages and attorney's fees in the amount of SIX HUNDRED THIRTY-NINE THOUSAND ONE HUNDRED EIGHTY-SIX PESOS AND 16/100 (₱639,186.16).[8]

The Labor Arbiter held that petitioner cannot be considered a managerial employee, and that her dismissal on grounds of gross negligence and breach of trust was unjustified.

On appeal, the NLRC reversed and set aside the Decision of the Labor Arbiter, and it entered a new decision dismissing petitioner's Complaint for lack of merit.[9]

The NLRC stated that the evidence showed that the pre-termination of the accounts of the depositors involved and the withdrawal of money from such accounts were with the approval of petitioner. A stamp of approval given by a bank officer, especially in sensitive transactions like pre-termination of accounts and withdrawal of money, means that the corresponding documents are in order and the validity of such documents had been verified. Otherwise, there would be no integrity in the approval of these transactions, considering that approval is the last act that would give effect to the transactions involved. According to the NLRC, the banking industry is such a sensitive one that the trust given by a bank's depositors must be protected at all times even by the lowest-ranking employee. As petitioner's signature appeared in the documents showing her approval of the pre-termination of the accounts of the depositors involved and the withdrawal of money from their accounts, the NLRC reversed the decision of the Labor Arbiter and ruled that petitioner's dismissal was for a valid cause.

Petitioner filed a petition for *certiorari* with the Court of Appeals, alleging that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction for the following: (1) Failing to consider with great respect and finality

---

[8] *Id.* at 76.

[9] Decision of the NLRC dated January 31, 2005, *id.* at 51-58.

the factual findings of the Labor Arbiter that petitioner followed all the policies and procedures in place and, hence, is not remiss in her duties; (2) concluding that mere approval of the transactions by petitioner in itself was a valid cause for dismissal; (3) concluding that petitioner could not be exculpated from liability by claiming that it is not incumbent upon her to call the depositors to personally appear before her and confirm their signatures when such is not required of petitioner; (4) not holding that the petitioner could not have committed gross negligence at the time the questioned transactions occurred, as she was not an Assistant Manager and her duties were that of a Cash II Officer; (5) not holding that there was insufficient factual and legal basis to terminate petitioner's employment; (6) ignoring the fundamental rule that all doubts must be resolved in favor of labor; (7) not affirming the award of backwages; and (8) not affirming the award of attorney's fees.[10]

On April 27, 2006, the Court of Appeals rendered a Decision,[11] the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the *Petition* is hereby **DENIED** and is accordingly **DISMISSED**. No costs.[12]

The Court of Appeals disagreed with petitioner's submission, in gist, that her termination was grossly disproportionate to the omission she committed. It stressed that petitioner was holding a highly confidential position, as Assistant Branch Manager, in the banking industry, which required extraordinary diligence among its employees. If petitioner was still unfamiliar with the terrain of her position, she should not have accepted it.

The Court of Appeals stated that petitioner is a managerial employee whose continuous employment is dependent on the trust and confidence reposed on her by respondent. After the incident wherein respondent lost thousands of U.S. dollars, it

---

[10] *Rollo*, pp. 12-14.

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

[12] *Id.* at 16. (Emphasis in the original)

could not be expected that the trust and confidence petitioner was previously enjoying could still be extended by respondent. Hence, the Court of Appeals held that petitioner's dismissal based on the ground of loss of trust and confidence was a valid exercise of management prerogative.

Petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution[13] dated July 13, 2006.

Petitioner filed this petition, and raised in her Memorandum the following issues:

I

WHETHER OR NOT THE FINDINGS OF FACT OF LABOR ARBITER LEDA ARE TO BE GIVEN MORE WEIGHT AND RESPECT GIVEN THE DOCTRINE LAID DOWN THAT THOSE FINDINGS OF FACT OF THE LABOR ARBITER, IN THE ABSENCE OF ANY FINDING OF ABUSE OF DISCRETION, ARE NOT TO BE DISTURBED ON APPEAL.

II

WHETHER OR NOT THE EVIDENCE SUBMITTED BY RESPONDENT BANK IS SUBSTANTIAL IN CHARACTER TO WARRANT THE DISMISSAL OF THE PETITIONER, GIVEN THE ELEMENTARY RULES IN LABOR THAT DOUBTS ARE TO BE RESOLVED IN FAVOR OF LABOR AND THE BURDEN OF PROOF THAT DISMISSAL IS FOR JUST CAUSE RESTS UPON THE EMPLOYER AND NOT ON THE WEAKNESS OF THE EVIDENCE FOR THE EMPLOYEE.

III

WHETHER OR NOT THE PENALTY OF DISMISSAL IS DISPROPORTIONATE TO OR IS IT COMMENSURATE TO THE ACTS ATTRIBUTED TO THE [PETITIONER] IN THE PERFORMANCE OF HER DUTIES.[14]

Petitioner contends that the factual finding of the Labor Arbiter is to be respected and given credence on appeal in the absence of abuse of discretion.

---

[13] *Id.* at 50.

[14] *Id.* at 156. (Emphasis ours).

As the decision of the Labor Arbiter has been appealed to the NLRC, the NLRC has the power to review the factual finding and resolution of the Labor Arbiter. It is a settled rule that only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of the decisions of the Court of Appeals.[15] However, an exception to this rule is when the findings of the NLRC, as affirmed by the Court of Appeals, contradict those of the Labor Arbiter.[16] In this case, the Labor Arbiter found that petitioner was illegally dismissed, while the NLRC reversed the finding of the Labor Arbiter, which reversal was affirmed by the Court of Appeals. In view of the discordance between the findings of the Labor Arbiter, on one hand, and the NLRC and the Court of Appeals, on the other, there is a need for the Court, in the exercise of its equity jurisdiction, to review the factual findings and the conclusions based on the said findings.[17]

After a review of the records of the case, the Court agrees with the findings of the Court of Appeals and the NLRC that petitioner's dismissal was for a valid cause.

Respondent dismissed petitioner from her employment on grounds of gross negligence and breach of trust reposed on her by respondent under Article 282 (b) and (c) of the Labor Code.

Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care.[18] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[19] On the other hand, the basic premise for dismissal on the ground of loss of confidence is that the employees concerned hold a position of trust and confidence.[20]

---

[15] *Lima Land, Inc. v. Cuevas*, G.R. No. 169523, June 16, 2010, 621 SCRA 36, 41.

[16] *Id.*; *Baron v. National Labor Relations Commission*, G.R. No. 182299, February 22, 2010, 613 SCRA 351, 359.

[17] *Baron v. National Labor Relations Commission*, *supra*, at 360.

[18] *Jumuad v. Hi-Flyer Food, Inc.*, G.R. No. 187887, September 7, 2011, 657 SCRA 288, 300.

[19] *Id.*

[20] *Id.* at 301.

It is the breach of this trust that results in the employer's loss of confidence in the employee.[21]

In this case, respondent avers that petitioner held the position of Assistant Manager in its Ayala Avenue Branch. However, petitioner contends that her position was only Cash II Officer.

The test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment.[22]

In respondent's Position Paper[23] before the NLRC and its Memorandum,[24] respondent stated that the responsibility of petitioner, among others, were as follows: (1) to maintain the integrity of the signature card files of certificates of deposits and/or detect spurious signature cards in the same files; (2) to ensure that releases of original CDS are done only against valid considerations and made only to the legitimate depositors or their duly authorized representatives; (3) to approve payments or withdrawals of deposits by clients to ensure that such withdrawals are valid transactions of the bank; and (4) to supervise the performance of certain rank-and-file employees of the branch.

Petitioner holds a managerial status since she is tasked to act in the interest of her employer as she exercises independent judgment when she approves pre-termination of USD CDs or the withdrawal of deposits. In fact, petitioner admitted the exercise of independent judgment when she explained that as regards the pre-termination of the USD CDs of Uymatiao and Caluag, the transactions were approved on the basis of her independent judgment that the signatures in all the documents presented to her by the traders matched, as shown in her reply[25] dated April

---

[21] *Id.*

[22] *Clientlogic Philippines, Inc. v. Castro*, G.R. 186070, April 11, 2011, 647 SCRA 524, 532.

[23] CA *rollo*, pp. 69-118.

[24] *Rollo*, pp. 121-142.

[25] Annex A, CA *rollo*, pp. 59-63.

23, 2002 to respondent's memorandum asking her to explain the unauthorized preterminations/withdrawals of U.S. dollar deposits in the BPI Ayala Avenue Branch.

Petitioner contends that respondent failed to submit substantial evidence to warrant a conclusion that she committed acts amounting to willful breach of trust and gross negligence. Petitioner submits that although she approved the fraudulent pre-termination of the accounts involved as well as the withdrawal of money from the accounts, before she affixed her signature on the questioned transactions, she followed office procedures by requiring the presentation of the original certificate on file with the branch bearing the client's signatures as proof that he holds the original in his possession, withdrawal slips, which when matched by her (petitioner) with the signature card on file with the branch, were found to be all the same. Hence, all required signatures matched before she (petitioner) gave her approval. According to petitioner, per respondent's policy, the signature card on file is the most exacting requirement in branch operations; hence, even when an identification card is required from the bank's client, the basis of approval would still be the signature card on file with the branch. Moreover, petitioner reasons that she was barely two months with the BPI Ayala Avenue Branch when the questioned transactions occurred. She asserts that she had no participation in the insertion of spurious signature cards which was done prior to her designation as Cash II Officer of the Ayala Avenue Branch.

Respondent counters that investigation disclosed that in approving the respective pre-termination transactions of Uymatiao and Caluag, no sincere effort was made by petitioner to properly identify the person or persons presenting the certificates of deposit for pre-termination. In other words, petitioner did not see to it that it was really Uymatiao or Caluag who was pre-terminating his/her USD CD. Neither did petitioner require that the original certificates of time deposit, which were supposed to be in the possession of Uymatiao and Caluag, be surrendered in exchange for the rolled-over certificates which were pre-terminated.

The Court notes that petitioner admitted that she did not call the depositors to appear before her, although she performed other procedures to determine whether the subject transactions were with the depositors' authorization.[26] Petitioner did not determine if it was really Uymatiao and Caluag who were pre-terminating their respective USD CD, as she based the identification of the said clients from their matching signatures on the original certificate on file with the branch, withdrawal slips and signature cards. Moreover, as stated by respondent, petitioner did not require that the original certificates of time deposit in the possession of Uymatiao and Caluag be surrendered to the bank when the rolled-over certificates were pre-terminated. If petitioner took the precaution to identify that it was really Uymatiao and Caluag who were pre-terminating their respective USD CD, and required that Uymatiao and Calaug surrender their respective original certificates of time deposit in their possession upon pre-termination of the rolled-over certificates, the fraud could have been averted.

In that regard, petitioner was remiss in the performance of her duty to approve the pre-termination of certificates of deposits by legitimate depositors or their duly-authorized representatives, resulting in prejudice to the bank, which reimbursed the monetary loss suffered by the affected clients. Hence, respondent was justified in dismissing petitioner on the ground of breach of trust. As long as there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position, a managerial employee may be dismissed.[27]

Bristol Myers Squibb (Phils), Inc. v. Baban[28] reiterated:

---

[26] Petition for *Certiorari*, *rollo*, p. 2.

[27] *Jumuad v. Hi-Flyer Food, Inc.*, *supra* note 18, at 302-303, citing *Lima Land, Inc. v. Cuevas*, *supra* note 15, at 470.

[28] G.R. No. 167449, December 17, 2008, 574 SCRA 198.

x x x [A]s a general rule, employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him.[29]

In fine, the dismissal of petitioner on the ground of breach of trust or loss of trust and confidence is upheld.

WHEREFORE, the petition is **DENIED.** The Court of Appeals' Decision dated April 27, 2006 in CA-G.R. SP No. 92202, and its Resolution dated July 13, 2006 are hereby **AFFIRMED.**

No costs.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

SPECIAL FIRST DIVISION

[G.R. No. 175602. February 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PO2 EDUARDO VALDEZ and EDWIN VALDEZ,** *accused-appellants.*

---

[29] *Id.* at 208-209, citing *Atlas Fertilizer Corporation v. National Labor Relations Commission*, G.R. No. 120030, June 17, 1997, 273 SCRA 551.

SYLLABUS

REMEDIAL LAW; APPEALS; EFFECT OF APPEAL BY ANY OF SEVERAL ACCUSED; A FAVORABLE JUDGMENT OBTAINED BY A CONSPIRATOR FROM THE COURT, DOWNGRADING THE CRIME COMMITTED FROM MURDER TO HOMICIDE AND PRESCRIBING LIGHTER PENALTIES IN THE FORM OF INDETERMINATE SENTENCE, APPLIES TO HIS CO-CONSPIRATOR WHO WITHDREW HIS APPEAL.— We grant the plea for reduction of Edwin's sentences. The final judgment promulgated on January 18, 2012 downgraded the crimes committed by Eduardo from three counts of murder to three counts of homicide, and consequently prescribed lighter penalties in the form of indeterminate sentences. As a result, Eduardo would serve only an indeterminate sentence of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum, under which he can qualify for parole in due course by virtue of the *Indeterminate Sentence Law*, instead of suffering the indivisible penalty of *reclusion perpetua* for each count. On his part, Edwin cannot be barred from seeking the application to him of the downgrading of the crimes committed (and the resultant lighter penalties) despite the finality of his convictions for three counts of murder due to his withdrawal of his appeal. The downgrading of the crimes committed would definitely be favorable to him. Worth pointing out is that to deny to him the benefit of the lessened criminal responsibilities would be highly unfair, considering that this Court had found the two accused to have acted in concert in their deadly assault against the victims, warranting their equal liabiliy under the principle of conspiracy. We grant Edwin's plea based on Section 11(a), Rule 122 of the *Rules of Court,* which relevantly provides: Section 11. *Effect of appeal by any of several accused*. — (a) **An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.** x x x In this connection, the Court has pronounced in *Lim v. Court of Appeals* that the benefits of this provision extended to all the accused, regardless of whether they appealed or not.

APPEARANCES OF COUNSEL

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

RESOLUTION

BERSAMIN, *J.*:

The two accused were tried for three counts of murder by the Regional Trial Court (RTC), Branch 86, in Quezon City. On January 20, 2005, after trial, the RTC convicted them as charged, prescribed on each of them the penalty of *reclusion perpetua* for each count, and ordered them to pay to the heirs of each victim ₱93,000.00 as actual damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages.

The Court of Appeals (CA) upheld the RTC on July 18, 2006, subject to the modification that each of the accused pay to the heirs of each victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱25,000.00 as exemplary damages, plus costs of suit.

The two accused then came to the Court on final appeal, but on May 9, 2007, Edwin Valdez filed a *motion to withdraw appeal*, which the Court granted on October 10, 2007, thereby deeming Edwin's appeal closed and terminated.[1]

On January 18, 2012, the Court promulgated its judgment on the appeal of PO2 Eduardo Valdez, finding him guilty of three counts of homicide, instead of three counts of murder, and meting on him for each count of homicide the indeterminate sentence of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum,[2] to wit:

WHEREFORE, the decision of the Court of Appeals promulgated on July 18, 2006 is MODIFIED by finding PO2 Eduardo Valdez

---

[1] *Rollo,* p. 57.

[2] *Id.* at 81.

guilty beyond reasonable doubt of three counts of HOMICIDE, and sentencing him to suffer for each count the indeterminate sentence of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum; and to pay to the respective heirs of the late Ferdinand Sayson, Moises Sayson, Jr., and Joselito Sayson the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages.

The accused shall pay the costs of suit.

SO ORDERED.

Subsequently, Edwin sent to the Court Administrator a self-explanatory letter[3] dated March 12, 2012, where he pleaded for the application to him of the judgment promulgated on January 18, 2012 on the ground that the judgment would be beneficial to him as an accused. The letter reads as follows:

HON. MIDAS MARQUEZ
Court Administrator
Office of the Court Administrator
Supreme Court of the Philippines
Manila

SUBJECT: Re. Section 11 (a), Rule 122 of Rules of Court, Request for.

Your honor,

The undersigned most respectfully requesting through your Honorable office, assistance on the subject mentioned above.

I, Edwin and Eduardo, both surnamed *Valdez* were both charged before the Regional Trial Court, Branch 86, Quezon City for the entitled Crime of Murder in Criminal Case Nos. Q-00-90718 to Q-0090720, which convicted us to suffer the penalty of Reclusion Perpetua for each of the three (3) offense.

Then after the decision of the RTC Branch 86, the same was appealed to the Court of Appeals with CA-G.R. CR-HC No. 00876 and again on July 18, 2006 the Honorable Court of appeals Ninth Division issued a Decision AFFIRMED the questioned Decision with MODIFICATION.

---

[3] *Id*. at 87.

Only my Co-principal Accused EDUARDO V. VALDEZ enterposed appealed (sic) the Affirmatory Decision of the Honorable Court of Appeals to the Highest Tribunal with G.R. Nos. 175602. On my part, I decided to withdraw my appeal, because I believe that there is no more hope for me, but I was wrong when I read the Decision of the First Division of the Supreme Court, dated January 18, 2012 signed by the Chief Justice Honorable Renato C. Corona and finally I found hope.

And now I come to your Honorable Office through this letter to seek help and assistance that the Decision of the Supreme Court to my Brother *Eduardo V. Valdez* may also benefitted (*sic*) the undersigned through Section 11 (a) , Rule 122 of the Rules of Court.

"(a) An Appeal taken by [the] one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the Appellate Court is favorable and applicable to the latter: x x x"

Favorable Humanitarian consideration on this matter.

Thank you very much and more power, God Bless.

Respectfully yours

EDWIN V. VALDEZ

Through a comment filed on September 25, 2012,[4] the Solicitor General interposed no opposition to the plea for the reduction of Edwin's sentences for being in full accord with the *Rules of Court* and pertinent jurisprudence.

We grant the plea for reduction of Edwin's sentences.

The final judgment promulgated on January 18, 2012 downgraded the crimes committed by Eduardo from three counts of murder to three counts of homicide, and consequently prescribed lighter penalties in the form of indeterminate sentences. As a result, Eduardo would serve only an indeterminate sentence of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum, under which he can qualify for parole in due course by virtue of the *Indeterminate Sentence Law*,

---

[4] *Id*. at 101.

instead of suffering the indivisible penalty of *reclusion perpetua* for each count.

The Court rationalized the result as follows:

x x x The records show that the version of PO2 Valdez was contrary to the established facts and circumstances showing that he and Edwin, then armed with short firearms, had gone to the *jai alai* betting station of Moises to confront Jonathan Rubio, the teller of the betting booth then busily attending to bettors inside the booth; that because the accused were calling to Rubio to come out of the booth, Moises approached to pacify them, but one of them threatened Moises; *Gusto mo unahin na kita?;* that immediately after Moises replied: *Huwag!*, PO2 Valdez fired several shots at Moises, causing him to fall to the ground; that PO2 Valdez continued firing at the fallen Moises; that Ferdinand (another victim) rushed to aid Moises, his brother, but Edwin shot Ferdinand in the head, spilling his brains; that somebody shouted to Joselito (the third victim) to run; that Edwin also shot Joselito twice in the back; and that Joselito fell on a burger machine. The shots fired at the three victims were apparently fired from short distances.

The testimonial accounts of the State's witnesses entirely jibed with the physical evidence. Specifically, the medico-legal evidence showed that Ferdinand had a gunshot wound in the head; that two gunshot wounds entered Joselito's back and the right side of his neck; and that Moises suffered a gunshot wound in the head and four gunshot wounds in the chest. Also, Dr. Wilfredo Tierra of the NBI Medico-Legal Office opined that the presence of marginal abrasions at the points of entry indicated that the gunshot wounds were inflicted at close range. Given that physical evidence was of the highest order and spoke the truth more eloquently than all witnesses put together, the congruence between the testimonial recollections and the physical evidence rendered the findings adverse to PO2 Valdez and Edwin conclusive.

Thirdly, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit the felony. Proof of the actual agreement to commit the crime need not be direct because conspiracy may be implied or inferred from their acts. Herein, both lower courts deduced the conspiracy between the accused from the mode and manner in which they perpetrated the killings. We are satisfied that their deduction was warranted.

Based on the foregoing, PO2 Valdez cannot now avoid criminal responsibility for the fatal shooting by Edwin of Ferdinand and Joselito. Both accused were convincingly shown to have acted in concert to achieve a common purpose of assaulting their unarmed victims with their guns. Their acting in concert was manifest not only from their going together to the betting station on board a single motorcycle, but also from their joint attack that PO2 Valdez commenced by firing successive shots at Moises and immediately followed by Edwin's shooting of Ferdinand and Joselito one after the other. It was also significant that they fled together on board the same motorcycle as soon as they had achieved their common purpose.

To be a conspirator, one did not have to participate in every detail of the execution; neither did he have to know the exact part performed by his co-conspirator in the execution of the criminal acts. Accordingly, the existence of the conspiracy between PO2 Valdez and Edwin was properly inferred and proved through their acts that were indicative of their common purpose and community of interest.

And, fourthly, it is unavoidable for the Court to pronounce PO2 Valdez guilty of three homicides, instead of three murders, on account of the informations not sufficiently alleging the attendance of treachery.

Treachery is the employment of means, methods or forms in the execution of any of the crimes against persons which tend to directly and specially insure its execution, without risk to the offending party arising from the defense which the offended party might make. It encompasses a wide variety of actions and attendant circumstances, the appreciation of which is particular to a crime committed. Corollarily, the defense against the appreciation of a circumstance as aggravating or qualifying is also varied and dependent on each particular instance. Such variety generates the actual need for the state to specifically aver the factual circumstances or particular acts that constitute the criminal conduct or that qualify or aggravate the liability for the crime in the interest of affording the accused sufficient notice to defend himself.

It cannot be otherwise, for, indeed, the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions

of law, but by the actual recital of facts in the complaint or information. In *People v. Dimaano*, the Court elaborated:

> For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. **Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.** [emphasis supplied]

The averments of the informations to the effect that the two accused "with intent to kill, qualified with treachery, evident premeditation and abuse of superior strength did x x x assault, attack and employ personal violence upon" the victims "by then and there shooting [them] with a gun, hitting [them]" on various parts of their bodies "which [were] the direct and immediate cause of [their] death[s]" did not sufficiently set forth the facts and circumstances describing how treachery attended each of the killings. It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an

instrument to kill was not *per se* treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term *treachery* constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the informations.

x x x. The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. This requirement accords with the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice, x x x.

x x x x x x x x x

x x x. There being no circumstances modifying criminal liability, the penalty is applied in its medium period (*i.e.,* 14 years, 8 months and 1 day to 17 years and 4 months). Under the *Indeterminate Sentence Law,* the minimum of the indeterminate sentence is taken from *prision mayor*, and the maximum from the medium period of *reclusion temporal*. **Hence, the Court imposes the indeterminate sentence of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum for each count of homicide.**

WHEREFORE, the decision of the Court of Appeals promulgated on July 18, 2006 is **MODIFIED** by **finding PO2 Eduardo Valdez guilty beyond reasonable doubt of three counts of HOMICIDE, and sentencing him to suffer for each count the indeterminate sentence of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum;** and to pay to the respective heirs of the late Ferdinand Sayson, Moises Sayson, Jr., and Joselito Sayson the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages.

The accused shall pay the costs of suit.

SO ORDERED.[5] (Emphasis supplied)

---

[5] *Id*. at 72-79.

On his part, Edwin cannot be barred from seeking the application to him of the downgrading of the crimes committed (and the resultant lighter penalties) despite the finality of his convictions for three counts of murder due to his withdrawal of his appeal. The downgrading of the crimes committed would definitely be favorable to him. Worth pointing out is that to deny to him the benefit of the lessened criminal responsibilities would be highly unfair, considering that this Court had found the two accused to have acted in concert in their deadly assault against the victims, warranting their equal liabiliy under the principle of conspiracy.

We grant Edwin's plea based on Section 11(a), Rule 122 of the *Rules of Court*, which relevantly provides:

Section 11. *Effect of appeal by any of several accused.* — (a) **An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.**

x x x x x x x x x

In this connection, the Court has pronounced in *Lim v. Court of Appeals*[6] that the benefits of this provision extended to all the accused, regardless of whether they appealed or not, to wit:

As earlier stated, both petitioner and the OSG laterally argue that in the event of Guingguing's acquittal, petitioner should likewise be acquitted, based on Rule 122, Section 11(a) of the Revised Rules of Criminal Procedure, as amended, which states:

SEC. 11. Effect of appeal by any of several accused. —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

Private respondent however, contends that said provision is not applicable to petitioner inasmuch as he appealed from his conviction, and the provision states that a favorable judgment shall be applicable only to those who *did not appeal*.

A literal interpretation of the phrase "*did not appeal*," as espoused by private respondent, will not give justice to the purpose of the

[6] G.R. No. 147524, June 20, 2006, 491 SCRA 385.

provision. It should be read in its entirety and should not be myopically construed so as to defeat its reason, *i.e.*, to benefit an accused who did not join in the appeal of his co-accused in case where the appellate judgment is favorable. In fact, several cases rendered by the Court applied the foregoing provision without regard as to the filing or non-filing of an appeal by a co-accused, so long as the judgment was favorable to him.

In *People v. Artellero*, the Court extended the acquittal of Rodriguez's co-accused to him despite the withdrawal of his appeal, applying the Rule 122, Section 11(a), and considering that the evidence against both are inextricably linked, to wit:

> Although it is only appellant who persisted with the present appeal, the well-established rule is that an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties. The records show that Rodriguez had withdrawn his appeal due to financial reasons. However, Section 11 (a) of Rule 122 of the Rules of Court provides that "[a]n appeal taken by one or more [of] several accused shall not affect those who did not appeal, except insofar as the judgment of the appellant court is favorable and applicable to the latter." As we have elucidated, the evidence against and the conviction of both appellant and Rodriguez are inextricably linked. Hence, appellant's acquittal, which is favorable and applicable to Rodriguez, should benefit the latter.

In *People v. Arondain*, the Court found accused Arondain guilty only of homicide. Such verdict was applied to his co-accused, Jose Precioso, who was previously found guilty by the trial court of robbery with homicide, despite the fact that Precioso appealed but failed to file an appellant's brief. The Court also modified Precioso's civil liability although the additional monetary award imposed on Arondain was not extended to Precioso since it was not favorable to him and he did not pursue the appeal before the Court.

In *People v. De Lara*, Eduardo Villas, together with several co-accused, were found by the trial court guilty of forcible abduction. During pendency of the review before the Court, Villas withdrew his appeal, hence his conviction became final and executory. Thereafter, the Court found Villas' co-accused guilty only of grave coercion. Applying Rule 122, Section 11(a), the Court also found Villas guilty of the lesser offense of grave coercion since it is beneficial to him.

In *People v. Escaño*, the Court granted a motion filed by accused Julian Deen Escaño, praying that the Court's Decision dated January 28, 2000, acquitting his co-accused Virgilio T. Usana and Jerry C. Lopez in Criminal Case No. 95-936 for violation of Section 4, Article II of Republic Act No. 6425, as amended, be applied to him. Escaño originally filed a Notice of Appeal with the trial court but later withdrew the same.

In the foregoing cases, all the accused appealed from their judgments of conviction but for one reason or another, the conviction became final and executory. Nevertheless, the Court still applied to them the favorable judgment in favor of their co-accused. The Court notes that the Decision dated September 30, 2005 in G.R. No. 128959 stated, "the verdict of guilt with respect to Lim [herein petitioner] had already become final and executory." In any event, the Court cannot see why a different treatment should be given to petitioner, given that the judgment is favorable to him and considering further that the Court's finding in its Decision dated September 30, 2005 specifically stated that "the publication of the subject advertisement by petitioner and Lim cannot be deemed by this Court to have been done with actual malice."[7]

ACCORDINGLY, the Court **GRANTS** the plea of **EDWIN VALDEZ** for the application to him of the judgment promulgated on January 18, 2012 finding **PO2 EDUARDO VALDEZ** guilty of three counts of homicide, and sentencing him to suffer for each count the indeterminate sentence of 10 years of *prision mayor* as minimum to 17 years of *reclusion temporal* as maximum, and to pay to the respective heirs of the late Ferdinand Sayson, the late Moises Sayson, Jr., and the late Joselito Sayson the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages for each count.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), del Castillo, Villarama, Jr., and *Leonen,*[*] *JJ.,* concur.

---

[7] *Id*. at 393-395.

[*] Vice Chief Justice Renato C. Corona, per Section 7, Rule II of the *Internal Rules of the Supreme Court*.

SECOND DIVISION

[G.R. No. 188659. February 13, 2013]

HEIRS OF MANUEL H. RIDAD, APOLINARIO G. BACTOL, EMERITA C. GULINAO and LYDIA S. JUSAY, *petitioners, vs.* **GREGORIO ARANETA UNIVERSITY FOUNDATION,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SEPARATION PAY; ONE WHO PLEADS PAYMENT HAS THE BURDEN OF PROVING IT, AND EVEN WHERE THE EMPLOYEES MUST ALLEGE NON-PAYMENT, THE GENERAL RULE IS THAT THE BURDEN RESTS ON THE EMPLOYER TO PROVE PAYMENT, RATHER THAN ON THE EMPLOYEES TO PROVE NON-PAYMENT; RATIONALE.—** Well-settled is the rule that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which he alleged that the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employees to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents — which will show that overtime, differentials, service incentive leave, and other claims of the worker have been paid — are not in the possession of the worker but in the custody and absolute control of the employer.

2. **ID.; ID.; ID.; ID.; PETITIONERS WERE DULY PAID THEIR SEPARATION PAY IN AMOUNTS MORE THAN WHAT THEY ARE ENTITLED TO RECEIVE UNDER THE LAW.—** The actual amounts given by GAUF were x x x more than the amounts mandated by law. As to whether these amounts were given to petitioners, GAUF insisted that they have in fact fully settled these obligations through offsetting of

> receivables in accordance with the compromise agreement. While this agreement bears the seal of judicial approval, the enforcement of this agreement is another matter. The NLRC uncovered that matters pertaining to settlement in kind which involved several parcels of lands were not complied with because the titles to said lands were subject of then ongoing litigation and was later on rescinded by the trial court. Therefore, these amounts relating to receivables on parcel of lands cannot be given credit. However, the receivables pertaining to tuition fees remain uncontested. Petitioners never questioned these amounts and in fact, they argued before the Labor Arbiter that the tuition fees of their dependents "have been applied to their money claims, such as wage increases, but which were never paid." Thus, these tuition fee receivables can be offset to the separation pay due to the employees. x x x. It is therefore evident that GAUF had granted petitioners their separation pay in amounts more than what they are entitled to receive under the law. Thus, there was full compliance with the RRR Program for the payment of separation pay.

APPEARANCES OF COUNSEL

Ruga & Cardinal Law Offices for petitioners.
Cayetano Sebastian Ata Dado & Cruz for respondent.

D E C I S I O N

PEREZ, *J.*:

For review is the Decision[1] of the Special Former Ninth Division of the Court of Appeals dated 18 December 2008 which annulled and set aside the Decision[2] of the National Labor Relations Commission (NLRC) of 31 August 2004, as well as the Labor Arbiter's Decision[3] dated 30 September 2002.

---

[1] Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Amelita G. Tolentino and Monina Arevalo-Zenarosa, concurring. *Rollo,* pp. 29-47.

[2] Penned by Presiding Commissioner Lourdes C. Javier with Commissioners Tito F. Genilo and Ernesto C. Verceles, concurring. *Id.* at 245-254.

[3] Presided by Labor Arbiter Ermita T. Abrasaldo-Cuyuca. *Id.* at 198-212.

Three cases[4] had already been brought up to this Court in a span of 3 decades all stemming from the Reorganization, Retrenchment and Restructuring (RRR) Program implemented by respondent Gregorio Araneta University Foundation (GAUF) way back in 1984.

At that time, Cesar Mijares, then President of GAUF, wrote to then Minister of Labor and Employment Blas F. Ople requesting the approval of the RRR Program of GAUF. The latter approved the RRR Program with a reminder that the implementation thereof shall be instituted without prejudice to whatever benefits may have accrued in favor of the employees concerned. The RRR Program took effect on 1 January 1984.

The Court, in all its decisions in the GAUF cases, recognized the adoption of the RRR Program on the ground of serious business losses and financial reverses suffered by GAUF.

As just noted, the instant controversy traces its roots to the same RRR Program adopted by GAUF in 1984.

Petitioners were former officers and employees of GAUF, as below indicated, with the corresponding dates of hiring and retirement, basic salaries, and amount of retirement benefits received, to wit:

Employees	Last Position Held	Date of Hiring	Date of Retirement	Amount Received	Basic Salaries
Manuel Ridad	External Relations Officer	June 1, 1974	Oct. 16, 2000	₱193,359.50	₱14,217.61
Apolinario Bactol	Head of Engineering Services	Aug. 20, 1969	Jan. 16, 2001	₱268,103.49	₱16,548.71
Emerita Gulinao	Director of Physical Plant and Facilities and General Services	June 11, 1973	Nov. 11, 2000	₱337,917.97	₱24,846.92
Lydia Jusay	Dean of College of Education	June 1967	May 31, 2000	₱187,315.57	(none indicated)

---

[4] *Callangan v. National Labor Relations Commission*, 251 Phil. 791 (1989); *Lantion v. National Labor Relations Commission*, 260 Phil. 548 (1990); *Blancaflor v. National Labor Relations Commission*, G.R. No. 101013, 2 February 1993, 218 SCRA 366.

It appears that petitioners were retrenched in view of the RRR Program but were re-hired in January 1984. Consequently, GAUF set the reckoning period for the computation of petitioners' retirement benefits to January 1984. Section 374, Article CVI of GAUF's Manual of Policies provided for a computation of the retirement benefits as follows:

> Section 374. In addition to the above privileges and benefits, faculty members and non-academic personnel of the University further enjoy the following:
>
> Gratuity or Retirement — A gratuity or retirement is likewise extended by the University to all faculty members and employees who retire or resign from the University in accordance with the following schedule, the payment of which, shall be subject to availability of funds:
>
> Length of Service Benefits
>
> 7-9 years: 50% of monthly salary per year of service
> 10-12 years: 60% of monthly salary per year of service
> 13-15 years: 70% of monthly salary per year of service
> 16-18 years: 80% of monthly salary per year of service
> 19-21 years: 90% of monthly salary per year of service
> 22-24 years: 95% of monthly salary per year of service
> 25 years and up: 100% of monthly salary per year of service[5]

Petitioners signed individual quitclaims upon receipt of their retirement pay.

Claiming that the computation of their retirement benefits should be reckoned from the date of their original hiring, petitioners filed a Complaint before the Labor Arbiter. Petitioners alleged that they were not paid separation benefits during the implementation of the RRR Program. They likewise sought the inclusion of their monthly honorarium in the computation of their 13th month pay.

In its position paper, GAUF averred that pursuant to the RRR Program, petitioners were all separated from employment

---

[5] As quoted in the Position Paper of Petitioners before the Labor Arbiter. *Rollo*, p. 59.

in 1984 and paid their separation benefits in the form of off-setting of their outstanding obligations to GAUF such as tuition fees and the value of the lots in the Gonzales Estate area owned by GAUF and sold to petitioners. The said settlement was embodied in a compromise agreement.[6] GAUF added that petitioners were re-employed on 1 January 1984, hence this date should be the reckoning point for the purpose of computing the separation pay.

On 30 September 2002, the Labor Arbiter ruled, thus:

> WHEREFORE, judgment is rendered ordering respondent GREGORIO ARANETA FOUNDATION to pay all Complainants the balance of their retirement/separation benefit as follows:
>
> Manuel H. Ridad – ₱129,784.88
> Apolinario G. Bactol – ₱210,757.93
> Emerita C. Gulinao – ₱273,316.12
>
> The award of complainant Lydia Jusay will be computed the moment she submits proof of her monthly salary.
>
> Ten percent of the total award as attorney's fees.
>
> Other claims are dismissed for lack of merit.[7]

The Labor Arbiter's award of retirement pay pertained to the period when petitioners were originally hired until 31 December 1983 because he found that the records were bereft of any proof that the petitioners were paid their retirement benefits before 1 January 1984. The Labor Arbiter merely confirmed the existence of GAUF's receivables from petitioner consisting of tuition fees of the latter's dependents and the value of the lots sold by GAUF to respondents in the following amounts:

Name	Value of Lot	Receivables	Total
Manuel Ridad	₱1,613.06	₱10,788.66	₱12,391.72
Apolinario Bactol	11,887.92	9,036.10	20,924.01

---

[6] *Id.* at 189-194.

[7] *Id.* at 211-212.

Emerita Gulinao	6,478.07	8,517.25	14,995.32
Lydia Jusay	8,878.30	7,883.30	16,781.60[8]

The Labor Arbiter ruled that these receivables should be offset against the retirement benefits due to each employee. The Labor Arbiter also held that the honoraria received by petitioners are not considered as part of the basic salary for the computation of the 13th month pay. With respect to the retirement benefits of petitioners from 1 January 1984 until the effectivity of their retirement or separation, the Labor Arbiter approved the amount as computed and submitted by GAUF.

Both parties filed their respective appeals. The NLRC noted that GAUF failed to comply with the compromise agreement which embodied the settlement of all monetary claims of GAUF employees, including the sale of parcels of land owned by GAUF. The NLRC added that the titles of said parcels of land were rescinded by the trial court in a separate litigation. Nevertheless, the NLRC affirmed the Decision of the Labor Arbiter.

GAUF then appealed to the Court of Appeals. In the assailed 18 December 2008 Decision, the appellate court resolved to grant the petition of GAUF:

> **WHEREFORE,** the petition is **GRANTED**. Setting aside the NLRC's August 31, 2004 decision as well as the Labor Arbiter's decision dated September 30, 2002, the Complaint below is **DISMISSED** for being devoid of merit.[9]

The issue that went up to the Court of Appeals is whether or not the petitioners were paid separation benefits for services rendered for the period ending in 1984. Notably, the Court of Appeals pointed out that the Labor Arbiter's ruling on retirement benefits of petitioners from 1 January 1984 until the effectivity of their retirement or separation in 2000 was unassailed, thus, that aspect of the decision has already attained finality. For the

---

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

[9] *Id.* at 47.

service period under question, the appellate court upheld the validity of the compromise agreement. The appellate court emphasized that the Labor Arbiter recognized the compromise agreement when he offset the value of lots from the retirement benefits of petitioners.

Petitioners now seek the review of the Decision of the Court of Appeals, submitting the following grounds for our consideration:

-A-

THE COURT OF APPEALS HAS DECIDED NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT WHEN IT RULED THAT PETITIONERS WERE DEEMED TO HAVE BEEN SEVERED FROM THEIR EMPLOYMENT UPON THE IMPLEMENTATION OF RRR PROGRAM IN 1984[.]

-B-

THE COURT OF APPEALS HAS SERIOUSLY ERRED IN COMPLETELY DISREGARDING THE FINDINGS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION THAT PETITIONERS WERE NOT PAID THEIR SEPARATION BENEFITS DURING THE EFFECTIVE DATE OF THE RRR PROGRAM[.]

-C-

THE COURT OF APPEALS HAS GROSSLY MISCONSTRUED THE DECISION OF THE LABOR ARBITER AND MADE AN ERRONEOUS CONCLUSION THAT THE PETITIONERS' CLAIMS FOR THEIR RETIREMENT/BENEFITS IN 1984 WERE MADE SUBJECT OF A COMPROMISE AGREEMENT OR CONTRACT TO SELL.[10]

There is no question about the validity of the RRR Program implemented in 1984. Petitioners however argue that they could not be considered severed from their employment in 1984 because they were not paid separation benefits during the implementation of the RRR program. To the contrary, GAUF insists that petitioners received in full their retirement benefits.

[10] *Id.* at 17.

Well-settled is the rule that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which he alleged that the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employees to prove non-payment.[11] The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents — which will show that overtime, differentials, service incentive leave, and other claims of the worker have been paid — are not in the possession of the worker but in the custody and absolute control of the employer.[12]

In unison, the Labor Arbiter and the NLRC concluded that petitioners were not paid their separation benefits. The Court of Appeals overturned the factual findings of these labor tribunals and found that petitioners were duly paid their retirement benefits. In view of these conflicting findings, we are constrained to review the facts on record.

We underscore the fact that there are supposed to be two (2) payments in the form of retirement/separation pay made by GAUF to petitioners—first, in 1984 and second, in 2000-2001. The first payment is the subject of the instant petition.

The retirement pay of petitioners in 1984 should be reckoned from the date of their hiring and computed in accordance with Section 374, Article CVI of GAUF's Manual of Policies. Moreover, the basic pay of petitioners should be based on the

---

[11] *De Guzman v. National Labor Relations Commission*, G.R. No. 167701, 12 December 2007, 540 SCRA 21, 35 citing *Mayon Hotel & Restaurant v. Adana,* 497 Phil. 892, 923-924 (2005) citing further *Sevillana v. I.T. (International) Corp.,* 408 Phil. 570, 588 (2001).

[12] *E.G. & I. Construction Corporation v. Sato*, G.R. No. 182070, 16 February 2011, 643 SCRA 492, 501 citing *Agabon v. National Labor Relations Commission*, 485 Phil. 248, 289 (2004).

amount of their last pay in 31 December 1983. The correct computation should be: Retirement/Separation Pay = Basic Pay (Percentage depending on the years of service) x Years of Service.

To illustrate:

	Basic Pay (1983)	**%**	**Years of Service**	**Retirement / Separation Pay**
Manuel Ridad	₱1,237	50%	9	₱5556.50
Apolinario Bactol	₱1,486	70%	13	₱13522.60
Emerita Gulinao	₱1,486	60%	10	₱8,916.00
Lydia Jusay	₱2,132	50%	7	₱7,462.00

GAUF claims to have paid the following amounts to the petitioners:

	Retirement / Separation Pay under the law	**Amount given by GAUF**
Manuel Ridad	₱5,556.50	₱7,422.00
Apolinario Bactol	₱13,522.60	₱14,562.80
Emerita Gulinao	₱8,916.00	₱9,807.60
Lydia Jusay	₱7,462.00	₱16,781.60

The actual amounts given by GAUF were clearly more than the amounts mandated by law. As to whether these amounts were given to petitioners, GAUF insisted that they have in fact fully settled these obligations through offsetting of receivables in accordance with the compromise agreement. While this agreement bears the seal of judicial approval, the enforcement of this agreement is another matter. The NLRC uncovered that matters pertaining to settlement in kind which involved several parcels of lands were not complied with because the titles to said lands were subject of then ongoing litigation and was later on rescinded by the trial court. Therefore, these amounts relating to receivables on parcel of lands cannot be given credit.

However, the receivables pertaining to tuition fees remain uncontested. Petitioners never questioned these amounts and in fact, they argued before the Labor Arbiter that the tuition fees of their dependents "have been applied to their money claims, such as wage increases, but which were never paid."[13] Thus, these tuition fee receivables can be offset to the separation pay due to the employees. They are as follows:

	Receivables
Manuel Ridad	₱10,788.66
Apolinario Bactol	₱ 9,036.10
Emerita Gulinao	₱ 8,517.25
Lydia Jusay	₱ 7,883.30[14]

It is therefore evident that GAUF had granted petitioners their separation pay in amounts more than what they are entitled to receive under the law. Thus, there was full compliance with the RRR Program for the payment of separation pay.

The amounts adjudged by the Labor Arbiter were clearly arbitrary. He did not provide a detailed computation as to how the monetary awards were arrived at. GAUF was correct in surmising that the amounts were more or less computed on the basis of their actual and latest salaries in 2000, less the amount of receivables, which is a clear error.

WHEREFORE, premises considered, the petition is **DENIED.** The assailed Decision and Resolution of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

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

---

[13] See Reply (To Respondents; Position Paper). CA *rollo*, p. 139.

[14] See Labor Arbiter's Decision dated 30 September 2002. *Id.* at 186.

FIRST DIVISION

[G.R. No. 188849. February 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONATHAN "UTO" VELOSO *Y* RAMA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREOF IS AFFORDED GREAT RESPECT AND EVEN FINALITY; RATIONALE.—** We have often reiterated the jurisprudential principle of affording great respect and even finality to the trial court's assessment of the credibility of witnesses. The trial judge is the one who hears the testimony of the witnesses presented firsthand and sees their demeanor and body language. The trial judge, therefore, can better determine if the witnesses are telling the truth being in the ideal position to weigh conflicting testimonies. We also have stated that: Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. **The rule finds an even more stringent application where said findings are sustained by the [Court of Appeals].** In dealing with cases for rape, this Court has often acknowledged that there is often a want of witnesses. In *People v. Dion*, this Court said that: Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. **Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that**

do not alter the essential fact of the commission of rape. The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding.

2. **ID.; ID.; ID.; THE LAW DOES NOT IMPOSE A BURDEN ON THE RAPE VICTIM TO PROVE RESISTANCE BUT THE PROSECUTION MUST PROVE ACCUSED'S USE OF FORCE OR INTIMIDATION IN HAVING SEXUAL INTERCOURSE WITH THE VICTIM.—** We agree with the Court of Appeals when it found that the records show that AAA made attempts to resist the advances of appellant. The records would reveal that she tried to kick and stave appellant's attack. However, appellant's strength proved to be too much for AAA to fend off. We note that at the time of the occurrence of the rape, AAA was only 12 years of age. Appellant in contrast was a grown man of twenty-five. As we have ruled in *People v. Salazar*: In a litany of cases, this Court has ruled that the testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true. Her candid narration of how she was raped bears the earmarks of credibility, especially if no ill will — as in this case — motivates her to testify falsely against the accused. It is well-settled that when a woman, more so when she is a minor, says she has been raped, she says in effect all that is required to prove the ravishment. The accused may thus be convicted solely on her testimony — provided it is credible, natural, convincing and consistent with human nature and the normal course of things. In any event, we have held that "the law does not impose a burden on the rape victim to prove resistance. What has to be proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim.

3. **ID.; ID.; ALIBI; TO MERIT APPROBATION, THE ACCUSED MUST ADDUCE CLEAR AND CONVINCING EVIDENCE THAT HE WAS IN A PLACE OTHER THAN THE *SITUS CRIMINIS* AT THE TIME THE CRIME WAS COMMITTED, SUCH THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME WHEN IT WAS COMMITTED.—** We also note that appellant did not introduce any evidence other

than his own testimony where he presented an alibi. This Court has in a long line of cases consistently held that: Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. Since alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime. Here, appellant claims that he, together with his cousin, was in Pili, Camarines Sur at the time of the incident. He hinges his claim on the testimony of Dr. Badong wherein the doctor testified that he had examined AAA at 11:00 a.m. However, the medical certificate, which is the best evidence, clearly shows that AAA was actually examined by Dr. Badong at 2:35 p.m. Besides appellant failed to present his cousin to buttress this claim. Moreover, he in fact admitted that he had visited the dwelling of BBB in the morning of April 4, 2002.

4. **ID.; ID.; CREDIBILITY OF WITNESSES; A FEW INCONSISTENT REMARKS IN RAPE CASES WILL NOT NECESSARILY IMPAIR THE TESTIMONY OF THE OFFENDED PARTY.—** [T]he alleged inconsistencies in the testimony of AAA do not detract from her credibility as a witness. Rape victims are not expected to make an errorless recollection of the incident, so humiliating and painful that they might in fact be trying to obliterate it from their memory. Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.

5. **CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF, DISCUSSED; EXEMPLARY DAMAGES OF ₱30,000.00 AWARDED AND 6% INTEREST PER ANNUM IMPOSED ON ALL MONETARY AWARDS FOR DAMAGES.—** We, however, cannot agree with the Court of Appeals regarding its deletion of exemplary damages. This Court has said in *People v. Alfredo*: Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages — taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason

why exemplary damages are awarded. Catubig is enlightening on this point, thus — Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant — associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud — that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future. Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. x x x. Thus, we reinstate the RTC award for exemplary damages which should be Thirty Thousand Pesos (₱30,000.00) for each count of rape. In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

DECISION

LEONARDO-DE CASTRO, *J.*:

Before this Court is an appeal of the March 30, 2009 **Decision**[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 03132[2] affirming with modification the March 6, 2007 **Decision**[3] of the Regional Trial Court (RTC), Branch 20, Naga City in Crim. Case Nos. RTC'02-0102-A and RTC 2002-0103, entitled *People of the Philippines v. Jonathan "Uto" Veloso y Rama*, which found appellant Jonathan Veloso guilty beyond reasonable doubt of two counts of rape as defined in Article 266-A of the Revised Penal Code for violating AAA,[4] a 12-year old minor.

On April 6, 2002, the following informations were filed against appellant by AAA's mother, BBB, acting on her behalf:

Criminal Case No. RTC'02-0102-A[5]

That on or about April 4, 2002, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], by means of force and intimidation, did then and there, willfully, unlawfully, and feloniously have carnal knowledge of [AAA], a minor, 12 years old, daughter of herein private complainant, against her will, to her damage and prejudice.

---

[1] *Rollo*, pp. 2-15; penned by Associate Justice Ricardo R. Rosario with Associate Justices Estela Perlas-Bernabe (now a member of the Court) and Mariflor Punzalan-Castillo, concurring.

[2] Entitled *People of the Philippines v. Jonathan "Uto" Veloso y Rama*.

[3] CA *rollo*, pp. 10-29; penned by Presiding Judge Erwin Virgilio P. Ferrer.

[4] *People v. Cabalquinto* (533 Phil. 703 [2006]) and Resolution in A.M. No. 04-11-09-SC dated September 19, 2006 mandates that the Court shall use fictitious initials in lieu of the real names of the victim/s and immediate family members other than the accused, and delete the exact addresses of the victim to protect the privacy of the victim and their relatives. This policy is in line with Sec. 29 of Republic Act No. 7610, Sec. 44 of Republic Act No. 9262, and Sec. 40, Rule on Violence Against Women and their Children.

[5] Records, Vol. 1, p. 1.

Criminal Case No. RTC'02-0103[6]

That on or about April 4, 2002, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], by means of force and intimidation, did, then and there, willfully, unlawfully, and feloniously have carnal knowledge of [AAA], a minor, 12 years old, daughter of herein private complainant, against her will, to her damage and prejudice.

In addition, appellant was also charged with two other offenses: rape by sexual assault[7] under Criminal Case No. RTC 2002-0104 and frustrated homicide[8] under Criminal Case No. RTC 2002-0106.

On arraignment, appellant pleaded not guilty to all the crimes charged.[9] After pre-trial was conducted, the cases were consolidated and trial ensued.

The following facts are culled from the respective records and decisions of the RTC and the Court of Appeals.

---

[6] Records, Vol. 2, p. 1.

[7] Criminal Case No. RTC 2002-0104 (CA *rollo*, p. 11).

That on or about April 4, 2002, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant] by means of force and intimidation, did then and there willfully, unlawfully and feloniously commit RAPE BY SEXUAL ASSUALT against the person of [AAA], a minor, 12 years old, daughter of herein private complainant by then and there inserting his finger into her vagina, against her will, to the damage and prejudice.

[8] Criminal Case No. RTC 2002-0106 (CA *rollo*, pp. 11-12).

That on or about April 4, 2002, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], with intent to kill, without any justifiable cause or motive, did then and there willfully, unlawfully and feloniously beat, assault, kick and strangle [AAA], a minor, 12 years old, daughter of the herein complaining witness, [BBB], who as a result thereof, suffered various injuries in the different parts of her body and which strangulation ordinarily would have caused the death of [AAA], thus, performing all the acts of execution which should have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason or causes independent of his will, that is, by the timely rescue of said [AAA] which prevented her death, to her damage and prejudice.

[9] Records, Vol. 1, pp. 22-23.

In order to establish its case, the prosecution presented the testimonies of Oscal Boral (Boral), a neighbor of BBB and appellant, Dr. Adelwisso Jesus Badong, Jr., Dr. Mayvelyn Talag, BBB, and AAA.

On the other hand, appellant served as the lone witness in his defense.

On April 4, 2002, at around 12:00 noon, appellant went looking for BBB's brother. He went to BBB's house asking her to accompany him to her brother's house. Since BBB was indisposed, she declined. Appellant then insisted that AAA, BBB's daughter, accompany him instead. BBB consented. Thus, AAA with CCC, BBB's nephew, left the house with appellant. Instead of taking a *padyak* or tricycle*,* appellant opted to take a boat. It was while they were in the middle of the river that appellant threatened to hit CCC with a paddle if he would not jump off the boat. Immediately after CCC jumped off the boat, appellant steered the boat towards the riverbank and pulled AAA out of the boat. Thereafter, appellant made AAA lie in the water lily- and grass-covered banks and proceeded to violate her, all the while threatening to drown her. AAA tried to fight appellant but was unsuccessful. After satisfying his lust twice, appellant boxed AAA on her face, lips, stomach and thighs. Appellant kicked AAA on the stomach, slapped and smashed her face to the ground, and choked her until she became unconscious.

Boral found a conscious but dazed, naked, and bloodied AAA along the grassy portion of the riverbank. He shouted and called for BBB. Upon BBB's arrival, she saw her daughter's state. She asked AAA what happened. AAA, however, could only say "Uto." BBB then covered AAA's body with a shirt and brought her to a nearby hospital where she was advised to proceed to Bicol Medical Center. There, AAA was examined by Dr. Adelwisso Jesus Badong, Jr. and Dr. Mayvelyn Talag. The findings of the physical examination[10] of AAA dated April 4, 2002 at 2:35 p.m., are as follows:

---

[10] *Id.* at 106.

The following lesions/findings were noted:

Surgery notes:

Multiple abrasions secondary to Rape/Mauling
R/O Blunt Abdominal Injury

OB notes:

NOI: Alleged Rape
TOI: 1 pm
POI: Riverside, Sabang, Naga City
DOI: 4-04-02

Findings:

Grossly normal-looking external genetalia; (+) intact fourchette
(+)Hyperemic borders of hymen
(+)Superficial, hyperemic laceration at 4 o'clock position
Admits one finger with ease

In his defense, appellant said that on April 4, 2002 he went to Pili, Camarines Sur to attend a birthday party with his cousin Francisco Rama. He left his house at 9:00 a.m. He arrived in Pili at 10:00 a.m. and returned to his house at 3:00 p.m. Upon his return, he was arrested by police officers on the charge of rape filed by BBB. On cross-examination, he admitted that he went to his neighbor, BBB's house, in the morning of April 4, 2002 to ask about the whereabouts of BBB's brother.

After considering the evidence presented by both parties, the RTC rendered the March 6, 2007 Decision finding appellant guilty of the crime of rape, to wit:

WHEREFORE, premise in the foregoing (sic), [appellant] Jonathan "Uto" Veloso is hereby found guilty beyond reasonable doubt of the crime of rape as charged in Criminal Case Nos. RTC 2002-0102-A and RTC 2002-0103 and sentenced him (sic) to suffer the penalty of ***RECLUSION PERPETUA* for each case**.

[Appellant] is hereby ordered to pay the victim as follows:

1. One Hundred Thousand (₱100,000.00) Pesos as moral damages for two (2) counts of rape;

2. One Hundred Thousand (₱100,000.00) Pesos as civil indemnity for two (2) counts of rape;

3. Seventy Thousand (₱70,000.00) Pesos as exemplary damages for two (2) counts of rape; and

4. To pay the costs.

With respect to Criminal Case No. RTC 2002-0104, [appellant] is hereby **ACQUITTED** due to insufficiency of evidence. In Criminal Case No. RTC 2002-0106, the case is hereby ordered **DISMISSED** the same having been absorbed in Criminal Case Nos. RTC 2002-0102-A and RTC 2002-0103, all for rape.[11]

Appellant filed his notice of appeal on March 21, 2007.[12]

The Court of Appeals in its March 30, 2009 Decision found no merit in the appeal, taking note of the injuries that AAA sustained and the fact that she was 12 years old at the time of the incident. It found AAA to be a credible witness and stressed that the gravamen of the crime of rape is carnal knowledge of a woman under any of the circumstances provided by law.[13] It further noted that the defense of alibi interposed by appellant was never corroborated. He even admitted to being in BBB's house in the morning of April 4, 2002. The Court of Appeals, thus, affirmed the findings of the trial court but modified the award of damages by deleting exemplary damages due to the lack of any aggravating circumstance to justify its award, to wit:

WHEREFORE, the appealed decision of the Regional Trial Court of Naga City (Branch 20), dated 6 March 2007, in Criminal Cases Nos. RTC 2002-0102-A and RTC 2002-0103, is AFFIRMED with the MODIFICATION that the award of exemplary damages is DELETED.[14]

Appellant filed his notice of appeal before this Court on April 7, 2009.[15]

---

[11] CA *rollo*, p. 29.

[12] Records, Vol. 1, pp. 169-170.

[13] *Rollo*, p. 12.

[14] *Id.* at 14.

[15] *Id.* at 16-18.

Both the Office of the Solicitor General and appellant manifested that they would adopt the pleadings filed in the Court of Appeals in lieu of supplemental briefs.[16]

Appellant's lone assignment of error is stated as follows:

THE COURT *A QUO* GRAVELY ERRED IN FINDING [APPELLANT] GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.[17]

Appellant argues that AAA's testimony that she was made to lie down on a water lily and thereafter raped her was improbable since it was impossible for the water lily to have supported their combined weights. Moreover, appellant questions AAA's non-resistance to the rape except by kicking. Lastly, appellant claims that the time of the physical examination preceded that of the rape incident. Thus, appellant claims that due to the inconsistencies in AAA's testimonies, his guilt for the crimes charged was not proven beyond reasonable doubt by the prosecution.

The appeal must be dismissed for lack of merit.

The applicable law in this case is Article 266-A of the Revised Penal Code, which states that:

Art. 266-A. Rape, When and How Committed. — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

---

[16] *Id.* at 32-35 and 36-39.

[17] *Id.* at 52.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

We have often reiterated the jurisprudential principle of affording great respect and even finality to the trial court's assessment of the credibility of witnesses. The trial judge is the one who hears the testimony of the witnesses presented firsthand and sees their demeanor and body language. The trial judge, therefore, can better determine if the witnesses are telling the truth being in the ideal position to weigh conflicting testimonies.[18] We also have stated that:

Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. **The rule finds an even more stringent application where said findings are sustained by the [Court of Appeals]**.[19] (Citation omitted, emphasis added.)

In dealing with cases for rape, this Court has often acknowledged that there is often a want of witnesses. In *People v. Dion*,[20] this Court said that:

Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. **Inconsistencies**

---

[18] *People v. Arpon*, G.R. No. 183563, December 14, 2011, 662 SCRA 506, 523.

[19] *Id.*

[20] G.R. No. 181035, July 4, 2011, 653 SCRA 117, 133.

in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. **The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding**. x x x. (Citations omitted, emphasis added.)

In the present case, defendant argues that AAA's testimony is improbable, especially her testimony under cross-examination where she stated that appellant placed her on top of a water lily floating on the water.

We agree with the Court of Appeals when it said:

Contrary to appellant's submission, however, a careful scrutiny of the records would show that the water lilies on which AAA was made to lie down were on the riverbank and not on the river. x x x.[21]

As AAA herself testified:

Q: Was there any unusual incident that happened while you were riding on the boat?
A: When we were at the middle of the river, [appellant] forced [CCC] to jump into the river.

Q: Did your cousin [CCC] [jump] into the river?
A: Yes, because he was threatened that if he will not jump into the river [appellant] will strike him with a paddle.

Q: After [CCC] jumped into the river, what happened next?
A: He brought me to the riverbank which was grassy and filled with water lilies.

Q: While on that situation, what else happened?
A: [CCC] forced me to get out of the boat and he started to kiss my lips and he removed my clothes.

Q: [D]id you not resist on what he was doing to you?
A: I resisted but I could not because he threatened to drown me.[22]

---

[21] *Rollo*, p. 11.

[22] TSN, September 24, 2004, p. 5.

The RTC remarked upon the demeanor of AAA when she took the witness stand in the following manner:

> [AAA's] testimony during the trial was straightforward, candid, clear and consistent. She was not moved nor cowed by the peroration of the cross-examiner. Her answers were direct and concise. She was unmoved by the slings and arrows of her misfortune. She was bold, determined and credible. The defense never broke her, in fact her answers enhanced her will to correct a wrong, her quest for the protective mantle of the law and her passion to punish the [appellant].[23]

We agree with the Court of Appeals when it found that the records show that AAA made attempts to resist the advances of appellant. The records would reveal that she tried to kick and stave appellant's attack. However, appellant's strength proved to be too much for AAA to fend off. We note that at the time of the occurrence of the rape, AAA was only 12 years of age. Appellant in contrast was a grown man of twenty-five.[24] As we have ruled in *People v. Salazar*:[25]

> In a litany of cases, this Court has ruled that the testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true. Her candid narration of how she was raped bears the earmarks of credibility, especially if no ill will — as in this case — motivates her to testify falsely against the accused. It is well-settled that when a woman, more so when she is a minor, says she has been raped, she says in effect all that is required to prove the ravishment. The accused may thus be convicted solely on her testimony — provided it is credible, natural, convincing and consistent with human nature and the normal course of things.

In any event, we have held that "the law does not impose a burden on the rape victim to prove resistance. What has to be

---

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

[24] TSN, March 15, 2005, p. 2.

[25] G.R. No. 181900, October 20, 2010, 634 SCRA 307, 318-319.

proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim."[26]

We also note that appellant did not introduce any evidence other than his own testimony where he presented an alibi. This Court has in a long line of cases consistently held that:

> Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. Since alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime.[27] (Citations omitted.)

Here, appellant claims that he, together with his cousin, was in Pili, Camarines Sur at the time of the incident. He hinges his claim on the testimony of Dr. Badong wherein the doctor testified that he had examined AAA at 11:00 a.m.[28] However, the medical certificate, which is the best evidence, clearly shows that AAA was actually examined by Dr. Badong at 2:35 p.m.[29] Besides appellant failed to present his cousin to buttress this claim. Moreover, he in fact admitted that he had visited the dwelling of BBB in the morning of April 4, 2002.[30]

In any event, the alleged inconsistencies in the testimony of AAA do not detract from her credibility as a witness. Rape victims are not expected to make an errorless recollection of the incident, so humiliating and painful that they might in fact be trying to obliterate it from their memory. Thus, a few

---

[26] *People v. Adlawan, Jr.*, G.R. Nos. 100917-18, January 25, 1993, 217 SCRA 489, 498.

[27] *People v. Arpon*, *supra* note 18 at 529.

[28] TSN, January 9, 2003, p. 9.

[29] Records, Vol. 1, p. 106.

[30] TSN, February 22, 2006, p. 6.

inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.[31]

We, however, cannot agree with the Court of Appeals regarding its deletion of exemplary damages. This Court has said in *People v. Alfredo*:[32]

> Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages — taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. Catubig is enlightening on this point, thus —
>
> > Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant — associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud — that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.
>
> Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary

---

[31] *People v. Rubio*, G.R. No. 195239, March 7, 2012, 667 SCRA 753, 762.

[32] G.R. No. 188560, December 15, 2010, 638 SCRA 749, 767-768.

damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. x x x Recently, in *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *The People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in *People of the Philippines v. Dante Gragasin y Par*, "[t]he application of Article 2230 of the Civil Code *strictissimi juris* in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages — to set a public example or correction for the public good." (Citation and emphases omitted.)

Thus, we reinstate the RTC award for exemplary damages which should be Thirty Thousand Pesos (₱30,000.00) for each count of rape.[33]

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

WHEREFORE, the appeal is **DISMISSED.** The March 30, 2009 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03132 is **AFFIRMED WITH MODIFICATION.** Appellant Jonathan "Uto" Veloso is **GUILTY** beyond reasonable doubt of **two** (2) **counts of RAPE as defined in Article 266-A and penalized in Article 266-B of the Revised Penal Code**. Appellant is ordered to pay AAA the following for **each** count of rape: civil indemnity of Fifty Thousand Pesos (₱50,000.00), moral damages of Fifty Thousand Pesos (₱50,000.00), and exemplary damages of Thirty Thousand Pesos (₱30,000.00),

---

[33] *People v. Delabajan and Lascano*, G.R. No. 192180, March 21, 2012, 668 SCRA 859, 868.

[34] *People v. Dion*, *supra* note 20 at 138.

and all monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192231. February 13, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAMES GALIDO *Y* NOBLE,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; THE IDENTITY OF THE BUYER AND THE SELLER, THE OBJECT AND CONSIDERATION OF THE SALE AND THE DELIVERY OF THE THING SOLD AND THE PAYMENT THEREFOR MUST BE ESTABLISHED BY THE PROSECUTION; CASE AT BAR.—** In illegal sale of dangerous drugs, the prosecution must establish the identity of the buyer and the seller, the object and consideration of the sale and the delivery of the thing sold and the payment therefor. In a manner straightforward, Punzalan narrated that he, acting a poseur-buyer, bought two hundred peso-worth of *shabu* from Galido. Upon receiving the *shabu* and handing the payment to Galido, he made a pre- arranged signal to his companions to proceed to their location and arrest the accused. Punzalan positively identified Galido as the subject of the buy-bust operation. He

pointed to the markings "JNG and JNG-1" he made while at the site of the operation which markings identify the two sachets containing white crystalline substance, the *corpus delicti* that was presented in court.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [T]o prosecute illegal possession of dangerous drugs, there must be a showing that (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

3. **REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION MADE BY THE POLICE OFFICIALS; FOR DENIAL TO PROSPER, THE DEFENSE MUST ADDUCE CLEAR AND CONVINCING EVIDENCE TO OVERCOME THE PRESUMPTION THAT GOVERNMENT OFFICIALS HAVE PERFORMED THEIR DUTIES IN A REGULAR AND PROPER MANNER.—** As an incident to the arrest, Galido was ordered to empty his pockets which led to the confiscation of another plastic sachet containing illegal drugs. The defense presented no evidence to prove that the possession was authorized by law, the defense being non-possession or denial of possession. However, such denial cannot prevail over the positive identification made by the police officials. For the defense position to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner. Galido failed to present any evidence that the police officials were distrustful in their performance of duties. He even testified that prior to the arrest, he did not have any quarrel nor misunderstanding with the police officers nor was he acquainted with any reason that they carried a grudge against him.

4. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; THE CHAIN OF CUSTODY REQUIREMENT IS NEEDED TO ENSURE THAT THE SUBSTANCE SEIZED FROM THE ACCUSED IS THE SAME SUBSTANCE PRESENTED IN COURT. —** The chain

of custody requirement has long been clarified as needed to ensure that the integrity and evidentiary value of the seized items are preserved, or simply to ensure that the substance seized from the accused is the same substance presented in court. Upon review, we note that the request for examination and the two pieces of small heat sealed transparent plastic sachet marked as "JNG" and "JNG-1" were duly received by the PNP Crime Laboratory on 5 November 2003 at around I0:35 p.m. The Physical Science Report prepared by Fabros readily shows that the time the pieces of specimen were received matched the information on the letter-request sent by SP04 Mangulabnan. The specimen tested positive for dangerous drugs. During the pre-trial conference, the parties stipulated that Fabros conducted an examination on the specimen submitted by Punzalan, through the Request for a Laboratory Examination ordered by SP04 Mangulabnan. The result thereof positively identifying the sample as methamphetamine hydrochloride was likewise stipulated.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

This is an appeal filed by herein accused James Galido *y* Noble (Galido) from the Decision[1] of the Court of Appeals (CA) affirming the decision of conviction rendered by the Regional Trial Court of Makati City for violation of Sections 5 and 11, Article II of R.A. No. 9165.[2]

---

[1] Penned by Associate Justice Japar B. Dimaampao with Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez, concurring. *Rollo*, pp. 2-16.

[2] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

The Facts

The prosecution presented a buy-bust case.

The operation was conducted on 5 November 2003, at around 6:00 o'clock in the evening by members of Makati Anti-Drug Abuse Council (MADAC) and Anti-Illegal Drug Special Operation Task Force (AIDSOTF). It was prompted by an information given to *Punong Barangay* Rodolfo Doromal (Doromal) of Pitogo, Makati City, who in turn, coordinated with AIDSOTF. SPO4 Arsenio Mangulabnan (SPO4 Mangulabnan), the head of AIDSOTF, designated PO2 Ruel Antigua (Antigua) to head the operation. Antigua coordinated with the Philippine Drug Enforcement Agency (PDEA), formed a team and assigned MADAC Operative Roberto Punzalan (Punzalan), as the poseur-buyer. He was given two pieces of ₱100.00 bills as buy-bust money.

The team together with the informant proceeded to the target area in Tanguile St., *Brgy*. Cembo, Makati City. Punzalan and the informant approached Galido, who was then standing near the gate of his house while the rest of the team positioned themselves nearby and waited for the pre-arranged signal by Punzalan who will light a cigarette. The informant introduced Punzalan to Galido as a person in need of illegal drugs. Then, Punzalan gave buy-bust money to Galido as payment. Galido put the money in his right pocket, drew a plastic sachet from his left pocket and gave it to Punzalan. Punzalan made the pre-arranged signal. The other members of the team approached and arrested Galido. Herminia Facundo (Facundo), also a member of the buy-bust team, then asked Galido to empty his pockets, which yielded another plastic sachet and the buy-bust money from the right pocket. Punzalan then placed the markings "JNG" on the plastic sachet he bought and "JNG-1" on the sachet recovered from the pocket of Galido.[3]

The defense interposed denial.

Galido narrated that he had just taken a bath and was dressing up when he heard a commotion outside his house. A man kicked

---

[3] TSN, 19 August 2004, pp. 2-12.

his door and several men entered. When he asked why the men entered he was told that they were able to buy illegal drugs from him. He denied the accusation. The men frisked him but nothing was recovered. One of the men even poked a gun at his head. He asked for help from his relatives who were also inside the house. His uncle and sister-in-law came to his aid, but both of them failed to do anything against the men harassing him. He was brought to the *Barangay* Hall of Pitogo and was frisked by Punzalan and Facundo; again, nothing was recovered from him. Doromal showed him a plastic sachet containing *shabu* and told him that the same was recovered from his possession. He denied such allegation. Doromal slapped him.[4] He was then subjected to a drug test which he eventually found out to have yielded positive results.

Galido was eventually charged with Illegal Sale and Possession of Dangerous Drugs punishable under Sections 5 and 11 of Article II of R.A. No. 9165.[5] When arraigned, he pleaded NOT GUILTY to the offenses charged.

---

[4] TSN, 28 June 2005, pp. 140-152.

[5] The accusatory portion of the Information in violation of Section 5 of Article II of R.A. No. 9165 reads:

> That on or about the 5th day of November 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, distribute and transport, weighing zero point zero one (0.01) gram of Methylamphetamine Hydrocloride (*Shabu*), which is a dangerous drug, in violation of the above-cited law.

Records, p. 2.

The accusatory portion of the Information in violation of Section 11 of Article II of R.A. No. 9165 reads:

> That on or about the 5th day of November 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and conrol weighing zero point zero three (0.03) gram of Methalamphetamine Hydrochloride (*Shabu*), which is a dangerous drug, violation of the above-cited law.

Id. at 4.

Based on the Pre-Trial Order,[6] the prosecution and defense stipulated that Forensic Chemist Sharon Lontoc Fabros (Fabros) of the PNP Crime Laboratory conducted an examination on the samples submitted and they yielded positive results for methamphetamine hydrochloride commonly known as *shabu*.

The Ruling of the Trial Court

The trial court on 4 August 2007 rendered a decision[7] finding Galido GUILTY BEYOND REASONABLE DOUBT of the offenses charged and imposed on him (1) a penalty of life imprisonment and a fine of ₱500,000.00 for Violation of Section 5, Article II of R.A. No. 9165; and (2) imprisonment of twelve (12) years and one (1) day as minimum to twenty (20) years as maximum and pay a fine of ₱300,000.00 and costs for Violation of Section 11, R.A. No. 9165.

The Ruling of the Court of Appeals

The appellate court affirmed the ruling of the trial court. It ruled that all the elements of illegal sale and illegal possession of dangerous drug were proven. It found credible the statements of the prosecution witnesses Punzalan, Antigua and Facundo about what transpired during the buy-bust operation.[8] Further, it ruled that the prosecution has proven as unbroken the chain of custody of evidence.[9] It upheld the findings of the trial court regarding the regularity of performance of official duty of the police operatives who conducted the operation and the absence of ill-motive on their part in the conduct of the buy-bust.[10]

Our Ruling

After a careful review of the evidence, we uphold the finding on the credibility of the prosecution witnesses. We do not find any basis to doubt the integrity of their testimonies.

---

[6] *Id.* at 33-36.

[7] CA *rollo*, pp. 61-68.

[8] CA Decision. *Rollo*, pp. 8-12.

[9] *Id.* at 13.

[10] *Id.* at 14.

In illegal sale of dangerous drugs, the prosecution must establish the identity of the buyer and the seller, the object and consideration of the sale and the delivery of the thing sold and the payment therefor.[11]

In a manner straightforward, Punzalan narrated that he, acting as a poseur-buyer, bought two hundred peso-worth of *shabu* from Galido. Upon receiving the *shabu* and handing the payment to Galido, he made a pre-arranged signal to his companions to proceed to their location and arrest the accused.[12] Punzalan positively identified Galido as the subject of the buy-bust operation. He pointed to the markings "JNG and JNG-1" he made while at the site of the operation which markings identify the two sachets containing white crystalline substance, the *corpus delicti* that was presented in court.[13]

On the other hand, to prosecute illegal possession of dangerous drugs, there must be a showing that (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[14]

As an incident to the arrest, Galido was ordered to empty his pockets which led to the confiscation of another plastic sachet containing illegal drugs. The defense presented no evidence to prove that the possession was authorized by law, the defense being non-possession or denial of possession. However, such denial cannot prevail over the positive identification made by the police officials.[15]

---

[11] *People v. Unisa*, G.R. No. 185721, 28 September 2011, 658 SCRA 305, 324; *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 463.

[12] TSN, 19 August 2004, p. 8.

[13] *Id.* at 11.

[14] *People v. Abedin*, G.R. No. 179936, 11 April 2012, 669 SCRA 322, 332 citing *People v. Gutierrez*, G.R. No. 177777, 4 December 2009, 607 SCRA 377, 390-391 further citing *People v. Pringas*, G.R. No. 175928, 31 August 2007, 531 SCRA 828, 846.

[15] *People v. Arriola*, G.R. No. 187736, 8 February 2012, 665 SCRA 581, 590; *People v. Dela Cruz*, G.R. No. 177324, 30 March 2011, 646 SCRA 707.

For the defense position to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.[16] Galido failed to present any evidence that the police officials were distrustful in their performance of duties. He even testified that prior to the arrest, he did not have any quarrel nor misunderstanding with the police officers nor was he acquainted with any reason that they carried a grudge against him.[17]

Too, the defense in its brief[18] tried to place a doubt on the chain of custody of evidence. He also questioned why Fabros was not presented to personally testify that she received the specimen taken from the accused.

The chain of custody requirement has long been clarified as needed to ensure that the integrity and evidentiary value of the seized items are preserved,[19] or simply to ensure that the substance seized from the accused is the same substance presented in court.

Upon review, we note that the request for examination and the two pieces of small heat sealed transparent plastic sachet marked as "JNG" and "JNG-1" were duly received by the PNP Crime Laboratory on 5 November 2003 at around 10:35 p.m.[20] The Physical Science Report[21] prepared by Fabros readily shows that the time the pieces of specimen were received matched the information on the letter-request sent by SPO4 Mangulabnan. The specimen tested positive for dangerous drugs. During the pre-trial conference, the parties stipulated that Fabros conducted

---

[16] *People v. Del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 639.

[17] TSN, 28 June 2005, p. 185.

[18] Accused-Appellant's Brief. CA *rollo*, pp. 53-58.

[19] *People v. Dela Rosa*, G.R. No. 185166, 26 January 2011, 640 SCRA 635, 653 citing *People v. Rosialda*, G.R. No. 88330, 25 August 2010, 629 SCRA 507, 521; *People v. Unisa*, *supra* note 11 at 333.

[20] Request for Laboratory Examination. Records, p. 11.

[21] *Id.* at 12.

an examination on the specimen submitted by Punzalan, through the Request for a Laboratory Examination ordered by SPO4 Mangulabnan. The result thereof positively identifying the sample as methamphetamine hydrochloride was likewise stipulated.

WHEREFORE, the instant appeal is **DENIED.** Accordingly, the decision of the Court of Appeals dated 29 January 2010 in CA-G.R. CR-H.C. No. 03275 is hereby **AFFIRMED.** No cost.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 194168. February 13, 2013]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **SPOUSES PLACIDO and CLARA DY ORILLA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; VOID JUDGMENT, DISCUSSED; A VOID JUDGMENT HAS NO LEGAL AND BINDING EFFECT, FORCE OR EFFICACY FOR ANY PURPOSE; HENCE, IT CAN NEVER BE EXECUTED.—** The CA , therefore, concluded that there was no sufficient legal basis for the valuation arrived at by the SAC in the amount of ₱1,479,023.00. In fine, the CA effectively set aside and voided the Decision of the RTC fixing the amount of just compensation for the subject property. As correctly argued by petitioner, being the fruit of a void judgment such amount cannot be the proper subject of the Order granting the motion for execution pending appeal issued by the SAC. A void

judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. Such judgment or order may be resisted in any action or proceeding whenever it is involved. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored. In *Metropolitan Waterworks & Sewerage System v. Sison*, this Court held that: x x x "[A] void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. All proceedings founded on the void judgment are themselves regarded as invalid. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgments. It, accordingly, leaves the parties litigants in the same position they were in before the trial." Accordingly, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final, and any writ of execution based on it is void: "x x x *it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head*." As correctly maintained by petitioner, since the valuation made by the SA C in its Decision dated November 20, 2000 having been annulled by the CA for its lack of sufficient and legal basis, the void judgment can never be validly executed.

2. **LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; JUST COMPENSATION; THE COURT ALLOWS THE RELEASE OF THE OFFERED COMPENSATION TO THE LANDOWNERS FOR THE LAND TAKEN PENDING THE DETERMINATION OF THE FINAL VALUATION OF THEIR PROPERTIES.—** [T]he amount of ₱371,154.99 representing the compensation offered by the petitioner for the land taken, can still be properly awarded to respondents in accordance with *Land Bank of the Philippines v. Court of Appeals*. In the said case, the Court allowed the release of the offered compensation to the landowner

pending the determination of the final valuation of their properties. The Court opined that: We are not persuaded. As an exercise of police power, the expropriation of private property under the CARP puts the landowner, and not the government, in a situation where the odds are already stacked against his favor. He has no recourse but to allow it. His only consolation is that he can negotiate for the amount of compensation to be paid for the expropriated property. As expected, the landowner will exercise this right to the hilt, but subject however to the limitation that he can only be entitled to a "just compensation." Clearly therefore, by rejecting and disputing the valuation of the DAR, the landowner is merely exercising his right to seek just compensation. If we are to affirm the withholding of the release of the offered compensation despite depriving the landowner of the possession and use of his property, we are in effect penalizing the latter for simply exercising a right afforded to him by law.

3. **ID.; ID.; ID.; CONCEPT THEREOF EMBRACES NOT ONLY THE CORRECT DETERMINATION OF THE AMOUNT TO BE PAID TO THE OWNER BUT ALSO PAYMENT WITHIN A REASONABLE TIME FROM ITS TAKING, FOR WITHOUT PROMPT PAYMENT, PAYMENT CANNOT BE CONSIDERED "JUST" INASMUCH AS THE PROPERTY OWNER IS MADE TO SUFFER THE CONSEQUENCES OF BEING IMMEDIATELY DEPRIVED OF HIS LAND WHILE BEING MADE TO WAIT FOR A DECADE OR MORE BEFORE ACTUALLY RECEIVING THE AMOUNT NECESSARY TO COPE WITH HIS LOSS.—** [T]his is without prejudice to the outcome of the case which was remanded to the SAC for recomputation of just compensation. Should the SAC find the said valuation too low and determine a higher valuation for the subject property, petitioner should pay respondents the difference. Conversely, should the SAC determine that the valuation was too high, respondents shouId return the excess. To be sure, the concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just'' inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land

while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Former Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated April 17, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 70071, and the Resolution[2] dated September 30, 2010 denying petitioner's Motion for Partial Reconsideration.[3]

The factual and procedural antecedents are undisputed:

Respondents spouses Placido and Clara Orilla (respondents) were the owners of a parcel of land situated in Bohol, identified as Lot No. 1, 11-12706, containing an area of 23.3416 hectares and covered by Transfer Certificate of Title No. 18401. In the latter part of November 1996, the Department of Agrarian Reform Provincial Agrarian Reform Office (DAR-PARO) of Bohol sent respondents a Notice of Land Valuation and Acquisition dated November 15, 1996 informing them of the compulsory acquisition of 21.1289 hectares of their landholdings pursuant to the Comprehensive Agrarian Reform Law (Republic Act [RA] 6657) for ₱371,154.99 as compensation based on the valuation made by petitioner Land Bank of the Philippines (LBP).[4]

---

[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Amy C. Lazaro-Javier and Rodil V. Zalameda, concurring; *rollo*, pp. 32-47.

[2] *Rollo*, pp. 48-52.

[3] *Id.* at 53-59.

[4] *Land Bank of the Philippines v. Orilla*, G.R. No. 157206, June 27, 2008, 556 SCRA 102, 107.

However, respondents rejected the said valuation. Consequently, a summary hearing was conducted by the Provincial Department of Agrarian Reform Adjudication Board (Provincial DARAB) to determine the amount of just compensation. After the proceedings, the Provincial DARAB affirmed the valuation made by the petitioner.[5]

Not content with the decision, respondents filed an action for the determination of just compensation before the Regional Trial Court of Tagbilaran City sitting as a Special Agrarian Court (SAC). The case was docketed as Civil Case No. 6085 and was raffled to Branch 3.

After trial on the merits, the SAC rendered a Decision dated November 20, 2000, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered fixing the just compensation of the land of petitioner subject matter of the instant action at ₱7.00 per square meter, as only prayed for, which shall earn legal interest from the filing of the complaint until the same shall have been fully paid. Furthermore, respondents are hereby ordered to jointly and solidarily indemnify the petitioners their expenses for attorney's fee and contract fee in the conduct of the appraisal of the land by a duly licensed real estate appraiser Angelo G. Fajardo of which petitioner shall submit a bill of costs therefor for the approval of the Court.
>
> SO ORDERED.[6]

On December 11, 2000, petitioner filed a Notice of Appeal. Subsequently, on December 15, 2000, respondents filed a Motion for Execution Pending Appeal, pursuant to Section 2, Rule 39 of the 1997 Rules of Civil Procedure and the consolidated cases of *Landbank of the Philippines v. Court of Appeals, et al.*[7] and *Department of Agrarian Reform v. Court of Appeals,*

---

[5] *Id.*

[6] *Id.* at 108.

[7] G.R. No. 118712 and 118745, July 5, 1996, 258 SCRA 404; 327 Phil. 1047 (1996).

et al.[8] Respondents argued that the total amount of ₱1,479,023.00, which is equivalent to ₱7.00 per square meter for 21.1289 hectares, adjudged by the SAC as just compensation, could then be withdrawn under the authority of the aforementioned case.[9]

On December 21, 2000, the SAC issued an Order granting the Motion for Execution Pending Appeal, the dispositive of which reads:

> WHEREFORE, the herein motion is granted and the petitioners are hereby ordered to post bond equivalent to one-half of the amount due them by virtue of the decision in this case. The respondent Land Bank of the Philippines, is therefore, ordered to immediately deposit with any accessible bank, as may be designated by respondent DAR, in cash or in any governmental financial instrument the total amount due the petitioner-spouses as may be computed within the parameters of Sec. 18(1) of RA 6657. Furthermore, pursuant to the Supreme Court decisions in *"Landbank of the Philippines vs. Court of Appeals, et al." G.R. No. 118712, promulgated on October 6, 1995 and "Department of Agrarian Reform vs. Court of Appeals, et al.," G.R. No. 118745, promulgated on October 6, 1995*, the petitioners may withdraw the same for their use and benefit consequent to their right of ownership thereof.[10]

On December 25, 2000, respondents filed a Motion for Partial Reconsideration of the amount of the bond to be posted, but it was later denied in an Order dated January 11, 2001.[11]

For its part, petitioner filed a Motion for Reconsideration, which was likewise denied in an Order dated December 29, 2000.[12]

On March 13, 2001, petitioner filed with the CA a special civil action for *certiorari* and prohibition under Rule 65 of the

---

[8] G.R. No. 118712 and 118745, October 6, 1995, 49 SCRA 149; 319 Phil. 246 (1995).

[9] *Land Bank of the Philippines v. Orilla, supra* note 4, at 108.

[10] *Id.* at 109.

[11] *Id.*

[12] *Id.*

Rules of Court with prayer for issuance of a temporary restraining order and/or preliminary injunction. It questioned the propriety of the SAC Order granting the execution pending appeal.[13]

In its Decision dated July 29, 2002, the CA dismissed the petition on the ground that the assailed SAC Order dated December 21, 2000 granting execution pending appeal was consistent with justice, fairness, and equity, as respondents had been deprived of the use and possession of their property, pursuant to RA 6657 and are entitled to be immediately compensated with the amount as determined by the SAC under the principle of "prompt payment" of just compensation. Petitioner filed a Motion for Reconsideration, but it was denied.[14]

Petitioner then sought recourse before this Court in a petition docketed as G.R. No. 157206. After due proceedings, this Court rendered a Decision[15] dated June 27, 2008, affirming the decision of the CA. The decretal portion reads:

> WHEREFORE, the Decision of the Court of Appeals, dated July 29, 2002, is AFFIRMED.[16]

Petitioner filed a Motion for Reconsideration, but was denied with finality by the Court.

Meanwhile, in CA-G.R. CV No. 70071, the CA rendered a Decision[17] dated April 17, 2009, granting the appeal filed by the petitioner. The dispositive portion reads:

> WHEREFORE, premises considered, the instant appeal is GRANTED. The assailed decision of the Regional Trial Court sitting as Special Agrarian Court is hereby SET ASIDE.
>
> This case is **REMANDED** to the trial court for the proper determination of just compensation for the land taken.

---

[13] *Id.*

[14] *Id.* at 110.

[15] *Land Bank of the Philippines v. Orilla*, *supra* note 4.

[16] *Id.* at 119.

[17] *Rollo*, pp. 32-47.

SO ORDERED.[18]

The CA held that there was no valid and sufficient legal basis for the SAC in fixing the just compensation for the subject property at ₱1,479,023.00. Thus, the CA remanded the case to the SAC for the proper determination of just compensation.

In disposing the case, the CA also took into consideration the Motion for Execution Pending Appeal that was granted earlier by the SAC and affirmed by the CA and this Court, to wit:

> Finally, the petitioners-appellees filed a Manifestation for Early Resolution before this Court revealing that the petitioners-appellees filed before the SAC a motion for execution pending appeal which was granted. This Court affirmed the decision of the SAC. Ultimately, the Supreme Court affirmed the decision of the Court of Appeals. Therefore, should the SAC find upon recomputation that the just compensation previously rendered is bigger than the recomputed value, the petitioners-appellees are ordered to return the excess considering that payment may already have been given by LBP in pursuant to the finality of the motion for execution pending appeal.[19]

Unsatisfied, petitioner filed a Motion for Partial Reconsideration.[20] Petitioner argued that when the CA set aside the valuation of the SAC amounting to ₱1,479,023.00, it necessarily follows that said amount can no longer be the subject of an execution pending appeal. Petitioner theorized that by annulling the SAC decision and, consequently, remanding the case to the trial court, the latter's decision was voided and, therefore, it could no longer be executed.

On September 30, 2010, the CA issued a Resolution[21] denying the motion. The CA held that the issue of the validity of the writ of execution was already resolved by the Supreme Court

---

[18] *Id.* at 46-47. (Emphasis in the original).

[19] *Id.* at 46.

[20] *Id.* at 53-63.

[21] *Id.* at 48-52.

with finality in G.R. No. 157206. That was precisely the reason why it stated in the decision that "should the SAC find upon recomputation that the just compensation previously rendered is bigger than the recomputed value, the petitioners-appellees are ordered to return the excess, considering that payment may already have been given by the LBP in pursuant to the finality of the motion for execution pending appeal."[22]

Hence, the petition assigning the lone error:

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN HOLDING THAT THE TRIAL COURT'S DECISION, WHICH WAS ANNULLED AND SET ASIDE, CAN STILL BE THE SUBJECT OF EXECUTION.[23]

Petitioner argues that when the CA set aside the valuation of the SAC, it necessarily means that such valuation can no longer be the subject of an execution pending appeal. It adds that the writ of execution ordering the LBP to pay respondents the amount of ₱1,479,023.00 remains unimplemented as of the time the CA rendered the decision annulling the aforesaid valuation.

Petitioner posits that once a decision is annulled or set aside, it is rendered without legal effect for being a void judgment. Petitioner maintains that while the issue of the validity of the writ of execution issued by the SAC had been upheld by this Court in G.R. No. 157206, the enforcement of the writ had been rendered moot and academic after the decision of the SAC was reversed and set aside by the CA.

On their part, respondents contend that having attained finality, the decision of this Court in G.R. No. 157206 could no longer be disturbed. Moreover, the reason advanced by the CA in denying the motion for partial reconsideration was merely an affirmation of the decision of this Court in the said case.

The petition is without merit.

---

[22] *Id.* at 51.

[23] *Id.* at 21.

At the onset, it should be noted that although this Court, in *Land Bank of the Philippines v. Orilla*,[24] held that the SAC validly issued the Order granting execution pending appeal in the exercise of its sound discretion in issuing the same according to the Rules, still what this Court deemed was justified in that particular case was the propriety of the issuance of the said Order and not the amount of monetary award that respondents were entitled to which, in turn, corresponds to the valuation of the subject property as determined by the SAC in its Decision. Thus, this Court stated in the said case that "[w]hile this decision does not finally resolve the propriety of the determination of just compensation by the SAC in view of the separate appeal on the matter, we find no grave abuse of discretion on the part of the SAC Judge in allowing execution pending appeal."[25]

Anent the present controversy, in its Decision annulling the SAC valuation, the CA opined:

> x x x In granting the award, the SAC merely granted the amount prayed for by the spouses and did not provide any computation or explanation on how it arrived at the amount. There was therefore no valid and sufficient legal basis for the award.[26]

The CA, therefore, concluded that there was no sufficient legal basis for the valuation arrived at by the SAC in the amount of ₱1,479,023.00. In fine, the CA effectively set aside and voided the Decision of the RTC fixing the amount of just compensation for the subject property. As correctly argued by petitioner, being the fruit of a void judgment such amount cannot be the proper subject of the Order granting the motion for execution pending appeal issued by the SAC.

A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. Such judgment or order may be resisted in any action or proceeding whenever it is involved. It is not even

---

[24] *Supra* note 4.

[25] *Id.* at 118.

[26] *Rollo*, p. 43.

necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored.[27]

In *Metropolitan Waterworks & Sewerage System v. Sison*,[28] this Court held that:

x x x "[A] void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. All proceedings founded on the void judgment are themselves regarded as invalid. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgments. It, accordingly, leaves the parties litigants in the same position they were in before the trial."[29]

Accordingly, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final, and any writ of execution based on it is void: *"x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."*[30]

As correctly maintained by petitioner, since the valuation made by the SAC in its Decision dated November 20, 2000 had been annulled by the CA for its lack of sufficient and legal basis, the void judgment can never be validly executed.

Nevertheless, it must be pointed out that the situation contemplated by the CA in the assailed Decision was one wherein

---

[27] *Guevarra v. Sandiganbayan, Fourth Division*, G.R. Nos. 138792-804, March 31, 2005, 454 SCRA 372, 382-383; 494 Phil. 378, 388 (2005). (citations omitted)

[28] No. L-40309, August 31, 1983, 124 SCRA 394; 209 Phil. 325 (1983).

[29] *Id.* at 404, citing 31 Am Jur., 91-92; at 335-336.

[30] *Nazareno v. Court of Appeals*, G.R. No. 111610, February 27, 2002, 378 SCRA 28; 428 Phil. 32, 42 (2002).

payment has already been made by petitioner to the respondents during the pendency of the appeal. Nowhere in the disquisition of the CA can it be inferred that it is enjoining the LBP to enforce the writ of execution in accordance with the valuation made by the SAC. On the contrary, the CA respected the finality of the motion for execution pending appeal should the same have already been enforced. As pronounced by the CA:

> x x x Therefore, should the SAC find upon computation that the just compensation previously rendered is bigger than the recomputed value, the petitioners-appellees are ordered to return the excess considering that payment *may* already have been given by LBP in pursuant to the finality of the motion for execution pending appeal.[31]

Verily, it appears that the writ of execution pending appeal remains unimplemented as of the time the CA rendered its decision annulling the valuation made by the SAC. The monetary award having emanated from a void valuation, it follows that the writ of execution pending appeal cannot be properly implemented. As contemplated by the CA, the situation would have been different if the writ was already enforced during the pendency of the appeal, for at that time the writ could still be validly enforced since the valuation made by the SAC still stands. Necessarily, as directed by the CA, any excess amount paid to respondents should be returned to petitioner.

Nonetheless, the amount of ₱371,154.99 representing the compensation offered by the petitioner for the land taken, can still be properly awarded to respondents in accordance with *Land Bank of the Philippines v. Court of Appeals*.[32] In the said case, the Court allowed the release of the offered compensation to the landowner pending the determination of the final valuation of their properties. The Court opined that:

> We are not persuaded. As an exercise of police power, the expropriation of private property under the CARP puts the landowner, and not the government, in a situation where the odds are already

[31] *Rollo*, p. 46. (Emphasis supplied)

[32] *Supra* note 7.

stacked against his favor. He has no recourse but to allow it. His only consolation is that he can negotiate for the amount of compensation to be paid for the expropriated property. As expected, the landowner will exercise this right to the hilt, but subject however to the limitation that he can only be entitled to a "just compensation." Clearly therefore, by rejecting and disputing the valuation of the DAR, the landowner is merely exercising his right to seek just compensation. If we are to affirm the withholding of the release of the offered compensation despite depriving the landowner of the possession and use of his property, we are in effect penalizing the latter for simply exercising a right afforded to him by law.[33]

Of course, this is without prejudice to the outcome of the case which was remanded to the SAC for recomputation of just compensation. Should the SAC find the said valuation too low and determine a higher valuation for the subject property, petitioner should pay respondents the difference. Conversely, should the SAC determine that the valuation was too high, respondents should return the excess. To be sure, the concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[34]

WHEREFORE, subject to the foregoing disquisitions, the Decision and Resolution of the Court of Appeals, dated April 17, 2009 and September 30, 2010, respectively, in CA-G.R. CV No. 70071, are **AFFIRMED.** Petitioner Land Bank of the Philippines is **ORDERED** to release the amount of ₱371,154.99 to respondents spouses Placido and Clara Orilla, without prejudice to the recomputation of the just compensation for the subject land by the Regional Trial Court.

---

[33] *Id.* at 408; 1053.

[34] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, February 6, 2007, 514 SCRA 537, 557-558.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 194578. February 13, 2013]

PHILIP SIGFRID A. FORTUN, *petitioner, vs.* **PRIMA JESUSA B. QUINSAYAS, MA. GEMMA OQUENDO, DENNIS AYON, NENITA OQUENDO, ESMAEL MANGUDADATU, JOSE PAVIA, MELINDA QUINTOS DE JESUS, REYNALDO HULOG, REDMOND BATARIO, MALOU MANGAHAS, DANILO GOZO, GMA NETWORK, INC. through its news editors Raffy Jimenez and Victor Sollorano, SOPHIA DEDACE, ABS-CBN CORPORATION through the Head of its News Group, Maria Ressa, CECILIA VICTORIA OREÑA-DRILON, PHILIPPINE DAILY INQUIRER, INC. represented by its Editor-in-Chief Letty Jimenez Magsanoc, TETCH TORRES, PHILIPPINE STAR represented by its Editor-in-Chief Isaac Belmonte, and EDU PUNAY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; CRIMINAL AND CIVIL CONTEMPT, DISTINGUISHED. —** The contempt charge filed by petitioner is in the nature of a criminal contempt. In *People v. Godoy*, this Court made a distinction between criminal and civil contempt. The Court declared: A criminal contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which

tends to bring the court into disrepute or disrespect. On the other hand, civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein and is, therefore, an offense against the party in whose behalf the violated order is made. A criminal contempt, being directed against the dignity and authority of the court, is an offense against organized society and, in addition, is also held to be an offense against public justice which raises an issue between the public and the accused, and the proceedings to punish it are punitive. On the other hand, the proceedings to punish a civil contempt are remedial and for the purpose of the preservation of the right of private persons. It has been held that civil contempt is neither a felony nor a misdemeanor, but a power of the court. It has further been stated that intent is a necessary element in criminal contempt, and that no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. On the contrary, there is authority indicating that since the purpose of civil contempt proceedings is remedial, the defendant's intent in committing the contempt is immaterial. Hence, good faith or the absence of intent to violate the court's order is not a defense in civil contempt.

2. **ID.; ID.; ID.; INDIRECT CONTEMPT; ONLINE POSTING IS CONSIDERED PUBLICATION WHERE IT WAS DONE ON THE TELEVISION NETWORK'S ONLINE NEWS WEBSITE.—** GMA Network's defense is that it has no newspaper or any publication where the article could be printed; it did not broadcast the disbarment complaint in its television station; and that the publication was already completed when Atty. Quinsayas distributed copies of the disbarment complaint to the media. GMA Network did not deny that it posted the details of the disbarment complaint on its website. It merely said that it has no publication where the article could be printed and that the news was not televised. Online posting, however, is already publication considering that it was done on GMA Network's online news website.

3. **COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; A SUBSIDIARY HAS AN INDEPENDENT AND SEPARATE JURIDICAL PERSONALITY DISTINCT FROM THAT OF ITS PARENT COMPANY AND THAT ANY SUIT AGAINST THE LATTER DOES NOT BIND**

THE FORMER AND VICE-VERSA.— ABS-CBN alleged that SNN is its subsidiary and although they have interlocking directors, SNN has its own juridical personality separate from its parent company. ABS-CBN alleged that SNN controls the line-up of shows of ANC. We agree with ABS-CBN on this issue. We have ruled that a subsidiary has an independent and separate juridical personality distinct from that of its parent company and that any suit against the the latter does not bind the former and vice-versa. A corporation is an artificial being invested by law with a personality separate and distinct from that of other corporations to which it may be connected. Hence, SNN, not ABS-CBN, should have been made respondent in this case.

4. **REMEDIAL LAW; DISBARMENT OR SUSPENSION OF ATTORNEYS; CONFIDENTIALITY RULE; PROCEEDINGS AGAINST ATTORNEYS SHALL BE PRIVATE AND CONFIDENTIAL UNTIL THEIR FINAL DETERMINATION BY THE COURT; PURPOSE OF THE RULE; PREMATURE PUBLICATION OF ADMINISTRATIVE COMPLAINTS AGAINST LAWYERS CONSTITUTES A CONTEMPT OF COURT.—** Section 18, Rule 139-B of the Rules of Court provides: Section 18. Confidentiality. — Proceedings against attorneys shall be private and confidential. However, the final order of the Supreme Court shall be published like its decisions in other cases. The Court explained the purpose of the rule, as follows: x x x. The purpose of the rule is not only to enable this Court to make its investigations free from any extraneous influence or interference, but also to protect the personal and professional reputation of attorneys and judges from the baseless charges of disgruntled, vindictive, and irresponsible clients and litigants; it is also to deter the press from publishing administrative cases or portions thereto without authority. We have ruled that malicious and unauthorized publication or verbatim reproduction of administrative complaints against lawyers in newspapers by editors and/or reporters may be actionable. Such premature publication constitutes a contempt of court, punishable by either a fine or imprisonment or both at the discretion of the Court.

5. **ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; CONTEMPT IS AKIN TO LIBEL AND THE PRINCIPLE OF PRIVILEGED COMMUNICATION MAY BE INVOKED**

IN A CONTEMPT PROCEEDING FOR BOTH CONSTITUTE LIMITATIONS UPON FREEDOM OF THE PRESS OR FREEDOM OF EXPRESSION.— In *People v. Castelo*, the Court ruled that contempt is akin to libel and that the principle of privileged communication may be invoked in a contempt proceeding. The Court ruled: While the present case involves an incident of contempt the same is akin to a case of libel for both constitute limitations upon freedom of the press or freedom of expression guaranteed by our Constitution. So what is considered a privilege in one may likewise be considered in the other. The same safeguard should be extended to one whether anchored in freedom of the press or freedom of expression. Therefore, this principle regarding privileged communications can also be invoked in favor of appellant.

6. **ID.; DISBARMENT OR SUSPENSION OF ATTORNEYS; CONFIDENTIALITY RULE; DISBARMENT PROCEEDINGS ARE CONFIDENTIAL IN NATURE UNTIL THEIR FINAL RESOLUTION OF THE COURT; HOWEVER, IF THE DISBARMENT COMPLAINT IS A MATTER OF PUBLIC INTEREST, THE LEGITIMATE MEDIA HAS A RIGHT TO PUBLISH SUCH FACT UNDER FREEDOM OF THE PRESS; EXPOUNDED.—** The Court recognizes that “publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech.” As a general rule, disbarment proceedings are confidential in nature until their final resolution and the final decision of this Court. In this case, however, the filing of a disbarment complaint against petitioner is itself a matter of public concern considering that it arose from the Maguindanao Massacre case. The interest of the public is not on petitioner himself but primarily on his involvement and participation as defense counsel in the Maguindanao Massacre case. Indeed, the allegations in the disbarment complaint relate to petitioners supposed actions involving the Maguindanao Massacre case. The Maguindanao Massacre is a very high-profile case. Of the 57 victims of the massacre, 30 were journalists. It is understandable that any matter related to the Maguindanao Massacre is considered a matter of public interest and that the personalities involved, including petitioner, are considered as public figure. The Court explained it, thus: But even assuming a person would not qualify as a public figure, it would not

necessarily follow that he could not validly be the subject of a public comment. For he could; for instance, if and when he would be involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. **The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety.** Since the disbarment complaint is a matter of public interest, legitimate media had a right to publish such fact under freedom of the press. The Court also recognizes that respondent media groups and personalities merely acted on a news lead they received when they reported the filing of the disbarment complaint.

7. **ID.; ID.; ID.; IF THERE IS LEGITIMATE PUBLIC INTEREST, MEDIA IS NOT PROHIBITED FROM MAKING A FAIR, TRUE, AND ACCURATE NEWS REPORT OF A DISBARMENT COMPLAINT; OTHERWISE, MEMBERS OF THE MEDIA MUST PRESERVE THE CONFIDENTIALITY OF DISBARMENT PROCEEDINGS DURING ITS PENDENCY.—** The distribution by Atty. Quinsayas to the media of the disbarment complaint, by itself, is not sufficient to absolve the media from responsibility for violating the confidentiality rule. However, since petitioner is a public figure or has become a public figure because he is representing a matter of public concern, and because the event itself that led to the filing of the disbarment case against petitioner is a matter of public concern, the media has the right to report the filing of the disbarment case as legitimate news. It would have been different if the disbarment case against petitioner was about a private matter as the media would then be bound to respect the confidentiality provision of disbarment proceedings under Section 18, Rule 139-B of the Rules of Court. Section 18, Rule 139-B of the Rules of Court is not a restriction on the freedom of the press. If there is a legitimate public interest, media is not prohibited from making a fair, true, and accurate news report of a disbarment complaint. In the absence of a legitimate public interest in a disbarment complaint, members of the media must preserve the confidentiality of disbarment proceedings during its pendency. Disciplinary proceedings against lawyers must still

remain private and confidential until their final determination. Only the final order of this Court shall be published like its decisions in other cases.

8. **ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; DISSEMINATING COPIES OF DISBARMENT COMPLAINT TO MEMBERS OF THE MEDIA CONSTITUTES CONTEMPT OF COURT; PREMATURE DISCLOSURE BY PUBLICATION OF THE FILING AND PENDENCY OF DISBARMENT PROCEEDINGS IS A VIOLATION OF THE CONFIDENTIALITY RULE.—** Atty. Quinsayas is bound by Section 18, Rule 139-B of the Rules of Court both as a complainant in the disbarment case against petitioner and as a lawyer. As a lawyer and an officer of the Court, Atty. Quinsayas is familiar with the confidential nature of disbarment proceedings. However, instead of preserving its confidentiality, Atty. Quinsayas disseminated copies of the disbarment complaint against petitioner to members of the media which act constitutes contempt of court. In *Relativo v. De Leon*, the Court ruled that the premature disclosure by publication of the filing and pendency of disbarment proceedings is a violation of the confidentiality rule. In that case, Atty. Relativo, the complainant in a disbarment case, caused the publication in newspapers of statements regarding the filing and pendency of the disbarment proceedings. The Court found him guilty of contempt.

9. **ID.; ID.; ID.; ID.; FINE OF TWENTY THOUSAND PESOS IMPOSED FOR INDIRECT CONTEMPT. —** Indirect contempt against a Regional Trial Court or a court of equivalent or higher rank is punishable by a fine not exceeding ₱30,000 or imprisonment not exceeding six months or both. Atty. Quinsayas acted wrongly in setting aside the confidentiality rule which every lawyer and member of the legal profession should know. Hence, we deem it proper to impose on her a fine of Twenty Thousand Pesos (₱20,000).

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Nena Santos for Esmael Mangundadato, *et al.*
Poblador Bautista & Reyes for ABS CBN Broadcasting Corp.

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for PDI & Theresa Torres.

Angara Abello Concepcion Regala & Cruz for Philippine Star and Edu Punay.

Belo Gozon Elma Parel Asuncion & Lucila for GMA Network, Inc. and Sophia M. Dedace.

Florante Arceo Bautista for Atty. Prima Jesusa B. Quinsayas.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for Contempt filed by Atty. Philip Sigfrid A. Fortun (petitioner) against Atty. Prima Jesusa B. Quinsayas (Atty. Quinsayas), Ma. Gemma Oquendo (Gemma), Dennis Ayon (Ayon), Nenita Oquendo (Nenita), Esmael Mangudadatu (Mangudadatu), Jose Pavia (Pavia), Melinda Quintos De Jesus (De Jesus), Reynaldo Hulog (Hulog), Redmond Batario (Batario), Malou Mangahas (Mangahas), and Danilo Gozo (Gozo). Atty. Quinsayas and the other respondents, who are not from the media, are referred to in this case as Atty. Quinsayas, *et al.* Petitioner also named as respondents GMA Network, Inc. (GMA Network) through its news editors Raffy Jimenez and Victor Sollorano, Sophia Dedace (Dedace), ABS-CBN Corporation (ABS-CBN) through the Head of its News Group Maria Ressa (Ressa), Cecilia Victoria Oreña-Drilon (Drilon), Philippine Daily Inquirer, Inc. (PDI) represented by its Editor-in-Chief Letty Jimenez Magsanoc, Tetch Torres (Torres), Philippine Star (PhilStar) represented by its Editor-in-Chief Isaac Belmonte, and Edu Punay (Punay). Respondents Atty. Quinsayas, *et al.* and respondent media groups and personalities are collectively referred to in this case as respondents.

The Antecedent Facts

On 23 November 2009, a convoy of seven vehicles carrying the relatives of then Maguindanao vice-mayor Esmael "Toto" Mangudadatu, as well as lawyers and journalists, was on their

way to the Commission on Elections office in Shariff Aguak to file Mangudadatu's Certificate of Candidacy[1] when they were accosted by a group of about 100 armed men at a checkpoint in Sitio Malating, Ampatuan town, some four to ten kilometers from their destination.[2] The group was taken hostage and brought to a hilly and sparsely-populated part of Sitio Magating, Barangay Salman, Ampatuan, Maguindanao.[3] The gruesome aftermath of the hostage-taking was later discovered and shocked the world. The hostages were systematically killed by shooting them at close range with automatic weapons, and their bodies and vehicles were dumped in mass graves and covered with the use of a backhoe.[4] These gruesome killings became known as the Maguindanao Massacre. A total of 57 victims were killed, 30 of them journalists. Subsequently, criminal cases for Murder were filed and raffled to the Regional Trial Court of Quezon City, Branch 221, and docketed as Criminal Cases No. Q-09-162148-172, Q-09-162216-31, Q-10-162652, and Q-10-163766. Petitioner is the counsel for Datu Andal Ampatuan, Jr. (Ampatuan, Jr.), the principal accused in the murder cases.

In November 2010, Atty. Quinsayas, *et al.* filed a disbarment complaint against petitioner before this Court, docketed as Bar Matter No. A.C. 8827. The disbarment case is still pending.

Petitioner alleged that on 22 November 2010, GMA News TV internet website posted an article, written by Dedace, entitled "Mangudadatu, others seek disbarment of Ampatuan lawyer," a portion of which reads:

On Monday, Maguindanao Governor Esmael "Toto" Mangudadatu and four others filed a 33 page complaint against lawyer Sigrid Fortun whom they accused of "engaging in every conceivable

---

[1] The Ampatuan Massacre: a map and timeline., 25 November 2009. <http://gmanetwork.com/news/story/177821/news/specialreports/the-ampatuan-massacre-a-map-and-timeline> (visited 4 December 2012).

[2] *Id.*

[3] *Id.*

[4] *Id.*

chichancery or artifice to unduly delay the proceedings by using and abusing legal remedies available."[5]

On even date, Inquirer.net, the website of PDI, also published an article, written by Torres, which according to petitioner also stated details of the disbarment case, as follows:

"Respondent Atty. Fortun had astutely embarked in an untiring quest to obstruct, impede and degrade the administration of justice by filing countless causes of action, all in the hope of burying the principal issue of his client's participation or guilt in the murder of 57 people that ill-fated day of November 23, 2009," the petitioners said.[6]

Petitioner further alleged that on 23 November 2010, PhilStar published an article, written by Punay, which gave details of the disbarment allegations, thus:

"Attorney Fortun used and abused legal remedies available and allowed under the rules, muddled the issues and diverted the attention away from the main subject matter of the cases, read the complaint.

*** *** ***

"Respondent Attorney Fortun's act of misleading the prosecution and trial court is a dishonest/deceitful conduct violative of Code of Professional Responsibility," read the complaint.

"In so doing, he diminished the public confidence in the law and the legal profession, rendering him unfit to be called a member of the Bar."[7]

Further, petitioner alleged that on 23 November 2010, Channel 23 aired on national television a program entitled "ANC Presents: Crying for Justice: the Maguindanao Massacre." Drilon, the program's host, asked questions and allowed Atty. Quinsayas to discuss the disbarment case against petitioner, including its principal points. Petitioner was allegedly singled out and identified in the program as the lead counsel of the Ampatuan family.

---

[5] *Rollo*, pp. 5-6, Contempt Charge.

[6] *Id.* at 6.

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

Petitioner alleged that Atty. Quinsayas, *et al.* actively disseminated the details of the disbarment complaint against him in violation of Rule 139-B of the Rules of Court on the confidential nature of disbarment proceedings. Petitioner further alleged that respondent media groups and personalities conspired with Atty. Quinsayas, *et al.* by publishing the confidential materials on their respective media platforms. Petitioner pointed out that Drilon discussed the disbarment complaint with Atty. Quinsayas in a television program viewed nationwide.

Petitioner alleged that the public circulation of the disbarment complaint against him exposed this Court and its investigators to outside influence and public interference. Petitioner alleged that opinion writers wrote about and commented on the disbarment complaint which opened his professional and personal reputation to attack. He alleged that the purpose of respondents in publishing the disbarment complaint was to malign his personal and professional reputation, considering the following: (1) the bases of the charges were not new but were based on incidents that supposedly took place in January 2010; (2) it was timed to coincide with the anniversary of the Maguindanao Massacre to fuel hatred, contempt and scorn for Ampatuan, Jr. and his counsel and violated the accused's right to presumption of innocence and due process; (3) it was published following articles written about petitioner's advocacy for the rights of an accused and negated the impact of these articles on the public; and (4) respondents knew that the charges were baseless as petitioner always opted for speedy trial and protection of the accused's rights at trial. Petitioner further alleged that in announcing their "causes of action" in the disbarment case, respondents were only seeking the approval and sympathy of the public against him and Ampatuan, Jr.

In its Comment, GMA Network alleged that it has no newspaper or any publication where it could have printed the article. It alleged that it did not broadcast the disbarment complaint on its television station. GMA Network alleged that the publication had already been done and completed when Atty. Quinsayas distributed copies of the disbarment complaint and thus, the members of the media who reported the news and the media groups that published it on their website, including GMA Network,

did not violate the confidentiality rule. GMA Network further alleged that Dedace, a field reporter for the judiciary, acted in good faith and without malice when she forwarded the news to the news desk. GMA News also acted in good faith in posting the news on its website. GMA Network denied that it conspired with the other respondents in publishing the news. GMA Network alleged that it posted the disbarment complaint, without any unfair, critical, and untruthful comment, and only after it was "published" by Atty. Quinsayas, *et al.* who furnished copies of the disbarment complaint to the media reporters. GMA Network alleged that it had no intention to malign petitioner's personal and professional reputation in posting the news about the disbarment complaint on its website.

In her Comment, Dedace clarified that she is a field news reporter of GMA Network and not a writer of the GMA News TV website. Her beat includes the Supreme Court, the Court of Appeals, and the Department of Justice. Dedace alleged that on 22 November 2010, she received an advice from fellow field reporter Mark Merueñas that the lawyer of Mangudadatu would be filing a disbarment case against petitioner. She waited at the Supreme Court. At around 5:00 p.m., Atty. Quinsayas arrived. Atty. Quinsayas gave copies of the petition to news reporters and Dedace received one. Dedace prepared and sent her news story to GMA Network where it went to the editor. Dedace alleged that she did not breach the rule on confidentiality of disbarment proceedings against lawyers when she reported the filing of the disbarment complaint against petitioner. She alleged that she acted in good faith and without malice in forwarding her news story to the news desk and that she had no intention to, and could not, influence or interfere in the proceedings of the disbarment case. She further alleged that she honestly believed that the filing of the disbarment complaint against petitioner was newsworthy and should be reported as news.

PDI alleged in its Comment that it shares content with the Inquirer.net website through a syndication but the latter has its own editors and publish materials that are not found on the broadsheet. It alleged that Philippine Daily Inquirer, Inc. and Inquirer Interactive, Inc. are two different corporations, with

separate legal personalities, and one may not be held responsible for the acts of the other.

Torres[8] alleged in her Comment that on 17 November 2010, a private prosecutor told her and several other reporters that a disbarment case would be filed against petitioner. The disbarment case was actually filed on 22 November 2010 when Torres received a copy of the complaint. Since the lead of the story came from a lawyer, Torres did not consider that writing a story about the filing of the disbarment complaint might amount to contempt of court. Torres alleged that the writing of the story was an independent act and she did not conspire with any of the other respondents. Torres maintained that she acted in good faith in writing the news report because the Maguindanao Massacre was a matter of public concern and the allegations in the disbarment complaint were in connection with petitioner's handling of the case. Torres further asserted that petitioner is a public figure and the public has a legitimate interest in his doings, affairs and character.

In her Comment, Ressa alleged that she was the former head of ABS-CBN's News and Current Affairs Group and the former Managing Director of ANC. However, she was on terminal leave beginning 30 October 2010 in advance to the expiration of her contract on 3 January 2011. Ressa alleged that she had no participation in the production and showing of the broadcast on 23 November 2010. Ressa adopts the answer of her co-respondents ABS-CBN and Drilon insofar as it was applicable to her case.

ABS-CBN and Drilon filed a joint Comment. ABS-CBN alleged that ABS-CBN News Channel, commonly known as ANC, is maintained and operated by Sarimanok Network News (SNN) and not by ABS-CBN. SNN, which produced the program "ANC Presents: Crying for Justice: the Maguindanao Massacre," is a subsidiary of ABS-CBN but it has its own juridical personality although SNN and ABS-CBN have interlocking directors. ABS-CBN and Drilon alleged that the presentation and hosting of

---

[8] Ma. Theresa Torres in her Comment. *Id.* at 209.

the program were not malicious as there was no criminal intent to violate the confidentiality rule in disbarment proceedings. They alleged that the program was a commemoration of the Maguindanao Massacre and was not a report solely on the disbarment complaint against petitioner which took only a few minutes of the one-hour program. They alleged that the program was not a publication intended to embarrass petitioner who was not even identified as the respondent in the disbarment complaint. Drilon even cautioned against the revelation of petitioner's name in the program. ABS-CBN and Drilon further alleged that prior to the broadcast of the program on 23 November 2010, the filing of the disbarment complaint against petitioner was already the subject of widespread news and already of public knowledge. They denied petitioner's allegation that they conspired with the other respondents in violating the confidentiality rule in disbarment proceedings. Finally, they alleged that the contempt charge violates their right to equal protection because there were other reports and publications of the disbarment complaint but the publishers were not included in the charge. They also assailed the penalty of imprisonment prayed for by petitioner as too harsh.

In their joint Comment, respondents Mangudadatu, Ayon, Nenita, and Gemma alleged that petitioner failed to prove that they actively participated in disseminating details of the disbarment complaint against him. They alleged that while they were the ones who filed the disbarment complaint against petitioner, it does not follow that they were also the ones who caused the publication of the complaint. They alleged that petitioner did not provide the name of any particular person, dates, days or places to show the alleged confederation in the dissemination of the disbarment complaint.

Respondents De Jesus, Hulog, Batario, and Mangahas, in their capacity as members of the Board of Trustees of the Freedom Fund for Filipino Journalists, Inc. (FFFJ) and Atty. Quinsayas, former counsel for FFFJ, also filed a joint Comment claiming that the alleged posting and publication of the articles were not established as a fact. Respondents alleged that petitioner did not submit certified true copies of the articles and he only offered to submit a digital video disk (DVD) copy of the televised program

where Atty. Quinsayas was allegedly interviewed by Drilon. Respondents alleged that, assuming the articles were published, petitioner failed to support his allegations that they actively disseminated the details of the disbarment complaint.

In their joint Comment, PhilStar and Punay alleged that on 22 November 2010, Atty. Quinsayas, *et al.* went to this Court to file the disbarment complaint but they were not able to file it on that day.[9] Atty. Quinsayas, *et al.* were able to file the disbarment complaint the following day, or on 23 November 2010. PhilStar and Punay alleged that their news article, which was about the plan to file a disbarment complaint against petitioner, was published on 23 November 2010. It came out before the disbarment complaint was actually filed. They alleged that the news article on the disbarment complaint is a qualified privileged communication. They alleged that the article was a true, fair, and accurate report on the disbarment complaint. The article was straightforward, truthful, and accurate, without any comments from the author. They alleged that Punay reported the plan of Mangudadatu, *et al.* to file the disbarment complaint against petitioner as it involved public interest and he perceived it to be a newsworthy subject. They further alleged that assuming the news article is not a privileged communication, it is covered by the protection of the freedom of expression, speech, and of the press under the Constitution. They also alleged that the case is a criminal contempt proceeding and intent to commit contempt of court must be shown by proof beyond reasonable doubt. They further alleged that they did not commit any contemptible act. They maintained that the news article did not impede, interfere with, or embarrass the administration of justice. They further claimed that it is improbable, if not impossible, for the article to influence the outcome of the case or sway this Court in making its decision. The article also did not violate petitioner's right to privacy because petitioner is a public figure and the public has a legitimate interest in his doings, affairs, and character.

---

[9] From Dedace's Comment, it appeared that Quinsayas, *et al.* arrived at the Supreme Court at around 5:00 p.m. *Id.* at 121.

Pavia died during the pendency of this case[10] and was no longer included in the Comment filed for the FFFJ Trustees. Gozo resigned as member of the FFFJ Trustees and was no longer represented by the FFFJ counsel in filing its comment.[11] Gozo did not file a separate comment.

The Issue

The only issue in this case is whether respondents violated the confidentiality rule in disbarment proceedings, warranting a finding of guilt for indirect contempt of court.

The Ruling of this Court

First, the contempt charge filed by petitioner is in the nature of a criminal contempt. In *People v. Godoy*,[12] this Court made a distinction between criminal and civil contempt. The Court declared:

> A criminal contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. On the other hand, civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein and is, therefore, an offense against the party in whose behalf the violated order is made.
>
> A criminal contempt, being directed against the dignity and authority of the court, is an offense against organized society and, in addition, is also held to be an offense against public justice which raises an issue between the public and the accused, and the proceedings to punish it are punitive. On the other hand, the proceedings to punish a civil contempt are remedial and for the purpose of the preservation of the right of private persons. It has been held that civil contempt is neither a felony nor a misdemeanor, but a power of the court.

---

[10] *Id.* at 235 and 429.

[11] *Id.* at 467.

[12] 312 Phil. 977 (1995).

It has further been stated that intent is a necessary element in criminal contempt, and that no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. On the contrary, there is authority indicating that since the purpose of civil contempt proceedings is remedial, the defendant's intent in committing the contempt is immaterial. Hence, good faith or the absence of intent to violate the court's order is not a defense in civil contempt.[13]

The records of this case showed that the filing of the disbarment complaint against petitioner had been published and was the subject of a televised broadcast by respondent media groups and personalities.

We shall discuss the defenses and arguments raised by respondents.

GMA Network, Inc.

GMA Network's defense is that it has no newspaper or any publication where the article could be printed; it did not broadcast the disbarment complaint in its television station; and that the publication was already completed when Atty. Quinsayas distributed copies of the disbarment complaint to the media.

GMA Network did not deny that it posted the details of the disbarment complaint on its website. It merely said that it has no publication where the article could be printed and that the news was not televised. Online posting, however, is already publication considering that it was done on GMA Network's online news website.

Philippine Daily Inquirer, Inc.

PDI averred that it only shares its contents with Inquirer.net through a syndication. PDI attached a photocopy of the syndication page stating that "[d]ue to syndication agreements between PDI and Inquirer.net, some articles published in PDI may not appear in Inquirer.net."[14]

---

[13] *Id.* at 999.

[14] *Rollo*, p. 204.

A visit to the website describes Inquirer.net as "the official news website of the Philippine Daily Inquirer, the Philippines' most widely circulated broadsheet, and a member of the Inquirer Group of Companies."[15] PDI was not able to fully establish that it has a separate personality from Inquirer.net.

ABS-CBN Corporation

ABS-CBN alleged that SNN is its subsidiary and although they have interlocking directors, SNN has its own juridical personality separate from its parent company. ABS-CBN alleged that SNN controls the line-up of shows of ANC.

We agree with ABS-CBN on this issue. We have ruled that a subsidiary has an independent and separate juridical personality distinct from that of its parent company and that any suit against the latter does not bind the former and vice-versa.[16] A corporation is an artificial being invested by law with a personality separate and distinct from that of other corporations to which it may be connected.[17] Hence, SNN, not ABS-CBN, should have been made respondent in this case.

Maria Ressa

Respondent Ressa alleged that she was on terminal leave when the program about the Maguindanao Massacre was aired on ANC and that she had no hand in its production. Ressa's defense was supported by a certification from the Human Resource Account Head of ABS-CBN, stating that Ressa went on terminal leave beginning 30 October 2010.[18] This was not disputed by petitioner.

Sophia Dedace, Tetch Torres, Cecilia Victoria Oreña-Drilon, and Edu Punay

Basically, the defense of respondents Dedace, Torres, Drilon, and Punay was that the disbarment complaint was published

[15] <http://services.inquirer.net/about/> (visited 12 December 2012).

[16] *Velarde v. Lopez, Inc.,* 464 Phil. 525 (2004).

[17] See *McLeod v. National Labor Relations Commission (1st Div.),* 541 Phil. 214 (2007).

[18] *Rollo*, p. 274.

without any comment, in good faith and without malice; that petitioner is a public figure; that the Maguindanao Massacre is a matter of public interest; and that there was no conspiracy on their part in publishing the disbarment complaint. They also argued that the news reports were part of privileged communication.

In Drilon's case, she further alleged that the television program was a commemoration of the Maguindanao Massacre and not solely about the filing of the disbarment case against petitioner. Even as the disbarment complaint was briefly discussed in her program, petitioner's name was not mentioned at all in the program.

Violation of Confidentiality Rule by Respondent Media Groups and Personalities

Section 18, Rule 139-B of the Rules of Court provides:

> Section 18. *Confidentiality.* — Proceedings against attorneys shall be private and confidential. However, the final order of the Supreme Court shall be published like its decisions in other cases.

The Court explained the purpose of the rule, as follows:

> x x x. The purpose of the rule is not only to enable this Court to make its investigations free from any extraneous influence or interference, but also to protect the personal and professional reputation of attorneys and judges from the baseless charges of disgruntled, vindictive, and irresponsible clients and litigants; it is also to deter the press from publishing administrative cases or portions thereto without authority. We have ruled that malicious and unauthorized publication or verbatim reproduction of administrative complaints against lawyers in newspapers by editors and/or reporters may be actionable. Such premature publication constitutes a contempt of court, punishable by either a fine or imprisonment or both at the discretion of the Court. x x x[19]

In *People v. Castelo*,[20] the Court ruled that contempt is akin to libel and that the principle of privileged communication may be invoked in a contempt proceeding. The Court ruled:

---

[19] *Saludo, Jr. v. Court of Appeals,* 522 Phil. 556, 561 (2006).

[20] 114 Phil. 892 (1962).

While the present case involves an incident of contempt the same is akin to a case of libel for both constitute limitations upon freedom of the press or freedom of expression guaranteed by our Constitution. So what is considered a privilege in one may likewise be considered in the other. The same safeguard should be extended to one whether anchored in freedom of the press or freedom of expression. Therefore, this principle regarding privileged communications can also be invoked in favor of appellant.[21]

The Court recognizes that "publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech."[22] As a general rule, disbarment proceedings are confidential in nature until their final resolution and the final decision of this Court. In this case, however, the filing of a disbarment complaint against petitioner is itself a matter of public concern considering that it arose from the Maguindanao Massacre case. The interest of the public is not on petitioner himself but primarily on his involvement and participation as defense counsel in the Maguindanao Massacre case. Indeed, the allegations in the disbarment complaint relate to petitioners supposed actions involving the Maguindanao Massacre case.

The Maguindanao Massacre is a very high-profile case. Of the 57 victims of the massacre, 30 were journalists. It is understandable that any matter related to the Maguindanao Massacre is considered a matter of public interest and that the personalities involved, including petitioner, are considered as public figure. The Court explained it, thus:

But even assuming a person would not qualify as a public figure, it would not necessarily follow that he could not validly be the subject of a public comment. For he could; for instance, if and when he would be involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. **The public's primary**

---

[21] *Id.* at 901.

[22] See *Borjal v. CA*, 361 Phil. 1 (1999).

interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety.[23] (Boldface in the original)

Since the disbarment complaint is a matter of public interest, legitimate media had a right to publish such fact under freedom of the press. The Court also recognizes that respondent media groups and personalities merely acted on a news lead they received when they reported the filing of the disbarment complaint.

The distribution by Atty. Quinsayas to the media of the disbarment complaint, by itself, is not sufficient to absolve the media from responsibility for violating the confidentiality rule. However, since petitioner is a public figure or has become a public figure because he is representing a matter of public concern, and because the event itself that led to the filing of the disbarment case against petitioner is a matter of public concern, the media has the right to report the filing of the disbarment case as legitimate news. It would have been different if the disbarment case against petitioner was about a private matter as the media would then be bound to respect the confidentiality provision of disbarment proceedings under Section 18, Rule 139-B of the Rules of Court.

Section 18, Rule 139-B of the Rules of Court is not a restriction on the freedom of the press. If there is a legitimate public interest, media is not prohibited from making a fair, true, and accurate news report of a disbarment complaint. In the absence of a legitimate public interest in a disbarment complaint, members of the media must preserve the confidentiality of disbarment proceedings during its pendency. Disciplinary proceedings against lawyers must still remain private and confidential until their final determination.[24] Only the final order of this Court shall be published like its decisions in other cases.[25]

---

[23] See *Villanueva v. Philippine Daily Inquirer, Inc.,* G.R. No. 164437, 15 May 2009, 588 SCRA 1, 13.

[24] *Tan v. IBP Commission on Bar Discipline*, 532 Phil. 605 (2006).

[25] Section 18, Rule 139-B of the Rules of Court.

Petitioner also failed to substantiate his claim that respondent media groups and personalities acted in bad faith and that they conspired with one another in their postings and publications of the filing of a disbarment complaint against him. Respondent media groups and personalities reported the filing of the disbarment complaint without any comments or remarks but merely as it was — a news item. Petitioner failed to prove that respondent media groups and personalities acted with malicious intent. Respondent media groups and personalities made a fair and true news report and appeared to have acted in good faith in publishing and posting the details of the disbarment complaint. In the televised broadcast of the commemoration of the Maguindanao Massacre over ANC, the disbarment case was briefly discussed but petitioner was not named. There was also no proof that respondent media groups and personalities posted and published the news to influence this Court on its action on the disbarment case or to deliberately destroy petitioner's reputation. It should also be remembered that the filing of the disbarment case against petitioner entered the public domain without any act on the part of the media. As we will discuss later, the members of the media were given copies of the disbarment complaint by one of the complainants.

Esmael Mangudadatu, Dennis Ayon, Nenita and Ma. Gemma Oquendo

Respondents, while admitting that they were some of the complainants in the disbarment complaint against petitioner, alleged that there was no proof that they were the ones who disseminated the disbarment complaint. Indeed, petitioner failed to substantiate his allegation that Mangudadatu, Ayon, Nenita, and Gemma were the ones who caused the publication of the disbarment complaint against him. There was nothing in the records that would show that Mangudadatu, Ayon, Nenita, and Gemma distributed or had a hand in the distribution of the disbarment complaint against petitioner.

Melinda Quintos De Jesus, Reynaldo Hulog, Redmond Batario, Malou Mangahas, and Atty. Prima Jesusa B. Quinsayas

Respondents De Jesus, Hulog, Batario, Mangahas, and Atty. Quinsayas alleged that petitioner was not able to establish the posting and publication of the articles about the disbarment complaint, and that assuming the posting and publication had been established, petitioner failed to support his allegation that they actively disseminated the details of the disbarment complaint. They further alleged that they did not cause the publication of the news articles and thus, they did not violate the rule on privacy and confidentiality of disbarment proceedings.

Indeed, petitioner failed to prove that, except for Atty. Quinsayas, the other respondents, namely De Jesus, Hulog, Batario, Mangahas, and even Gozo, who did not file his separate comment, had a hand in the dissemination and publication of the disbarment complaint against him. It would appear that only Atty. Quinsayas was responsible for the distribution of copies of the disbarment complaint. In its Comment, GMA Network stated that the publication **"had already been done and completed when copies of the complaint for disbarment were distributed by one of the disbarment complainants, Atty. Prima Quinsayas x x x."**[26] Dedace also stated in her Comment that "Atty. Quinsayas gave copies of the disbarment complaint against Atty. Fortun and she received one[.]"[27]

Atty. Quinsayas is bound by Section 18, Rule 139-B of the Rules of Court both as a complainant in the disbarment case against petitioner and as a lawyer. As a lawyer and an officer of the Court, Atty. Quinsayas is familiar with the confidential nature of disbarment proceedings. However, instead of preserving its confidentiality, Atty. Quinsayas disseminated copies of the disbarment complaint against petitioner to members of the media which act constitutes contempt of court. In *Relativo v. De Leon,*[28] the Court ruled that the premature disclosure by publication of the filing and pendency of disbarment proceedings is a violation of the confidentiality rule.[29] In that case, Atty. Relativo, the

[26] *Rollo*, p. 97. Boldface in the original.

[27] *Id.* at 121.

[28] 128 Phil. 104 (1967).

[29] Then Section 10, Rule 128 of the Rules of Court.

complainant in a disbarment case, caused the publication in newspapers of statements regarding the filing and pendency of the disbarment proceedings. The Court found him guilty of contempt.

Indirect contempt against a Regional Trial Court or a court of equivalent or higher rank is punishable by a fine not exceeding ₱30,000 or imprisonment not exceeding six months or both.[30] Atty. Quinsayas acted wrongly in setting aside the confidentiality rule which every lawyer and member of the legal profession should know. Hence, we deem it proper to impose on her a fine of Twenty Thousand Pesos (₱20,000).

WHEREFORE, we find Atty. Prima Jesusa B. Quinsayas **GUILTY** of indirect contempt for distributing copies of the disbarment complaint against Atty. Philip Sigfrid A. Fortun to members of the media and we order her to pay a **FINE** of Twenty Thousand Pesos (₱20,000).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 197299. February 13, 2013]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **RODRIGO V. MAPOY and DON EMMANUEL R. REGALARIO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; THE QUANTUM OF PROOF REQUIRED

---

[30] Section 7, Rule 71 of the 1997 Rules of Civil Procedure.

FOR A FINDING OF GUILT IS ONLY SUBSTANTIAL EVIDENCE.— It is well-entrenched that in an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and not proof beyond reasonable doubt which requires moral certainty to justify affirmative findings. In this case, the Court finds substantial evidence to support the charges against respondents for grave misconduct and dishonesty.

2. **ID.; ID.; ID.; GRAVE MISCONDUCT AND DISHONESTY, DEFINED; EXHORTING MONEY AMOUNTS TO GRAVE MISCONDUCT; ACCEPTING MONEY FROM A PARTY IN EXCHANGE FOR NOT FILING ANY CRIMINAL CHARGES AGAINST THE LATTER AMOUNTS TO DISHONESTY; DISMISSAL FROM THE SERVICE, PROPER PENALTY.—** Records show that Matias sought the help of the police to entrap respondents who were illegally soliciting money from him. Hence, the CISU-NCRPO planned an entrapment operation which took place at the Century Park Hotel, Manila on October 8, 2003. Prior to the entrapment, Matias withdrew ₱300,000.00 from his bank, which, in turn, recorded the serial numbers of the bills released. During the entrapment, Mapoy received the white envelope containing ₱300,000.00 marked money from Matias and handed it over to Regalario from whom it was subsequently recovered. After their arrest, respondents were brought to the police station for investigation and subsequently charged of the crime of robbery/extortion. To a reasonable mind, the foregoing circumstances are more than adequate to support the conclusion that respondents extorted money from Matias which complained act amounts to grave misconduct or such corrupt conduct inspired by an intention to violate the law, or constituting flagrant disregard of well-known legal rules. Similarly, respondents have been dishonest in accepting money from Matias. Dishonesty has been held to include the disposition to lie, cheat, deceive or defraud, untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle, lack of fairness and straightforwardness, among others. Hence, their dismissal from the service with all its accessory penalties was in order.

3. **REMEDIAL LAW; EVIDENCE; EQUIPOSE RULE IS INAPPLICABLE TO CASE AT BAR. —** The Court cannot subscribe to the theory of respondents that they were at the Century Park Hotel, Manila on that fateful day to entrap Matias for the crime of corruption of public officers. As correctly found by the Ombudsman, nothing was mentioned in the Disposition Form relied upon by respondents with respect to their planned entrapment of Matias. It was only a request to conduct further investigation which was not even shown to have been approved. Moreover, the respondents' act of letting Matias leave the table after handing the money to them is inconsistent with their purported intent to arrest him for the crime of corruption of public officers. No law officer would let an offender walk away from him. Furthermore, as aptly observed by the Ombudsman, the presence of respondents' witnesses, Ramirez and Maure, at the hotel was not sufficiently established, and no justification was offered to explain their failure to come to the aid of respondents when the latter were being arrested. All told, the inculpatory evidence herein point to only one thing: respondents are guilty as charged. Consequently, the CA committed reversible error in applying the equipoise rule in resolving respondents' appeal.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Donato Zarate & Rodriguez for respondents.

D E C I S I O N

***PER CURIAM*:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated February 7, 2011 and Resolution[2] dated June 7, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 116179 which reversed and set aside

---

[1] *Rollo*, pp. 44-56. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Noel G. Tijam and Marlene Gonzales-Sison, concurring.

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

the Review/Recommendation[3] dated February 1, 2008 issued by the Office of Ombudsman finding respondents Rodrigo V. Mapoy (Mapoy) and Don Emmanuel R. Regalario (Regalario) guilty of grave misconduct and dishonesty, and imposing upon them the penalty of dismissal from the service with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service.

The Antecedent Facts

Mapoy and Regalario (respondents) are Special Investigators of the National Bureau of Investigation (NBI), assigned at the Criminal Intelligence Division (CRID).[4] On August 26, 2003, they implemented a search warrant against Pocholo Matias (Matias), owner of Pocholo Matias Grain Center, at his warehouses located in Valenzuela City and were able to seize 250,000 sacks of imported rice. Matias was then charged with technical smuggling or violation of Section 3602 of the Tariff and Customs Code before the Office of the City Prosecutor of Valenzuela. The search warrant, however, was subsequently quashed for "lack of deputization by the Bureau of Customs."[5]

On October 8, 2003, respondents were arrested by the elements of the Counter Intelligence Special Unit of the National Capital Regional Police Office (CISU-NCRPO) during an entrapment operation conducted at the Century Park Hotel, Manila based on the complaint[6] of Matias that the respondents extorted money from him in exchange for not filing any other criminal charges against him. The arresting officers recovered the ₱300,000.00 marked money from Regalario.[7]

Thus, on October 20, 2003, the NBI, through its then Director, General Reynaldo G. Wycoco, filed a complaint[8] against

---

[3] *Id.* at 174-182.

[4] *Id.* at 144.

[5] *Id.* at 45.

[6] *Id.* at 131-132.

[7] *Id.* at 135.

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

respondents before the Office of the Ombudsman, docketed as OMB-CA-03-0499-K and OMB-CA-03-0559-L, for Dishonesty, Grave Misconduct and Corrupt Practices.

In their position paper,[9] respondents denied the charges against them and claimed that Matias sent them death threats and offered money for the settlement of his case. This led them to seek authority from the Chief of the CRID-Intelligence Services to conduct further investigation on the matter.[10] Thus, when Matias called them up in the morning of October 8, 2003 reiterating his offered consideration, they formed a team to conduct a legitimate entrapment operation against him for corruption of public officials at the agreed place or the Century Park Hotel, Manila whereat Matias dropped a white envelope on their table and hurriedly left. They then followed him to effect his arrest but were prevented from doing so by the CISU-NCRPO operatives.

The Ombudsman Ruling

On February 1, 2008, Medwin S. Dizon, Graft Investigation and Prosecution Officer II, issued a Review/Recommendation,[11] the dispositive portion of which states:

> WHEREFORE, foregoing considered, respondents Rodrigo V. Mapoy, Special Investigator IV and Don Emmanuel R. Regalario, Special Investigator III, both of the National Bureau of Investigation are hereby found guilty of Grave Misconduct and Dishonesty, and are hereby meted the penalty of DISMISSAL from the service with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for re-employment in the government service pursuant to the Uniform Rules on Administrative Cases in the Civil Service.
>
> SO ORDERED.[12]

---

[9] *Id.* at 165-173.

[10] *Id.* at 198. Disposition Form.

[11] *Id.* at 174-182.

[12] *Id.* at 180-181.

It found substantial evidence to support the charges against respondents who were caught in possession of the marked money inside the hotel. It ruled that as between the claims of entrapment by the parties, the presumption of regularity in the performance of duty applies in favor of the CISU-NCRPO operatives whose acts were not impelled by ill-motives, and whose entrapment operation was well-planned and coordinated. It noted that even the serial numbers of the marked money were duly recorded by the bank. In contrast, the supposed entrapment operation by the respondents did not have the imprimatur of the NBI Director who even initiated the instant complaint against them. Not even the Deputy Director for Intelligence Service of the NBI supported respondents' entrapment claim. Neither was the alleged presence of the other members of the NBI team, Jose Rommel G. Ramirez (Ramirez) and Mark III C. Maure (Maure), at the hotel on that fateful day sufficiently established. Nor did the Disposition Form relied upon by respondents disclose the purported entrapment operation against Matias. Moreover, the Investigating Officer noted that: (1) some inconsistencies in the statements of respondents and their witnesses tend to corroborate the claims of Matias; (2) respondents did not immediately reveal the supposed purpose of their presence at the crime scene; and (3) it took them one week after the incident to file their complaint against Matias for corruption of public officials.[13] Thus, it was concluded that respondents' defenses were mere afterthought resorted to in order to gain leverage against the charge of robbery/extortion.[14]

The foregoing resolution was approved by then Acting Ombudsman, Orlando C. Casimiro, on December 8, 2009.[15] Respondents' motion for reconsideration therefrom was denied in the Order[16] dated September 2, 2010.

Aggrieved, respondents filed a petition for review under Rule 43 of the Rules of Court before the CA.

---

[13] *Id.* at 177-180.

[14] *Id.* at 180.

[15] *Id.* at 181.

[16] *Id.* at 183-187.

The CA Ruling

In its assailed Decision,[17] the CA reversed and set aside the findings of the Office of the Ombudsman based on the following grounds: (1) there was no evidence positively confirming the fact that respondents were not conducting a legitimate entrapment operation; (2) Matias had an axe to grind against respondents who raided his warehouses and caused the filing of a criminal case against him, thus, his motive is highly suspect; (3) it is unclear what really transpired at the Century Park Hotel, Manila on October 8, 2003 between the respondents, Matias and the arresting officers of the CISU-NCRPO. Consequently, applying the equipoise rule, the CA acquitted respondents of the crimes charged.

The NBI thus sought reconsideration[18] while the Office of the Ombudsman filed an Omnibus Motion to Intervene and to Admit Attached Motion for Reconsideration of the Decision dated 07 February 2011 (Filed with Plea for Leave of Court).[19] On June 7, 2011, the CA issued a Resolution[20] where it noted the Office of the Ombudsman's Motion to Intervene and denied both motions for reconsideration.

Issues Before the Court

Hence, the instant petition filed by the Office of the Ombudsman based on the following ground:

THE COURT OF APPEALS SERIOUSLY ERRED IN ISSUING THE ASSAILED DECISION DATED 07 FEBRUARY 2011, REVERSING THE OFFICE OF THE OMBUDSMAN'S REVIEW/RECOMMENDATION DATED 01 FEBRUARY 2008 WHICH FOUND THE RESPONDENTS GUILTY OF GRAVE MISCONDUCT AND DISHONESTY AND IMPOSED UPON THEM THE PENALTY OF DISMISSAL FROM THE SERVICE WITH CANCELLATION OF ELIGIBILITY, FORFEITURE OF

---

[17] *Id.* at 44-56.

[18] *Id.* at 188-196.

[19] *Id.* at 61-88.

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

RETIREMENT BENEFITS, AND PERPETUAL DISQUALIFICATION FOR REEMPLOYMENT IN THE GOVERNMENT SERVICE, CONSIDERING THAT:

> **The findings of facts established by the Office of the Ombudsman in the Review/Recommendation dated 01 February 2008 are supported by substantial evidence, thus, conclusive upon the reviewing authority.**[21]

The Court's Ruling

The petition is meritorious.

It is well-entrenched that in an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and not proof beyond reasonable doubt which requires moral certainty to justify affirmative findings.[22]

In this case, the Court finds substantial evidence to support the charges against respondents for grave misconduct and dishonesty. Records show that Matias sought the help of the police to entrap respondents who were illegally soliciting money from him. Hence, the CISU-NCRPO planned an entrapment operation which took place at the Century Park Hotel, Manila on October 8, 2003. Prior to the entrapment, Matias withdrew ₱300,000.00 from his bank,[23] which, in turn, recorded the serial numbers of the bills released.[24] During the entrapment, Mapoy received the white envelope containing ₱300,000.00 marked money from Matias and handed it over to Regalario from whom it was subsequently recovered. After their arrest, respondents were brought to the police station for investigation[25] and

---

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

[22] *Miro v. Dosono*, G.R. No. 170697, April 30, 2010, 619 SCRA 653, 660; *Commission on Audit, Regional Office No. 13, Butuan City v. Hinampas*, G.R. No. 158672, August 7, 2007, 529 SCRA 245, 260.

[23] *Rollo*, p. 137.

[24] *Id.* at 138.

[25] *Id.* at 135.

subsequently charged of the crime of robbery/extortion. To a reasonable mind, the foregoing circumstances are more than adequate to support the conclusion that respondents extorted money from Matias which complained act amounts to grave misconduct or such corrupt conduct inspired by an intention to violate the law, or constituting flagrant disregard of well-known legal rules.[26] Similarly, respondents have been dishonest in accepting money from Matias. Dishonesty has been held to include the disposition to lie, cheat, deceive or defraud, untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle, lack of fairness and straightforwardness, among others.[27] Hence, their dismissal from the service with all its accessory penalties was in order.

The Court cannot subscribe to the theory of respondents that they were at the Century Park Hotel, Manila on that fateful day to entrap Matias for the crime of corruption of public officers. As correctly found by the Ombudsman, nothing was mentioned in the Disposition Form[28] relied upon by respondents with respect to their planned entrapment of Matias.[29] It was only a request to conduct further investigation which was not even shown to have been approved. Moreover, the respondents' act of letting Matias leave the table after handing the money to them[30] is inconsistent with their purported intent to arrest him for the crime of corruption of public officers. No law officer would let an offender walk away from him. Furthermore, as aptly observed by the Ombudsman, the presence of respondents' witnesses, Ramirez and Maure, at the hotel was not sufficiently established,[31] and no justification was offered to explain their failure to come to the aid of respondents when the latter were being arrested.

---

[26] *Miro v. Dosono,* G.R. No. 170697, April 30, 2010, 619 SCRA 653, 662.

[27] *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652, 663.

[28] *Rollo,* p. 198.

[29] *Id.* at 178.

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

[31] *Id.* at 178.

All told, the inculpatory evidence herein point to only one thing: respondents are guilty as charged. Consequently, the CA committed reversible error in applying the equipoise rule[32] in resolving respondents' appeal.

WHEREFORE, premises considered, the instant petition is **GRANTED.** The February 7, 2011 Decision and June 7, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 116179 are hereby **REVERSED** and **SET ASIDE.** The Review/ Recommendation dated February 1, 2008 of the Office of the Ombudsman is **REINSTATED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 198694. February 13, 2013]

RAMON MARTINEZ *Y* GOCO/RAMON GOCO *Y* MARTINEZ @ MON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNWARRANTED INTRUSIONS BY THE GOVERNMENT; EFFECTS SECURED BY GOVERNMENT AUTHORITIES IN CONTRAVENTION THEREOF ARE RENDERED INADMISSIBLE IN EVIDENCE FOR ANY PURPOSE; EXCEPTIONS TO THE

---

[32] *Id.* at 53.

"EXCLUSIONARY RULE".— Enshrined in the fundamental law is a person's right against unwarranted intrusions by the government. Section 2, Article III of the 1987 Philippine Constitution (Constitution) states that: Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. Accordingly, so as to ensure that the same sacrosanct right remains revered, effects secured by government authorities in contravention of the foregoing are rendered inadmissible in evidence for any purpose, in any proceeding. In this regard, Section 3(2), Article III of the Constitution provides that: 2. Any evidence obtained in violation of this or the preceding section [referring to Section 2] shall be inadmissible for any purpose in any proceeding. Commonly known as the "exclusionary rule," the above-cited proscription is not, however, an absolute and rigid one. As found in jurisprudence, the traditional exceptions are customs searches, searches of moving vehicles, seizure of evidence in plain view, consented searches, "stop and frisk" measures and searches incidental to a lawful arrest. This last-mentioned exception is of particular significance to this case and thus, necessitates further disquisition.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; TO BE VALID, THE APPREHENDING OFFICER MUST HAVE BEEN SPURRED BY PROBABLE CAUSE TO ARREST A PERSON CAUGHT *IN FLAGRANTE DELICTO*; TERM "PROBABLE CAUSE," EXPLAINED.—** A valid warrantless arrest which justifies a subsequent search is one that is carried out under the parameters of Section 5(a), Rule 113 of the Rules of Court which requires that the apprehending officer must have been spurred by probable cause to arrest a person caught *in flagrante delicto*. To be sure, the term probable cause has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged. Specifically

with respect to arrests, it is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. In this light, the determination of the existence or absence of probable cause necessitates a re-examination of the factual incidents.

3. **ID.; ID.; ID.; ID.; TO JUSTIFY A WARRANTLESS ARREST FOR DISRUPTION OF COMMUNAL TRANQUILITY, IN VIOLATION OF SECTION 844 OF THE MANILA CITY ORDINANCE, IT MUST BE ESTABLISHED THAT THE APPREHENSION WAS EFFECTED AFTER A REASONABLE ASSESSMENT BY THE POLICE OFFICER THAT A PUBLIC DISTURBANCE IS BEING COMMITTED.—** Records show that PO2 Soque arrested Ramon for allegedly violating Section 844 of the Manila City Ordinance x x x. [T]he foregoing ordinance penalizes the following acts: (1) making, countenancing, or assisting in making any riot, affray, disorder, disturbance, or breach of the peace; (2) assaulting, beating or using personal violence upon another without just cause in any public place; (3) uttering any slanderous, threatening or abusive language or expression or exhibiting or displaying any emblem, transparency, representation, motto, language, device, instrument, or thing; and (4) doing any act, in any public place, meeting or procession, tending to disturb the peace or excite a riot, or collect with other persons in a body or crowd for any unlawful purpose, or disturbance or disquiet any congregation engaged in any lawful assembly. Evidently, the gravamen of these offenses is the disruption of communal tranquillity. Thus, to justify a warrantless arrest based thereon, it must be established that the apprehension was effected after a reasonable assessment by the police officer that a public disturbance is being committed.

4. **ID.; ID.; ID.; ID.; ABSENT PROBABLE CAUSE, THE WARRANTLESS ARREST OF ACCUSED IS UNJUSTIFIED; NO PROBABLE CAUSE EXISTED TO JUSTIFY PETITIONER'S WARRANTLESS ARREST.—** [P]O2 Soque's testimony detailed the surrounding circumstances leading to Ramon's warrantless warrant x x x. [A] perusal of the x x x testimony negates the presence of probable cause when the police officers conducted their warrantless arrest of Ramon. To elucidate, it cannot be said that the act of shouting in a

thickly-populated place, with many people conversing with each other on the street, would constitute any of the acts punishable under Section 844 of the Manila City Ordinance as above-quoted. Ramon was not making or assisting in any riot, affray, disorder, disturbance, or breach of the peace; he was not assaulting, beating or using personal violence upon another; and, the words he allegedly shouted — "*Putang ina mo! Limang daan na ba ito*?" — are not slanderous, threatening or abusive, and thus, could not have tended to disturb the peace or excite a riot considering that at the time of the incident, Balingkit Street was still teeming with people and alive with activity. x x x In its totality, the Court observes that these facts and circumstances could not have engendered a well-founded belief that any breach of the peace had been committed by Ramon at the time that his warrantless arrest was effected. All told, no probable cause existed to justify Ramon's warrantless arrest.

5. **ID.; ID.; ID.; ID.; THE DETERMINATION OF PROBABLE CAUSE IS NOT A BLANKET-LICENSE TO WITHHOLD LIBERTY OR TO CONDUCT UNWARRANTED FISHING EXPEDITION BUT THE SAME MUST BE PERFORMED WISELY AND CAUTIOUSLY, APPLYING THE EXACTING STANDARDS OF A REASONABLY DISCREET AND PRUDENT MAN.—** Indeed, while it is true that the legality of arrest depends upon the reasonable discretion of the officer or functionary to whom the law at the moment leaves the decision to characterize the nature of the act or deed of the person for the urgent purpose of suspending his liberty, this should not be exercised in a whimsical manner, else a person's liberty be subjected to ubiquitous abuse. As law enforcers, it is largely expected of them to conduct a more circumspect assessment of the situation at hand. The determination of probable cause is not a blanket-license to withhold liberty or to conduct unwarranted fishing expeditions. It demarcates the line between legitimate human conduct on the one hand, and ostensible criminal activity, on the other. In this respect, it must be performed wisely and cautiously, applying the exacting standards of a reasonably discreet and prudent man. Surely, as constitutionally guaranteed rights lie at the fore, the duty to determine probable cause should be clothed with utmost conscientiousness, as well as impelled by a higher sense of public accountability.

6. ID.; ID.; ID.; ID.; ABSENT A VALID ARREST, THE WARRANTLESS SEARCH THAT RESULTED FROM IT IS ALSO ILLEGAL; ACQUITTAL OF PETITIONER FOR THE CRIME OF POSSESSION OF DANGEROUS DRUGS, WARRANTED.— [A]s it cannot be said that Ramon was validly arrested, the warrantless search that resulted from it was also illegal. Thus, the subject *shabu* purportedly seized from Ramon is inadmissible in evidence for being the proverbial fruit of the poisonous tree as mandated by the above-discussed constitutional provisions. In this regard, considering that the confiscated *shabu* is the very *corpus delicti* of the crime charged, Ramon's acquittal should therefore come as a matter of course.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the June 30, 2011 Decision[2] and September 20, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 32544 which affirmed the April 30, 2009 Decision[4] of the Regional Trial Court of Manila, Branch 2 (RTC) in Criminal Case No. 08-258669, convicting petitioner Ramon Martinez *y* Goco/Ramon Goco *y* Martinez (Ramon) of the crime of possession of dangerous drugs punished under Section 11(3), Article II of Republic Act No. 9165 (RA 9165), otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

---

[1] *Rollo*, pp. 8-12.

[2] *Id.* at 25-37. Penned by Associate Justice Antonio L. Villamor, with Associate Justices Jose C. Reyes, Jr. and Ramon A. Cruz, concurring.

[3] *Id.* at 69-70.

[4] *Id.* at 17-23. Penned by Judge Alejandro G. Bijasa.

The Factual Antecedents

At around 9:15 in the evening of December 29, 2007, PO2 Roberto Soque (PO2 Soque), PO2 Alejandro Cepe (PO2 Cepe) and PO3 Edilberto Zeta (PO3 Zeta), who were all assigned to the Station Anti-Illegal Drugs (SAID) Section of the Malate Police Station 9 (Police Station 9), conducted a routine foot patrol along Balingkit Street, Malate, Manila. In the process, they heard a man shouting "*Putang ina mo! Limang daan na ba ito?*" For purportedly violating Section 844 of the Revised Ordinance of the City of Manila (Manila City Ordinance) which punishes breaches of the peace, the man, later identified as Ramon, was apprehended and asked to empty his pockets. In the course thereof, the police officers were able to recover from him a small transparent plastic sachet containing white crystalline substance suspected to be *shabu*. PO2 Soque confiscated the sachet and brought Ramon to Police Station 9 where the former marked the item with the latter's initials, "RMG." There, Police Superintendent Ferdinand Ricafrente Quirante (PSupt Quirante) prepared a request for laboratory examination which, together with the specimen, was brought by PO2 Soque to the PNP Crime Laboratory for examination.

Forensic Chemist Police Senior Inspector Erickson Calabocal (PSInsp Calabocal) examined the specimen which contained 0.173 gram of white crystalline substance and found the same positive for methylamphetamine hydrochloride (or *shabu*).

Consequently, Ramon was charged with possession of dangerous drugs under Section 11(3), Article II of RA 9165 through an Information dated January 3, 2008 which states:

> That **on or about December 29, 2007**, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control **one (1) heat sealed transparent plastic sachet containing ZERO POINT ONE SEVEN THREE (0.173) gram** of white crystalline substance containing methylamphetamine hydrochloride known as *SHABU*, a dangerous drug.[5]

[5] Original records, p. 1.

In defense, Ramon denied the charge and gave his version of the incident. He narrated that on December 29, 2007, at around 4:00 in the afternoon, while walking along Balingkit Street to borrow a welding machine from one Paez Garcia, a man in civilian clothing approached and asked him if he is Ramon Goco. Upon affirming his identity, he was immediately handcuffed by the man who eventually introduced himself as a police officer. Together, they boarded a tricycle (sidecar) where the said officer asked him if he was carrying illegal drugs. Despite his denial, he was still brought to a precinct to be detained. Thereafter, PO2 Soque propositioned Ramon and asked for ₱20,000.00 in exchange for his release. When Ramon's wife, Amalia Goco, was unable to produce the ₱20,000.00 which PO2 Soque had asked for, he (Ramon) was brought to the Manila City Hall for inquest proceedings.

The RTC Ruling

In its April 30, 2009 Decision, the RTC convicted Ramon of the crime of possession of dangerous drugs as charged, finding all its elements to have been established through the testimonies of the prosecution's disinterested witnesses. In this relation, it also upheld the legality of Ramon's warrantless arrest, observing that Ramon was disturbing the peace in violation of the Manila City Ordinance during the time of his apprehension. Consequently, Ramon was sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to seventeen (17) years and four (4) months as maximum and to pay a fine of ₱300,000.00. Aggrieved, Ramon elevated his conviction to the CA.

The CA Ruling

In its June 30, 2011 Decision, the CA denied Ramon's appeal and thereby affirmed his conviction. It upheld the factual findings of the RTC which found that the elements of the crime of possession of dangerous drugs were extant, to wit: (1) that the accused is in possession of a prohibited drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[6]

---

[6] *Rollo,* p. 35.

Likewise, the CA sustained the validity of the body search made on Ramon as an incident of a lawful warrantless arrest for breach of the peace which he committed in the presence of the police officers, notwithstanding its (the case for breach of the peace) subsequent dismissal for failure to prosecute.

Moreover, the CA observed that every link in the chain of custody of the prohibited drug was sufficiently established from the time PO2 Soque took the same up to its actual presentation in court.

Finally, it did not give credence to Ramon's claim of extortion as his asseverations failed to overcome the presumption of regularity in the performance of the police officers' official duties.

The Issue

The sole issue raised in this petition is whether or not the CA erred in affirming the Decision of the RTC convicting Ramon of the crime of possession of dangerous drugs.

The Ruling of the Court

The petition is meritorious.

Enshrined in the fundamental law is a person's right against unwarranted intrusions by the government. Section 2, Article III of the 1987 Philippine Constitution (Constitution) states that:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Accordingly, so as to ensure that the same sacrosanct right remains revered, effects secured by government authorities in contravention of the foregoing are rendered inadmissible in evidence for any purpose, in any proceeding. In this regard, Section 3(2), Article III of the Constitution provides that:

2. Any evidence obtained in violation of this or the preceding section [referring to Section 2] shall be inadmissible for any purpose in any proceeding.

Commonly known as the "exclusionary rule," the above-cited proscription is not, however, an absolute and rigid one.[7] As found in jurisprudence, the traditional exceptions are customs searches,[8] searches of moving vehicles,[9] seizure of evidence in plain view,[10] consented searches,[11] "stop and frisk" measures[12] and searches incidental to a lawful arrest.[13] This last-mentioned exception is of particular significance to this case and thus, necessitates further disquisition.

A valid warrantless arrest which justifies a subsequent search is one that is carried out under the parameters of Section 5(a), Rule 113 of the Rules of Court[14] which requires that the

---

[7] *People v. Montilla*, G.R. No. 123872, January 30, 1998, 285 SCRA 703, 717.

[8] *Id.*, citing *Chia v. Acting Collector of Customs,* L-43810, September 26, 1989, 177 SCRA 755; *Papa v. Mago*, L-27360, February 28, 1968, 22 SCRA 857.

[9] *Id.*, citing *Aniag, Jr. v. Commission on Elections,* G.R. No. 104961, October 7, 1994, 237 SCRA 424; *Valmonte v. De Villa,* G.R. No. 83988, May 24, 1990, 185 SCRA 665.

[10] *Id.*, citing *People v. Leangsiri*, G.R. No. 112659, January 24, 1996, 252 SCRA 213; *People v. Figueroa*, G.R. No. 97143, October 2, 1995, 248 SCRA 679.

[11] *Id.*, citing *People v. Fernandez*, G.R. No. 113474, December 13, 1994, 239 SCRA 174; *People v. Tabar,* G.R. No. 101124, May 17, 1993, 222 SCRA 144.

[12] *Id.*, citing *Terry v. Ohio*, 392 U.S. I, 88 S Ct. 1868, 20 L. Ed. 2d 889 (1968), adopted in *Posadas v. Court of Appeals*, G.R. No. 89139, August 2, 1990, 188 SCRA 288.

[13] *Id.*, citing *People v. Malmstedt*, G.R. No. 91107, June 19, 1991, 198 SCRA 401.

[14] Sec. 5(a) Rule 113 of the Rules of Court provides:

(a) When, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense.

apprehending officer must have been spurred by probable cause to arrest a person caught *in flagrante delicto*. To be sure, the term probable cause has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[15] Specifically with respect to arrests, it is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested.[16] In this light, the determination of the existence or absence of probable cause necessitates a re-examination of the factual incidents.

Records show that PO2 Soque arrested Ramon for allegedly violating Section 844 of the Manila City Ordinance which provides as follows:

> Sec. 844. — Breaches of the Peace. — No person shall make, and, countenance, or assist in making any riot, affray, disorder, disturbance, or breach of the peace; or assault, beat or use personal violence upon another without just cause in any public place; or utter any slanderous, threatening or abusive language or expression or exhibit or display any emblem, transparency, representation, motto, language, device, instrument, or thing; or do any act, in any public place, meeting or procession, tending to disturb the peace or excite a riot, or collect with other persons in a body or crowd for any unlawful purpose; or disturbance or disquiet any congregation engaged in any lawful assembly.
>
> PENALTY: Imprisonment of not more than six (6) months and/or fine not more than Two Hundred pesos (PHP 200.00)

As may be readily gleaned, the foregoing ordinance penalizes the following acts: (1) making, countenancing, or assisting in making any riot, affray, disorder, disturbance, or breach of the

---

[15] *People v. Chua Ho San @Tsay Ho San*, G.R. No. 128222, June 17, 1999, 308 SCRA 432, 445, citing *People v. Encinada*, October 2, 1997, 280 SCRA 72.

[16] *Id.* at 556-446, citing Joaquin G. Bernas, S.J., *The Constitution of the Philippines: A Commentary*, 85 (1st *ed.* 1987).

peace; (2) assaulting, beating or using personal violence upon another without just cause in any public place; (3) uttering any slanderous, threatening or abusive language or expression or exhibiting or displaying any emblem, transparency, representation, motto, language, device, instrument, or thing; and (4) doing any act, in any public place, meeting or procession, tending to disturb the peace or excite a riot, or collect with other persons in a body or crowd for any unlawful purpose, or disturbance or disquiet any congregation engaged in any lawful assembly. Evidently, the gravamen of these offenses is the disruption of communal tranquillity. Thus, to justify a warrantless arrest based thereon, it must be established that the apprehension was effected after a reasonable assessment by the police officer that a public disturbance is being committed.

In this regard, PO2 Soque's testimony detailed the surrounding circumstances leading to Ramon's warrantless warrant, *viz*:

Direct Examination:

ASST. CITY PROS. YAP:
Q: Tell the Court, what happened when you were there on patrol?
A: While we were on routinary patrol we heard a man shouting on top of his voice telling "*Putang ina mo! Limang daan na ba ito*?" pointing to his right front pocket, sir.

Q: There was a shouting, where was this man shouting, where was the shouting came from?
A: Along the street of Balingkit, sir.

Q: How far were you from this shouting, as you said?
A: About ten (10) meters, sir.

Q: Tell the Court what happened, what next follows?
A: We proceeded to the voice where it came from, then, we saw a man, sir.

Q: Who was that man?
A: Goco, sir.

Q: Who is this Goco in relation to this case?
A: Ramon Martinez Goco, sir.

Q: Who is this Goco in relation to this case?
A: He is the one that we apprehended, sir.

Q: What was he doing then when you said you responded immediately, when you saw a man?
A: We saw him shouting on top of his voice, sir.

Q: That is why you came near him, the one who shouted?
A: Yes, sir.

Q: So, what did you do, Mr. Witness, together with your other co-operatives?
A: We apprehended him for bringing [*sic*] the silence of the serenity of the place, sir.

Q: What time was that already at that time, the incident of shouting?
A: Past 9:00, sir.

Q: Who actually accosted Goco, the one who shouted?
A: Me, sir.

Q: Tell the Court, how many were there at that time present with Goco?
A: They scampered away when they saw the police were coming near the place, sir, they scampered in different directions.

Q: Tell the Court what were Cepe and Zeta doing also when you approached the accused?
A: They followed me, sir.

Q: So, tell the Court what happened when you approached accused therein Goco?
A: We apprehended Goco for violation for alarm scandal, sir.

x x x x x x x x x[17]

CROSS EXAMINATION:

x x x x x x x x x

ATTY. AMURAO:

Q: So, just like Leveriza, Balingkit is also thickly populated?
PO2 Soque:
A: Yes, sir.

Q: And there are many people outside their houses?
A: Yes, sir.

---

[17] TSN, September 3, 2008, pp. 7-9.

Q: And I can imagine everybody there outside was talking also?
A: Yes, sir.

Q: I was very noisy, everybody talking, altogether?
A: They were talking casually.

x x x x x x x x x[18]

Clearly, a perusal of the foregoing testimony negates the presence of probable cause when the police officers conducted their warrantless arrest of Ramon.

To elucidate, it cannot be said that the act of shouting in a thickly-populated place, with many people conversing with each other on the street, would constitute any of the acts punishable under Section 844 of the Manila City Ordinance as above-quoted. Ramon was not making or assisting in any riot, affray, disorder, disturbance, or breach of the peace; he was not assaulting, beating or using personal violence upon another; and, the words he allegedly shouted — "*Putang ina mo! Limang daan na ba ito*?" — are not slanderous, threatening or abusive, and thus, could not have tended to disturb the peace or excite a riot considering that at the time of the incident, Balingkit Street was still teeming with people and alive with activity.

Further, it bears stressing that no one present at the place of arrest ever complained that Ramon's shouting disturbed the public. On the contrary, a disinterested member of the community (a certain Rosemarie Escobal) even testified that Ramon was merely standing in front of the store of a certain Mang Romy when a man in civilian clothes, later identified as PO2 Soque, approached Ramon, immediately handcuffed and took him away.[19]

In its totality, the Court observes that these facts and circumstances could not have engendered a well-founded belief

---

[18] TSN, September 17, 2008, p. 19.

[19] TSN, January 14, 2009, pp. 6-9.

that any breach of the peace had been committed by Ramon at the time that his warrantless arrest was effected. All told, no probable cause existed to justify Ramon's warrantless arrest.

Indeed, while it is true that the legality of arrest depends upon the reasonable discretion of the officer or functionary to whom the law at the moment leaves the decision to characterize the nature of the act or deed of the person for the urgent purpose of suspending his liberty,[20] this should not be exercised in a whimsical manner, else a person's liberty be subjected to ubiquitous abuse. As law enforcers, it is largely expected of them to conduct a more circumspect assessment of the situation at hand. The determination of probable cause is not a blanket-license to withhold liberty or to conduct unwarranted fishing expeditions. It demarcates the line between legitimate human conduct on the one hand, and ostensible criminal activity, on the other. In this respect, it must be performed wisely and cautiously, applying the exacting standards of a reasonably discreet and prudent man. Surely, as constitutionally guaranteed rights lie at the fore, the duty to determine probable cause should be clothed with utmost conscientiousness, as well as impelled by a higher sense of public accountability.

Consequently, as it cannot be said that Ramon was validly arrested, the warrantless search that resulted from it was also illegal. Thus, the subject *shabu* purportedly seized from Ramon is inadmissible in evidence for being the proverbial fruit of the poisonous tree as mandated by the above-discussed constitutional provisions. In this regard, considering that the confiscated *shabu* is the very *corpus delicti* of the crime charged, Ramon's acquittal should therefore come as a matter of course.

WHEREFORE, the petition is **GRANTED.** The June 30, 2011 Decision and September 20, 2011 Resolution of the Court of Appeals in CA-G.R. CR No. 32544 are **REVERSED** and **SET ASIDE.** Petitioner Ramon Martinez *y* Goco/ Ramon Goco *y* Martinez is hereby **ACQUITTED** of the crime charged.

---

[20] *People v. Ramos*, G.R. No. 85401-02, June 4, 1990, 264 SCRA 554, 569. See also *People v. Molleda,* November 21, 1978, 86 SCRA 667, 700.

SO ORDERED.

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

INDEX

INDEX

ADMINISTRATIVE CASES

Grave misconduct and dishonesty — Extorting money amounts to grave misconduct or such corrupt conduct inspired by an intention to violate the law, or constituting flagrant disregard of well-known legal rules; accepting money from a party in exchange for not filing any criminal charges against the latter amounts to dishonesty; dismissal from the service, proper penalty. (Office of the Ombudsman *vs.* Mapoy, G.R. No. 197299, Feb. 13, 2013) p. 600

ADMINISTRATIVE PROCEEDINGS

Quantum of proof — The quantum of proof required for a finding of guilt is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and not proof beyond reasonable doubt which requires moral certainty to justify affirmative findings. (Office of the Ombudsman *vs.* Mapoy, G.R. No. 197299, Feb. 13, 2013) p. 600

ALIBI

Defense of — An inherently weak defense because it is easy to fabricate and highly unreliable; to merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. (People of the Phils. *vs.* Veloso *y* Rama, G.R. No. 188849, Feb. 13, 2013) p. 541

APPEALS

Appeal by any of several accused — A favorable judgment obtained by a conspirator from the court, downgrading the crime committed from murder to homicide and prescribing lighter penalties in the form of indeterminate sentence, applies to his co-conspirator who withdrew his appeal;

Section 11(a), Rule 122 of the Rules of Court; the benefits of this provision extended to all the accused, regardless of whether they appealed or not. (People of the Phils. *vs*. PO2 Eduardo Valdez, G.R. No. 175602, Feb. 13, 2013) p. 519

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. (De Leon Cruz *vs*. Bank of the Philippine Islands, G.R. No. 173357, Feb. 13, 2013) p. 504

(Goyanko, Jr. *vs*. United Coconut Planters Bank, G.R. No. 179096, Feb. 06, 2013) p. 76

(Cavite Apparel, Inc. *vs*. Marquez, G.R. No. 172044, Feb. 06, 2013) p. 46

Points of law, theories, issues and arguments — A party cannot change the legal theory of this case under which the controversy was heard and decided in the trial court; it should be the same theory under which the review on

appeal is conducted; points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal; this will be offensive to the basic rules of fair play, justice, and due process. (*Vda. De* Figuracion *vs*. Figuracion-Gerilla, G.R. No. 151334, Feb. 13, 2013) p. 455

(Goyanko, Jr. *vs*. United Coconut Planters Bank, G.R. No. 179096, Feb. 06, 2013) p. 76

— A party may change his theory on appeal when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory. (*Vda. de* Figuracion *vs*. Figuracion-Gerilla, G.R. No. 151334, Feb. 13, 2013) p. 455

— Matters not taken up during the trial cannot be raised for the first time an appeal; non-observance of all the requirements in the chain of custody of seized drugs should be raised before the trial court. (People of the Phils. *vs*. Bartolome *y* Bajo, G.R. No. 191726, Feb. 06, 2013) p. 148

Rules on appeal — An appeal taken either to the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed; a re-calibration of evidence cannot be done in a petition filed under Rule 45. (Lim Po *vs*. Department of Justice, G.R. No. 195198, Feb. 11, 2013) p. 201

ARREST

Warrantless arrest — To be valid, the apprehending officer must have been spurred by probable cause to arrest a person caught *in flagrante delicto*; term "probable cause," explained. (Martinez *y* Goco/Ramon Goco *y* Martinez @ Mon *vs*. People of the Phils., G.R. No. 198694, Feb. 13, 2013) p. 609

Warrantless arrest for disruption of communal tranquility — Absent probable cause, the warrantless arrest of accused is unjustified; the act of shouting in a thickly-populated place, with many people conversing with each other on the street, does not constitute any of the acts punishable under Section 844 of the Manila City Ordinance. (Martinez *y* Goco/Ramon Goco *y* Martinez @ Mon *vs*. People of the Phils., G.R. No. 198694, Feb. 13, 2013) p. 609

— Acts penalized by Section 844 of the Manila City Ordinance: (1) making, countenancing, or assisting in making any riot, affray, disorder, disturbance, or breach of the peace; (2) assaulting, beating or using personal violence upon another without just cause in any public place; (3) uttering any slanderous, threatening or abusive language or expression or exhibiting or displaying any emblem, transparency, representation, motto, language, device, instrument, or thing; and (4) doing any act, in any public place, meeting or procession, tending to disturb the peace or excite a riot, or collect with other persons in a body or crowd for any unlawful purpose, or disturbance or disquiet any congregation engaged in any lawful assembly; to justify a warrantless arrest based thereon, it must be established that the apprehension was effected after a reasonable assessment by the police officer that a public disturbance is being committed. *(Id.)*

ATTORNEYS

Disbarment — Disbarment proceedings are confidential in nature until their final resolution and the final decision of the Court; however, if the filing of a disbarment complaint is a matter of public interest, legitimate media had a right to publish such fact under freedom of the press; expounded. (Fortun *vs*. Quinsayas, G.R. No. 194578, Feb. 13, 2013) p. 578

Disbarment or suspension — Disseminating copies of disbarment complaint to members of the media constitutes contempt of court; premature disclosure by publication of the filing and pendency of disbarment proceedings is a violation of the confidentiality rule. (Fortun *vs*. Quinsayas, G.R. No. 194578, Feb. 13, 2013) p. 578

— If there is legitimate public interest, media is not prohibited from making a fair, true, and accurate news report of a disbarment complaint; otherwise, members of the media must preserve the confidentiality of disbarment proceedings during its pendency. *(Id.)*

BANKS

Obligations — A bank is obliged to observe high standards of integrity and performance in complying with its obligations under the contract of simple loan; its fiduciary relationship with its depositors does not convert the contract between the bank and its depositors from a simple loan to a trust agreement, whether express or implied. (Goyanko, Jr. *vs*. United Coconut Planters Bank, G.R. No. 179096, Feb. 06, 2013) p. 76

— Bank's duty is to its creditor-depositor and not to third persons; its receipt of the deposit signified that it agreed to pay the depositor upon its demand and only upon its order. *(Id.)*

BILL OF RIGHTS

Right against unwarranted intrusions by the government — Stated in Section 2, Article III of the 1987 Philippine Constitution; exclusionary rule stated in Section 3(2), Article III; exceptions are customs searches, searches of moving vehicles, seizure of evidence in plain view, consented searches, "stop and frisk" measures and searches incidental to a lawful arrest. (Martinez *y* Goco/Ramon Goco *y* Martinez @ Mon *vs*. People of the Phils., G.R. No. 198694, Feb. 13, 2013) p. 609

BUY-BUST OPERATIONS

Prior surveillance — Not necessary to render a buy-bust operation legitimate, especially when the buy-bust team is accompanied to the target area by the informant. (People of the Phils. *vs*. Bartolome *y* Bajo, G.R. No. 191726, Feb. 06, 2013) p. 148

CERTIORARI

Petition for — A bond is not required for the filing of special civil actions such as a petition for certiorari under Rule 65 of the Rules of Court; the requirement of a cash or surety bond as provided under the Labor Code only applies to appeals from the orders of the labor arbiter to the NLRC; explained. (Sang-An *vs*. Equator Knights Detective and Security Agency, Inc., G.R. No. 173189, Feb. 13, 2013) p. 492

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657)

Coverage — Court allowed the release of the offered compensation to the landowner pending the determination of the final valuation of their properties. (Land Bank of the Phils. *vs*. Spouses Orilla, G.R. No. 194168, Feb. 13, 2013) p. 565

Just compensation — Concept thereof embraces not only the correct determination of the amount to be paid to the landowners but also payment within a reasonable time from its taking; rationale. (Land Bank of the Phils. *vs*. Spouses Orilla, G.R. No. 194168, Feb. 13, 2013) p. 565

— Court allowed the release of the offered compensation to the landowner pending the determination of the final valuation of their properties. *(Id.)*

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — As a mode of authenticating evidence, it requires that the presentation and admission of the seized prohibited drug as an exhibit be preceded by evidence to support a finding that the matter in question is what the proponent claims it to be; elucidated. (Sales *y* Abalahin *vs*. People of the Phils., G.R. No. 191023, Feb. 06, 2013) p. 133

— Failure of the police officers to make an inventory report and to photograph the drugs seized from the accused are not automatically fatal to the prosecution's case as long as the integrity and evidentiary value of seized items are properly preserved. (People of the Phils. *vs*. De Jesus *y* Garcia, G.R. No. 198794, Feb. 06, 2013) p. 169

(People of the Phils. *vs*. Alviz *y* Yatco, G.R. No. 177158, Feb. 06, 2013) p. 58

— Failure to strictly comply with the procedure on the chain of custody of seized dangerous drugs will not render an arrest illegal or the items seized from the accused inadmissible in evidence. (People of the Phils. *vs*. Manalao *y* Alauya, G.R. No. 187496, Feb. 06, 2013) p. 101

— Links that the prosecution must prove in a buy-bust operation: 1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; 2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and 4) the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. (People of the Phils. *vs.* Langcua *y* Daimla, G.R. No. 190343, Feb. 06, 2013) p. 115

— Means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. *(Id.)*

— Needed to ensure that the integrity and evidentiary value of the seized items are preserved, or simply to ensure that the substance seized from the accused is the same substance presented in court. (People of the Phils. *vs*. Galido *y* Noble, G.R. No. 192231, Feb. 13, 2013) p. 557

— Non-adherence to the procedure on the seizure and custody of dangerous drugs does not make the arrest of the accused illegal or the seized item inadmissible in evidence; what was crucial was the proper preservation of the integrity and evidentiary value of the seized drugs. (People of the Phils. *vs*. Bartolome *y* Bajo, G.R. No. 191726, Feb. 06, 2013) p. 148

(People of the Phils. *vs*. Langcua *y* Daimla, G.R. No. 190343, Feb. 06, 2013) p. 115

— Sufficiently established when there was proof of the following: 1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; 2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and 4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. (People of the Phils. *vs*. Alviz *y* Yatco, G.R. No. 177158, Feb. 06, 2013) p. 58

— The failure of the prosecution to show compliance with the procedural requirements is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible; condition. (Sales *y* Abalahin *vs*. People of the Phils., G.R. No. 191023, Feb. 06, 2013) p. 133

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. (People of the Phils. *vs*. Galido *y* Noble, G.R. No. 192231, Feb. 13, 2013) p. 557

(People of the Phils. *vs*. De Jesus *y* Garcia, G.R. No. 198794, Feb. 06, 2013) p. 169

(Sales *y* Abalahin *vs*. People of the Phils., G.R. No. 191023, Feb. 06, 2013) p. 133

(People of the Phils. *vs*. Manalao *y* Alauya, G.R. No. 187496, Feb. 06, 2013) p. 101

— 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. (People of the Phils. *vs*. De Jesus *y* Garcia, G.R. No. 198794, Feb. 06, 2013) p. 169

Illegal sale of dangerous drugs — Elements necessary to successfully prosecute an illegal sale of drugs case 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. (People of the Phils. *vs*. Galido *y* Noble, G.R. No. 192231, Feb. 13, 2013) p. 557

(People of the Phils. *vs*. De Jesus *y* Garcia, G.R. No. 198794, Feb. 06, 2013) p. 169

(People of the Phils. *vs*. Bartolome *y* Bajo, G.R. No. 191726, Feb. 06, 2013) p. 148

(People of the Phils. *vs*. Manalao *y* Alauya, G.R. No. 187496, Feb. 06, 2013) p. 101

(People of the Phils. *vs*. Alviz *y* Yatco, G.R. No. 177158, Feb. 06, 2013) p. 58

— The exact date of the commission of the crime need not be proven unless it is an essential element of the crime; what is significant is that the links in the chain of custody were all accounted for by the prosecution, from the time the items were confiscated, up to the time they were presented in court during trial. (People of the Phils. *vs*. De Jesus *y* Garcia, G.R. No. 198794, Feb. 06, 2013) p. 169

— What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti*; the commission of illegal sale merely consummates the selling transaction, which happens the moment the buyer receives the drug from the seller. (People of the Phils. *vs*. Bartolome *y* Bajo, G.R. No. 191726, Feb. 06, 2013) p. 148

(People of the Phils. *vs*. Langcua *y* Daimla, G.R. No. 190343, Feb. 06, 2013) p. 115

CONTEMPT

Criminal and civil contempt, distinguished — A criminal contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect; civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein and is an offense against the party in whose behalf the violated order is made; discussed. (Fortun *vs*. Quinsayas, G.R. No. 194578, Feb. 13, 2013) p. 578

Indirect contempt — Online posting is considered publication where it was done on the television network's online news website. (Fortun *vs*. Quinsayas, G.R. No. 194578, Feb. 13, 2013) p. 578

Nature — Contempt is akin to libel and the principle of privileged communication may be invoked in a contempt proceeding for both constitute limitations upon freedom of the press or freedom of expression guaranteed by our Constitution. (Fortun *vs*. Quinsayas, G.R. No. 194578, Feb. 13, 2013) p. 578

CO-OWNERSHIP

Application of laches — Unavailing in view of the proximity of the period when the co-ownership was expressly repudiated and when the complaint was filed; laches, defined. (*Vda. de* Figuracion *vs*. Figuracion-Gerilla, G.R. No. 151334, Feb. 13, 2013) p. 455

Prescription among co-owners — Prescription can only produce all its effects when acts of ownership, or possession, do not evince any doubt as to the ouster of the rights of the other co-owners; the evidence relative to the possession must be clear, complete and conclusive. (*Vda. de* Figuracion *vs*. Figuracion-Gerilla, G.R. No. 151334, Feb. 13, 2013) p. 455

Repudiation — Acquisitive prescription cannot set in absent a clear act of repudiation; the act of repudiation, as a mode of terminating co-ownership, is subject to certain

conditions: (1) a co-owner repudiates the co-ownership; (2) such an act of repudiation is clearly made known to the other co-owners; (3) the evidence thereon is clear and conclusive; and (4) he has been in possession through open, continuous, exclusive, and notorious possession of the property for the period required by law. (*Vda. de* Figuracion *vs*. Figuracion-Gerilla, G.R. No. 151334, Feb. 13, 2013) p. 455

Rights of co-owners — A co-owner is entitled to sell his undivided share; a sale of the entire property by one co-owner without the consent of the other co-owners is a valid conveyance but only insofar as the share of the co-owner is concerned; a co-owner has the right to compel partition at any time. (*Vda. de* Figuracion *vs*. Figuracion-Gerilla, G.R. No. 151334, Feb. 13, 2013) p. 455

— Each co-owner had full ownership of his part and of the fruits and benefits pertaining thereto and the right to alienate the lot but only in so far as the extent of his portion; an affidavit of self-adjudication executed by a co-owner cannot alienate the shares of his other co-owners. *(Id.)*

CORPORATIONS

Doctrine of piercing the veil of corporate fiction — Negligence of the officer must be so gross that it could amount to bad faith and must be established by clear and convincing evidence. (Heirs of Fe Tan Uy *vs*. International Exchange Bank, G.R. No. 166282, Feb. 13, 2013) p. 477

— Obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities; when legal fiction may be disregarded. *(Id.)*

— Requisites to hold a director or officer of a corporation personally liable for corporate obligations: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence

or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith. *(Id.)*

— Under a variation of this doctrine, when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or one and the same. *(Id.)*

Subsidiary — Has an independent and separate juridical personality distinct from that of its parent company and any suit against the latter does not bind the former and vice-versa; corporation, defined. (Fortun *vs*. Quinsayas, G.R. No. 194578, Feb. 13, 2013) p. 578

COURT OF APPEALS

Internal Rules of the Court of Appeals — Consolidation of cases embodied in Sec. 3, Rule III thereof; procedure, discussed. (Serrano *vs*. Ambassador Hotel, Inc., G.R. No. 197003, Feb. 11, 2013) p. 213

COURT PERSONNEL

Simple neglect of duty — Delay in the mailing of orders or personal service constitutes simple neglect of duty. (Mendoza *vs*. Esguerra, A.M. No. P-11-2967 [(Formerly A.M. OCA IPI No. 08-2991-P], Feb. 13, 2013) p. 435

— Penalty of fine imposed instead of suspension so as to prevent undue adverse effect on public service. *(Id.)*

COURTS

Separation of powers — The courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion; a preliminary investigation for the purpose of determining the existence of probable cause is not part of a trial. (Lim Po *vs*. Department of Justice, G.R. No. 195198, Feb. 11, 2013) p. 201

DAMAGES

Exemplary damages — Also known as “punitive” or “vindictive” damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. (People of the Phils. *vs*. Veloso *y* Rama, G.R. No. 188849, Feb. 13, 2013) p. 541

Nominal damages — Awarded in case of violation of right to procedural due process but for a just cause, in accordance with *Agabon v. NLRC*. (Sang-An *vs*. Equator Knights Detective and Security Agency, Inc., G.R. No. 173189, Feb. 13, 2013) p. 492

DENIAL AND FRAME-UP

Defenses of — Inherently weak and are not favored upon by the courts for being easily concocted; they must be proven with strong and convincing evidence. (People of the Phils. *vs.* De Jesus *y* Garcia, G.R. No. 198794, Feb. 06, 2013) p. 169

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over the positive identification made by the police officials; to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner. (People of the Phils. *vs*. Galido *y* Noble, G.R. No. 192231, Feb. 13, 2013) p. 557

DOCUMENTARY STAMP TAX

Persons primarily and secondarily liable — A party to a taxable transaction who “accepts” any documents or instruments in the plain and ordinary meaning of the act does not become primarily liable for the tax; Section 173 of the 1997 National Internal Revenue Code determines liability should the parties who are primarily liable be exempted from paying tax. (Philacor Credit Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 169899, Feb. 06, 2013) p. 26

— The persons primarily liable for the payment of the DST are the person (1) making; (2) signing; (3) issuing; (4) accepting; or (5) transferring the taxable documents, instruments or papers; should these parties be exempted from paying tax, the other party who is not exempt would then be liable. *(Id.)*

EMPLOYEES' COMPENSATION

Occupational diseases — Cardio-vascular diseases, compensable subject to any of the conditions stated in Resolution No. 432 of the Employees' Compensation Commission. (GSIS *vs.* Alcaraz, G.R. No. 187474, Feb. 06, 2013) p. 91

EMPLOYEES, KINDS OF

Managerial employees — The test of "supervisory" or "managerial status" depends on whether a person possesses authority to act in the interest of his employer and whether such authority is not merely routinary or clerical in nature, but requires the use of independent judgment. (De Leon Cruz *vs.* Bank of the Philippine Islands, G.R. No. 173357, Feb. 13, 2013) p. 504

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogative to discipline employees — Penalties must be commensurate to the offense involved and to the degree of the infraction; the exercise of this prerogative should at all times be reasonable and tempered with compassion and understanding. (Cavite Apparel, Inc. *vs.* Marquez, G.R. No. 172044, Feb. 06, 2013) p. 46

EMPLOYMENT, TERMINATION OF

Dismissal of managerial employees — As long as there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position, a managerial employee may be dismissed. (De Leon Cruz *vs.* Bank of the Philippine Islands, G.R. No. 173357, Feb. 13, 2013) p. 504

Due process requirement — Requirement of two written notices, discussed; a first written notice that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a second written notice which informs the employee of the employer's decision to dismiss him. (Sang-An *vs*. Equator Knights Detective and Security Agency, Inc., G.R. No. 173189, Feb. 13, 2013) p. 492

— To validly dismiss an employee, the employer must observe both substantive and procedural due process; the termination of employment must be based on a just or authorized cause and the dismissal effected after due notice and hearing. *(Id.)*

Gross negligence and breach of trust as a ground — Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care; the basic premise for dismissal on the ground of loss of confidence is that the employees concerned hold a position of trust and confidence. (De Leon Cruz *vs*. Bank of the Philippine Islands, G.R. No. 173357, Feb. 13, 2013) p. 504

Neglect of duty as a ground — Must be both gross and habitual; gross negligence implies want of care in the performance of one's duties; habitual neglect imparts repeated failure to perform one's duties for a period of time, depending on the circumstances. (Cavite Apparel, Inc. *vs*. Marquez, G.R. No. 172044, Feb. 06, 2013) p. 46

Penalty of dismissal — May be disregarded by the Court if manifestly disproportionate to the infraction committed. (Cavite Apparel, Inc. *vs*. Marquez, G.R. No. 172044, Feb. 06, 2013) p. 46

Separation pay — One who pleads payment has the burden of proving it, and even where the employees must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employees to prove non-payment. (Heirs of Manuel H. Ridad *vs*. Gregorio Araneta University Foundation, G.R. No. 188659, Feb. 13, 2013) p. 531

Serious misconduct as a ground — The misconduct must be of such grave and aggravated character and not merely trivial or unimportant and must be in connection with the employee's work; committed when the employee lost two firearms and issued an unlicensed firearm. (Sang-An *vs*. Equator Knights Detective and Security Agency, Inc., G.R. No. 173189, Feb. 13, 2013) p. 492

ENTRAPMENT

Buy-bust operations — The accused was caught *in flagrante delicto* during an entrapment through a buy-bust operation; the idea to commit the crime originated from the mind of the accused. (People of the Phils. *vs*. Bartolome *y* Bajo, G.R. No. 191726, Feb. 06, 2013) p. 148

EVIDENCE

Admissibility of — Seizure of a dangerous drug from a passenger during a routine frisk pursuant to airport security procedures is admissible in evidence. (Sales *y* Abalahin *vs*. People of the Phils., G.R. No. 191023, Feb. 06, 2013) p. 133

Equipoise rule — Inapplicable in light of the evidence that respondents are guilty as charged; their act of letting the accused leave the table after handing the money to them is inconsistent with their purported intent to arrest him for the crime of corruption of public officers; no law officer would let an offender walk away from him. (Office of the Ombudsman *vs*. Mapoy, G.R. No. 197299, Feb. 13, 2013) p. 600

Presentation of evidence — The presentation of an informant as a witness is not indispensable to the success of a prosecution of a drug-dealing accused, reason. (People of the Phils. *vs*. Bartolome *y* Bajo, G.R. No. 191726, Feb. 06, 2013) p. 148

FRAME-UP AND EXTORTION

Defenses of — The fact that frame-up and extortion could be easily concocted renders such defenses implausible; to be credited at all, they must be established with clear and

convincing evidence. (People of the Phils. *vs*. Bartolome *y* Bajo, G.R. No. 191726, Feb. 06, 2013) p. 148

JUDGES

Acts done in the exercise of judicial functions — Judges are not liable for damages for what they do in the exercise of their judicial functions, provided the acts are within their legal powers and jurisdiction. (Panes, Jr. *vs*. Judge Dinopol, A.M. OCA-IPI No. 07-2618-RTJ, Feb. 12, 2013) p. 289-290

Gross ignorance of the law— The issuance of the orders when the courts were already closed is a violation of due process; ordering the unwarranted arrest and incarceration of powerless individuals without the opportunity to be heard was in total disregard of the Rules of Court and with grave abuse of authority. (Panes, Jr. *vs*. Judge Dinopol, A.M. OCA-IPI No. 07-2618-RTJ, Feb. 12, 2013) p. 289-290

Inhibition of — Respondent judge should have inhibited himself from taking cognizance of the cases because of his previous undertaking; mandatory inhibition provided in Section 1, Rule 137 of the Rules of Court. (Panes, Jr. *vs*. Judge Dinopol, A.M. OCA-IPI No. 07-2618-RTJ, Feb. 12, 2013) p. 289-290

Misconduct — Committed by continued failure to settle a just debt despite demand letters sent by the complainant; an offer to pay can only mitigate culpability; penalty of fine imposed to ensure that public service is not hindered. (Manlapaz *vs*. Judge Sabillo, A.M. No. MTJ-10-1771 [Formerly A.M. OCA IPI No. 09-2160-MTJ], Feb. 13, 2013) p. 441

Undue delay in rendering a decision — Candid admission and acceptance of infraction, considered as factors in imposing only a fine; age and frail health, also taken into account although these factors do not in any way absolve a judge from liability or excuse him from diligently fulfilling his duties. (Atty. Jimenez, Jr. *vs*. Judge Amdengan, A.M. No. MTJ-12-1818 [Formerly OCA I.P.I. No. 10-2265-MTJ-P], Feb. 13, 2013) p. 448

— The 30-day period within which to render judgment, mandatory; a judge could not subvert Section 10 of the Rules on Summary Procedure by mere issuance of an Order to extend the same. *(Id.)*

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. (Serrano *vs*. Ambassador Hotel, Inc., G.R. No. 197003, Feb. 11, 2013) p. 213

Void judgment — A void judgment or order has no legal and binding effect, force or efficacy for any purpose and can never be validly executed; it is not necessary to take any steps to vacate or avoid it. (Land Bank of the Phils. *vs*. Spouses Placido and Clara Dy Orilla, G.R. No. 194168, Feb. 13, 2013) p. 565

MOOT AND ACADEMIC CASES

Concept — Courts will not consider questions in which no actual interests are involved; where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. (PLDT Co. *vs*. Eastern Telecommunications Phils., Inc., G.R. No. 163037, Feb. 06, 2013) p. 1

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Construction of — While labor contracts are impressed with public interest and the provisions of the POEA-Standard Employment Contract must be construed logically and liberally in favor of Filipino seamen in the pursuit of their employment on board ocean-going vessels, the rule is that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence. (Sy *vs*. Philippine Transmarine Carriers, Inc., G.R. No. 191740, Feb. 11, 2013) p. 190

PRELIMINARY INVESTIGATION

Nature — The prosecutor is bound to determine merely the existence of probable cause that a crime has been committed and that the accused has committed the same; the determination of probable cause is an executive function. (Lim Po *vs*. Department of Justice, G.R. No. 195198, Feb. 11, 2013) p. 201

Probable cause — The determination of probable cause is not a blanket-license to withhold liberty or to conduct unwarranted fishing expeditions; it must be performed wisely and cautiously, applying the exacting standards of a reasonably discreet and prudent man. (Martinez *y* Goco/ Ramon Goco *y* Martinez @ Mon *vs*. People of the Phils., G.R. No. 198694, Feb. 13, 2013) p. 609

PRESUMPTIONS

Presumption of regularity in the performance of official duties — Becomes conclusive in the absence of clear and convincing indication of the lawmen's ill motive and irregular performance of duty. (People of the Phils. *vs*. Bartolome *y* Bajo, G.R. No. 191726, Feb. 06, 2013) p. 148

RAPE

Prosecution for — The law does not impose a burden on the rape victim to prove resistance; what has to be proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim. (People of the Phils. *vs*. Veloso *y* Rama, G.R. No. 188849, Feb. 13, 2013) p. 541

RES JUDICATA

Bar by prior judgment — A final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit; requisites: there must be identity of parties, subject matter, and causes of action as between the first case where the

first judgment was rendered and the second case that is sought to be barred. (Serrano *vs*. Ambassador Hotel, Inc., G.R. No. 197003, Feb. 11, 2013) p. 213

RETIREMENT

Retirement benefits for government employees — Concept of government service, explained. (*Re*: Request of (Ret.) Chief Justice Artemio V. Panganiban for Re-Computation of his Creditable Service for the Purpose of Re-Computing his Retirement Benefits, A.M. No. 10-9-15-SC, Feb. 12, 2013; *Brion, J., dissenting opinion*) p. 227

RETIREMENT OF JUSTICES OF THE SUPREME COURT AND THE COURT OF APPEALS UNDER R.A. NO. 910, AS AMENDED

Retirement benefits and terminal leave pay of justices and judges — As a contract of service, consultancy is excluded as "government service" for retirement purposes because it does not satisfy the basic requirement that there be a public office as understood under the law; excluded by the Civil Service Commission for lack of the required employer-employee relationship. (*Re*: Request of [Ret.] Chief Justice Artemio V. Panganiban for Re-Computation of his Creditable Service for the Purpose of Re-Computing his Retirement Benefits, A.M. No. 10-9-15-SC, Feb. 12, 2013; *Brion, J., dissenting opinion*) p. 227

— Equitable considerations are not necessary where an existing rule holds that consultancy service cannot be creditable government service; where the law or jurisprudence is clear, there must be clear and decisive application; the liberal application of retirement laws is not a universal remedy that applies to all cases. *(Id.)*

— Liberal treatment in passing upon retirement claims, followed by the Supreme Court, thus: (1) waiving the lack of required length of service in cases of disability or death while in actual service or distinctive service; (2) adding accumulated leave credits to the actual length of government service in order to qualify one for retirement; (3) tacking post-retirement service in order to complete the years of

government service required; (4) extending the full benefits of retirement upon compassionate and humanitarian considerations; and (5) considering legal counseling work for a government body or institution as creditable government service. (*Re*: Request of [Ret.] Chief Justice Artemio V. Panganiban for Re-Computation of his Creditable Service for the Purpose of Re-Computing his Retirement Benefits, A.M. No. 10-9-15-SC, Feb. 12, 2013) p. 227

— Not all services rendered for the government can be considered as government service which can be credited to claim retirement benefits, particularly if the service is rendered not by virtue of an appointment or election to a specific public office or position, which requires the taking of an oath of office, but by a contractual engagement like that of a consultant. (*Re*: Request of [Ret.] Chief Justice Artemio V. Panganiban for Re-Computation of his Creditable Service for the Purpose of Re-Computing his Retirement Benefits, A.M. No. 10-9-15-SC, Feb. 12, 2013; *Leonardo-De Castro, J., dissenting opinion*) p. 227

— Services as Legal Counsel to the Department of Education and as Consultant to the Board of National Education considered as creditable government service for purposes of retirement benefits computation even without specific position in the government structure. (*Re*: Request of [Ret.] Chief Justice Artemio V. Panganiban for Re-Computation of his Creditable Service for the Purpose of Re-Computing his Retirement Benefits, A.M. No. 10-9-15-SC, Feb. 12, 2013) p. 227

SEAFARERS, CONTRACT OF EMPLOYMENT

Compensation and benefits for death — The death of the seafarer (1) must be work-related; and (2) must happen during the term of the employment contract; necessary to show a causal connection between a seafarer's work and his death. (Sy *vs*. Philippine Transmarine Carriers, Inc., G.R. No. 191740, Feb. 11, 2013) p. 190

Work-related injury or work-related illness — An injury resulting in disability or death arising out of and in the course of employment; there is a need to show that the injury must arise (1) out of employment, and (2) in the course of employment. (Sy *vs*. Philippine Transmarine Carriers, Inc., G.R. No. 191740, Feb. 11, 2013) p. 190

SEARCH AND SEIZURE

Warrantless search — Absent a valid arrest, the warrantless search that resulted from it was also illegal; the subject seized is inadmissible in evidence for being the proverbial fruit of the poisonous tree. (Martinez *y* Goco/Ramon Goco *y* Martinez @ Mon *vs*. People of the Phils., G.R. No. 198694, Feb. 13, 2013) p. 609

TAX LAWS

Interpretation of — BIR Commissioner has the power and authority to interpret tax laws, but he cannot legislate guidelines contrary to the law he is tasked to implement; his erroneous application of the law is not binding and conclusive upon the Court. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013; *Leonen, J., separate opinion*) p. 311

— In case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer; taxes, as burdens which must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares. (Philacor Credit Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 169899, Feb. 06, 2013) p. 26

TAX REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE

Application of rules — Taxpayers who bona fide relied on the previous rules and prevailing practices prior to Aichi doctrine must be given due credit; prospective application of the latter revenue regulation comports with the precepts of due process. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013; *Velasco, Jr., J., dissenting opinion*) p. 311

Prescriptive period for filing a claim — Compliance with the 120-day waiting period before filing a judicial claim is mandatory and jurisdictional. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013) p. 311

— Failure to comply with the 120-day waiting period violates the doctrine of exhaustion of administrative remedies and renders the petition premature and without a cause of action; effect, discussed. *(Id.)*

Prescriptive period for filing judicial claims — Litany of CTA decisions treat the 120-day and 30-day periods as merely discretionary and dispensable; it constitutes an operative fact and serves as guidance to taxpayers in filing their claims; adherence to the then prevailing practices of the BIR and CTA, sufficient to clothe the taxpayer with good faith. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013; *Velasco, Jr., J., dissenting opinion*) p. 311

— Revenue Memorandum Circular No. 49-03 conclusively proves that the Commissioner of Internal Revenue and the Court of Tax Appeals regarded the 120-day and 30-day periods in Sec. 112(D) as being non-jurisdictional in nature; discussed. *(Id.)*

— Revenue Regulation No. (RR) 7-95 was not superseded upon the approval of R.A. No. 8424 or the 1997 NIRC; RR 7-95 was created in view of Section 106 (d) of the 1977 NIRC which was actually replicated in Section 112 (D) of the 1997 NIRC; to disregard RR 7-95 upon the enactment of the 1997 NIRC would create a complicated scenario of determining which administrative issuance would govern claims during the intervening period pending the revision on implementing rules. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013; *Sereno, C.J., separate dissenting opinion*) p. 311

— Rulings of the Court established that the 120-day and 30-day periods are merely discretionary and dispensable, as long as both the administrative and judicial claims were filed within two years from the close of the relevant taxable quarter. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013; *Velasco, Jr., J., dissenting opinion*) p. 311

— Sec. 4.106-2 of Revenue Regulation No. 7-95, which provided that such judicial claims for refund/credit of input VAT must be filed "before the lapse of the two (2) year period from the date of filing of the VAT return for the taxable quarter" was not repealed by the 1997 NIRC. *(Id.)*

— The 120+30-day period is mandatory and jurisdictional and the Court of Tax Appeals does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period; failure to elevate the claim within 30 days from the lapse of the 120-day period, counted from the filing of the administrative claim for refund, or from the date of receipt of the decision of the Commissioner, will bar any subsequent judicial claim for refund. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013; *Leonen, J., separate opinion*) p. 311

— The judicial claim contemplated under Sec. 112(C) must be filed within a mandatory and jurisdictional period of thirty (30) days after the taxpayer's receipt of the CIR's decision denying the claim, or within thirty (30) days after the CIR's inaction for a period of 120 days from the submission of the complete documents supporting the claim; the period for filing the judicial claim under Sec. 112(C) may stretch out beyond the 2-year threshold provided in Sec. 112(A) as long as the administrative claim is filed within the said 2-year period. (Commissioner of Internal Revenue *vs*. San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013; *Velasco, Jr., J., dissenting opinion*) p. 311

— The mandatory and jurisdictional application of the 120+30 day period must be applied prospectively, or at the earliest only upon the finality of Aichi case where this Court categorically ruled on the nature of said period pursuant to Section 112 (D) of the 1997 NIRC; discussed; rationale. (Commissioner of Internal Revenue *vs.* San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013; *Sereno, C.J., separate dissenting opinion*) p. 311

TAXES

Documentary stamp tax — Revenue Regulations No. 13-2004 states that "[t]he DST on all debt instruments shall be imposed only on every original issue and the tax shall be based on the issue price thereof; hence, the sale of a debt instrument in the secondary market will not be subject to the DST"; included in the enumeration of debt instruments is a promissory note; DST is imposed on the issuances and renewals of promissory notes, but not on their assignment or transfer. (Philacor Credit Corp. *vs.* Commissioner of Internal Revenue, G.R. No. 169899, Feb. 06, 2013) p. 26

— The law expressly provides for the imposition of documentary stamp tax on the transfer and/or assignment of documents evidencing certain transactions; where the law did not specify that such transfer and/or assignment is to be taxed, there would be no basis to recognize an imposition; an assignee or transferee of promissory notes is not liable for the assignment or transfer thereof. *(Id.)*

Filing of a judicial claim — Application of the 120+30 day period in filing a judicial claim pursuant to Aichi doctrine, explained; these periods are mandatory and jurisdictional. (Commissioner of Internal Revenue *vs.* San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013) p. 311

— BIR Ruling No. DA-489-03 cannot be given retroactive effect, reasons: 1) it is admittedly an erroneous interpretation of the law; 2) prior to its issuance, the BIR held that the 120-day period was mandatory and jurisdictional, which

is the correct interpretation of the law; 3) prior to its issuance, no taxpayer can claim that it was misled by the BIR into filing a judicial claim prematurely; and 4) a claim for tax refund or credit, like a claim for tax exemption, is strictly construed against the taxpayer. *(Id.)*

— BIR Ruling No. DA-489-03, explained; mandatory and jurisdictional application of the 120-day period, exceptions: 1) If the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the Court of Tax Appeals; and 2) Where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. *(Id.)*

— BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers from the time of its issuance up to its reversal pursuant to the Aichi doctrine. *(Id.)*

— Reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, discussed. *(Id.)*

— Revenue Memorandum Circular No. 49-03, construed; effects of filing a judicial claim before or after the 120-day waiting period. *(Id.)*

— The inaction of the Commissioner on the claim during the 120-day period is "deemed a denial" of the claim; the taxpayer had 30 days from the expiration of the 120-day period to file its judicial claim with the Court of Tax Appeals; failure to do so rendered the decision of the Commissioner final and inappealable. *(Id.)*

— The prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, illegally, excessively or in any manner wrongfully collected," reckoned from the date the person liable for the tax pays the tax; only the person legally liable to pay the tax can file the judicial claim for refund. *(Id.)*

Filing of an administrative claim — The 60-day period for Commissioner to act on the administrative claim, mandatory and jurisdictional; Revenue Regulation No. 7-95 did not amend Section 106(d) of the Tax Code, as amended by R.A. No. 7716, but merely implemented it; reasons. (Commissioner of Internal Revenue *vs.* San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013) p. 311

Value-added tax — Concept of "excess" input vat and "excessively" collected tax, distinguished and explained. (Commissioner of Internal Revenue *vs.* San Roque Power Corp., G.R. No. 187485, Feb. 12, 2013) p. 311

TRUSTS

Express or direct trusts — Created by the direct and positive acts of the trustor or of the parties; no written words are required to create an express trust, but its creation must be firmly shown. (Goyanko, Jr. *vs.* United Coconut Planters Bank, G.R. No. 179096, Feb. 06, 2013) p. 76

— Required elements before an express trust will be recognized: a competent trustor and trustee; an ascertainable trustor; and sufficiently certain beneficiaries. *(Id.)*

Nature — A trust, express or implied, is the fiduciary relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. (Goyanko, Jr. *vs.* United Coconut Planters Bank, G.R. No. 179096, Feb. 06, 2013) p. 76

WITNESSES

Credibility of — 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*. Veloso *y* Rama, G.R. No. 188849, Feb. 13, 2013) p. 541

(People of the Phils. *vs*. Alviz *y* Yatco, G.R. No. 177158, Feb. 06, 2013) p. 58

Few inconsistencies in the testimony of the offended party do not detract from her credibility as a witness; rape victims are not expected to make an errorless recollection of the incident, so humiliating and painful that they might in fact be trying to obliterate it from their memory. (People of the Phils. *vs*. Veloso *y* Rama, G.R. No. 188849, Feb. 13, 2013) p. 541

— Inconsistencies on minor and trivial matters only serve to strengthen rather than weaken the credibility of witnesses for they erase the suspicion of rehearsed testimony; rationale. *(Id.)*

— Minor inconsistencies in the narration of witnesses do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable; inaccuracies may in fact suggest that the witnesses are telling the truth and have not been rehearsed. (People of the Phils. *vs*. Langcua *y* Daimla, G.R. No. 190343, Feb. 06, 2013) p. 115

CITATION

Page

I. LOCAL CASES

Abakada Guro Party List *vs.* Ermita, G.R. Nos. 168056, etc., Sept. 1, 2005, 469 SCRA 1 427
Abakada Guro Party List *vs.* Ermita, 506 Phil. 1, 251 (2005) 399
Aboitiz and Co., Inc. *vs.* Collector of Customs of Cebu, 172 Phil. 617 (1978) 354
Accenture, Inc. *vs.* Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2012 393-394
Active Wood Products Co. *vs.* CA, 260 Phil. 825, 828-829 (1990) 225
Adamson *vs.* Court of Appeals, G.R. Nos. 120935 and 124557, May 21, 2009, 588 SCRA 27 355
Adille *vs.* Court of Appeals, 241 Phil. 487, 494-495 (1988) 471
Agabon *vs.* National Labor Relations Commission, 485 Phil. 248, 289 (2004) 538
Agabon *vs.* NLRC, 485 Phil. 248 (2004) 503
Agcaoili *vs.* Suguitan, 48 Phil. 676, 697 (1926) 382
Aguirre *vs.* Court of Appeals, 466 Phil. 32, 48 (2004) 470
Agustin *vs.* Delos Santos, G.R. No. 168139, Jan. 20, 2009, 576 SCRA 576, 585 223
Alcantara *vs.* Department of Environment and Natural Resources, G.R. No. 161881, July 31, 2008, 560 SCRA 753 356
Aliling *vs.* Feliciano, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 209 502
Allied Banking Corporation *vs.* Lim Sio Wan, G.R. No. 133179, March 27, 2008, 549 SCRA 504, 515 89
Alzua *vs.* Johnson, 21 Phil. 308 (1912) 306
Andrada *vs.* Pilhino Sales Corporation, G.R. No. 156448, Feb. 23, 2011, 644 SCRA 1, 8-9 83
Ang Ping *vs.* RTC, Manila, Branch 40, 238 Phil. 77 (1987) 382
Aniag, Jr. *vs.* Commission on Elections, G.R. No. 104961, Oct. 7, 1994, 237 SCRA 424 517
Antonio *vs.* Sayman Vda. de Monje, G.R. No. 149624, Sept. 29, 2010, 631 SCRA 471, 480 223

Page

Apo Fruits Corporation *vs*. Court of Appeals,
G.R. No. 164195, Feb. 6, 2007, 514 SCRA 537, 557-558 577
Aratea *vs*. Suico, G.R. No. 170284, March 16, 2007,
518 SCRA 501, 507 485
Arenas *vs*. CA, G.R. No. 126466, Jan. 14, 1999,
345 SCRA 617 89
Aromin *vs*. Floresca, 528 Phil. 1165, 1195 (2006) 469
Asiatico *vs*. People, G.R. No. 195005, Sept. 12, 2011,
657 SCRA 443, 451-452 188-189
AT&T Communications Services Philippines, Inc. *vs*.
CIR, G.R. No. 182364, Aug. 3, 2010, 626 SCRA 567 379
Atlas Consolidated Mining and Development
Corporation *vs.* Commissioner of Internal Revenue,
(Atlas), G.R. Nos. 141104 & 148763, June 8, 2007,
524 SCRA 73 .... 345, 403
Baculi *vs.* Ugale, A.M. No. P-08-2569, Oct. 30, 2009,
604 SCRA 685, 687 439
Balindong *vs*. Court of Appeals, 488 Phil. 203 (2004) 398
Baron *vs*. National Labor Relations Commission,
G.R. No. 182299, Feb. 22, 2010, 613 SCRA 351, 359 515
Blancaflor *vs*. National Labor Relations Commission,
G.R. No. 101013, Feb. 2, 1993, 218 SCRA 366 533
Bongcac *vs*. Sandiganbayan, G.R. Nos. 156687-88,
May 21, 2009, 588 SCRA 64, 71 224
Borjal *vs*. CA, 361 Phil. 1 (1999) 596
BPI Family Bank *vs*. Franco, G.R. No. 123498, Nov. 23, 2007,
538 SCRA 184, 198 88
BPI-Family Savings Bank, Inc. *vs*. Court of Appeals,
386 Phil. 719, 729 (2000) 399
BPI Leasing Corporation *vs*. Court of Appeals,
G.R. No. 127624, Nov. 18, 2003 407
Bristol Myers Squibb (Phils), Inc. *vs.* Baban,
G.R. No. 167449, Dec. 17, 2008, 574 SCRA 198 518
Bughaw, Jr. *vs*. Treasure Island Industrial Corporation,
G.R. No. 173151, March 28, 2008,
550 SCRA 307, 316-318 500
Callangan *vs*. National Labor Relations Commission,
251 Phil. 791 (1989) 533

Page

Caltex (Philippines), Inc. *vs*. Commissioner of Internal
Revenue, 121 Phil. 1390 (1965) 356
Caltex Refinery Employees Association *vs*. NLRC,
316 Phil. 335, 343-344 (1995) 56
Cañezo *vs*. Rojas, G.R. No. 148788, Nov. 23, 2007,
538 SCRA 242, 253 90
Carbajal *vs*. GSIS (San Julian, Eastern Samar),
247 Phil. 167, 173 (1988) 95
Castro *vs*. People, G.R. No. 193379, Aug. 15, 2011,
655 SCRA 431, 441 143-144
Central Bank of the Philippines *vs*. Citytrust Banking
Corporation, G.R. No. 141835, Feb. 4, 2009,
578 SCRA 27, 32 89
Challenge Socks Corporation *vs*. Court of Appeals,
G.R. No. 165268, Nov. 8, 2005, 474 SCRA 356, 363-364 500
Chavez *vs*. Ronidel, G.R. No. 180941, June 11, 2009,
589 SCRA 103, 109 246
Chia *vs*. Acting Collector of Customs, G.R. No. L-43810,
Sept. 26, 1989, 177 SCRA 755 617
Chris Garments Corporation *vs*. Sto. Tomas,
G.R. No. 167426, Jan. 12, 2009, 576 SCRA 13, 21-22 223
CIR *vs*. Cebu Toyo Corporation,
491 Phil. 625, 637-638 (2005) 379
Cebu Toyo Corporation, G.R. No. 149073, Feb. 16, 2005,
451 SCRA 447 420
Ironcon Builders and Development Corporation,
G.R. No. 180042, Feb. 8, 2010, 612 SCRA 39 379
Philippine Health Care Providers, Inc., G.R. No. 168129,
April 24, 2007, 522 SCRA 131, 142-143 375
Toshiba Information Equipment (Phils.), Inc.,
503 Phil. 823 (2005) 378
Toshiba Information Equipment (Phils.), Inc.,
G.R. No. 150154, Aug. 9, 2005, 466 SCRA 211 421
Cirtek Employees Labor Union-Federation of Free Workers
vs. Cirtek Electronics, Inc., G.R. No. 190515,
June 6, 2011, 650 SCRA 656 210
Clientlogic Philippines, Inc. *vs*. Castro, G.R. 186070,
April 11, 2011, 647 SCRA 524, 532 515

Page

Co *vs*. Court of Appeals, G.R. No. 100776,
Oct. 28, 1993, 227 SCRA 444, 448-455 432
Collector of Internal Revenue *vs*. Batangas
Transportation Company and Laguna-Tayabas
Bus Company, 102 Phil. 822 (1958) 392
Commission on Audit, Regional Office No. 13, Butuan City
vs. Hinampas, G.R. No. 158672, Aug. 7, 2007,
529 SCRA 245, 260 607
Commissioner of Internal Revenue *vs*. Aichi Forging
Company of Asia, Inc. (Aichi) G.R. No. 184823,
Oct. 6, 2010, 632 SCRA 422 .... 344, 402
American Express, G.R. No. 152609, June 29, 2005,
462 SCRA 197, 229-230 411
Bank of the Philippine Islands, G.R. No. 178490,
July 7, 2009, 592 SCRA 219 357
Burmeister and Wain Scandinavian Contractor
Mindanao, Inc., 541 Phil. 119 (2007) 394
Hitachi Computer Products (Asia) Corporation,
CA-G.R. SP No. 63340, Feb. 7, 2002 373
Ilagan Electric & Ice Plant, Inc. and Court of Tax Appeals,
140 Phil. 62 (1969) 392
Ironcon Builders and Development Corporation,
G.R. No. 180042, Feb. 8, 2010, 612 SCRA 39 422
Mirant Pagbilao Corporation (Mirant),
G.R. No. 172129, Sept. 12, 2008, 565 SCRA 154 403-404
Mirant Pagbilao Corporation, 535 Phil. 481, 490 (2006) 467
Placer Dome Technical Services (Phils.), Inc.,
G.R. No. 164365, June 8, 2007, 524 SCRA 271, 276 40
Rio Tuba Nickel Mining Corp., G.R. Nos. 83583-84,
March 25, 1992, 207 SCRA 549 357
Smart Communications, Inc., G.R. Nos. 179045-06,
Aug. 25, 2010, 629 SCRA 342, 353 367
Solidbank Corporation, 462 Phil. 96 (2003) 397
Villa, 130 Phil. 3 (1968) 356
Concept Builders, Inc. *vs*. NLRC, 326 Phil. 955, 965 (1996) 490
Consolidated Bank and Trust Corporation *vs.*
Court of Appeals, G.R. No. 138569, Sept. 11, 2003,
457 Phil. 688, 707 88-89

Page

Cruz *vs*. Cristobal, 529 Phil. 695, 715 (2006) 474
Cuyo *vs*. People, G.R. No. 192164, Oct. 12, 2011,
659 SCRA 69, 76 468
Dadison *vs*. Asis, A.M. No. RTJ-03-1760, Jan. 15, 2004,
419 SCRA 456, 463-464 305
David *vs*. Macapagal-Arroyo, 522 Phil. 705, 754 [2006] 25
De Guzman *vs*. National Labor Relations Commission,
371 Phil. 192, 204 (1999) 56
De Guzman *vs*. National Labor Relations Commission,
G.R. No. 167701, Dec. 12, 2007, 540 SCRA 21, 35 538
De Mesa *vs*. Pepsi Cola Products Phils., Inc.,
504 Phil. 685 (2005) 382-383
Delos Reyes *vs*. Flores, G.R. No. 168726,
March 5, 2010, 614 SCRA 270 354
Department of Agrarian Reform *vs*. Court of Appeals, et al.,
G.R. Nos. 118712 and 118745, Oct. 6, 1995, 49 SCRA 149;
319 Phil. 246 (1995) 569-570
Development Bank of the Philippines *vs*. Commission
on Audit, G.R. No. 144516, Feb. 11, 2004,
422 SCRA 459 82
DUP Sound Philippines *vs*. Court of Appeals,
G.R. No. 168317, Nov. 21, 2011, 660 SCRA 461,467 53
Duran *vs*. Court of Appeals, 522 Phil. 399, 407 (2006) 90
E.G. & I. Construction Corporation *vs*. Sato,
G.R. No. 182070, Feb. 16, 2011, 643 SCRA 492, 501 538
Estarija *vs*. Ranada, G.R. No. 159314, June 26, 2006,
492 SCRA 652, 663 608
Estate of Margarita D. Cabacungan *vs*. Laigo,
G.R. No. 175073, Aug. 15, 2011, 655 SCRA 366, 376 85-86
Estate of Edward Grimm *vs*. Estate of Charles Parsons
and Patrick C. Parsons, G.R. No. 159810, Oct. 9, 2006,
504 SCRA 67 82
Evangelista *vs*. Collector of Internal Revenue,
102 Phil. 140 (1957) 393
Fabrigar *vs*. People, 466 Phil. 1036, 1044 (2004) 397
Fernandez *vs*. Sto. Tomas, 312 Phil. 235, 247 (1995) 266
Figuerres *vs*. Court of Appeals, 364 Phil. 683 (1999).................. 354

Page

Figuracion-Gerilla *vs*. Carolina *Vda. De* Figuracion, et al.,
531 Phil. 81 (2006) 460
Filipro, Inc. *vs*. Hon. Minister Ople, 261 Phil. 104 (1990) 56
Floresca *vs*. Philex Mining Corporation,
220 Phil. 533 (1985) 382
Francisco *vs*. Galvez, A.M. No. P-09-2636, Dec. 4, 2009,
607 SCRA 21, 27 439
Mallen, Jr., G.R. No. 173169, Sept. 22, 2010,
631 SCRA 118, 123 486
National Labor Relations Commission, G.R. No. 170087,
Aug. 31, 2006, 500 SCRA 690, 697-698 269
Fulton Iron Works Co. *vs*. China Banking Corporation,
55 Phil. 208, 216-217 (1930) 89
G&M (Phil.), Inc. *vs*. Batomalaque, G.R. No. 151849,
June 23, 2005, 461 SCRA 111, 118 219
Gallardo-Corro *vs*. Gallardo, G.R. No. 136228,
Jan. 30, 2001, 350 SCRA 568, 578 224
Galvez *vs*. Court of Appeals, 485 SCRA 346 82
Galvez *vs*. Court of Appeals, 520 Phil. 217, 225 (2006) 472
Gancho-on *vs*. Secretary of Labor and Employment,
337 Phil. 654, 658 (1997) 24
Garcia *vs*. Social Security Commission Legal and
Collection, G.R. No. 170735, Dec. 17, 2007,
540 SCRA 456, 473-474 485
Gaw Sin Gee *vs*. Market Master of the Divisoria
Market, et.al. [C.A.], 46 O.G. 2617 397
General Credit Corporation *vs*. Alsons Development
and Investment Corporation, 542 Phil. 219, 231 (2007) 489
Gibbs *vs*. Collector of Internal Revenue,
107 Phil. 232 (1960) 370
Government Service Insurance System (GSIS) *vs*.
Cadiz, 453 Phil. 384, 391 (2003) 396
Cuanang. G.R. No. 158846, June 3, 2004, 430 SCRA 639 96
Civil Service Commission, 315 Phil. 159, 165 (1995 277
Civil Service Commission, G.R. Nos. 98395 and 102449,
Oct. 28, 1994, 237 SCRA 809, 818 284
CSC, G.R. Nos. 98395 and 102449, June 19, 1995,
245 SCRA 179, 188 265

Page

Gabriel, 368 Phil. 187, 195 (1999) 96
Grio Lending Services *vs.* Sermonia, A.M. No. P-03-1757,
Dec. 10, 2003, 417 SCRA 361 446
Guagua Electric Light Co., Inc. *vs.* Collector of Internal
Revenue, 126 Phil. 85 (1967) 392
Guevarra *vs.* Sandiganbayan, Fourth Division,
G.R. Nos. 138792-804, March 31, 2005, 454 SCRA 372,
382-383; 494 Phil. 378, 388 (2005) 575
Gutierrez *vs.* Quitalig, 448 Phil. 469, 479 (2003) 439
Gutierrez *vs.* Singer Sewing Machine Company,
458 Phil. 401, 413 (2003) 56
Hacienda Bigaa, Inc. *vs.* Chavez, G.R. No. 174160,
April 20, 2010, 618 SCRA 559, 576-577 223
Hacienda Luisita, Incorporated *vs.* Luisita Industrial
Park Corporation, G.R. No. 171101, July 5, 2011,
653 SCRA 154 432
Ham *vs.* Bachrach Motor Co., Inc., 109 Phil. 949 (1960) 354
Heirs of Abadilla *vs.* Galarosa, 527 Phil. 264, 277 (2006) 223
Heirs of Maningding *vs.* CA, 342 Phil. 567, 577 (1997) 473
Heirs of Pacencia Racaza, etc. *vs.* Spouses Florencio
Abay-abay, et al., G.R. No. 198402, June 13, 2012 84
Heirs of Zari *vs.* Santos, 137 Phil. 79 (1969) 356
Herbon *vs.* Palad, 528 Phil. 130, 145 (2006) 474
Hilado *vs.* Collector of Internal Revenue,
100 Phil. 288 (1956) 356
Iglesia Evangelista Metodista en las Islas Filipinas
(IEMELIF), Inc. *vs.* Juane, G.R. Nos. 172447 and 179404,
Sept. 18, 2009, 600 SCRA 555, 567 53
Ilagan *vs.* People, Jan. 29, 1974, 55 SCRA 361 432
Iloilo Dock & Engineering Co. *vs.* Workmen's
Compensation Commission, G.R. No. L-26341,
Nov. 27, 1968, 26 SCRA 102; 135 Phil. 95, 110-113 (1968) 198
In Re: Application for Life Pension Under Rep. Act 910
of Justice Ruperto G. Martin, A.M. No. 747-RET,
July 13, 1990 243
In Re: Claim of CAR Judge Noel, 194 Phil. 9 (1981) 285

Page

Insular Lumber Co. *vs*. Court of Tax Appeals,
192 Phil. 221, 232-233 [1981] 386
Intel Technology Philippines, Inc. *vs*. Commissioner
of Internal Revenue, G.R. No. 166732, April 27, 2007,
522 SCRA 657 .... 378, 421
JGB & Associates, Inc. *vs*. NLRC,
324 Phil. 747, 754 (1996) 55
Juario *vs*. Labis, A.M. No. P-07-2388, June 30, 2008,
556 SCRA 540, 544 440
Jumuad *vs*. Hi-Flyer Food, Inc., G.R. No. 187887,
Sept. 7, 2011, 657 SCRA 288, 300 .... 515, 518
Kukan International Corporation *vs*. Reyes,
G.R. No. 182729, Sept. 29, 2010, 631 SCRA 596, 628 487
La Carlota Sugar Central *vs*. Jimenez, 112 Phil. 232 (1961) 357
Lacbayan *vs*. Samoy, Jr., G.R. No. 165427,
March 21, 2011, 645 SCRA 677, 690 469
Land Bank of the Philippines *vs*. Arceo,
G.R. No. 158270, July 21, 2008, 559 SCRA 85, 94-95 224
Court of Appeals, et al., G.R. Nos. 118712
and 118745, July 5, 1996, 258 SCRA 404;
327 Phil. 1047 (1996) 569, 576
De Leon, 447 Phil. 495 (2003) 399
Orilla, G.R. No. 157206, June 27, 2008,
556 SCRA 102, 107 .... 568, 570-571, 574
Lantion *vs*. National Labor Relations Commission,
260 Phil. 548 (1990) 533
Lazo *vs*. Employees Compensation Commission,
264 Phil. 953, 959 (1990) 100
Lecaroz *vs*. Sandiganbayan, 364 Phil. 890, 904 (1999) 246
Ligon *vs*. Court of Appeals, 314 Phil. 689, 699 (1995) 397
Lim *vs*. Court of Appeals, G.R. No. 147524,
June 20, 2006, 491 SCRA 385 528
Lima Land, Inc. *vs*. Cuevas, G.R. No. 169523,
June 16, 2010, 621 SCRA 36, 41 .... 515, 518
Lincoln Philippine Life Insurance Co. *vs*. CA,
354 Phil. 896, 904 (1998) 46
Lopez *vs*. Metropolitan Waterworks and Sewerage System,
501 Phil. 115, 129-130 (2005) 269

Page

Lorzano *vs.* Tabayag, Jr., G.R. No. 189647,
Feb. 6, 2012, 665 SCRA 38, 46-47 83-84
Lucman *vs.* Malawi, 540 Phil. 289, 300 (2006) 89
Magaling *vs.* Ong, G.R. No. 173333, Aug. 13, 2008,
562 SCRA 152, 169-170 487
Malillin *vs.* People, G.R. No. 172953, April 30, 2008,
553 SCRA 619, 632-633 74
Manalo *vs.* PAIC Savings Bank, 493 Phil. 854, 859 (2005) 90
Manguiob *vs.* Arcangel, G.R. No. 152262, Feb. 15, 2012,
666 SCRA 39, 51 468
Marcelo Steel Corporation *vs.* Court of Appeals,
G.R. No. L-35851, Oct. 8, 1974, 60 SCRA 167, 171 225
Mayon Hotel & Restaurant *vs.* Adana,
497 Phil. 892, 923-924 (2005) 538
McLeod *vs.* National Labor Relations Commission
(1st Div.), 541 Phil. 214 (2007) 594
Mendoza *vs.* Laxina, Sr., 453 Phil. 1013, 1026-1027 (2003) 246
Mendoza *vs.* NLRC, G.R. No. 94294, March 22, 1991,
195 SCRA 606, 613 54
Metropolitan Bank & Trust Company, Inc. *vs.* Board
of Trustees of Riverside Mills Corporation Provident
and Retirement Fund, G.R. No. 176959, Sept. 8, 2010,
630 SCRA 350, 357 86
Metropolitan Bank & Trust Co. (Metrobank) *vs.* Tobias III,
G.R. No. 177780, Jan. 25, 2012, 664 SCRA 165 210
Metropolitan Waterworks & Sewerage System *vs.*
Sison, G.R. No. L-40309, Aug. 31, 1983, 124 SCRA 394;
209 Phil. 325 (1983) 575
Mindanao Development Authority *vs.* Court of Appeals,
G.R. No. L-49087, April 5, 1982, 113 SCRA 429, 436-437 86
Miranda, et al. *vs.* Imperial, et al., 77 Phil. 1073 (1947) 396-397
Miro *vs.* Dosono, G.R. No. 170697, April 30, 2010,
619 SCRA 653, 660 607-608
Montemayor *vs.* Millora, G.R. No. 168251, July 27, 2011,
654 SCRA 580, 587-588 224
Moreno *vs.* San Sebastian College-Recoletos Manila,
G.R. No. 175283, March 28, 2008, 550 SCRA 414, 429 56

Page

Morla *vs*. Belmonte, G.R. No. 171146, Dec. 7, 2011,
661 SCRA 717, 727 85
Nazareno *vs*. Court of Appeals, G.R. No. 111610,
Feb. 27, 2002, 378 SCRA 28; 428 Phil. 32, 42 (2002) 575
New Puerto Commercial *vs*. Lopez, G.R. No. 169999,
July 26, 2010, 625 SCRA 422, 423 503
Nisda *vs*. Sea Serve Maritime Agency, G.R. No. 179177,
July 23, 2009, 593 SCRA 668, 693 197
Nissan Motor Phils., Inc. *vs*. Angelo, G.R. No. 164181,
Sept. 14, 2011, 657 SCRA 520, 530 54
NM Rothschild & Sons (Australia) Limited *vs*. Lepanto
Consolidated Mining Company, G.R. No. 175799,
Nov. 28, 2011, 661 SCRA 328, 338-339 90
Northern Motors, Inc. *vs*. National Labor Union, et al.,
102 Phil. 958, 960 (1958) 53
Ocampo *vs*. Ocampo, 471 Phil. 519, 534 (2004) 468
Panasonic Communications Imaging Corporation
of the Philippines *vs*. Commissioner of Internal
Revenue, G.R. No. 178090, Feb. 8, 2010, 612 SCRA 28 412
Panganiban *vs*. Oamil, G.R. No. 149313, Jan. 22, 2008,
542 SCRA 166, 176 470
Panganiban *vs*. Tara Trading Shipmanagement, Inc.,
G.R. No. 187032, Oct. 18, 2010, 633 SCRA 353, 369 200
Papa *vs*. Mago, L-27360, Feb. 28, 1968, 22 SCRA 857 617
Peña *vs*. Tolentino, G.R. Nos. 155227-28, Feb. 9, 2011,
642 SCRA 310, 323 85
People *vs*. Abedin, G.R. No. 179936, April 11, 2012,
669 SCRA 322, 336 .... 161, 563
Adlawan, Jr., G.R. Nos. 100917-18, Jan. 25, 1993,
217 SCRA 489, 498 554
Alas, 340 Phil. 423, 432 (1997) 127
Alfredo, G.R. No. 188560, Dec. 15, 2010,
638 SCRA 749, 767-768 555
Amansec, G.R. No. 186131, Dec. 14, 2011,
662 SCRA 574, 594 .... 146, 188
Antonio, 339 Phil. 519 (1997) 225
Arpon, G.R. No. 183563, Dec. 14, 2011,
662 SCRA 506, 523 .... 551, 554

Page

Arriola, G.R. No. 187736, Feb. 8, 2012,
665 SCRA 581, 590-592, 598 .... 68, 128-129, 563
Bautista, G.R. No. 177320, Feb. 22, 2012,
666 SCRA 518, 533 145
Bayani, G.R. No. 179150, June 17, 2008,
554 SCRA 741, 748-751 161
Berdadero, G.R. No. 179710, June 29, 2010,
622 SCRA 196, 202 110
Cabalquinto, 533 Phil. 703 [2006] 545
Canton, 442 Phil. 743 (2002) 141-142
Capalad, G.R. No. 184174, April 7, 2009,
584 SCRA 717, 727 69
Castelo, 114 Phil. 892 (1962) 595
Castro, G.R. No. 194836, June 15, 2011,
652 SCRA 393, 406 114
Chua Ho San @Tsay Ho San, G.R. No. 128222,
June 17, 1999, 308 SCRA 432, 445 618
Chua Tan Lee, 457 Phil. 443, 449-450 (2003) 72, 188
Concepcion, G.R. No. 178876, June 27, 2008,
556 SCRA 421, 440 67
Cruz, G.R. No. 185381, Dec. 16, 2009,
608 SCRA 350, 364 127
Daen, Jr., 314 Phil. 280, 292 (1995) 127
De Leon, G.R. No. 186471, Jan. 25, 2010,
611 SCRA 118, 133 113
Del Monte, G.R. No. 179940, April 23, 2008,
552 SCRA 627, 636, 639 .... 145, 564
Del Norte, G.R. No. 149462, March 29, 2004,
426 SCRA 383, 388 140
Del Rosario, G.R. No. 188107, Dec. 5, 2012 182
Dela Cruz, G.R. No. 177324, March 30, 2011,
646 SCRA 707 563
Dela Rosa, G.R. No. 185166, Jan. 26, 2011,
640 SCRA 635, 653 .... 132, 564
Delabajan and Lascano, G.R. No. 192180,
March 21, 2012, 668 SCRA 859, 868 556
Denoman, G.R. No. 171732, Aug. 14, 2009,
596 SCRA 257, 272-275 74

Page

Dion, G.R. No. 181035, July 4, 2011,
653 SCRA 117, 133 .... 551, 556
Encila, G.R. No. 182419, Feb. 10, 2009,
578 SCRA 341, 355 160
Encinada, October 2, 1997, 280 SCRA 72 618
Fernandez, G.R. No. 113474, Dec. 13, 1994,
239 SCRA 174 617
Figueroa, G.R. No. 97143, Oct. 2, 1995,
248 SCRA 679 617
Gaspar, G.R. No. 192816, July 6, 2011,
653 SCRA 673, 686 125
Godoy, 312 Phil. 977 (1995) 592
Gonzaga, G.R. No. 184952, Oct. 11, 2010,
632 SCRA 551, 570 127
Gutierrez, G.R. No. 177777, Dec. 4, 2009,
607 SCRA 377, 390-391 563
Hernandez, G.R. No. 184804, June 18, 2009,
589 SCRA 625, 647-648 147
Johnson, 401 Phil. 734 (2000) 140
Kamad, G.R. No. 174198, Jan. 19, 2010,
610 SCRA 295, 307-308 .... 74, 113, 128
Lazaro, Jr., G.R. No. 186418, Oct. 16, 2009,
604 SCRA 250, 269 .... 159, 164, 190
Le, G.R. No. 188976, June 29, 2010, 622 SCRA 571, 583 74
Leangsiri, G.R. No. 112659, Jan. 24, 1996,
252 SCRA 213 517
Legaspi, G.R. No. 173485, Nov. 23, 2011,
661 SCRA 171, 185 110
Llanita and Buar, G.R. No. 189817, Oct. 3, 2012 113
Lorena, G.R. No. 184954, Jan. 10, 2011, 639 SCRA 139 132
Madriaga, G.R. No. 82293, July 23, 1992,
211 SCRA 698, 712-713 71
Malmstedt, G.R. No. 91107, June 19, 1991,
198 SCRA 401 617
Manlangit, G.R. No. 189806, Jan. 12, 2011,
639 SCRA 455, 469-470 .... 145, 564
Mariacos, G.R. No. 188611, June 21, 2010,
621 SCRA 327, 344-345 115

Page

Mendoza, G.R. No. 189327, Feb. 29, 2012,
667 SCRA 357, 369, 374 .... 116, 189
Molleda, Nov. 21, 1978, 86 SCRA 667, 700 622
Montilla, G.R. No. 123872, Jan. 30, 1998,
285 SCRA 703, 717 617
Naquita, G.R. No. 180511, July 28, 2008,
560 SCRA 430, 445-446 165
Pringas , G.R. No. 175928, April 31, 2007,
531 SCRA 828, 845-846 .... 160, 563
Ramos, G.R. No. 85401-02, June 4, 1990,
264 SCRA 554, 569 622
Rivera, G.R. No. 182347, Oct. 17, 2008,
569 SCRA 879, 897-898 145
Rosialda, G.R. No. 188330, Aug. 25, 2010,
629 SCRA 507, 520-521 .... 132, 145, 564
Rubio, G.R. No. 195239, March 7, 2012,
667 SCRA 753, 762 555
Salazar, G.R. No. 181900, Oct. 20, 2010,
634 SCRA 307, 318-319 553
Salcena, G.R. No. 192261, Nov. 16, 2011,
660 SCRA 349, 358 179
Santiago, 465 Phil. 151, 161-162 (2004) 71
Sembrano, G.R. No. 185848, Aug. 16, 2010,
628 SCRA 328, 342-343 114
Sta. Maria, G.R. No. 171019, Feb. 23, 2007,
516 SCRA 621, 633-634 166
Tabar, G.R. No. 101124, May 17, 1993, 222 SCRA 144 617
Tiu, 469 Phil. 163, 173 (2004) 109
Unisa, G.R. No. 185721, Sept. 28, 2011,
658 SCRA 305, 336 .... 69, 126, 132, 563-564
Zeng Hua Dian, G.R. No. 145348, June 14, 2004,
432 SCRA 25, 32 147
Perez *vs*. Abiera, 159-A Phil. 575 (1975) 309
Philippine Bank of Communications *vs*. CIR, CTA & CA,
361 Phil. 916 (1999) 391
Philippine Basketball Association *vs*. Court of Appeals,
392 Phil. 133, 144 (2000) 391

Page

Philippine Commercial International Bank *vs.* Balmaceda, G.R. No. 158143, Sept. 21, 2011, 658 SCRA 33, 42-43 83
Philippine Geothermal, Inc *vs*. CIR, G.R. No. 154028, July 29, 2005, 465 SCRA 308 421
Philippine Long Distance Company *vs*. The Late Romeo F. Bolso, G.R. No. 159701, Aug. 17, 2007, 530 SCRA 550, 560 501
Philippine Long Distance Company *vs*. Teves, G.R. No. 143511, Nov. 15, 2010, 634 SCRA 538, 552 57
Philippine National Bank *vs.* Andrada Electric & Engineering Company, 430 Phil. 882, 894 (2002) 487-488
Philippine National Bank *vs*. Aznar, G.R. Nos. 171805 and 172021, May 30, 2011, 649 SCRA 214, 230 85-86
Philippine Ports Authority *vs*. City of Iloilo, 453 Phil. 927, 934 (2003) 467
Planas *vs*. Collector of Internal Revenue, 113 Phil. 377 (1961) 393
Posadas *vs*. Court of Appeals, G.R. No. 89139, Aug. 2, 1990, 188 SCRA 288 617
Prudential Bank *vs*. Alviar, 502 Phil. 595 (2005) 485
Ramos *vs*. Ramos, 447 Phil. 114, 119 (2003) 224
Rañises *vs*. Employees Compensation Commission, 504 Phil. 340, 345 (2005) 96, 99
Re: Application for Gratuity Benefits of Associate Justice Efren I. Plana, A.M. No. 5460-RET, March 24, 1988 .... 243, 281
Re: Application for Optional Retirement of Former Associate Justice Venicio T. Escolin, A.M. No. 5498-Ret, March 7, 1989 281
Re: Application for Retirement of Associate Justice Britanico of the IAC, 255 Phil. 346 (1989) 281
Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 994, A.M. No. 14061-Ret, June 19, 2012 283
Re: Gregorio G. Pineda, Adm. Matter Nos. 2076-RET, 5621-RET, 5698-RET, 5717-RET, 5794-RET and 6789-RET, July 13, 1990, 187 SCRA 469 284

Page

Re: Request of Chief Justice Andres R. Narvasa (Ret.) For Re-Computation of his Creditable Government Service, A.M. No. 07-6-10-SC, Jan. 15, 2008 .... 238, 250, 283
Re: Request of Justice Abraham F. Sarmiento (Ret.) for Monthly Retirement Pensions and All Upward Adjustment of Benefits, A.M. No. 03-12-08-SC, Dec. 13, 2005 238
Re: Request of Justice Abraham F. Sarmiento (Ret.) for Monthly Retirement Pension and All Upward Adjustment of Benefits, A.M. NO. 03-13-8-SC, Feb. 13, 2007 .... 250, 256, 283
Re: Retirement Benefits of the Late City Judge Alejandro Galang, Jr., 194 Phil. 14 (1981) 243, 285
Re: Retirement of District Judge Isaac Puno, Jr., A.M. No. 589-Ret., June 28, 1977 243
Re: Ruperto G. Martin, A.M. No. 747-RET, July 13, 1990, 187 SCRA 477 282
Relativo *vs*. De Leon, 128 Phil. 104 (1967) 599
Republic *vs*. De Guzman, G.R. No. 175021, June 15, 2011, 652 SCRA 101, 113 83
Republic of the Philippines *vs*. Court of Appeals, G.R. No. 116111, Jan. 21, 1999, 301 SCRA 366 433
Ringor *vs*. Ringor,480 Phil. 141 (2004) 472
Rizal Surety & Insurance Co. *vs*. CA, 329 Phil. 789, 805-806 86
Rodriguez *vs*. Judge Rodolfo S. Gatdula, 442 Phil. 307, 308 (2002) 454
Salmone *vs*. Employees' Compensation Commission, 395 Phil. 341, 347 (2000) 94
Saludo, Jr. *vs*. Court of Appeals, 522 Phil. 556, 561 (2006) 595
Samsung Construction Co. Phils., Inc. *vs*. FEBTC, 480 Phil. 39, 49 (2004) 89
Santos *vs*. Santos, 396 Phil. 928, 947 (2000) 471
Sarona *vs*. National Labor Relations Commission, G.R. No. 185280, Jan. 18, 2012, 663 SCRA 394, 415 486

Page

Serrano *vs*. NLRC, 380 Phil. 416 (2000) 503
Sevillana *vs*. I.T. (International) Corp.,
408 Phil. 570, 588 (2001) 538
Silicon Philippines, Inc. *vs*. Commissioner of Internal
Revenue, G.R. No. 172378, Jan. 17, 2011, 639 SCRA 521 412
Sy *vs*. Judge Dinopol, A.M. No. RTJ-09-2189,
Jan. 18, 2011, 639 SCRA 681 .... 308, 310
Taganas *vs*. Emulsan, G.R. No. 146980, Sept. 2, 2003,
410 SCRA 237, 241-242 222
Tan *vs*. IBP Commission on Bar Discipline,
532 Phil. 605 (2006) 597
Tan *vs*. Lagrama, 436 Phil. 191, 201 (2002) 269
Teodosio *vs*. Judge Arturo Carpio, 468 Phil. 164 (2004) 454
Teroña *vs*. Hon. Antonio de Sagun, G.R. No. 152131,
April 29, 2009, 587 SCRA 60, 72 453
The Philippine Veterans Affairs Office *vs*. Segundo,
247 Phil. 330, 336 (1988) 382
Tiongson *vs*. Court of Appeals, G.R. No. L-35059,
Feb. 27, 1973, 49 SCRA 429, 434 224
Torbela *vs*. Rosario, G.R. Nos. 140528 and 140553,
Dec. 7, 2011, 661 SCRA 633, 661 .... 85-86, 88
Toshiba Information Equipment (Phils.), Inc. *vs*. CIR,
G.R. No. 157594, March 9, 2010, 614 SCRA 526 421
Uichico *vs*. National Labor Relations Commission,
339 Phil. 242, 252 (1997) 486
Union Industries, Inc. *vs.* Vales, 517 Phil. 247 (2006).................. 53
University of Sto. Tomas *vs*. Board of Tax Appeals,
93 Phil. 376 (1953) 393
Valiao *vs*. Court of Appeals, 479 Phil. 459, 469 (2004) 55
Valmonte *vs*. De Villa, G.R. No. 83988, May 24, 1990,
185 SCRA 665 617
Velarde *vs*. Lopez, Inc., 464 Phil. 525 (2004) 594
Villanueva *vs*. Philippine Daily Inquirer, Inc.,
G.R. No. 164437, May 15, 2009, 588 SCRA 1, 13 597
Villarica Pawnshop, Inc. *vs*. Gernale, G.R. No. 163344,
March 20, 2009, 582 SCRA 67, 78 225

Page

Villaseñor *vs*. De Leon, A.M. No. P-03-1685,
March 20, 2003, 399 SCRA 342 445
Western Mindanao Power Corporation *vs*. Commissioner
of Internal Revenue, G.R. No. 181136, June 13, 2012 412
Yao *vs*. Court of Appeals, 398 Phil. 86 (2000) 363
Zamudio *vs*. Auro, A.M. No. P-04-1793, Dec. 8, 2008,
573 SCRA 178, 187 .... 440, 447

II. FOREIGN CASES

Choctawhatchee Electric Cooperative, Inc *vs*.
Green, 123 So. 2d 357 (1960) 41
Danville Building Ass'n *vs*. Pickering (D. C.) 294 F. 117 39
Endler *vs*. United States, 110 F. Supp. 945 (1953) 41
Loyola Federal Savings and Loan Association *vs*.
South Carolina Tax Commission, 308 S.C. 211 (1992) 41
Pennsylvania Company for Insurances on Lives and
Granting Annuities *vs*. United States,
39 F. Supp 1019 (1941) 41
State of Florida Department of Revenue *vs*. Miami
National Bank, 374 So. 2d 1 (1979) 43
Terry *vs*. Ohio, 392 U.S. I, 88 S Ct. 1868,
20 L. Ed. 2d 889 (1968) 142, 617
US. *vs*. Isham, 84 US 496 (1873) 39

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. III, Sec. 2 616
Sec. 3(2) 616
Art. VIII, Secs. 1, 4 266
Secs. 5(5), 6 266
Art XI(B), Sec. 4 245

Page

1935 Constitution
Art. XIV 274

B. STATUTES

Act
Act. No. 1870, as amended by R.A. No. 9500 251
Act No. 2657 (Administrative Code of 1917) 237, 263, 273
Act No. 2711 .... 263, 273
Sec. 83 273
Administrative Code (1987)
Sec. 2 266
(12) 277
(14)(15) 263
Sec. 17, Chapter 3, Book IV 273
Batas Pambansa
B.P. Blg. 129 257
Civil Code, New
Art. 5 356
Art. 13 364
Art. 493 469
Art. 494 470-471
Art. 807 474
Art. 834 475
Art. 1003 476
Art. 1007 476
Art. 1173 89
Arts. 1392, 1407 474
Art. 1444 86
Art. 1456 472
Art. 1980 88-89
Art. 2254 356
Code of Conduct for Court Personnel
Canon IV, Sec. 1 439
Code of Judicial Conduct
Canon 1, Rule 1.01 304
Corporation Code
Sec. 31 485

Page

Sec. 74(2) in relation to Sec. 144 .... 203-204, 212
Sec. 144 204
Executive Order
E.O. No. 43 .... 238, 251
E.O. No. 94 .... 251, 273
E.O. No. 273 .... 354, 404, 408
Sec. 106 404
E.O. No. 292, Sec. 40 245
E.O. No. 401-A 393
Internal Revenue Code (1904)
Sec. 110 40
Labor Code
Art. 223 .... 498, 499
Art. 277(b) 57
Art. 282 .... 54, 496, 500
(A) 500
(b)(c) 515
Art. 283 500
Art. 287 219
National Internal Revenue Code (1986)
Sec. 4 .... 373, 391, 412
Sec. 105 .... 350, 365
Sec. 106 405
(b)(e) 358
Sec. 106(d) 395
Sec. 108(B) 368, 394
Sec. 110(B) 350, 366-368
Sec. 112 .... 351, 389
(A) 344-345, 363, 365, 367
(B) 344-345
(C) 345, 358, 360, 363, 365, 401
(D) 345, 360, 391, 394-395, 402
Sec. 114(A) 359
Sec. 173 .... 34, 37, 39
Sec. 180 44
Sec. 198 43
Sec. 229 401

Page

Sec. 230 405
Sec. 245 (now Sec. 244) in relation to Sec. 4 406
Sec. 246 .... 372, 374-375, 391, 432
National Internal Revenue Code (1977)
Sec. 106(d) 385-386
Negotiable Instruments Law
Sec. 132 36
Penal Code, Revised
Art. 266-A 545, 550, 556
Art. 266-B 556
Presidential Decree
P.D. No. 626 95
amending Book IV of the Labor Code 98
P.D. No. 1158 404
Sec. 180 34
P.D. No. 1886 251
Sec. 1 501
Sec. 9 277
Republic Act
R.A. No. 910 .... 235, 241, 248-249, 252-253
Sec. 1 .... 240, 252, 282
R.A. No. 1125, Sec. 7 355
R.A. No. 2260 264
Secs. 1, 3, 6 264
R.A. No. 3019 .... 246, 274
R.A. No. 6235, Sec. 9 141
R.A. No. 6425 559
R.A. No. 6657 568
R.A. No. 6713 246
R.A. No. 7610, Sec. 29 545
R.A. No. 7660 32
R.A. No. 7716 .... 358, 385-386, 405
R.A. No. 7925 .... 17-18, 20
Sec. 18 17
R.A. No. 8291, Sec. 3 259
R.A. No. 8424 .... 34, 332, 354, 373
Sec. 7 409
Sec. 112 408
(A) 343, 347

Page

Sec. 112(B) 332
Sec. 112(D) 360
R.A. No. 9165 .... 73, 115, 157
Art. II, Sec. 5 .... 62, 75-76, 102, 107, 118-119, 123, 559
Sec. 11 .... 102, 107-108, 135, 171, 559
(3) 613-614
Sec. 21 .... 65, 111-112, 145, 164, 167
Sec. 21(a) 112
par. 1 .... 72, 165
Sec. 21 183
Sec. 21(a) 73
Sec. 29 159
R.A. No. 9184 268
Sec. 5(f) 268
R.A. No. 9262, Sec. 40 545
Sec. 44 545
R.A. No. 9337 427
Sec. 112 351
Sec. 112(C) 360, 427
R.A. No. 9946 .... 240, 248-249, 255, 262
Rules of Court, Revised
Rule 13, Sec. 10 209
Sec. 13 209
Rule 15, Sec. 4 302
Rule 39, Sec. 6 14
Sec. 47(b) 222
Rule 43 .... 93, 605
Rule 44, Sec. 15 467
Rule 45 .... 2, 30, 49, 53, 83, 208, 460, 468
Sec. 2 210
Rule 65 .... 209, 498
Rule 69 477
Rule 70 451
Rule 71, Sec. 3 303
Rule 113, Sec. 5 56-57
Sec. 5(a) 617
Rule 122, Sec. 11(a) 528
Rule 126, Sec. 13 .... 114, 189

Page

Rule 137, Sec. 1 308
Rule 138, Sec. 10 599
Rule 139-B, Sec. 18 .... 595, 597, 599
Rule 140 445
Sec. 8 .... 305, 445-447
Sec. 9 .... 451, 453
Sec. 11 .... 305, 445, 451
Rules on Civil Procedure, 1997
Rule 39, Sec. 2 569
Rule 45 .... 79, 328-329
Rule 71, Sec. 7 600
Rules on Summary Procedure
Sec. 10 452
Tariff and Customs Code
Sec. 3602 603

C. OTHERS

CSC Memorandum Circular
No. 17, series of 2002 269
No. 19, series of 1999 .... 440, 445
Rule IV, Sec. 52C(10) 445
Dangerous Drugs Board Regulation No. 1, Series of 2002
Sec. 1(b) 73, 128, 144
Implementing Rules and Regulations of R.A. No. 9165
Sec. 21 .... 157, 185
(a) 131, 165
Internal Rules of the Court of Appeals
Rule III, Sec. 3 225
Internal Rules of the Supreme Court
Rule II, Sec. 7 530
Omnibus Rules Implementing Book V of the E.O. No. 292
Rule XI 235
Rule XIV, Sec. 22(i) 444-445
Sec. 23 446

Page

Omnibus Rules Implementing the Labor Code
Sec. 2, Rule XXIII, Book V 501
POEA Memorandum Circular No. 9, series of 2000
Sec. 20(A) 197-198
Revised Administrative Circular
No. 81-2010 (Guidelines on the Implementation
of R.A. No. 9946) 259
Revised Civil Service Rules
Rule VI 264

D. BOOKS
(Local)

Jose Arañas, "Annotations and Jurisprudence on the
National Internal Revenue Code, as amended,"
Volume 3, 1963 edition, p. 2 37
C. A. Azucena, Jr., The Labor Code, with Comments
and Cases, Volume I, Sixth Edition, 2007 100
Joaquin G. Bernas, S.J., The Constitution of the
Philippines: A Commentary, 85 (1st ed. 1987) 618
Jose Campos Jr. & Maria Clara Lopez-Campos, "Notes
and Selected Cases on Negotiable Instruments Law,"
1994 edition, p. 520 36
Hector de Leon and Hector de Leon, Jr., "The National
Internal Revenue Code Annotated, volume 2,
2003 ed., p. 288 39
De Leon, The Law on Public Officers and Election Law,
pp. 214-215 (2003 edition) 265
Hector S. De Leon, "The National Internal Revenue
Code Annotated," 1991 ed., p. 9 40

II. FOREIGN AUTHORITIES

BOOKS

31 Am Jur., 91-92 575